

9 WAYS TO KEEP KEEPING OUT OF MORTGAGE PROMOTION TROUBLE

Advertising rules apply even to a one-sheet flyer

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In my recent travels I've seen some banks starting to beef up their real estate lending activities again-showing some renewed optimism for this lending market. I saw one bank advertising on its website for multiple new mortgage lenders to add to its existing pair of mortgage lenders.

The home lending process naturally begins with efforts to bring in potential real estate loan customers. How to do that in today's environment?

The basics haven't changed. You can go to your existing customer base and see if anyone wants to obtain a new loan or increase their existing loan amounts. Or you can do some kind of external advertising or marketing to bring new customers to the bank.

But the compliance can be tougher. In either case, you are going to be subject to federal advertising compliance requirements, including the relatively new requirements in Regulation Z.

These regulations apply to more than you might think. Even if your bank's advertising is limited to a one-page information sheet that is handed out at a booth at the community farmers market, the advertisement is subject to all of the compliance disclosures, restrictions, requirements, and rules as an advertisement in the newspaper or on the internet.

How to stay out of trouble

Here are some key compliance points to remember when promoting dwelling-secured loan advertising:

• Avoid unintentional discouragement. Don't use any words, symbols, pictures, graphics, or models in the ads that might discourage someone on a prohibited basis (race, sex, religion, etc.) from applying for credit.

• Don't forget this basic. Include the Equal Housing Lender logo or statement in the ad.

• Be equally multilingual. Don't disclose some of the key terms of the loan in a foreign language and the other terms only in English.

• Beware of triggering terms. If the ad includes a triggering term (number of payments, period of repayment, amount of any payment, or the amount of any finance charge), be sure to also include the required disclosures that apply (terms of repayment reflecting the full term of the loan, APR, and the fact that the rate is variable, if applicable).

• Be clear on "clear and conspicuous." All advertising disclosures required under Regulation Z are subject to a "clear and conspicuous" standard, but advertising disclosures for dwelling-secured loans are subject to a higher clear and conspicuous standard.

For example, certain required information must be disclosed in close proximity to and with equal prominence to the advertised rate or payment that is being highlighted.

• If you open the door, walk through. If the ad mentions a payment amount or a rate, all of the other applicable payments and rates must be disclosed too (with certain exceptions).

• Never fix yourself with "fixed." Don't use the word "fixed" in an ad to describe a rate or payment, unless it really is fixed for the entire loan-or you also clearly disclose the adjustable or variable aspects of the loan just as conspicuously.

• Not even a whiff of bait and switch. Be sure that your ad includes only actually available terms and that the bank is prepared to offer the rates and other terms for the time period stated or implied in the ad. (If a rate is only available for a limited period of time, define what that time period is in the ad.)

• Make rate basis clear. If an ad includes an APR and it is variable or adjustable, state that fact in the ad.

There are more highly technical requirements of Regulation Z that apply, depending on specific rates and payments that are included in the advertisement. That's where the bank's compliance officer can help.

The best general tip is to be sure that any advertisement is designed to meet both the letter and spirit of the law and is not in any way misleading or confusing for the average consumer-potential customer.

Have you sent in your idea for a compliance t-shirt yet?

See Nancy's blog of Dec. 1, "Time for a compliance t-shirt?," for details

About Nancy Derr-Castiglione

"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.

Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.

Previously, Nancy held compliance positions with Bank One Corporation and with United Banks of Colorado.

In addition to serving as a Contributing Editor of ABA Banking Journal, Nancy has served on the ABA Compliance Executive Committee; National and Graduate Compliance Schools board; conference planning committees, and the Editorial Advisory Board for the ABA Bank Compliance magazine. She can be reached at nancycastiglione@comcast.net

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