



LBA Marketing Conference

October 28, 2016

The Bankers Center, Baton Rouge

1

SIX TIPS TO MARKETING COMPLIANCE

PRESENTED BY:

SUSAN COSTONIS, C.R.C.M.



Seminar Objectives

3

- When it comes to advertising and marketing, banks have no shortage of rules and regulations governing what's permitted, what's "off the island" and some "gray" areas about what may be hiding behind the UDAAP curtain.
- Is there something "unfair, deceptive, or abusive" about the marketing of the product or the product features. The resulting interplay between marketing and compliance goals can become confusing and chaotic. Understanding the bigger picture and having a list of basic guidelines to follow can go a long way in avoiding this difficult paradox

It's all about REPUTATION

4

- Who's in the “news” for a damaged reputation because of:
- Product Quality
- Social Responsibility
- Hacking of customer information
- Deceptive marketing

Possible Candidates

5

- Wells Fargo
- Volkswagen Automotive (Scored very good in 2015 with 75.21 and dropped to very poor in 2016 with 54.75)
- Samsung Galaxy Note 7 – recalled and BANNED by FAA
- Takata Airbags for tens of millions of cars; allegedly known since 2004.
- Target - who let the dogs out?

What's in the NEWS?

6



Was this part of the “Strategic Plan”?

7

- Wells Fargo has agreed to pay **\$185 million** in penalties after 2 million unauthorized accounts were established in customers names by thousands of Wells Fargo employees trying to meet quotas for 'cross-selling.'
- So far, the firm has fired 5,300 employees involved in setting up the accounts. Carrie Tolsted “retired” when the action was announced. She lost \$19 million in equity awards , this year’s bonus and severance.
- October 12th, the CEO, John Stumpf “retired” and lost \$41 million in unvested awards, bonus, and salary.

Six Tips

8

1. Always strive to be clear, concise, and true
2. For deposit products, make sure to include all the required disclosures.
3. Loans require specific disclosure too—make sure to include all those necessary.
4. Be sure your advertising represents all types of customers – consider Fair Lending issues
5. Manage the **compliant process** – consider technology for marketing complaints.
6. More technology concerns & online banking issues. Don't forget about compliance when sending text messages. Social media has benefits and RISKS.

WHAT YOU WILL LEARN

9

- Understanding UDAAP “traps”, what is likely to be considered deceptive, unfair, or abusive? How can you evaluate UDAAP advertising risks?
- Advertising rules under Reg. Z for mortgage loans and open-end plans from the Credit CARD Act; rules for consumer loan products in Regulation Z
- Consumer deposit products in Truth in Savings
- Fair lending concerns for marketing lending products
- "Equal Housing Lender" statement and the logo
- Soliciting via the phone and e-mail: the Telemarketing Sales Rule (TSR) from the FTC and Do Not Call Registry, and CAN-SPAM; rules for TCPA (Telephone Consumer Protection Act) to protect unwanted texts.
- Promotions - drawings, giveaways, bonus rules.
- Restrictions on advertising non-deposit investment sales
- Handling complaints about advertising and marketing

WHAT IS ADVERTISING?

10

- Reg DD - message, ***appearing in any medium***, that promotes directly or indirectly the availability or terms of, or a deposit in, a new account
- Reg Z - commercial message in any medium that promotes, directly or indirectly, a credit transaction.
- FDIC member - commercial message, in any medium, that is designed to attract public attention or patronage to a product or business
- MEDIA TYPES COVERED?

Social Media in 2016

11

- <https://youtu.be/N4znQDyz038>



BIG PICTURE FOR UDAP VERSUS UDAAP

12

UDAP	UDA<u>A</u>AP
<ul style="list-style-type: none">➤ UNFAIR➤ DECEPTIVE	<ul style="list-style-type: none">➤ UNFAIR➤ DECEPTIVE➤ <u>ABUSIVE</u>
<ul style="list-style-type: none">➤ Applies to commercial and consumer transactions	<ul style="list-style-type: none">➤ Applies to consumer transactions, products and services

What's “abusive”?

13

- The Dodd-Frank Act makes it unlawful for any covered person or service provider to engage in an “abusive act or practice.” An abusive act or practice:
- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
- Takes unreasonable advantage of –
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.



What are potential areas for Transaction Testing?

15

Through a high-level assessment of the entity's products, services, and customer base, identify areas for potential transaction testing. This process should determine whether:

- The entity does not underwrite a given credit product on the basis of **ability to repay**.
- A product's profitability depends significantly on **penalty fees** or "back-end" rather than upfront fees.
- A product has **high rates of re-pricing** or other **changes in terms**.
- A product combines features and terms in a manner that can **increase the difficulty of consumer understanding of the overall costs or risks** of the product and the potential harm.
- **Penalties** are imposed on a customer when he **terminates** his relationship with the entity.
- Fees or other costs are imposed on a consumer to **obtain information about their account**.
- A product is **targeted to particular populations**, *without appropriate tailoring* of marketing, disclosures, and other materials designed to ensure understanding by the consumers



Analyzing Complaints

16



- Analysis of consumer complaints may assist in the identification of potential unfair, deceptive, or abusive practices. Examiners should consider the context and reliability of complaints; every complaint does not indicate violation of law. When consumers repeatedly complain about an institution's product or service, however, examiners should flag the issue for possible further review. Moreover, even a single substantive complaint may raise serious concerns that would warrant further review. Complaints that allege, for example, misleading or false statements, or missing disclosure information, may indicate possible unfair, deceptive, or abusive acts or practices needing review.
- Another area that could indicate potential unfair, deceptive, or abusive acts or practices is a high volume of charge-backs or refunds for a product or service. While this information is relevant to the consumer complaint analysis, it may not appear in the institution's complaint records



Analyzing Complaints

17



- Another source of concern would be ANY complaint from a service or product offered by a THIRD PARTY that alleges:
 - Misrepresentation of any terms or costs
 - Enrolled without consent
 - Benefits were not received, did not justify the expense, were not fully explained, were difficult to obtain.



**“What good is online banking if you can’t
download free money from the Internet?”**

FDIC ENFORCEMENT ACTIONS AND CONSUMER HARM

19

Press Release, August 12, 2015

FDIC Announces Settlement with Citizens Bank of Pennsylvania for Unfair and Deceptive Practices

The FDIC Order requires the Bank to pay a civil money penalty (CMP) of **\$3 million**, and restitution of **approximately \$ \$5.8 million to consumers and businesses**

- CBPA engaged in **unfair and deceptive practices** related to the processes by which the bank reconciled **deposit discrepancies**, specifically the procedures for reconciling discrepancies between the amount of a deposit as stated on an account holder's deposit slip and the actual amount of the deposit.
- The Order requires CBPA to **correct the violations of law, ensure future compliance** with Section 5
- Requires the bank **to** develop and implement a **comprehensive restitution plan** for all consumers and businesses adversely impacted by the violations

OTHER REGULATIONS AND “UNFAIR”

20

- Reg Z – “actual available terms” and only those that are offered by the creditor
- Reg DD – prohibits “misleading or inaccurate or misrepresent a depository institution's deposit contract”
- Fair Lending
- FTC rules
- UDAP/UDAAP

Evaluating Consumer Harm

21

- **What is Consumer Harm?**
 - *Actual or potential injury or loss*
- **What is Quantifiable Harm?**
 - **Deceptive marketing that entices purchase without accurate information**
 - **Pricing structure that allows discretion with higher prices to a protected class**
- **What is Non-Quantifiable Harm?**
 - **Denies credit on prohibited basis or additional requirements for billing disputes**
- **What is Potential Harm?**
 - **Failing to require flood insurance**

© Randy Glasbergen
glasbergen.com



“Of course we can afford it. A \$500,000 house with a 30-year mortgage only costs 6¢ a minute!”

AVOIDING UDAAP TRAPS AND BEST PRACTICES FOR COMPLIANCE

23

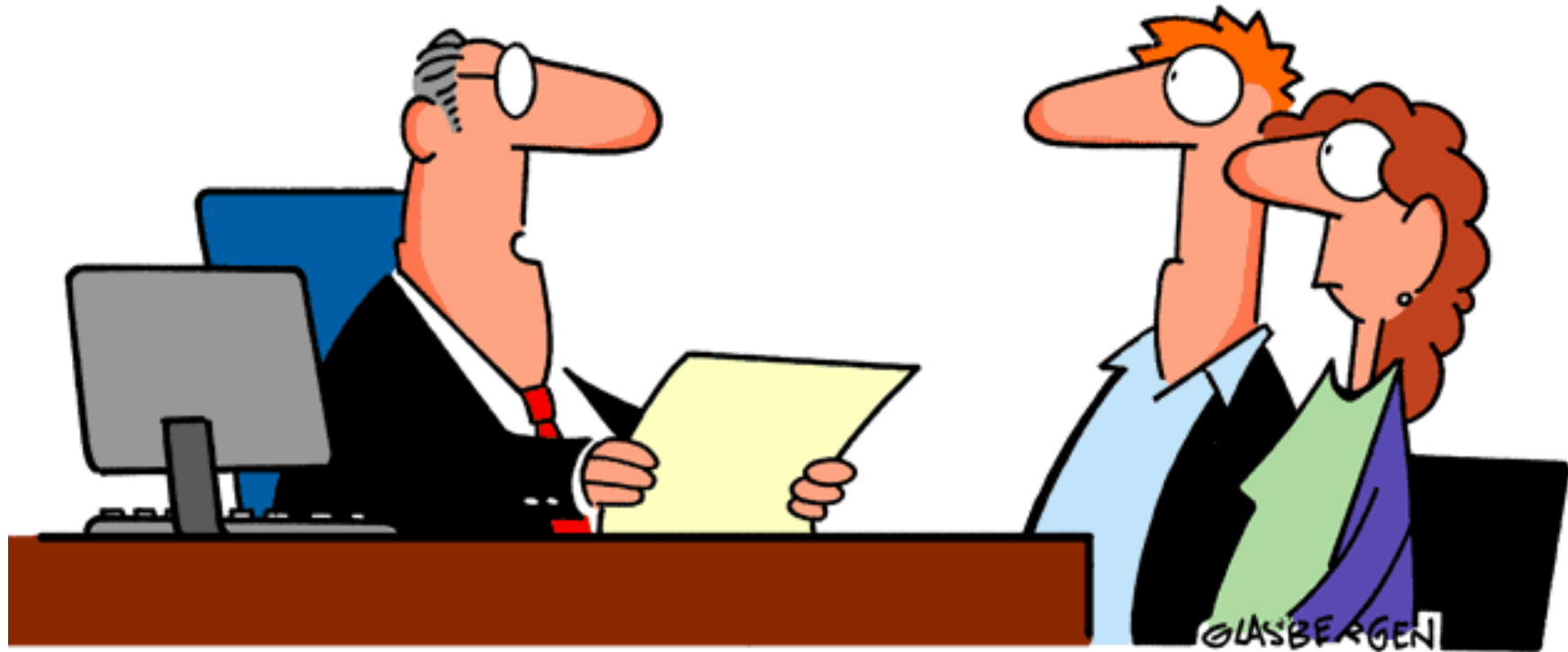
- CFPB Compliance Exam Guidance
- Regular review of all advertising & marketing materials; can an **informed decision be made by the consumer?**
- **Due diligence and regular review of third-parties that are involved in products and service sales or delivery to your customers.**
- Financial institutions should maintain procedures for **consumer complaints**, including documentation, reporting, and tracking. Training for complaints that have these comments:
 - allegations of misleading or false statements,
 - missing disclosures or information,
 - undue or excessive fees,
 - inability to reach customer service,
 - previously undisclosed or unauthorized charges in their accounts.

DEPOSIT ADVERTISING BASICS

24

- Be careful when using the words “free” or “no cost” or even “low cost”
- If any maintenance fee or activity fee can be assessed (under any circumstances) the account should not be advertised as FREE
- There are limited exceptions for check re-order fees, over-limit charges, NSF charges, dormancy fees CAN be assessed on a “FREE” account
- **BE CAREFUL** – if a service is “required” for the account and a fee can be assessed it can’t be advertised as “FREE”. If a bank **REQUIRES** that a debit or ATM card be issued for a free account and the consumer will be charged ATM service fees for a foreign transaction the account is not considered to qualify as a free account. If the account allows the debit or ATM card to be **OPTIONAL** then it may be advertised as a free account if there are no other fees that apply.
- Accounts may be advertised as “FREE” for a limited time **IF** the timeframe is clearly stated in the ad

Copyright 2005 by Randy Glasbergen.
www.glasbergen.com



**“You have been approved for a fixed-rate mortgage.
That means if interest rates go up again and
you’re not paying enough, we’ll fix it.”**

DEPOSIT ADVERTISING BASICS

26

- **ANNUAL PERCENTAGE YIELD** – when an interest rate is advertised, the “annual percentage yield” must also appear, using that term.
 - **The APY may be stated without the interest rate**
 - **The abbreviation APY may be used elsewhere in the ad as long as it is spelled out at least one in the ad (may be in small print)**
 - **The numerical statement of the rate is a trigger term-**
 - ✦ **“2% over normal rates” or “bonus rates” available don’t trigger additional disclosures**
 - ✦ **If the APY is given as a number, state it to 2 decimal points; for example 1.25% APY**
 - ✦ **Advertising on the internet that discloses an interest rate must have the APY visible on the same page; links to the APY are not permitted**
 - ✦ **Tiered-rate or stepped-rate accounts have rules – the highest APY may be disclosed but not without the other rates; all are required**
 - ✦ **APY’s must be accurate within .05 (plus or minus)**

DEPOSIT ADVERTISING BASICS

27

- **TRIGGER TERMS** -APY and bonus are *triggering terms*, meaning if either appears in an ad, additional disclosures must also be made in the ad
- For broadcast media ads (meaning radio, TV, outdoor billboards, telephone), disclose the following:
 - The minimum balance (if any) to obtain the APY (–If it is a tiered rate account, the minimum balance for each tier must be disclosed)
 - The term of the account for a time product (CD)
 - If a bonus is offered, the APY and all applicable disclosures about the APY must appear
 - A financial institution cannot advertise a bonus by itself (without the APY)

DEPOSIT ADVERTISING BASICS

28

- APY and bonus are *triggering terms*, meaning for **written ads** (meaning newspaper, magazine, internet, brochures, etc.), disclose:
 - All requirements for broadcast media, plus:
 - If the rate is variable, a statement that the rate may change after the account is opened
 - The timing of the APY offered (“offered until” or “offered as of”)
 - The minimum opening deposit (if greater than the minimum to earn the stated APY)
 - A statement that “fees could reduce the earnings on the account” (if this is the case)
 - For a time account, statement that a penalty may or will be imposed for early withdrawal
 - If a bonus is offered, what is required to earn the bonus and when it will be provided
- For Internet ads, triggered terms may appear in a link, provided that link is **only one click away**

SIGNS AND MOBILE DEVICES

29

- **Loan signs**
- Reg Z has no such exceptions; signs must meet all Reg Z requirements
- Discretionary overdraft limits on automated systems
If the dollar amount of such a limit is included in the disclosed balance, the disclosure is considered to be an “advertisement” promoting the payment of overdrafts
- Additional disclosures (conditions, etc.) required

SIGNS AND MOBILE DEVICES

30

- **MOBILE DEVICES** – no exceptions; **advertising on a mobile phone or tablet must be handled the same way it is on a bank’s website or other form of electronic media.**
- Mortgage loan on phone or bank’s app must have Equal Housing Lender logo; scrolling allowed, but must be legible.
- See “Member FDIC” requirements & non deposit ad restrictions.
- Trigger term allows “one click away” disclosures, but it must take consumer directly to the terms.
- **One-click-away rule does not apply to the “Equal Housing Lender” or “Member FDIC” language (or to the Non deposit Investment Product disclosures). Those must appear on the same page as the promotional message.**
- See Social Media comments – Twitter has 140 characters and “Equal Housing Lender” take up 20 all by themselves. This is one-seventh of the space just for a disclosure.

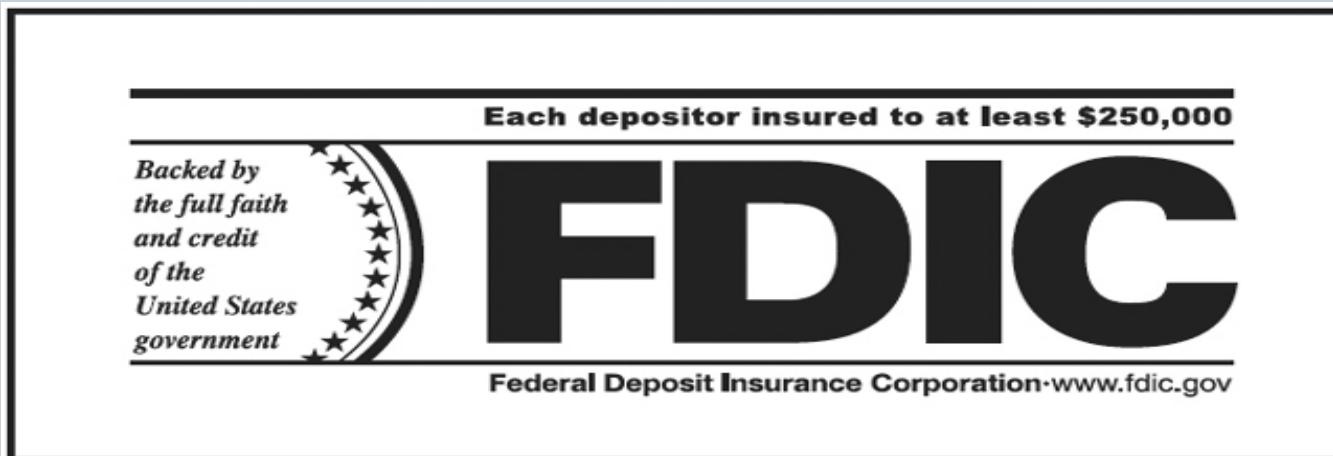


" Do I LOOK like I pay my bills online ? "

FDIC ADVERTISEMENT OF MEMBERSHIP

32

- BASIC RULE SUMMARY
- “Member FDIC” must appear on certain advertisements
- The FDIC’s “official advertising statement” is shown in the “rules” and below



FDIC ADVERTISEMENT OF MEMBERSHIP

33

- **OPTIONS – A bank can use symbol or statement (variations)**
- **This should appear in each ad for any insured deposit product**
- **Also if the ad mentions the institution's name, but is not specific as to any product**
- **There are various exceptions to these rules (FDIC regulation: 12 CFR 328)**
- **It is permissible, though not necessary, for loan ads**

NON-DEPOSIT INVESTMENT PRODUCTS

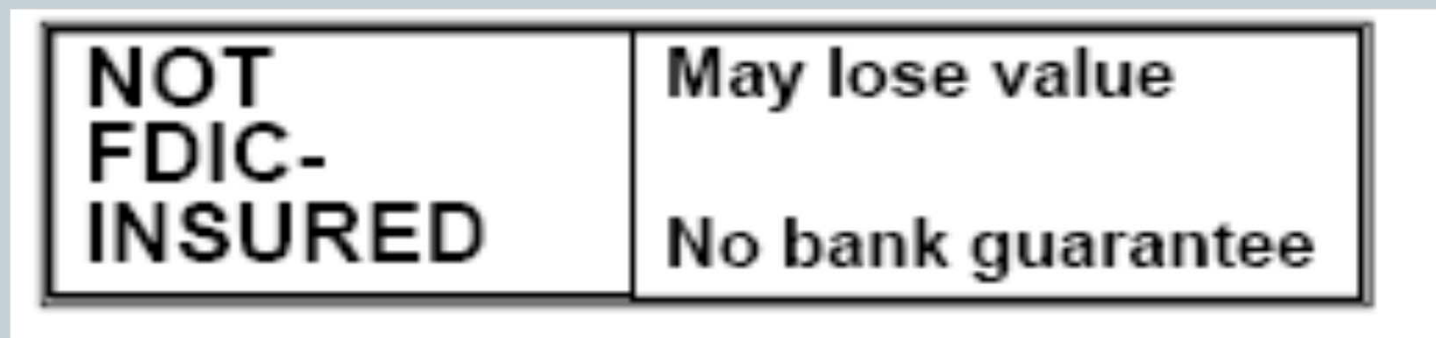
34

- Such as mutual funds, securities, and so forth, do NOT include the FDIC official advertising statement or logo
- Sales representatives should inform consumers (orally or in writing) that:
- "This product is not insured by the Federal Deposit Insurance Corporation"
- "This product is not a deposit or other obligation of, or guaranteed by, the bank"
- "This product is subject to investment risks, including possible loss of the principle amount invested"

NON-DEPOSIT INVESTMENT PRODUCTS

35

- **THIS IS THE TYPICAL LOGO FOR NON-DEPOSIT PRODUCTS**
- When advertising both insured and non-insured products, make sure proper disclosures are made, and there is separation in the ad so there is no doubt non-insured products are not insured



Fair Lending Basics

36



Table 1

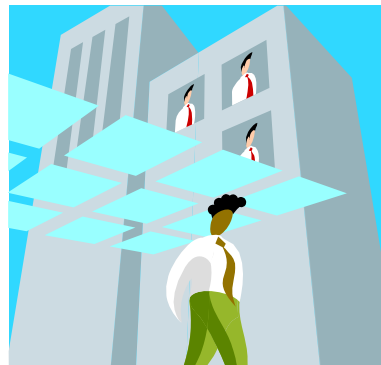
Prohibited Bases under Equal Credit Opportunity Act (ECOA) and Fair Housing Act (FHA)

ECOA	FHA
Race or color	Race or color
Religion	Religion
National origin	National origin
Sex	Sex
Marital status	Familial status
Age	Handicap
Receipt of public assistance income	
Exercising, in good faith, any right under the Consumer Credit Protection Act	



DISCRIMINATION - WHAT IS IT?

Reg B prohibits financial institutions from discriminating against an applicant on a **prohibited basis regarding any aspect of a credit transaction**



FAIR LENDING CONSIDERATIONS

38

- Ads must not overtly discriminate
- Would a “**reasonable person**” be discouraged from applying by looking at your ad?)
- Encourage everyone; discourage no one
- Pay attention to the characteristics of the models in ads, do they represent the makeup of your marketing area and demographics? CHECK the FFIEC website for statistics.
- Ad programs are examined in their totality – is there any aspect of the program that would be viewed as discriminatory on a prohibited basis?
- Be careful with jointly-sponsored ads, guilt by association if your bank is seen as a co-conspirator in discriminatory conduct

FAIR LENDING CONSIDERATIONS

39

- Geographic lending advertising – be careful to monitor different ads based on state, city, county, zip code.
- **CONSIDER** – Is it a high-minority census tracts (HMCTs)
- How about advertising for different ages?
- Only age 62 or over may be targeted (older Americans)
- Vulnerable classes (UDAAP)
- Proxies for prohibited information
- Are lenders or customer service staff screening on a prohibited basis?
- See **PERMITTED ACTIVITIES**

ADVERTISING BASICS

40

- **REG. Z: CONSUMER LOAN ADVERTISING – OPEN END CREDIT , (1026.16)**
- **Triggering Terms If you say any of these:**
 - Finance charge or APR
 - Any other charges
- **Triggered Terms, then you must say all of these:**
 - Transaction or other activity charges
 - APR (and the fact that it may vary, if it can)
 - Any membership or other participation fee

ADVERTISING BASICS

41

- **Additional special rule for HELOCs (1026.16) and portions of (1026.40)**
- Triggering terms can be stated affirmatively or negatively (the absence of the term)
- •“No Closing Costs Home Equity Lines During July!” - Triggers
- Stating the absence of a triggering term nonetheless means you must include all triggered terms in your ad
- For all consumer loans covered by Reg. Z, the form of media doesn't matter
- Rate boards, online ads, etc. all must follow the same rules

ADVERTISING BASICS

42

- **TAX DEDUCTIBILITY**
- Don't hold yourself out to be a tax expert or advisor
- Do you advertise that interest on home loans is tax-deductible?
- Especially on home equity loans where LTV could exceed 100%, retirement account ads
- “Consult your tax advisor” or similar language

EQUAL HOUSING LOGO

43

- When advertising a residential loan product, the Equal Housing Lender logo must be used (commonly known as the little “house”) Options are to use either the Equal Housing Lender statement and or the logo (the “house”)
- For visual ad – the logo must appear in all dealing with residential lending
- No size requirement anymore – just must be legible
- For internet ads: logo should appear on each page dealing with residential lending products
- Verbal ads: “equal housing lender” statement should be announced



SOCIAL MEDIA: CONSUMER RISK MANAGEMENT GUIDANCE

44

- **Social Media: Consumer Compliance Risk Management Guidance**
- **Background**
- **Compliance Risk Management Expectations for Social Media**

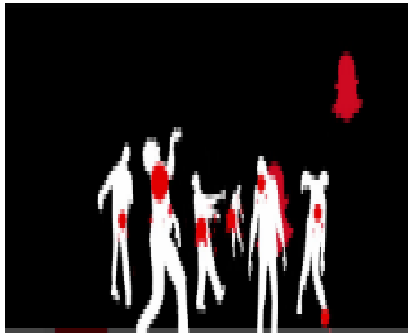
SOCIAL MEDIA: CONSUMER RISK MANAGEMENT GUIDANCE

45

- **Compliance and Legal Risks**
- **Truth in Savings Act/Regulation DD**
- **Fair Lending Laws: Equal Credit Opportunity Act/Regulation B and Fair Housing Act**
- **Truth in Lending Act/Regulation Z**
- **Real Estate Settlement Procedures Act**
- **Fair Debt Collection Practices Act**
- **Unfair, Deceptive, or Abusive Acts or Practices**
- **Deposit Insurance or Share Insurance**
- **Electronic Fund Transfer Act/Regulation E & Check rules**
- *Bank Secrecy Act/Anti-Money Laundering Programs (BSA/AML)*
- *Community Reinvestment Act*
- *Privacy*
- **CAN-SPAM Act and Telephone Consumer Protection Act**
- **Children's Online Privacy Protection Act**
- **Fair Credit Reporting Act**
- **Reputation Risk – Fraud, Third Party Risk, Privacy, Complaints**
- *Employee Use of Social Media Sites*
- **Operational Risk**

What's next in "Social Media "Advertising?"

46



Social Media Revolution 2016

youtu.be

Social media and user interface are revolutionizing the way we communicate. This video shows the 2016 trends. To see full blog post click: <http://ow.ly/4numR...>

10 MILLION VIEWS MORE THAN
"THE WALKING DEAD" FINALE
ON CABLE TV IN 2014

<https://youtu.be/jVKAtOeo-AQ>

LOTTERIES

47

- Banks are prohibited from holding or participating in “lotteries”
 - A “lottery” is where 3 or more people give money or credit for the possibility that one or more of them (but not all of them) will get more than they contributed
 - ✦ .The winner may be determined by any random selection, game, race, contest, etc.
- The key is “giving money or credit” to get in
 - If there is no purchase required to qualify the contest, drawing, etc., then it is not a “lottery” under the statute and it’s permitted
- **MORE RULES:**
- Financial institutions cannot deal in lottery tickets for others
- Advertise or publicize another’s lottery or its winners
- Allow use of its premises by others for a lottery purpose

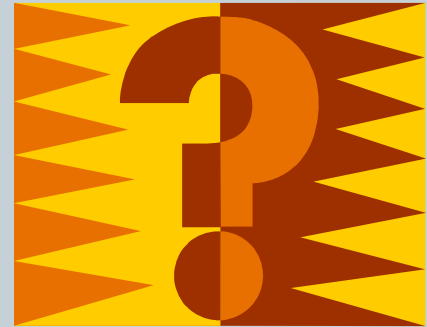
TELEPHONE CONSUMER PROTECTION ACT – TCPA

48

- **What is regulated under the TCPA?**
- **What are the TCPA's restrictions on collection calls under FCC rules?**
- **What are the TCPA's restrictions on telemarketing and advertisements under FCC rules?**
- **What if a wired number is ported to a wireless number?**
- **What if a number is added to the National Do Not Call Registry?**
- **What is the compliance risk?**

Questions???

49



*Thank you for
Attending!*