

TRUTH IN LENDING ACT ADVERTISING RULES

EXISTING REQUIREMENTS AND RECENT CHANGES

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I. TiLA ADVERTISING AMENDMENTS

A. The Federal Reserve Board (the “Board”) issued amendments to the advertising requirements under both Regulation Z and the Official Staff Commentary to Regulation Z on July 30, 2008.

1. Affects advertisements for both open-end and closed-end credit.
2. Compliance required on October 1, 2009.

B. Background and Purpose of Amendments

1. To ensure that advertisement for mortgage loans provide accurate and balanced information and do not contain misleading or deceptive representations.
2. The Board’s rules require that advertisement for both open-end and closed-end mortgage loans provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features.
3. New rules for both open-end and closed-end residential secured loans.
4. Board adopted new Commentary provisions to clarify how the clear and conspicuous stand applies to advertisements for home-equity plans.
5. New rules regarding the advertisement of promotional rates and payments.
6. The rules also prohibit the following seven deceptive or misleading practices in advertisements for closed-end mortgage loans:
 - Advertisements that state “fixed” rates or payments for loans whose rates or payment can vary with adequately disclosing that

the interest rate or payment amount are “fixed” only for a limited period of time, rather than for the full term of the loan;

- Advertisements that compare an actual or hypothetical rate or payment obligation to the rates or payments that would apply if the consumer obtains the advertised produce unless the advertisement states the rates or payments that will apply over the full term of the loan;
- Advertisements that characterize the product offered as “government loan programs,” “government-supported loans,” or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government-supported or –sponsored loans;
- Advertisements, such as solicitation letters, that display the name of the consumer’s current mortgage lender, unless the advertisement also prominently discloses the advertisement is from a mortgage lender not affiliated with the consumer’s current lender;
- Advertisements that make claims of debt elimination if the product advertised would merely replace one debt obligation with another;
- Advertisements that create a false impression that the mortgage broker or lender is a “counselor” for the consumer; and
- Foreign-language advertisements in which certain information, such as a low introductory “teaser” rate, is provided in a foreign language, while required disclosures are provided only in English.

II. THE TRUTH IN LENDING ACT AND REGULATION Z ADVERTISING RULES¹

A. Clear and Conspicuous Standard

1. **Advertisements for both open-and closed-end credit generally are subject to a *clear and conspicuous* standard. For some disclosures, the regulation defines what is needed to be clear and conspicuous.**
2. ***Clear and conspicuous* for purposes of visual text on the Internet, means that required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices.**

¹ All information in bold type reflects new advertising requirements under the amendments as well as revisions to existing requirements.

3. **In regard to visual text on television, *clear and conspicuous* means that required disclosures**
 - a. **are not obscured by techniques such as graphical display, shading, coloration, or other devices, and**
 - b. **are displayed in a manner that allows consumers to read them (*e.g.*, prohibits very fine print that cannot be read).**
4. **In regard to oral disclosures, whether by radio, television, the Internet or other medium, *clear and conspicuous* means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them (*e.g.*, prohibits rapid delivery at low volume).**
5. **Special rule for catalogs, multiple page advertisements, and electronic advertisements:**
 - a. **A catalog, multiple page advertisement, or electronic advertisement (*e.g.*, Internet website) that gives information in a table or schedule in detail sufficient to make proper disclosures is considered a single advertisement if:**
 - b. **Table is *clear and conspicuous*, and**
 - c. **Any “trigger terms” appearing elsewhere clearly refers to page or location where table begins.**
 - d. **Table or schedule must include all disclosures for a representative scale of amounts up to the level of the more commonly sold higher priced property or services offered.**

B. **General Rules for All Open-End Credit Subject to the Truth-In-Lending Act**

1. **“Advertisement” is defined in Regulation Z as a commercial message that promotes, directly or indirectly, a credit transaction. Direct personal contact, such as follow-up letters and cost estimates for individual consumers, are excluded. Credit application brochures would be included.**
2. **A creditor only may advertise terms it is actually prepared to offer.**
3. **If any of the terms required to be disclosed in the initial disclosure statement regarding the finance charge or other charges that may be imposed as part of the plan (“triggering terms”) are set forth, either explicitly or implicitly, the advertisement also must clearly and conspicuously disclose:**

- a. Any minimum, fixed, transaction, activity or similar charge that may be imposed.
 - b. Any periodic rate that may be applied expressed as an annual percentage rate. The abbreviation “APR” may be used.
 - c. If the plan is variable rate, this fact also must be disclosed. This requirement may be satisfied by disclosing that “the annual percentage rate may vary” or a similar statement. To disclose the annual percentage rate in an advertisement for a variable rate plan, the creditor may use an insert showing the current APR, give the APR as of a specified date or disclose an estimated APR.
 - d. Advertisements for discounted variable rate plans must include both the initial discounted rate with a statement of how long it will remain in effect and the actual rate that would have resulted from application of the current index and a statement that this rate may vary.
 - e. Any membership or participation fee that could be imposed.
4. Examples of “triggering terms”:
- a. “Small monthly service charge.”
 - b. “10% APR or 1 1/2% per month.”
 - c. “\$25 annual membership fee.”
 - d. “No finance charge until May.”

C. Home Equity Line Rules

- 1. These are **in addition to** the general rules above.
- 2. If any of the following terms are mentioned in an advertisement, affirmatively or negatively (“HELOC trigger terms”), the disclosures listed in Paragraph 4 below must be made:
 - a. The circumstances under which a finance charge will be imposed, how the finance charge will be determined, whether there is a free ride period, any periodic rate used to compute the finance charge, the range of balances to which a periodic rate is applicable, the annual percentage rate, an explanation of the methods used to determine the balance on which the finance charge may be computed, or an explanation of how the amounts of any finance charge will be determined.

- b. Late payment charges.
 - c. Charges imposed in connection with real estate transactions, such as title, appraisal and credit report fees.
 - d. The payment terms of a plan.
3. Negative, as well as positive, statements trigger. Examples:
- a. “No annual fee.”
 - b. “No points.”
 - c. “No closing costs.”
4. If any of the terms listed in Paragraph 2 above appear in an advertisement, then all of the following terms must appear, clearly and conspicuously:
- a. Any loan fee that is a percentage of the credit limit.
 - b. An estimate of any other fees imposed for opening the plan, *i.e.*, closing costs. For property insurance, may include statement that such insurance is required in lieu of including premiums in cost estimate.
 - c. The annual percentage rate. To disclose the annual percentage rate for variable rate plans, you may use an insert showing the current rate; may give the rate as of a specified recent date; or may disclose an estimated rate.
 - d. **If an advertisement states an initial APR not based on the index and margin used to make later rate adjustments, the advertised annual percentage rate must include the initial rate, and with *equal prominence* and in *close proximity* to the initial rate, a statement of how long it will remain in effect, and a reasonably current indexed APR.**
 - e. The maximum annual percentage rate that may be imposed.
 - f. That the plan provides for a variable periodic rate. To disclose that a rate may vary, it is sufficient to state that the annual percentage rate may vary.
5. **Balloon Payment - - If an advertisement contains a statement of the amount of any minimum periodic payment and a balloon payment may result if only the minimum payments are made, the advertisement also shall state with *equal prominence* and in *close***

proximity to the minimum payment that a balloon payment may result and the amount and timing of the balloon payment.

a. A *balloon payment* results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time.

6. Tax Implications - - Any advertisement referring to the deductibility of interest may not be misleading. If an advertisement in paper form or through the Internet (rather than by radio or television) is for a plan secured by the consumer's *principal dwelling*, and *states* (not just implies) that the credit may exceed the fair market value of the dwelling, the advertisement must state *clearly and conspicuously* that (i) interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes and (ii) the consumer should consult a tax advisor regarding the deductibility of interest and charges.

7. Promotional Rates and Promotional Payments

- a. A *promotional rate* in a variable rate plan is any APR that is not based on the index plus margin and that is less than a reasonably current APR derived from the index and margin that will be used to make rate adjustments.
- i. Does not include fixed rate conversion option rates.
 - ii. Preferred rate provision (*e.g.*, automatic debit discount) does not of itself make a promotional rate.
 - iii. Initial rates that are calculated using index and margin used to make later rate adjustments, but in slightly different manner (*e.g.*, index determined on closing date and otherwise on the 15th of each month) are not promotional rates.
 - iv. Different rates or payment calculation terms for draw and repayment periods may result in promotional rate or payments (*e.g.*, interest only payments during draw period, amortizing payments during repayment period.)
 - v. An index and margin is deemed to be reasonably current for these purposes as follows:
 - (a) For direct mail advertisements, index and margin were in effect within 60 days before mailing;

- (b) For advertisements in electronic form, index and margin were in effect within 30 days before the advertisement is sent to a consumer's e-mail address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or
- (c) For printed advertisement made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, index and margin were in effect within 30 days before printing.

b. *A promotional payment*

- i. in a variable rate plan, means any minimum payment required for a promotional period that is not derived by applying the index and margin to the outstanding balance when the index and margin will be used to determine other minimum payments under the plan (and is less than a minimum payment that would be derived by applying a reasonably current index and margin).
- ii. in a fixed rate plan, the payment is less than other payments required under the plan.
- iii. Fact that minimum payment could increase solely because consumer makes additional draws is not a *promotional payment*.

c. *Promotional period* is a period of time, less than the full term of the loan, during which a promotional rate/payment will be in effect.

d. Distinction between *promotional rates* and *discounted and premium rates*.

- i. Some advertised rates may be both.
- ii. *Promotional rate* not limited to initial rate.
- iii. *Premium rate* may be greater than initial rate (using index and margin), but *promotional rate* always is less.

e. Generally, for variable rate plans, if the advertised APR or advertised payment is derived from the index and margin used

to make rate or payment adjustments over the life of the plan, there is no promotional rate or promotional payment.

- f. Except on an envelope (in which application or solicitation is mailed) or banner or pop-up advertisement delivered electronically, if a promotional rate or payment is stated, you also must disclose (other than on television or radio) in *clear and conspicuous* manner with *equal prominence* and in *close proximity* to each listing of the promotional rate or payment:
 - i. Period of time that the promotional rate or payment will apply.
 - ii. For promotional rate, any APR that will apply and, if the rate is variable, in accordance with accuracy standard of §§ 226.5b or 226.16(b)(1)(ii), as applicable.
 - iii. For promotional payments, the amounts and time periods of any payments that will apply under the plan (if variable rate plan, must use reasonably current index and margin to calculate other payment amounts.)
- g. Required disclosure of amounts and time periods of all payments, including balloon payment.
- h. *Close proximity* means immediately next to or directly above or below promotional rate, but not in a footnote.
- i. *Equally prominent* means in same type size.
- j. Alternative disclosures for TV or radio - - If the “triggering terms” or the “HELOC triggering terms” are stated in a TV or radio advertisement, a creditor may instead disclose
 - i. The APR and that the APR is variable, if applicable.
 - ii. A toll free telephone number or any telephone number that allows a consumer to reverse the charges.
 - iii. That the telephone number may be used to obtain additional cost information (*e.g.*, “call 1-800-000-000 for details about credit costs and terms.”)
 - iv. If multi-purpose telephone number provides disclosures, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures.

8. No advertisement may contain any misleading terms. Specifically, creditors are prohibited from referring to home equity plans as “free money.” An advertisement may not state “no closing costs” if consumers may be required to pay any closing costs, such as recordation fees. However, a lender can state that there are “no closing costs” if the only cost related to required property insurance, provided that the advertisement state the properly insurance is required
9. Home equity plan advertising is governed exclusively by the open-end credit rules, even if the advertisement refers to a “closed-end” aspect of the plan.

D. General Rules for Closed-End Credit

1. If a rate of finance charge is stated in the advertisement, it must be stated as an “annual percentage rate”.
2. If the annual percentage rate is subject to increase after consummation, this fact must also be disclosed.
3. **No rate other than the “annual percentage rate” may be stated except, that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.**
4. Disclosure of any of the following terms “triggers” additional disclosure requirements:
 - a. The amount or percentage of any downpayment;
 - b. The number of payments or the repayment period;
 - c. The amount of any payment; or
 - d. The amount of any finance charge.
5. Even if the trigger terms are not stated explicitly, but are disclosed by implication, the additional disclosures are required. For example, an advertisement stating “80% financing available” is the equivalent of stating that a 20% downpayment is required.
6. If triggering terms are disclosed, all of the following terms must be disclosed:
 - a. The amount or percentage of the downpayment;

- b. The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and
 - c. The “annual percentage rate”, using that term, and if the annual percentage rate is variable, that fact.
7. An advertisement made through television or radio stating any of the terms listed in Paragraph 4 above requiring additional disclosures under Paragraph 6 above may comply with advertising the additional terms either by:
- a. Stating *clearly and conspicuously* each of the additional disclosures required under Paragraph 6 above; or
 - b. Stating *clearly and conspicuously* the “annual percentage rate,” using that term, and if the annual percentage rate is variable, that fact, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information. If provide a multiple purpose telephone number, disclosure should be provided early in the sequence.

E. Rules for Closed-End Credit Secured by a Dwelling

- 1. These are in addition to the general rules for closed-end credit above.
- 2. No rate other than the “annual percentage rate” may be stated except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.
- 3. If an advertisement states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a *clear and conspicuous* manner:
 - a. Each simple annual rate of interest that will apply.
 - i. In variable rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
 - b. The period of time during which each simple annual rate of interest will apply; and

- c. The annual percentage rate for the loan.
 - d. In this context, *clearly and conspicuously* disclosed means that the required information in (a) through (c) must be disclosed with equal prominence (*e.g.*, same type size) and in close proximity to (*e.g.*, immediately next to or directly above or below without any intervening text or graphical displays) any advertised rate that triggered the required disclosures. The required information (c) may be disclosed with greater prominence than the other information.
4. If an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a *clear and conspicuous* manner:
- a. The amount of each payment that will apply over the term of the loan, including any balloon payment.
 - i. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
 - b. The period of time during which each payment will apply; and
 - c. In an advertisement for credit secured by a first lien, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.
 - d. In this context, a *clear and conspicuous* disclosure means that the required information in (a) and (b) shall be disclosed with equal prominence (*e.g.*, same type size) and in close proximity to (*e.g.*, immediately next to or directly above or below, but not in a footnote) any advertised payment that triggered the required disclosures, and that the required information in (c) shall be disclosed with prominence and in close proximity to the advertisement payments.
5. Exceptions. The rules described in Paragraphs 3 and 4 above do not apply to:
- a. An envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically; and
 - b. To television or radio advertisement.

6. **Tax Implications - - If an advertisement in paper or by Internet (rather than by radio or television) is for a loan secured by the consumer's *principal* dwelling, and *states* (not just implies) that the credit may exceed the fair market value of the dwelling, the advertisement must state *clearly and conspicuously* that:**
- a. **The interest on the portion of the credit that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and**
 - b. **The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.**

F. Prohibited Acts or Practices in Advertisements for Closed-End Credit Secured by a Dwelling: The following acts or practices are prohibited in advertisements for credit secured by a dwelling.

1. **It is prohibited to use the word “fixed” to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:**
- a. **In the case of an advertisement solely for one or more variable-rate transactions:**
 - i. **The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement before the first use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” in the advertisement; and**
 - ii. **Each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;**
 - b. **In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (*e.g.*, a stepped-rate mortgage transaction with an initial lower payment), each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or**
 - c. **In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,**

- b. Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.**
- 5. It is prohibited to make any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.**
- 6. It is prohibited to use the term "counselor" in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating, or selling mortgages.**
- 7. It is prohibited to provide information about some triggering terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other triggering terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.**