REGULATORY ADVISORY SERVICES

MAY 2025 EDITION

THE BIG ORANGE BOOK

A BANK & CREDIT UNION'S GUIDE TO

a wipro company

"The BOB is an industry standard that has helped state banking associations, federal agencies, and financial institutions for over 30 years."

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151 Southhall Lane

Orlando, FL 32751

regulatory.services@capco.com

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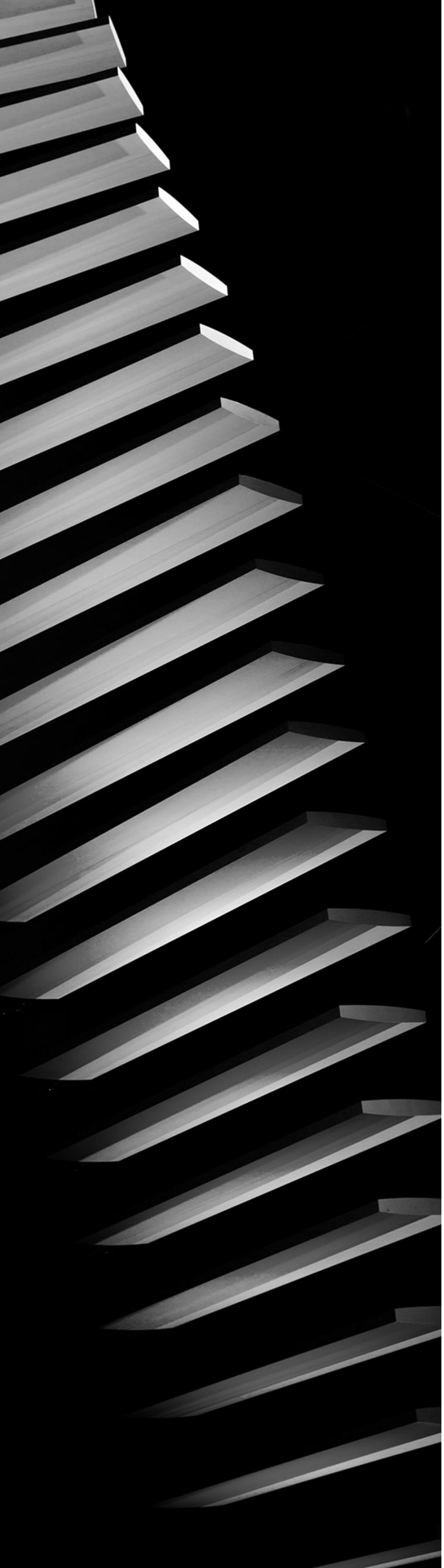

Contributors to the
Big Orange Book

Vic Berbano
Senior Consultant, Contributor

Becky Breland, JD
Principal Consultant, Editor-in-Chief

Sherry Jones
Senior Consultant, Contributor

Christopher Price, CAMS, AMLP
Senior Consultant, Contributor

Elizabeth Rozsa
Senior Consultant, Contributor

Our team of subject matter experts are comprised of former examiners, bank compliance officers, and lawyers, and are passionate about providing our clients with timely and accurate regulatory analysis and industry best practices.

Welcome

Welcome to Capco! Here's How to Use the BOB! As one of the nation's leading compliance advisors, Capco's Regulatory Intelligence Solutions team has helped thousands of financial institutions and government agencies gain a richer understanding of current and emerging federal compliance laws and regulations. Our consulting solutions are designed to make your life easier by giving you honest, accurate, and timely compliance advice that you can easily apply within your organization.

The Big Orange Book: A Bank & Credit Union Guide to Compliance was originally published in 1990 and has become an industry standard that has helped state banking associations, federal agencies, and financial institutions clear the fog of compliance for over 30 years. BOB is written in plain English and easy to follow, making compliance understandable for even the newest compliance officers, while also serving as an excellent reference tool for the most seasoned subject matter experts.

- Throughout this publication you will see orange font which indicates updated information since the prior release of February 2025.
- The table of contents is organized by functional departments (Deposits, Loans, Customer-Related Operations, and Internal Operations.)
- These sections contain materials on laws and regulations within the functional area, and topics that provide you with a more thorough understanding of the applicable issues. It is also hyperlinked, which allows you to click and go to your desired location within the BOB.
- The index allows you to locate the topic in which you are interested in. Each term is followed by the page number(s) on which the term occurs.
- You can also use the search button to find specific terms listed throughout the BOB.

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Advertising Deposits

Introduction

Virtually every aspect of the business of banking is regulated in the United States, including advertising. There is no single federal regulation that sets out all the advertising rules, rather they are scattered about in the regulations in different subject areas (e.g. deposit insurance, different lending regulations, etc.). Some states also have laws and regulations that govern advertising, so each institution should check their state's rules.

Insurance Rules

Common Name: Insurance Rules	
Agency	**Regulation**
FDIC	12 C.F.R. 328

FDIC Rules

FDIC Advertising Statement. On December 23, 2023, the FDIC adopted a final rule to modernize and amend rules governing Insured Depository Institution (IDI) display of the official sign. The amendments have an effective date of April 1, 2024 with full compliance date extended to January 1, 2025 (for misrepresentations of deposit insurance) and March 1, 2026 (for new signs and advertising requirements). The Rule's sign requirements include three distinct signs relating to deposit insurance.

FDIC Official Sign. The first is the FDIC official sign advertising display of the official sign, statement "Member of the Federal Deposit Insurance Corporation," "Member FDIC," or the new option "FDIC-Insured".

The advertising statement must be in every advertisement published by a bank if the advertisement promotes deposit products or services, or promotes the financial institution generally, unless the advertisement falls within one of the exceptions described later in this chapter. For example, an advertisement that states, "Hometown Bank is the friendliest bank in town," must have the advertising statement. In print advertisements, the statement must be of a size that is clearly legible.

Symbol. The FDIC corporate symbol can be used instead of the statement. It consists of the portion of the official sign containing "FDIC" and two lines of text appearing above and below the "FDIC." If the symbol instead of the statement is used, drop the two lines of text if they are illegible and use the "FDIC" part only.

Usage. Insured depository institutions are required to include the official advertising statement in all ads that either promote deposit products and services or promote non-specific banking products and services**.** An example of an ad that promotes a non-specific banking product and service would be listing the financial institution's name and stating that it offers a full range of banking services. Unless the use of the FDIC advertisement is specifically forbidden to be included under the FDIC rules, such as for advertisements of only non-deposit investment products, then insured financial institutions should make sure to include the advertising statement in advertisements. Remember, FDIC insurance is a positive benefit to offer and, therefore, a good thing to advertise.

IDI Physical Premises. An IDI must continuously, clearly, and conspicuously display the official sign where consumers have access to or transact with deposits, including all of its branches and other physical premises. The sign must be visible from teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area. IDIs must display the FDIC official sign in any physical location where IDIs receive deposits other than teller windows or stations or non-branch locations.

Digital Sign. Second, beginning March 1, 2026, banks will be required to display the FDIC official digital sign "clearly and conspicuously" in a continuous manner, near the top of the relevant website page or screen, mobile applications and in close proximity to the IDI's name. Banks also will be required to display the FDIC official digital sign on certain automated teller machines. The official digital sign has specific font, size and color requirements.

The FDIC official digital sign must be displayed on the (1) initial or homepage of the website or application including hyperlinks to a website offering non-deposit products, (2) landing or login pages, and (3) pages where the customer may transact non-deposit products with deposits. For example, the FDIC official digital sign should be displayed where an IDI's mobile application allows customers to deposit checks remotely.

ATMs and like devices are required, at a minimum, to display the FDIC official digital sign on the home page or screen and each transaction page or screen relating to deposits. After March 1, 2026, IDIs must display the official digital sign (with no option to satisfy the requirement through display of the physical official sign).

Non-deposit Investment Products. Third, a non-deposit sign requirement addresses potential confusion where an IDI offers both insured deposits and non-deposit products through the same channel, including branches, ATMs or like devices. Non-deposit products include crypto-assets. The non-deposit signage must be continuously displayed on each IDI page relating to non-deposit products indicating that the non-deposit products are (1) not insured by the FDIC; (2) are not deposits; and (3) may lose value.

Generally, an IDI must physically segregate the areas where non-deposit products are offered from areas where insured deposits are usually and normally accepted. When both insured deposits and non-deposit products are offered within the IDI's premises, regardless of whether deposits are received at teller windows or stations or deposits are received in areas other than teller windows or stations, IDIs must continuously, clearly, and conspicuously display a non-deposit sign within a segregated area and not in close proximity to the official sign.

After March 1, 2026, an IDI's ATM or like device that both receives deposits and offers access to non-deposit products, such ATMs must: (a) display the official digital sign clearly, continuously, and conspicuously on the home page or screen and on each transaction page or screen relating to deposits; and (b) clearly, continuously, and conspicuously indicate that non-deposit products are not insured by the FDIC, are not deposits, and may lose value on each transaction page or screen relating to non-deposit products.

When advertising non-deposit products, do not include the advertising statement or official symbol in advertisements for non-deposit investment products, such as mutual funds, annuities, insurance products and crypto-assets. These products are not insured deposits of the financial institution. To include the advertising statement or symbol with these products would be confusing to the reader and a violation of the regulations. The FDIC rule permits combined advertisements, but FDIC-insured products must be clearly segregated from non-deposit investment products, and the advertisement must disclose that non-deposit investment products are not financial institution products, not FDIC insured, may go down in value and are not guaranteed by any government agency. Please see the Non-deposit Investment Products article for additional information on advertising such products.

Exemptions from Use of the Advertising Statement. There are ten exceptions included in the regulation. Therefore, financial institutions are permitted, but not required, to include either the official advertising statement or the official symbol in the following advertisements:

- Statements and reports of condition that are required by law to be published.
- Printed supplies, such as envelopes, deposit slips, checks, signature cards, passbooks, time deposit certificates and similar items. Stationery is not required to have the statement except when used in an advertising mailing.
- Signs or plates containing the financial institution's name located in the financial institution's offices or attached to a building in which an office of the financial institution is located.
- Listings in directories.
- Display advertisements in a financial institution directory provided the name of the financial institution is listed on a page with a symbol or other descriptive material indicating it is a member of the FDIC.
- Joint or group advertisements of a financial institution's services where the names of both insured and non-insured institutions are listed and form a part of the advertisement.
- Advertisements on radio that do not exceed 30 seconds.
- Advertisements on television, other than display advertisements, that do not exceed 30 seconds.
- Advertisements in which it is impractical to include the official advertising statement, such as calendars, matchbooks, pens, pencils, key chains and similar items. The most questioned items are shirts and other articles of clothing. If a shirt is intended to be worn by employees of the financial institution on the premises of the financial institution, then its purpose is to identify financial institution employees to customers, and it is not an advertisement. Alternatively, articles of clothing given to customers or intended to be worn off of the financial institution's premises are advertisements, and it is recommended in these situations to add "Member FDIC" to the logo on a shirt or baseball cap.
- Advertisements that contain within their text a statement that the financial institution is a member of the Federal Deposit Insurance Corporation or that the institution's deposits are insured by the FDIC.

Pitfalls. There are several pitfalls for the unwary in these rules. First, billboard advertisements do not fall under any of the exceptions unless they deal with a topic that is the subject of an exception. Therefore, all outdoor billboard advertisements for which the financial institution cannot claim such an exception must include the advertising statement or the official symbol. It must be large enough to be legible to the drivers at whom the billboard is directed.

Another pitfall arises for advertisements in languages other than English. Financial institutions are directed to translate the advertising statement or symbol into any other languages used in their advertisements. The regulation, however, dictates that the translated advertising statement or symbol must have the written approval of the FDIC before it is used. It is a regulatory violation to use even a perfect translation unless it has been approved in writing by the FDIC. Any such important approval should be retained in the financial institution's files. The FDIC does not have **any** pre-approved translations into non-English languages in which financial institutions might wish to advertise. Should an institution wish to change the language of the sign, it must obtain advance clearance.

Another pitfall comes with the financial institution's annual report. An annual report is not required to identify the bank's FDIC membership unless it is given to anyone who does not own shares.

NCUA Rules

Common Name: Insurance Rules	
Agency	**Regulation**
NCUA	12 C.F.R. 740

NCUA Advertising Statement. The National Credit Union Administration official advertising statement is "This credit union is federally insured by the National Credit Union Administration." Alternatively, insured credit unions can use the short statement "Federally insured by NCUA," "Insured by NCUA" or a reproduction of the official sign. The official advertising statement must be in a size and print that is clearly legible and may not be smaller than the smallest font size used in other portions of the advertisement. Non-English equivalents may be used, but only if the regional director gives prior approval of the translation.

Requirements for the Official Sign. Each insured credit union must display the official sign at each station or window where insured deposits are normally received, as well as on its website where the credit union accepts deposits or opens accounts. The official color scheme is a blue background with white lettering, but credit unions may develop the sign in any color scheme, as long as it is legible. To achieve readability, a credit union may alter the font size on the sign on its website or its advertisements, but it cannot change the font size on the physical sign that is posted at each teller window or station where it receives deposits in its main office and in all branches. The sign is not required on automated teller machines (ATMs) or at point of sale terminals.

Either the official statement or the official sign must be included in all advertisements and on its main website.

Generally, to avoid member confusion as to NCUA insurance coverage, federally insured credit unions are prohibited from receiving deposits at any teller station or window where any non-federally insured credit union also receives deposits. Exceptions can be made in the following instances:

- A teller in a branch of a federally insured credit union may accept account funds for non-federally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states, "This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color and font.
- A teller in a facility operated by a non-credit-union entity may accept account funds for both federally insured credit unions and non-federally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating, "This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly." This sign must be similar to the official sign in terms of design, color and font.
- A teller in a branch of a non-federally insured credit union may accept account funds for federally insured credit unions. However, the non-federally insured credit union teller may not display the official NCUA sign.

Exemptions from Use of the Advertising Statement.

Credit unions are permitted, but not required, to include either the official advertising statement or the official sign in the following advertisements:

- Supplies such as stationery (except when used for mass mailings), envelopes, deposit slips, checks, drafts, signature cards, account passbooks and non-insurable certificates.

- Signs or plates in the office or attached to the building in which the offices are located.
- Listings in directories.
- Advertisements that do not use the name of the credit union.
- Display advertisements in directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured.
- Joint or group advertisements of credit union services where the names of insured credit unions and non-insured credit unions are listed and form a part of such advertisement.
- Radio advertisements lasting less than 30 seconds.
- Television advertisements, other than display advertisements, that last less than 30 seconds.
- Advertisements in which, because of their type or character, it would be impractical to include the official advertising statement including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils and key chains.
- Advertisements that already contain a statement that the credit union is insured by the NCUA, or states that shares or members are insured to the maximum insurance amount for each member.
- Advertisements that do not relate to member accounts, such as those relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable and credit life or disability insurance.

Insured credit unions that do not adhere to the NCUA notice requirements are subject to a penalty of up to $153 per day (as of 2025) under the regulation. This penalty is adjusted annually for inflation.

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

Common Name: UDAAP	
Agency	**Regulation**
FTC	15 U.S.C 45 (section 5a of the FTC Act); 10-14-1983 Policy Statement
CFPB	12 U.S.C. 5531 & 5536

There are additional rules in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) with requirements for unfair, deceptive or abusive acts or practices (UDAAP). UDAAP is an umbrella of rules prohibiting financial institutions from engaging in any unfair, abusive or deceptive acts or practices in every context, including in advertising. Even though an advertisement might comply with certain regulations, if they are confusing, misleading, incomplete or deceptive, there could be a UDAAP violation. For more information on these requirements, please see the Unfair, Deceptive or Abusive Acts or Practices article.

Federal Trade Commission (FTC) Advertising Rules - General

Policy Statement on Deceptively Formatted Advertisements. On December 22, 2015, the FTC issued an enforcement policy statement explaining how established consumer protection principles apply to different advertising formats, including so-called native advertisements that look like surrounding non-advertising content. The FTC lays out the general principles it considers in determining whether any advertisement format is deceptive and violates the FTC Act. The policy statement affirms the long-standing consumer protection principle that advertisements and promotional messages that promote the benefits and attributes of goods and services should be identifiable as advertising to consumers. For more information on these requirements, please see the FTC Advertising Rules article in the Advertising Loans section of this manual.

Banks - Truth in Savings

Common Name: Truth in Savings Act	
Agency	**Regulation**
CFPB	12 C.F.R. 1030

What is an Advertisement? Regulation DD defined an advertisement as a commercial message, appearing in any medium, that promotes the availability of terms of, or a deposit in, a new or existing account. Television, radio, newspapers, billboards and even hold messages are media for advertising. Lobby boards and an institution's name on a building are advertising. Rate sheets published by newspapers are not advertisements as long as a financial institution does not pay a fee to be included and has no control over the information. Any message that a financial institution controls the content of is considered an advertisement.

Restrictions. The Truth in Savings Act contains three rules for what an advertisement must not contain:

- Anything misleading or inaccurate or that misrepresents the financial institution's deposit contract.
- The words free, no cost, or similar terms to describe an account if any maintenance or activity fee may be imposed.
- The word profit if used to refer to interest paid on an account.

The third is the most straightforward of these rules: Do not use the word profit, and the institution will be in compliance.

The second rule is slightly more obscure. A financial institution may not use the word free, or any similar term, to describe an account if it is possible under any circumstances for a maintenance or activity fee to be charged on the account. Monthly service charges and minimum balance fees are examples of maintenance charges. Fees imposed for exceeding a specified number of transactions and per check charges are examples of activity charges. Balance inquiry, stop-payment, dormant, account, insufficient fund and overdraft charges, check certification, check reorder and similar charges are neither maintenance nor activity charges. While a financial institution may not advertise an account as free because it imposes maintenance charges, the financial institution may advertise a service as free. Free bill pay or free telephone banking are examples. An advertisement may state that an account (or a specific service) is free for a limited time, provided the time period is stated as well. And "free subject to conditions" is also permissible, such as "free for persons over age 62," even though maintenance and/or activity fees are imposed on those under 62.

What constitutes misleading or misrepresentation is more subjective. Problems in this area generally result from what is not stated rather than what is. Make sure the wording of the advertisement is accurate. Financial institutions shouldn't forget the UDAAP provisions referenced earlier in this article. There are also state laws that prohibit unfair and deceptive acts and misleading advertising.

Requirements. If an advertisement does not state an annual percentage yield (APY) or bonus, or promote a discretionary overdraft program, there are no regulations regarding content other than UDAAP considerations. A bonus is something with a value greater than $10 that is not a financial institution product and does not require the customer to spend money to use. For example, a $15 stadium blanket is a bonus, while a $9 stadium blanket is not. Services such as free safe deposit boxes, added interest rates or other fee waivers are not considered bonuses even when the value is greater than $10.

This includes discounts on loans and premium rates on time deposits or other interest-bearing deposit products.

Stating an APY or a bonus, however, are trigger terms, meaning when they are used (or when words conveying the same thoughts are used), additional disclosures must be made. A general reference to the word bonus will not trigger the additional disclosures. For example, statements such as, “bonus checking,” “get a bonus when you open a checking account” or “bonus rates available” in advertisements do not trigger additional disclosures if the bonus being advertised does not fall within the bonus definition.

When advertising in broadcast or electronic media such as radio or television, outdoor media such as billboards, telephone response machines and lobby boards, the Truth in Savings Act provides some exceptions to the disclosure requirements if a rate of return is stated. There are no limited disclosure requirements for print media, such as newspapers, periodicals, brochures and any other media not listed above.

Print Media. If the advertisement is in a newspaper, a brochure or other print media, additional disclosures are required. Website advertisements should generally be treated the same as those advertisements that are printed. If a rate of return is expressed in an advertisement, it must be the annual percentage yield, and it must be called or spelled out “annual percentage yield,” using exactly those words. (Once the term annual percentage yield has been used in an advertisement, it may subsequently be referred to as APY in the same advertisement.) If the APY is stated in print media, the following must also be included as applicable:

- Variable rate. If the account is a variable-rate account, the advertisement must contain a statement that the rate may change after the account is opened.
- Timeframe in which the APY is offered. The advertisement must set out a date by which an account opened will receive the yield advertised. For example, “This Annual Percentage Yield is available for accounts opened through November 30, 2020.” Alternatively, the advertisement may state a recent date that the advertised rate was offered. If the advertisement is in a dated periodical, such as a newspaper, and the rate stated is offered on the date of the periodical, then the date or time the yield will be offered must be stated in the advertisement.
- Minimum balance to earn the APY. If there is a minimum balance required to earn the APY, that balance must be stated. For tiered rate accounts, the minimum balance for each tier must be stated in close proximity, and with equal prominence, to the applicable APY.
- Minimum opening deposit. If there is a minimum deposit required to open the account that is HIGHER than the minimum balance to earn the APY, the advertisement must state what the minimum deposit is.
- Effect of fees. If fees may be charged to an account, a statement that fees could reduce the earnings on the account must be made. Note that this disclosure applies only to the imposition of maintenance or activity fees.

Additionally, for time deposits:

- The term of the account.
- Early withdrawal penalties. The advertisement must state a penalty will or may be imposed if there is an early withdrawal from the account.
- The statement that “interest cannot remain on deposit and payout of interest is mandatory” for any non-compounding time deposits with a term of greater than one year that require interest payouts at least annually.

If a bonus is being advertised:

- The APY and all disclosures triggered by the APY.
- 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.
- When the bonus will be provided.

For example, if a newspaper advertisement for a minor/student savings account states that $10 will be deposited to the account by the financial institution upon account opening and annually thereafter on the birthday of the consumer, up to but not including the consumer's eighteenth birthday, the bonus disclosures are triggered. Why, if $10 is de minimis? The initial $10 is de minimis, but the crediting of $10 on the consumer's birthday will cause the amount to breach the de minimis exception. Therefore, the APY must be disclosed along with all the terms it triggers. The time requirement to obtain, and when the bonus will be provided, are both satisfied by the fact that the advertisement states "$10 will be deposited to the account by the financial institution upon account opening and annually thereafter on the birthday of the consumer." The advertisement must comply with all the requirements triggered when a bonus is stated in an advertisement.

For stepped-rate account advertisements in print media, if an interest rate is advertised for one step, then the advertisement must disclose the rate for every step.

All of a financial institution's lobby brochures and other handout-type advertising literature must conform to the print media rules too.

Note the APY must be disclosed with a tolerance of .05%. A 6.00% APY may be disclosed as anything from 5.95% to 6.05%. With today's technology, an APY can be computed with great accuracy. If a financial institution purposely overstates an APY, albeit within the tolerance, it will be deemed to have violated the regulation.

Indoor Signs. An indoor sign is a sign inside a depository institution, whether it can be viewed from inside or outside the facility. Indoor signs are exempt from most of the advertising requirements because people who see them are inside or near the building and thus other information is available to them. Be aware, however, that signs on the financial institution's property not inside the building, such as message boards in the parking lot, are not on-premises signs.

Although on-premises signs are exempt from most of the Truth in Savings Act's advertising requirements, the following rules still apply. If an on-premises sign states a rate of return on deposits, it must state the rate as an "annual percentage yield" using that term or APY. The sign may also state an interest rate in conjunction with the APY to which it relates. If the on-premises sign advertises a tiered-rate account, it must state the lower dollar amount of the tier for which it shows an APY. For a time account, an on-premises sign must state the term of the account. Additionally, if the APY is stated on the sign, the sign must contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

Broadcast Media. If a rate of return is expressed in an advertisement on radio or television, it must be the annual percentage yield and must be called or spelled out "annual percentage yield," using exactly that term. (Once the term "annual percentage yield" has been used in an advertisement, it may subsequently be referred to as APY in the same advertisement.) If the annual percentage yield is stated in a broadcast media advertisement, the interest rate may be stated in conjunction with it, provided it is not more prominent or conspicuous than the annual percentage yield and the words "interest rate" are used to identify it. Otherwise, if only one rate is published, it must be the annual percentage yield and not the interest rate.

If the APY is stated, the advertisement must also disclose, as applicable:

- The minimum balance, if any, required to earn the yield advertised.
- If the account is a tiered-rate account, the minimum balance for each tier must be stated “in close proximity and with equal prominence” to the corresponding APY. If one tier is highlighted over all other tiers, that tier and its corresponding balance requirements must be the same size, and the remaining tiers and corresponding rates must be listed in the disclosure section of the advertisement.
- For a stepped-rate account, if an interest rate is advertised for one step, then the advertisement must disclose the rate for every step.
- If the account is a time account, the advertisement must disclose:
  - The term of the account.
  - The statement that “interest cannot remain on deposit and payout of interest is mandatory” for any non-compounding time deposits with a term of greater than one year that require interest payouts annually.

If a bonus is offered, the advertisement must state, as applicable:

- The APY and all the disclosures the APY triggers for broadcast media.
- The time requirement to obtain the bonus.
- The minimum balance required to obtain the bonus.

Discretionary Overdraft Programs. When a financial institution promotes a discretionary overdraft program, the following additional disclosures must also be stated clearly and conspicuously:

- The fee or fees for each overdraft payment.
- The transaction categories for which the overdraft fee may be imposed.
- The time period by which the consumer must repay or cover the overdraft.
- The circumstances under which the institution will not pay an overdraft.

Additionally, as with any advertisement covered by TISA, overdraft promotions must not be misleading or inaccurate.

If the overdraft program is promoted on an ATM screen or a telephone response machine, only the first and third bulleted items above need to be disclosed. If the program is promoted on an indoor sign, none of the bulleted items above need to be disclosed. The sign must clearly and conspicuously state that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. Note that the regulation specifically states that an indoor ATM screen is not considered an indoor sign. Several types of communications are exempt from the additional advertising rules. They are discussed in the Overdraft Protection Products article.

Record Retention. An institution is required to retain evidence of compliance with the TISA for two years, including a copy of every advertisement it publishes, lobby materials and either an audio recording or the script of any broadcast advertisement. This also includes the financial institution’s website. Each time the site is changed, the financial institution should retain a copy of the previous version. Each advertisement should be labeled with the date(s) on which it was published and the media in which it was published.

Credit Unions - Truth in Savings

Common Name: Truth in Savings Act	
Agency	**Regulation**
NCUA	12 C.F.R. 707

What is an Advertisement? An advertisement is defined as a commercial message in any medium that promotes directly or indirectly the availability or terms of, or a deposit in, a new or existing account. Television, radio, newspapers, billboards and even hold messages are media for advertising. Lobby boards and an institution's name on a building are advertising. Rate sheets published by newspapers are not advertisements as long as a financial institution does not pay a fee to be included and has no control over the information. Any message that a financial institution controls the content of is considered an advertisement.

Restrictions. The Truth in Savings Act contains three rules for what an advertisement must not contain:

- Anything misleading or inaccurate or that misrepresents the financial institution's deposit contract.
- The words free, no cost or similar terms to describe an account if any maintenance or activity fee may be imposed.
- The word profit if used to refer to dividends or interest paid on an account.

The second rule is slightly obscure. A financial institution may not use the word free or any similar term to describe an account if it is possible under any circumstances for a maintenance or activity fee to be charged on the account. Monthly service charges and minimum balance fees are examples of maintenance charges. Fees imposed for exceeding a specified number of transactions and per check charges are examples of activity charges. Balance inquiry, stop-payment, dormant, account, insufficient fund and overdraft charges, check certification, check reorder and similar charges are neither maintenance nor activity charges. While a financial institution may not advertise an account as free because it imposes maintenance charges, the financial institution may advertise a service as free. Free bill pay or free telephone banking are examples. An advertisement may state that an account (or a specific service) is free for a limited time, provided the time period is stated as well. The term free subject to conditions is also permissible, such as "free for persons over age 62," even though maintenance and/or activity fees are imposed on those under 62.

What constitutes misleading or misrepresentation is more subjective. Problems in this area generally result from what is not said rather than what is said. Make sure the wording of the advertisement is accurate. Financial institutions shouldn't forget the UDAAP provisions referenced earlier in this article. There are also state laws that prohibit unfair and deceptive acts and misleading advertising.

Requirements. If an advertisement does not state an annual percentage yield (APY) or a bonus, or promote a discretionary overdraft program, there are no regulations regarding content other than UDAAP considerations. A bonus is something with a value greater than $10 that is not a financial institution product and does not require the customer to spend money to take advantage of it. For example, a $15 stadium blanket is a bonus, but a $9 stadium blanket is not. Services such as free safe deposit boxes, added interest rates or other fee waivers are not considered bonuses even when the value is greater than $10. This includes discounts on loans and premium rates on time deposits or other interest bearing deposit products.

Stating an APY or a bonus, however, are trigger terms, meaning when they are used (or when words conveying the same thoughts are used), additional disclosures must be made. A general reference to the word bonus will not trigger the additional disclosures. For example, statements such as "bonus checking," "get a bonus when you open a checking account" or "bonus rates available" in an advertisement do not trigger additional disclosures if the bonus being advertised does not fall within the bonus definition.

Advertisements in broadcast or electronic media such as radio or television, outdoor media such as billboards, telephone response machines and lobby boards are provided some exceptions under the Truth in Savings Act to the disclosure requirements if a rate of return is stated. There are no limited disclosure requirements for print media such as newspapers, periodicals, brochures, and any other media not listed above.

Print Media. If the advertisement is in a newspaper, a brochure or other print media, additional disclosures are required. Website advertisements should generally be treated the same as those advertisements that are printed. If a rate of return is expressed in an advertisement, it must be the annual percentage yield and must be called or spelled out "annual percentage yield," using exactly that term. (Once the term "annual percentage yield" has been used in an advertisement, it may then be referred to as APY in the same advertisement.) If the APY is stated in print media, the following must also be included as applicable:

- Variable rate. If the account is a variable-rate account, the advertisement must contain a statement that the rate may change after the account is opened.
- For interest-bearing accounts and dividend-bearing accounts, the period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date. For dividend-bearing accounts other than term share accounts, a statement that the annual percentage yield is accurate as of the last dividend declaration date.
- Minimum balance to earn the APY. If there is a minimum balance required to earn the APY, that balance must be stated. For tiered rate accounts, the minimum balance for each tier must be stated in close proximity and with equal prominence to the applicable APY.
- Minimum opening deposit. If there is a minimum deposit required to open the account that is HIGHER than the minimum balance to earn the APY, the advertisement must state what the minimum deposit is.
- Effect of fees. If fees may be charged to an account, a statement that fees could reduce the earnings on the account must be made. Note that this disclosure applies only to the imposition of maintenance or activity fees.

Additionally, for term share accounts the following must be included:

- The term of the account.
- Early withdrawal penalties. The advertisement must state a penalty will or may be imposed if there is an early withdrawal from the account.
- The statement that "interest cannot remain on deposit and payout of interest is mandatory" for any non-compounding time deposits with a term of greater than one year that require interest payouts at least annually.

If a bonus is advertised, it must include:

- The APY and all disclosures triggered by the APY.
- 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.
- When the bonus will be provided.

For example, if a newspaper advertisement for a minor/student savings account states that $10 will be deposited to the account by the financial institution upon account opening and annually thereafter on the birthday of the consumer, up to but not including the consumer's eighteenth birthday, the bonus disclosures are triggered. Why, if $10 is de minimis? The initial $10 is de minimis, but the crediting of $10 on the consumer's birthday will cause the amount to breach the de minimis exception. Therefore, the APY must be disclosed along with all the terms that it triggers. The time requirement to obtain the bonus and when it will be provided are both satisfied by the fact that the advertisement states "$10 will be deposited to the account by the financial institution upon account opening and annually thereafter on the birthday of the consumer." The advertisement will need to comply with all the requirements triggered when a bonus is stated in an advertisement.

For stepped-rate account advertisements in print media, if an interest rate is advertised for one step, then the advertisement must disclose the rate for every step.

All of a financial institution's lobby brochures and other handout-type advertising literature must also conform to the print media rules.

Note, the APY must be disclosed with a tolerance of .05%. A 6.00% APY may be disclosed as anything from 5.95% to 6.05%. With today's technology, an APY can be computed with great accuracy. If a financial institution purposely overstates an APY, albeit within the tolerance, it will be deemed to have violated the regulation.

Indoor Signs. An indoor sign is a sign inside a depository institution, whether it can be viewed from inside or outside the facility. Indoor signs are exempt from most of the advertising requirements because people who see them are inside or near the building and thus other information is available to them. Be aware, however, that signs on the financial institution's property not inside the building, such as message boards in the parking lot, are not "on-premises" signs.

Although on-premises signs are exempt from most of the Truth in Savings Act's advertising requirements, the following rules still apply. If an on-premises sign states a rate of return on deposits, it must state the rate as an "annual percentage yield" using that term or APY. The sign may also state an interest rate in conjunction with the APY to which it relates. If the on-premises sign advertises a tiered-rate account, it must state the lower dollar amount of the tier for which it shows an APY. Additionally, if the APY is stated on the sign, the sign must contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

Broadcast Media. If a rate of return is expressed in an advertisement on the radio or television, it must be the annual percentage yield and it must be called or spelled out "annual percentage yield," using exactly that term. (Once the term "annual percentage yield" has been used in an advertisement, it may then be referred to as APY in the same advertisement.) If the annual percentage yield is stated in an advertisement, the interest rate may be stated in conjunction with it, provided it is not more prominent or conspicuous than the annual percentage yield and the words "interest rate" are used to identify it. Otherwise, if only one rate is published, it must be the annual percentage yield and not the interest rate.

If the APY is stated, the broadcast advertisement must also disclose, as applicable:

- The minimum balance, if any, required to earn the yield advertised.
- If the account is a tiered-rate account, the minimum balance for each tier must be stated "in close proximity and with equal prominence" to the corresponding APY. If one tier is highlighted over all other tiers, that tier and its corresponding balance requirements must be the same size, and the remaining tiers and corresponding rates must be listed in the disclosure section of the advertisement.
- If the account is a stepped-rate account, if an interest rate is advertised for one step,

then the advertisement must disclose the rate for every step.

- If the account is a time account, the advertisement must disclose:
  - The term of the account.
  - The statement that “interest cannot remain on deposit and payout of interest is mandatory” for any non-compounding time deposits with a term of greater than one year that require interest payouts annually.

If a bonus is offered, the advertisement must state, as applicable:

- The APY and all the disclosures that the APY triggers for broadcast media.
- The time requirement to obtain the bonus.
- The minimum balance required to obtain the bonus.

Newsletters. If a newsletter states a rate of return, it must state the rate as an “annual percentage yield” or APY. The newsletter must not state any other rate, except the dividend rate may be stated along with the APY to which it relates. Furthermore, newsletters must contain a statement advising members to contact an employee for information about fees and terms.

Discretionary Overdraft Programs. When a financial institution promotes a discretionary overdraft program, the following additional disclosures must also be stated:

- The fee or fees for each overdraft payment.
- The transaction categories for which the overdraft fee may be imposed.
- The time period by which the consumer must repay or cover the overdraft.
- The circumstances under which the institution will not pay an overdraft.

Additionally, as with any advertisement covered by TISA, overdraft promotions must not be misleading or inaccurate.

If the overdraft program is promoted on an ATM screen or a telephone response machine, only the first and third bulleted items above need to be disclosed. If the program is promoted on an indoor sign, none of the bulleted items above need to be disclosed. The sign must clearly and conspicuously state that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. Note that the regulation specifically states that an indoor ATM screen is not considered an indoor sign. Several types of communications are exempt from the additional advertising rules. They are discussed in the Overdraft Protection Products article.

Record Retention. An institution is required to retain evidence of compliance with the TISA for two years, including a copy of every advertisement it publishes, lobby materials and either an audio recording or the script of any broadcast advertisement. This also includes the financial institution’s website. Each time the site is changed, the financial institution should retain a copy of the previous version. Each advertisement should be labeled with the date(s) on which it was published and the media in which it was published.

Federal Trade Commission (FTC) Communication Laws

Common Name: FTC Laws – CAN-SPAM, TCPA, and Junk Fax Acts	
Agency	**Regulation**
FTC – CAN-SPAM	16 C.F.R. 316
FTC – TCPA & Junk Fax	47 C.F.R. 64

The CAN-SPAM Act

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, otherwise known as the CAN-SPAM Act, which became effective on January 1, 2004, controls the transmission of "commercial electronic mail messages" to either customers or to non-customers. The content of a website operated for a commercial purpose is included. The law provides for substantial penalties for non-compliance.

The CAN-SPAM Act preempts any state regulation for commercial email messages except for laws prohibiting false or deceptive statements.

Exemptions

Messages that meet the standard of being a "transactional or relationship message" (i.e., a non-sales and non-marketing message) are considered exempt. The CAN-SPAM Act defines a transactional or relationship message as a message with the primary purpose of facilitating, completing or confirming a transaction that the recipient has agreed to, or one which provides safety, security, warranty or product recall information in connection with such a transaction. It also includes, with respect to an account or similar ongoing relationship, notifications of changes in terms or features, changes in the recipient's status or standing and regular periodic account statements. Messages relating to an employment relationship or employee benefits connected therewith, and messages related to delivering goods or services including updates and upgrades, are permitted as well.

Also exempt are commercial email messages in which the recipient's affirmative consent has been obtained. The term affirmative consent, when used with respect to a commercial email message, means that the recipient expressly consented to receive the message either in response to a clear and conspicuous request for such consent or at the recipient's own initiative. , In addition, affirmative consent means, if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's email address could be transferred to such other party for purpose of initiating a commercial electronic mail message.

Who is a Sender?

A sender of a commercial email is a person who initiates such a message and whose product, service or website is advertised or promoted in the message. Keep in mind that the term person includes any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

Furthermore, if a business entity operates through separate lines of business or divisions and holds itself out to the recipient of the message as that particular line of business or division, rather than as the business entity itself, then the line of business or division is treated as the sender of the message. Financial institutions often do this with trust, wealth management and other functions.

Standards for Covered Messages

Institutions must respect requests from customers who wish not to receive unsolicited commercial emails. That means all potential messages must be screened against its internal do not e-mail list **before** the messages are sent. Such a list is required by the CAN-SPAM Act.

All unsolicited commercial emails, whether they are sent to customers or non-customers, are subject to format and labeling requirements intended to keep them from being fraudulent, false or misleading to the recipients.

When sending commercial email messages, institutions must conform to the following rules:

- Avoid sending false or misleading transmission information, including the header, that misleads recipients as to the source or content.
  - The email's from, to and routing information, including the origination domain name and email address, must be accurate and must identify the person who initiated the email.
  - Avoid sending messages with deceptive subject headings.
  - Never mislead the recipient about the contents or subject matter of the message.
- All commercial email must be identified as an advertisement and include the sender's valid physical postal address or private mailbox.
  - The message must contain a clear and conspicuous notice that it is an advertisement or solicitation and that the recipient can opt out of receiving more commercial email from the institution. It also must include in the body of the message a valid "physical postal address.
- Messages must include an electronic return address or a comparable mechanism for recipients to reply easily to the message if they wish to opt out of receiving future solicitations.
  - In this regard, they must provide either a return email address or another internet-based response mechanism that allows a recipient to ask you not to send future email messages to their email address. The institution must honor any such requests.
- The email recipient cannot be required to pay a fee to opt out, to provide any additional information other than his or her email address and opt-out preferences or to take any steps other than sending a reply email message or visiting a single website.
- Messages may provide a menu of choices to allow the recipient to opt out of certain types of messages, but they must also include the option to end any commercial messages from the sender.
- Whatever opt-out mechanism institutions make available must be operational for at least 30 days after the commercial message is sent. When an opt-out request is received, institutions must process it promptly, so it is effective no later than 10 business days after receipt.

Multi-Party Emails and Opt Outs

When multiple parties are advertising in a single email to a recipient, those multiple marketers can designate a single sender for opt-out purposes. That sender will need to: (1) meet the act's definition of sender, which is a person that initiates a commercial email message in which he or she advertises or promotes their own goods, service or website and (2) be uniquely identified in the from field on the email as the sole sender of the message.

Multi-purpose Emails

As discussed earlier, "commercial electronic messages" are messages for which the primary purpose is the advertisement or promotion of a product or service. There are four possible categories of email messages.

The first category is covered messages that contain only commercial advertising or promotional material. Those messages will always be deemed "commercial electronic messages" subject to the CAN-SPAM Act rules.

The second category is covered messages that contain both commercial content and transactional or relationship content. For these mixed-content messages, the rules state institutions must treat them as covered messages when either a recipient *reasonably interpreting* the subject line of the email would *likely conclude* that the message contains commercial content, or the email's transactional or relationship content does not appear in whole or substantial part at the beginning of the message. The third category is covered messages that contain both commercial content and content that is neither commercial nor transactional or relationship. (It is unclear what content that category of message would have.) This type of mixed message will be treated as a commercial message subject to the CAN-SPAM Act rules if a recipient reasonably interpreting the subject line of the email would likely conclude that either the message contains commercial content, or that the primary purpose of the message is commercial. Factors relevant to this interpretation include the placement of commercial content in whole or in substantial part at the beginning of the message, the proportion of the message dedicated to commercial content, and how color, graphics, type size and style are used to highlight any commercial content.

The last category deals with messages that contain only transactional or relationship content. Such pure messages will be treated as exempt from the CAN-SPAM Act rules.

Other Provisions

The act contains provisions that make it illegal to send commercial email messages to addresses that were harvested from web-sites. Spammers often create their mailing lists from software programs that scan websites they operate, or that are operated by others, and grab email addresses from unsuspecting users of those sites. While the generation of such lists is not illegal, it is a violation of the act to **use** lists generated in that manner to send a commercial electronic message.

The CAN-SPAM Act holds both spammers and those who use their services equally liable. You cannot contract to have someone else handle your electronic sales process and wash your hands of any knowledge of how they go about generating business for you. A number of provisions in the act use language such as "if such a person knows, should have known, or consciously avoids knowing that…" to pin liability on both those who violate the rules directly as well as those who hire them to do so or benefit by their actions.

Enforcement

Each separate email in violation of the CAN-SPAM Act is subject to substantial penalties subject to inflation, so non-compliance can be costly. The Justice Department can bring actions against individuals or organizations that violate the law and seek civil money penalties and/or criminal penalties, including imprisonment, for commercial e-mailers who violate the rules. Since there is no private right of action created under the law for recipients of spam, CAN-SPAM-related class action lawsuits will not occur.

The FTC collects consumer complaints relative to the CAN-SPAM Act via its website and toll-free help line: 1-877-FTC-HELP.

The National Do Not Call Registry

In 2003, the Federal Trade Commission began operation of its National Do Not Call Registry service. Any consumer can call the FTC's toll-free number (888-382-1222), or go to its website, to put his or her telephone number on the federal do not call (DNC) list. A number can be de-registered only on request of the individual to whom the number is assigned, or if the number becomes invalid or is disconnected or reassigned.

The telemarketing rules cover "any plan, program or campaign to sell goods or services through interstate phone calls." While the language makes it sound like the rules cover most telemarketing calls, there are many types that are exempt. The exemptions fall into three major groupings.

Political organizations. Political organizations are exempt from DNC restrictions.

Charities. Calls by charitable organizations do not have to be screened through the DNC registry. Charities are, however, subject to the requirement that they keep an in-house DNC list and honor the requests of individuals who ask not to be called again.

Telephone surveys. Legitimate surveys are exempt from coverage, however, surveys that are fronts for sales pitches are treated as sales calls and are subject to these rules.

Established Business Relationship and Prerecorded and Autodialed Calls

Effective October 16, 2013, the FCC amended its rules to conform to changes made earlier in the FTC's rules. For our purposes here, there are three important changes:

First, the established business relationship exemption was eliminated for prerecorded telemarketing calls to residential lines. Financial institutions may no longer make prerecorded telemarketing calls to residential lines based on such relationships. (This exemption never was available for such calls to cellular telephones.)

Second, oral consents to autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded calls to residential lines were outlawed in these amendments. Pre--existing oral consents became invalid then, and new ones are prohibited thereafter. Those calls now require "prior express written consent." New standards for the content and methods of obtaining such consents are provided. There are two required elements of content:

- That, by signing, the person is authorizing the institution to make autodialed or prerecorded advertising or telemarketing calls to him or her at a specified number.
- That signing it is not required as a condition of purchasing any good or service.

Obviously, a specially drafted form will be required, but no safe harbor model for it is provided with the rule. We recommend staying close to the language immediately above.

The signature of the person consenting to the calls may be written or electronic pursuant to the E-SIGN Act (see our article on that topic in this manual). Specifically, the amendments state that a signature "obtained via an email, website form, text message, telephone keypress, or voice recording" would satisfy the requirement.

Third, entities that originate autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded calls to residential lines must provide an "automated, interactive voice- and/or key-press-activated opt-out mechanism" at the outset of each call and honor any opt outs so obtained. The regulation provides technical specifications for what that mechanism must say and do (including how quickly it must do it) to comply with the rules.

Financial Institution Coverage. While the exemptions of the FTC's DNC regulation may seem to include financial institutions that is not the case since the FTC is not the only agency charged with regulating telemarketing calls. The Federal Communications Commission (FCC) is also responsible for rulemaking in connection with the Telephone Consumer Protection Act of 1991.

In 2003, the FCC issued a rule CG Docket No. 02-278, which required organizations (including financial institutions) under its jurisdiction to comply with the FTC-created DNC rules. It is this ruling that requires regulated financial institutions to abide by the FTC's DNC rules.

To-Do List

Institutions that have active telemarketing functions, covered under DNC requirements, must:

1. **Subscribe to the service.**

Subscriptions are good for 12-month periods and can be renewed no earlier than one month before the expiration date of each subscription. You must register to be allowed to use the DNC lists. To register, institutions can visit the FTC's website and create a profile by providing information, including name, address, the institution's authorized representative and the representative's telephone number and email address. If institutions access the registry in a representative capacity on behalf of other organizations, they would need to identify their client organizations as well.

2. **Pay for the service**.

Institutions are required to pay an annual fee based on the number of area codes they will need to access. The first five area codes worth of registered numbers are free. Additional area codes above that number cost a flat fee each.

3. **Use current DNC information to screen telemarketing calls.**

Once registered, institutions will be able to access the website and download either a complete updated list of numbers from their selected area codes or a more limited list which shows additions or deletions since the last downloads. Depending on how an institution structures its screening procedures, one or the other function may be more operationally useful.

Institutions must search the registry every 31 days and drop from their prospective call list phone numbers that have been registered with the DNC registry in that time.

If telemarketing calls are made to non-customers in a "dialing for dollars" effort, institutions must always filter those calls against the telephone numbers that have been put off limits for such calls on the DNC registry. They are required to honor any do-not-call requests they receive from individual customers. This means that institutions must have an internal DNC list they adequately maintain and be guided by it without exception. If DNC requests are not honored, institutions could be subject to fines and sanctions.

Mixed Purpose Calls

Unlike the CAN-SPAM Act rules, the Do Not Call rules contain no exception for mixed-content telephone calls. If the call has any sales component at all, it must be treated as subject to the Do Not Call rules.

If an institution calls a customer to respond to a question, or to manage or maintain an existing account relationship, that call is not subject to the DNC rules. If, however, the caller begins a sales pitch after handling the business at hand, that call would be covered by the DNC rules. If the customer's number is on the federal DNC list, the rules are being violated. In addition, if the customer's number is not on the federal list, and that customer requests the institution refrains from future marketing efforts, that customer should be added to the internal do not call list.

DNC Policy

The DNC rules require financial institutions that engage in telemarketing to have a Do Not Call policy and to make it available to the public on demand. Therefore, all regulated financial institutions are required to have a board-approved Do Not Call policy in place. Financial institutions with formal telemarketing programs (especially those that telemarket to non-customers) need extensive policies and procedures to ensure compliance with the TCPA rules. Financial institutions without formal telemarketing programs still need policies and procedures with respect to consents and the maintenance of an internal Do Not Call list if they ever make marketing calls to their existing customers.

Consumers have a right to request a financial institution's DNC policy. Make sure all - customer contact personnel are aware of this requirement and are prepared to provide the policy promptly if it is ever requested.

Enforcement

The rules provide for an easy system of feedback to the FTC about business organizations that abuse the rules. Consumers are encouraged to contact the FTC and register complaints either online or by calling the FTC's toll-free number.

The "No Fax" Rules

Most financial institutions do not use fax broadcasts as a marketing outreach tool to reach new customers. However, those that do must comply with the Junk Fax Prevention Act of 2005 (JFPA), which was signed into law July 9, 2005. Contrary to what the name of the act implies, the law does nothing new to protect the public from receiving junk faxes. Quite to the contrary, it actually makes it easier for businesses to send advertising faxes to their customers under an established business relationship (EBR) exemption. On April 5, 2006, the FCC adopted rules implementing this act (FCC-06-42A1.) These rules were clarified in October 2014 with respect to solicited facsimile ads. The FCC issued an order clarifying that opt-out notices are required in solicited facsimile advertisements even if the recipient had granted prior express consent. However, this opt out does not apply to unsolicited facsimile ads sent in the context of an existing business relationship (even if no prior express consent from the recipient).

A valid EBR exists when it has been formed by a "voluntary two-way communication" between the sender and the recipient in the context of an inquiry, application, purchase or transaction. The fax recipient must voluntarily disclose the fax number to use. That disclosure could be made either directly to the sender or to the public generally in the case of fax numbers that are published in directories, advertisements or websites. If there is already a valid EBR with the recipient, institutions can continue to send marketing faxes unless the recipient opts out of receiving them.

Keep in mind, however, that recipients may terminate an EBR at any time by asking the sender to stop transmitting fax advertisements.

Content of Advertising Faxes

The No Fax rules require that the business or entity on whose behalf the fax is being sent identify itself in the top or bottom margin of each page or on the first page of the fax message. The business or entity is also required to include its telephone number and the date and time the fax is sent.

If a facsimile broadcaster (an entity or person transmitting fax messages on behalf of another) demonstrates what is called a "high degree of involvement" in the sender's facsimile messages, such as supplying the facsimile numbers to which the message is sent, the broadcaster must also provide its name on the fax.

Advertising faxes must contain a clear and conspicuous disclosure that the recipient can opt out of receiving future junk faxes. This disclosure must appear on the first page of any marketing fax. It must provide an easy, cost-free way to opt out of receiving future faxes. Legitimate cost-free ways of opting out can include visiting a website or calling a toll-free telephone number.

Faxes sent to fax servers and to personal computers are covered by the No Fax rules.

Enforcement

Consumers who have received unsolicited faxes can report them to the FCC by either calling in complaints at 1-888-CALL-FCC or completing and submitting a consumer complaint form on the FCC's specially designated website.

Lotteries

Common Name: Lotteries	
Agency	**Regulation**
OCC	12 U.S.C. 25a(c)
FDIC	12 U.S.C. 1829a
NCUA	State Law

Financial institutions are forbidden to:

- Deal in lottery tickets.
- Deal in bets used as a means or a substitute for participation in a lottery.
- Announce, advertise or publicize the existence of a lottery or the identity of any participant or winner of a lottery.
- Allow premises to be used in any way in connection with a lottery.

Lotteries are often used as a form of advertisement to tempt consumers to become a customer.

A lottery is any arrangement in which three or more persons (the participants) advance money or credit in exchange for the possibility or expectation that one or more (but not all) will receive back more than the amounts they have advanced, and the winners will be determined by a means such as a random selection, game, race or contest, or the tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility of winning. An exclusion from the definition of lottery is the savings promotion raffle, under which the only consideration required for a chance to win is the deposit of a specified amount in a savings account or other savings program. For this type of raffle, the participant deposits a specified amount of money into a savings account, which serves as an entry or ticket. Each entry or ticket has the same chance of winning. Congress amended the lottery rules to allow for this exception to encourage people to save after determining that 40% of Americans lack the savings to cover basic costs for three months. However, other than this very narrow exception, lotteries as defined above continue to be prohibited.

Lottery rules are commonly violated with promotions that are targeted at generating new business. Consider, for example, an institution that is about to open a new branch. Its marketing department decides to award a free trip to Europe to one of the branch's new customers and, to receive a chance in the contest, requires customers open an account at the new branch. That institution has just designed an illegal lottery.

Sometimes financial institutions support local charitable organizations' fundraising efforts. They might allow church organizations to sell raffle tickets on financial institution premises or advertise the grand prize drawing at a charity fundraising event. While these practices are done for good causes, they unfortunately often violate the rules against dealing in, supporting or engaging in lotteries.

To avoid this problem, we suggest adding the phrase "No Purchase Necessary" to any promotion and allowing anyone to come into the new branch and fill out an entry form to enter the contest without requiring them to pay or become a customer. Financial institutions should also consult with counsel regarding state laws before engaging in lotteries.