

Advertising & Marketing, including Social Media

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Social Media Guidance

Is your institution engaged in or considering engaging in Social Media?

The Federal Financial Institutions Examination Council (FFIEC) issued guidance on December 11, 2013.

https://www.ffiec.gov/press/PDF/2013_Dec%20Final%20SMG%20attached%20to%2011Dec13%20press%20release.pdf

How is Social Media Defined?

The FFIEC guidance states that “social media is a form of interactive online communication in which users can generate and share content through text, images, audio and/or video.”

Goes on to identify various types of social media:

- Blogs
- Micro blogs such as Facebook and Twitter
- Forums
- Customer review websites and bulletin boards such as Yelp
- Photo/Video Sites such as Flickr and YouTube
- Professional Networking Sites such as LinkedIn

Excludes email messages and text messaging provided they are standalone.

- Reminds the reader that while not covered by this guidance, they may be regulated by other federal and/or state laws; think Controlling the Assault of Non-solicited Pornography and Marketing Act of 2003 (CAN-SPAM)

Social Media - What is required?

The guidance prescribes no new requirements.....

However, reminds FI that social media should be part of any risk management program, including:

- Governance
- Policies/Procedures
- Process for Selecting/Managing Third-parties
- Employee Training Program
- Audit and Compliance Functions
- Reporting

Social Media - What is required?

As with any other Line of Business or Delivery Channel, your social media program should include:

- A risk assessment to determine the FI's level of risk and appropriate risk controls
- Ensure privacy disclosure rules are met
- Ensure your FI has a process in place to track and respond to customer complaints and inquiries.

Don't Forget!

- How your institution chooses to use Social Media will determine, which regulations apply, but does not change HOW they apply.
- For example, If your institution wants to take mortgage applications through social media, then the RESPA disclosure requirements (including timing) still apply.

Social Media Archiving

An archiving strategy focused on email as the sole method for workforce communications is not broad enough to handle the dynamic and more complex data that results from social communications.

To manage the numerous channels your workforce uses, develop a flexible strategy that preserves the full context and formatting of every social channel.

Record retention requirements are still applicable!

Social Media Policy

It is the policy of the Bank to utilize social media as may be appropriate in its marketing and communications strategies. For the purpose of this policy, social media is inclusive of any form of interactive online communication in which users can generate and share content through text, images, audio, and/or video, including but not limited to:

- Micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter);
- Forums, blogs, customer review web sites and bulletin boards (e.g., Yelp);
- Photo and video sites (e.g., Flickr and YouTube);
- Sites that enable professional networking (e.g., LinkedIn);
- Virtual worlds (e.g., Second Life);
- Social games (e.g., FarmVille and CityVille); and
- Any other formats of electronic communication that gain sufficient popularity.

Social Media Compliance Risk

Compliance and legal risk arise from the potential for violations of, or nonconformance with, laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards.

These risks also arise in situations in which the Institution's policies and procedures governing certain products or activities may not have kept pace with changes in the marketplace. This is particularly pertinent to an emerging medium like social media.

The potential for defamation or libel risk exists where there is broad distribution of information exchanges.

Failure to adequately address these risks can expose the Bank to enforcement actions and/or civil lawsuits.

Social Media Compliance Risk

Social media may be used to market products and originate new accounts.

When used to do either, a financial institution must take steps to ensure that all processes are performed in compliance with applicable consumer protection and compliance laws and regulations.

- Marketing and advertising
- Account origination
- Account servicing
- Document retention

CFPB Proposes Rule to Jumpstart Competition and Accelerate Shift to Open Banking (10/19/23)

Personal Financial Data Rights Rule – Dodd Frank Act Section 1033

CFPB proposed a rule that would accelerate a shift toward open banking, where consumers would have control over data about their financial lives and would gain new protections against companies misusing their data. The proposed Personal Financial Data Rights rule activates a dormant provision of law enacted by Congress more than a decade ago. It would jumpstart competition by forbidding financial institutions from hoarding a person's data and by requiring companies to share data at the person's direction with other companies offering better products. The proposed rule would allow people to break up with banks that provide bad service and would forbid companies that receive data from misusing or wrongfully monetizing the sensitive personal financial data.

"With the right consumer protections in place, a shift toward open and decentralized banking can supercharge competition, improve financial products and services, and discourage junk fees," said CFPB Director Rohit Chopra. "Today, we are proposing a rule to give consumers the power to walk away from bad service and choose the financial institutions that offer the best products and prices."

CFPB Proposes Rule to Jumpstart Competition and Accelerate Shift to Open Banking (10/19/23)

The proposed Personal Financial Data Rights rule would ensure that consumers:

- Get their data free of junk fees: Banks and other providers subject to the rule would have to make personal financial data available, at no charge to consumers or their agents, through dedicated digital interfaces that are safe, secure, and reliable.
- Have a legal right to share their data: People would have a legal right to grant third parties access to information associated with their credit card, checking, prepaid, and digital wallet accounts. This type of data can help firms provide a wide range of products and services, including cash flow-based underwriting that stands to improve pricing and access across credit markets. When these firms offer a desired product or service, people would be able to switch providers more easily. They would also be able to more conveniently manage accounts from multiple providers.
- Can walk away from bad service: Not only would the proposed rule increase competitive forces among financial institutions, it would also enable people to walk away from bad services and products. People can become trapped by providers that hold their data, but this proposal would allow them to more easily shift their data to a competitor offering better or lower priced products and services.

CFPB Proposes Rule to Jumpstart Competition and Accelerate Shift to Open Banking (10/19/23)

The proposed Personal Financial Data Rights rule would protect the interests of both consumers and financial firms through:

- Robust protections to prevent unchecked surveillance and misuse of data: Companies that people authorize to access data on their behalf would have to agree to certain important conditions. Third parties could not collect, use, or retain data to advance their own commercial interests through actions like targeted or behavioral advertising. Instead, third parties would be obligated to limit themselves to what is reasonably necessary to provide the individual's requested product.
- Meaningful consumer control: The proposal would also give people the right to revoke access to their data. When a person revokes access, the proposal would require that data access end immediately, and deletion would be the default practice. Access can be maintained for no more than one year, absent the individual consumer's reauthorization.
- A move away from risky data collection practices: Many companies currently access consumer data through screen scraping, which often requires people to share their usernames and passwords with third parties. This proposal seeks to move the market away from these risky data collection practices.
- Fair industry standard-setting: Instead of providing detailed technical standards, the rule contains several requirements to ensure industry standards are fair, open, and inclusive. The CFPB intends to assess future standards developed by the private sector under the terms described in the rule.

Under the proposal, the requirements would be implemented in phases, with larger providers being subject to them much sooner than smaller ones. In addition, the many community banks and credit unions that have no digital interface at all with their customers would be exempt from the rule's requirements.

Social Media Reputation Risk

Reputation risk is the risk arising from negative public opinion. Activities that result in dissatisfied consumers and/or negative publicity could harm the reputation and standing of the financial institution, even if the Bank has not violated any law. The Bank's media activities must be sensitive to, and properly manage, the reputation risks that arise from those activities. Reputation risk can arise in areas including the following:

- Fraud and Brand Identity
- Third Party Concerns
- Privacy Concerns
- Consumer Complaints and Inquiries
- Employee Use of Social Media Sites

Fair Housing Act

Under Section 804 of the Fair Housing Act (FHA), it is unlawful—"to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination."

Logotype and Legend—Used for written or visual advertisements size guidelines:

- Ad size 1/2 page or larger—2" by 2"
- Ad size 1 1/8 to 1/2 page—1" by 1"
- Ad size 4 column inches to 1/8 page 1/2" by 1/2"
- Smaller ads—use statement instead

"Equal Housing Lender" statement—used in oral advertisements

- Can use either logotype or statement if advertisement is both oral and visual
- Equal Housing Lender Poster must be conspicuously displayed in any public lobby or area within the bank where deposits are received

Use of the One-Click Rule

- “One-Click Rule”
 - Electronic advertisements, including online, institution’s website and social media
- Rather than include the “additional disclosures” in the advertisement itself, the institution can:
 - Provide the additional disclosures on a separate page via a direct link
- One-Click Rule is allowed for:
 - Reg Z additional disclosures
 - Credit cards, HELOCs (open-end)
 - Auto Loans, mortgages (closed-end)
- Truth in Savings additional disclosures
 - Checking, savings, CDs

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Electronic Advertisements

“If an electronic advertisement displays a triggering term, the advertisement must clearly refer the consumer to the location where the additional required information begins.

For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the consumer to the additional information.”

Comment 9 to OSC to 12 CFR 1030.8(a)

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What is Your Digital World?

- Website/Marketing
- Online Banking
- Bill Payments
- Funds Transfers
- Remote Deposit Capture
- Personal Computer (PC) vs. Mobile/Tablet
- Mobile App
- Social Media

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What are the Advertising Rules?

Your institutions unauthenticated website is primarily a form of advertising so the general advertising rules apply.

Even in your authenticated online banking watch for advertising, such as banner ads and boxes.

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What are the Advertising Rules?

Sample webpage with a banner ad at the top



What are the Advertising Rules?

Sample Banner Ad



A website link can be used for "one click" disclosures or to direct a customer/consumer to a third party website.

SAFE Act & ML Comp: Different Purposes

Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) and Regulation G:

- Establishes a system for identifying and tracking mortgage loan originators (MLO)

Truth in Lending Act (TILA) and Regulation Z:

- Sets controls on Loan Originator Compensation (LO Comp) so that loan originators are not motivated to raise a consumer's loan costs only to benefit the loan originator

Note: Regulation H addresses the SAFE Mortgage Licensing Act's State Compliance and Bureau Registration System

Comparison of LO Definitions

REG Z LO COMP

Broader definition than SAFE Act

Means an individual or entity who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities:

- Takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; OR
- Through advertising or other means of communication represents to the public that such person can or will perform any of these activities.

SAFE ACT MLO

For purposes of this section, mortgage loan originator means an individual who:

Takes a residential mortgage loan application; and

Offers or negotiates terms of a residential mortgage loan for compensation or gain.

Establishes a de minimis threshold of 5 or fewer residential mortgage loans (RML) during the past rolling 12 months.

- Prior to originating the 6th RML, the MLO would have to register with the NMLSR.

SAFE Act Provision of NMLSR

Unique identifier of each employed registered MLO must be made available by financial institutions in a method and manner practical to the institution

- Upon consumer's request
- Before acting in an MLO capacity; and
- In the MLO's initial written communication with the consumer, if any. Generally orally or electronically (but must provide in writing at some point) through GFE or other disclosures, a commitment letter, etc.
 - Not intended to include promotional items for general use

Various regulatory requirements mandate including the MLO # on the key loan documents and disclosures

- Consumer mortgage application
- Reg Z TRID Loan Estimate and Closing Disclosure
- Note or loan contract
- Security agreement

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LO Compensation Name and NMLSR # on Loan Documents

LO Comp rules require the name and NMLSR # on loan documents:

- For a consumer credit transaction secured by a dwelling, a loan originator organization must include on the loan documents described in paragraph (g)(2) of this section, whenever each such loan document is provided to a consumer or presented to a consumer for signature, as applicable:
 - Its name and NMLSR ID, if the NMLSR has provided it an NMLSR ID; and
 - The name of the individual loan originator (as it appears in the NMLSR) with primary responsibility for origination and, if NMLSR has provided person an NMLSR ID, that NMLSR ID.
- The loan documents that must include the names and NMLSR IDs pursuant to paragraph §1026.36(g)(1) of this section are:
 - The credit application;
 - Reserved
 - The note or loan contract; and
 - The security instrument.

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Truth in Lending Act (Reg Z)

Advertise ONLY terms actually available

- No Bait and Switch
- Current scenarios accessible by MOST

“Clear and conspicuous” standard

Ads that state a rate of finance charge must state rate as an Annual Percentage Rate (APR)

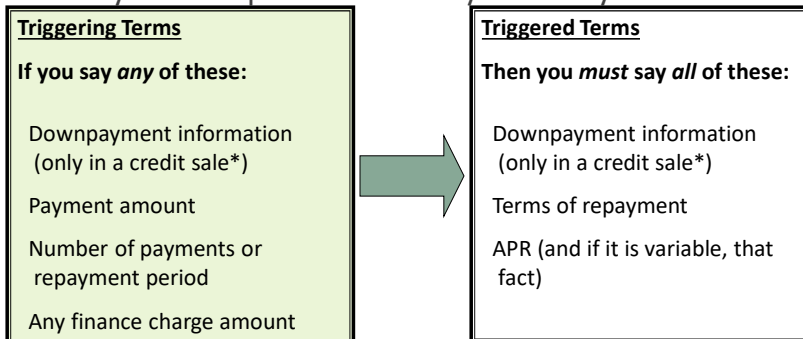
Simple Interest Rate may also be advertised, but not more conspicuously than APR

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Advertising – Closed-End Credit

You may only advertise terms that are actually available

What you must say in ad depends on what you do say in the ad:



* A “credit sale” is one in which the creditor is also the seller (selling repossessed property or a foreclosure sale, for instance)

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Closed-End Loan Advertising

Numerical disclosures of the terms trigger

- Or if you can figure the number from the ad's information)

Notice what is NOT a triggering term: APR

- If you do advertise an APR that may increase after consummation (ARM, step-rate mortgage, etc.), you must have a statement of that fact
- You may also state the interest rate, but not more prominently than the APR

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Mortgage Advertising

Rate information:

- Must disclose all rates
 - If more than one could apply, each simple rate must be shown, its period of time, and the APR for the loan
- Disclose all rates and payments that could apply over the term of the loan, and time periods
- If advertising a discounted variable-rate transaction, must show the initial term and the APR after the term expires

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Mortgage Advertising

Payment information – if any payment amount is advertised:

- Show payments that will apply over the term of the loan (including balloon if borrower only makes minimum payment specified in the ad)
- Period of time for each payment
- Fact that payments don't include taxes or interest
- Additional disclosures required when the ad shows the effect of a buydown on the payment schedule

Cannot use the word “fixed” when rate or payment could change

- If only fixed for a limited time, for example

Tax implications (same as open-end provisions)

- If amount of the loan exceeds FMV of the dwelling, interest on the portion exceeding the FMV is not deductible for Federal income tax purposes
 - Only applies if amounts greater than the FMV are available and stated in the ad

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Mortgage Advertising

Comparing actual or hypothetical current rates or payments to a new loan

- All applicable rates or payments over the term must be included
- Statement that amounts don't include taxes or insurance, if true

Prohibitions

- Disclosing that product is endorsed or sponsored by a government entity, unless for a FHA, VA, or similar loan
- Displaying the consumer's current lender without a statement that the advertiser is not affiliated with that current lender
- Claims that debt will be eliminated, waived, or forgiven
- Trigger terms in a foreign language, with required disclosures only in English

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Prohibited Practices: Closed-End Dwelling Secured Ads

Misleading use of words “fixed” “counselor”

Misleading claims of debt elimination

Misleading claims of government endorsed or sponsored loan programs

Providing some required disclosures or triggering terms in foreign language and others in English in same ad

Making misleading comparisons between actual or hypothetical payments or rates and payments or rates that will be available for a period less than whole loan term

Use of consumer’s current lender name in ad that is not sent by current lender

Advertising – Open-End Credit

You may only advertise terms that are actually available

What you must say in an ad depends on what you do say in the ad:

Triggering Terms

If you say **any** of these:

- Finance charge or APR
- Any other charges



Triggered Terms

Then you **must** say **all** of these:

- Transaction or other activity charges
- APR (and the fact that it may vary, if it can)
- Any membership or other participation fee

- There are additional special rules for HELOCs
 - Triggering terms can be stated affirmatively or negatively (the absence of the term)
 - “No Closing Costs Home Equity Lines During July!” - Triggers
 - Stating the absence of a triggering term nonetheless means you must include all triggered terms in your ad
 - If advertising a teaser rate, the time period and current APR must be disclosed (with equal prominence)

Advertising – HELOCs

Variable rate HELOC stating an initial APR not based on index + margin (teaser/promo rate) must state time it is in effect and current fully-indexed rate

- Equal prominence and close proximity to initial APR advertised

For teaser/promo rates and payments

- Use term “promotional” in immediate proximity each time it’s stated
- Additionally with each listing of the rate or payment:
 - Period of time it would apply
 - Any APR that would apply under the plan
 - Promotional payment: amount and time period it would be in effect
 - Variable rate transaction: payment based on a reasonably current index + margin

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Advertising – HELOCs

Balloon payments

- Must state that one would result (if paying only minimum payments would result in one)
- Must be equally prominent and in close proximity to the minimum periodic payment

Tax implications

- If amount of the loan exceeds FMV of the dwelling, interest on the portion exceeding the FMV is not deductible for Federal income tax purposes
 - Only applies if amounts greater than the FMV are available and stated in the ad

Exceptions exist for banner and TV ads

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Advertising Terminology

Cannot use the term “fixed” (or anything similar) with an APR unless:

- The ad also states a specific time period that the rate will be fixed
- If no time period in the ad is stated, the rate cannot change while the plan is open
 - For example, if rate can change but no time period is stated, “fixed” cannot be used

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Special Procedures for Phone Numbers

The toll-free, collect or local phone number, which only applies to radio and TV ads, must be established no later than the ad’s air date.

- Offer must continue for at least 10 days after the air date.

Callers must be given all the required disclosures early in the message.

A clear and conspicuous written copy of the disclosures must be provided to anyone who asks for it.

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Advertising Violations

If your ads aren't compliant, you could face enforcement actions or civil lawsuits. For advertisers under the FTC's jurisdiction, that could mean:

- Orders to cease and desist. If you violate an order, you could be fined up to \$16,000 per day per violation.
- Injunctions by federal district courts. Violations of these orders could result in civil or criminal contempt proceedings.
- Refunds to consumers for actual damages in civil lawsuits.

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FDIC Membership

Member
FDIC



Member FDIC, Member of FDIC

Clearly legible

In all ads that promote bank products and services or promote non-specific banking products and services

Prohibited in non-deposit product ads

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Equal Credit
Opportunity
Act (ECOA)

Reg B

Prohibition against
discrimination in any
aspect of credit

Including advertising of
any credit products

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Fair Lending → Fair Treatment

Nondiscrimination in marketing products to consumers and
businesses

Beyond the prohibited bases (more protected groups)

Steering to high-cost products

Targeting certain groups or geographic areas

Expectation that banks will analyze product impact (after the fact) on
protected groups

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CAN-SPAM Act



Commercial email messages must contain identification as an Advertisement

Must provide email recipient with opportunity to decline further messages from sender

Must contain valid postal address of sender in email

Prohibits deceptive subject lines in emails

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FTC's CAN-SPAM Act: A Compliance Guide for Business Aug 2023

www.ftc.gov/business-guidance/resources/can-spam-act-compliance-guide-business

The [CAN-SPAM Act](#), a law that sets the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations. The FTC enforces the CAN-SPAM Act and the accompanying [CAN-SPAM Rule](#).

Despite its name, the CAN-SPAM Act doesn't apply just to bulk email. It covers all commercial messages, which the law defines as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service," including email that promotes content on commercial websites. The law makes no exception for business-to-business email. That means all email – for example, a message to former customers announcing a new product line – must comply with the law.

Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to \$50,120, so non-compliance can be costly. But following the law isn't complicated. Here's a rundown of CAN-SPAM's main requirements on the following slides.

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FTC's CAN-SPAM Act: A Compliance Guide for Business Aug 2023

www.ftc.gov/business-guidance/resources/can-spam-act-compliance-guide-business

Don't use false or misleading header information. Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.

Don't use deceptive subject lines. The subject line must accurately reflect the content of the message.

Identify the message as an ad. The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is an advertisement.

Tell recipients where you're located. Your message must include your valid physical postal address. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations.

Tell recipients how to opt out of receiving future marketing email from you. Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting marketing email from you in the future. Craft the notice in a way that's easy for an ordinary person to recognize, read, and understand. Creative use of type size, color, and location can improve clarity. Give a return email address or another easy Internet-based way to allow people to communicate their choice to you. You may create a menu to allow a recipient to opt out of certain types of messages, but you must include the option to stop all marketing messages from you. Make sure your spam filter doesn't block these opt-out requests.

FTC's CAN-SPAM Act: A Compliance Guide for Business Aug 2023

www.ftc.gov/business-guidance/resources/can-spam-act-compliance-guide-business

Remember that subscribers and members can opt out of marketing emails, too. Recipients of emails from a sender that runs a subscription service or membership program still have the right to opt out of marketing messages from you. While you don't need to get members' consent to send them marketing emails, subscribers and members don't lose their ability to opt out of marketing emails from you simply because they have a subscription or membership. Before sending a message without an unsubscribe link to subscribers or members, be sure that the primary purpose of the message fits within one of the five categories of "transactional or relationship" message set out in the Act. If it doesn't, you need to include a way for recipients to opt out of further marketing messages from you.

Honor opt-out requests promptly. Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's opt-out request within 10 business days. You can't charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for honoring an opt-out request. Once people have told you they don't want to receive more messages from you, you can't sell or transfer their email addresses, even in the form of a mailing list. The only exception is that you may transfer addresses to a company you've hired to help you comply with the CAN-SPAM Act.

Monitor what others are doing on your behalf. The law makes clear that even if you hire another company to handle your email marketing, you can't contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible.

Q. How do I know if the CAN-SPAM Act covers email my business is sending?

A. What matters is the “primary purpose” of the message. To determine the primary purpose, remember that an email can contain three different types of information:

- Commercial content – which advertises or promotes a commercial product or service, including content on a website operated for a commercial purpose;
- Transactional or relationship content – which facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction; an
- Other content – which is neither commercial nor transactional or relationship.

If the message contains only commercial content, its primary purpose is commercial, and it must comply with the requirements of CAN-SPAM. If it contains only transactional or relationship content, its primary purpose is transactional or relationship. In that case, it may not contain false or misleading routing information, but is otherwise exempt from most provisions of the CAN-SPAM Act.

Q. How do I know if what I’m sending is a transactional or relationship message?

A. The email’s primary purpose is transactional or relationship if it consists only of content that:

- Facilitates, completes, or confirms a commercial transaction that the recipient already has agreed to;
- Gives warranty, recall, safety, or security information about a product or service the recipient bought;
- Notifies the recipient about a change in the terms or features of a membership, subscription, account, loan or other ongoing commercial relationship; notifies the recipient of a change in their standing with respect to that ongoing commercial relationship; or provides regular, periodic account balance information to the recipient;
- Provides information about an employment relationship or employee benefits; or
- Delivers goods or services as part of a transaction that the recipient already has agreed to.

Keep in mind that the law views these categories narrowly. That means you shouldn’t assume that any message you send to recipients who have an ongoing commercial relationship with you – including subscribers or recipients who participate in a membership program – are transactional or relationship messages. Carefully consider the five categories of transactional or relationship message listed above and ask whether a reasonable consumer reading your email would understand that the message’s primary purpose fits in one of those categories. If it doesn’t, the message needs to comply with all of the requirements of CAN-SPAM.

Q. What if the message combines commercial content and transactional or relationship content?

A. It's common for email sent by businesses to mix commercial content and transactional or relationship content. When an email contains both kinds of content, the primary purpose of the message is the deciding factor. Here's how to make that determination: If a recipient reasonably interpreting the subject line would likely conclude that the message contains an advertisement or promotion for a commercial product or service or if the message's transactional or relationship content does not appear mainly at the beginning of the message, the primary purpose of the message is commercial. So, when a message contains both kinds of content – commercial and transactional or relationship – if the subject line would lead the recipient to think it's a commercial message, it's a commercial message for CAN-SPAM purposes. Similarly, if the bulk of the transactional or relationship part of the message doesn't appear at the beginning, it's a commercial message under the CAN-SPAM Act.

Two examples are provided on the following 2 slides

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Q. What if the message combines commercial content and transactional or relationship content?

Example 1

MESSAGE A

TO: Jane Smith
FR: XYZ Distributing
RE: Your Account Statement
We shipped your order of 25,000 deluxe widgets to your Springfield warehouse on June 1st. We hope you received them in good working order. Please call our Customer Service Office at (877) 555-7726 if any widgets were damaged in transit. Per our contract, we must receive your payment of \$1,000 by June 30th. If not, we will impose a 10% surcharge for late payment. If you have any questions, please contact our Accounts Receivable Department. Visit our website for our exciting new line of mini-widgets!

MESSAGE A is most likely a *transactional or relationship message* subject only to CAN-SPAM's requirement of truthful routing information. One important factor is that information about the customer's account is at the beginning of the message and the brief commercial portion of the message is at the end.

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Q. What if the message combines commercial content and transactional or relationship content?

Example 2

MESSAGE B

TO: Jane Smith
FR: XYZ Distributing
RE: Your Account Statement
We offer a wide variety of widgets in the most popular designer colors and styles – all at low, low discount prices. Visit our website for our exciting new line of mini-widgets!
Sizzling Summer Special: Order by June 30th and all waterproof commercial-grade widgets are 20% off. Show us a bid from one of our competitors and we will match it. XYZ Distributing will not be undersold.
Your order has been filled and will be delivered on June 1st.

MESSAGE B is most likely a **commercial message** subject to all CAN-SPAM's requirements. Although the subject line is "Your Account Statement" – generally a sign of a transactional or relationship message – the information at the beginning of the message is commercial in nature and the brief transactional or relationship portion of the message is at the end.

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Q. What if the message combines elements of both a commercial message and a message with content defined as "other"?

A. In that case, the primary purpose of the message is commercial and the provisions of the CAN-SPAM Act apply if:

- A recipient reasonably interpreting the subject line would likely conclude that the message advertises or promotes a commercial product or service; or
- A recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service.

Factors relevant to that interpretation include the location of the commercial content (for example, is it at the beginning of the message?); how much of the message is dedicated to commercial content; and how color, graphics, type size, style, etc., are used to highlight the commercial content.

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Q. What if the email includes info from more than one company? Who is the “sender” responsible for CAN-SPAM compliance?

A. If an email advertises or promotes the goods, services, or websites of more than one marketer, there’s a straightforward method for determining who’s responsible for the duties the CAN-SPAM Act imposes on “senders” of commercial email. Marketers whose goods, services, or websites are advertised or promoted in a message can designate one of the marketers as the “sender” for purposes of CAN-SPAM compliance as long as the designated sender:

- Meets the CAN-SPAM act’s definition of “sender,” meaning that they initiate A commercial message advertising or promoting their own goods, services, or website;
- Is specifically identified in the “from” line of the message; and
- Complies with the “initiator” provisions of the act – for example, making sure the email does not contain deceptive transmission information or A deceptive subject heading, and ensuring that the email includes A valid postal address, A working opt-out link, and proper identification of the message’s commercial or sexually explicit nature.

If the designated sender doesn’t comply with the responsibilities the law gives to initiators, all marketers in the message may be held liable as senders.

Q. My company sends email with a link so recipients can forward the message to others. Who is responsible for CAN-SPAM compliance for these “Forward to a Friend” messages?

A. Whether a seller or forwarder is a “sender” or “initiator” depends on the facts. So deciding if the CAN-SPAM Act applies to a commercial “forward-to-a-friend” message often depends on whether the seller has offered to pay the forwarder or give the forwarder some other benefit. For example, if the seller offers money, coupons, discounts, awards, additional entries in a sweepstakes, or the like in exchange for forwarding a message, the seller may be responsible for compliance. Or if a seller pays or gives a benefit to someone in exchange for generating traffic to a website or for any form of referral, the seller is likely to have compliance obligations under the CAN-SPAM Act.

Common Compliance Mistakes

Not legible

- Mouseprint
- Equal Housing logo and legend
- Member FDIC

Outdated information

“Some conditions may apply”

Disclosures not in close proximity to triggered term

Triggered disclosures not included as required

Advertisements triggered outside of the Marketing Department



What is your institution's digital footprint and how are you ensuring compliance?

Online Banking

Does your institution provide online banking services?

Do you offer:

- Bill Pay?
- Remote Deposit Capture?
- Money Movement?
 - P2P
 - ACH
 - Wire transfer

Do you open new accounts online:

- For existing customer only?
- For new customers?
- Both?

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Regulatory Considerations

FFIEC Guidance – Authentication in an Internet Banking Environment

- Issued in October 2005 and Supplement to the Guidance issued in June 2011
- Requires a risk assessment of the FI's current environment
 - Possession of a mobile device is not sufficient to meet the "something the consumer possesses" requirement
 - Minimum standards for authentication apply
 - Requires a layered approach to security

Electronic Signatures in Global and National Commerce Act (E-sign)

- Provides the standards and enforceability of electronic contracts, records and signatures
- Does not require consumers to accept electronic records
- Does require consumers affirmative consent to accept electronically contracts, records, etc., that will "take the place of" paper documentation required.

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Regulatory Considerations

Before consent the consumer must be provided with certain disclosures:

- Single transaction or continuous (must identify categories of information covered by the consent)
- Consumers right to receive paper
- Consumer right to revoke and instructions on how the consumer may exercise that right
- Hardware and software requirements
- Consumer must accept electronically, or demonstrate the ability to access the information electronically
- Cannot be given orally
- Requires re-disclosure if hardware/software standards change.

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Regulatory Considerations

Regulation E – Electronic Funds Transfer (EFTA)

Applicability

- Bill Pay
- Person to Person (P2P)
- Debit card usage in a mobile transaction
- Remittances

Disclosure requirement still apply

- New Services
- Limits and Restrictions

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Regulatory Considerations

Regulation E / Regulation Z

- Error resolution requirements still apply
 - Unauthorized transaction
 - Incorrect transactions
 - Transactions omitted from periodic statements
 - Computation or bookkeeping errors
- Consumer Limitations Still Apply
- Investigation timing requirements still apply
- Regulation E provisional credit requirement still applies

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Additional Regulatory Concerns

Information Security

- Gramm-Leach Bliley Act, Title 5
- Keeping consumer information safe
- Perform annual risk assessment

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Additional Regulatory Concerns

Regulation GG – Online Gambling

Children’s Online Privacy Protection Act

Equal Employment Opportunity Employer, yes don’t forget the Human Resources Requirements

- Does your institution utilize e-Verify?

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Regulatory Requirements

Unfair or Deceptive Acts or Practices (UDAP)

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

Truth in Advertising (TIA)

Truth in Savings Act (TISA) Regulation DD

Truth in Lending Act (TILA) Regulation Z

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UDAP or UDAAP?

Unfair or Deceptive Acts or Practices (UDAP)

Covers unfair or deceptive practices against consumers or commercial entities

- The Federal Trade Commission Act of 1914 was originally about protecting against commercial monopolies
 - Section 5(a) of the FTC Act [15 USC 45(a)]
- FTC has no enforcement authority over banks
- Federal Deposit Insurance Act (FDIA) authorized regulators to enforce UDAP on banks
- Congress originally gave FTC power to enforce and discretion to seek corrective action rather than monetary damages
- FTC appointed federal banking regulators to enforce UDAP against banks

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Bank Regulatory Unfairness

Unfairness is already incorporated in some regs

- Reg Z requires statement of “only those terms that actually are or will be arranged or offered”
- Reg DD prohibits “misleading or inaccurate advertisements,” requiring that ads “shall not misrepresent a depository institution’s contract”
- Reg B, FHA, and fair lending are based on unfairness
 - If a practice unfairly targets or has a disparate impact on members of a protected class, the practice may be considered unfair

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Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

Introduced by Dodd-Frank Act § 1031, effective July 10, 2010, gave the CFPB broad authority to prevent UDAAP against consumers

Introduced the concept of “abusive” inferring the bank did not have the consumer’s best interest as its priority as the consumer believed and relied on

Builds on the FTC’s definitions and adds “abusive”

Applies to all banking activities and services from a perspective of “consumer protection” rather than “check the box compliance”

Gave the CFPB authority to take any action appropriate to prevent UDAAP under Federal law related to a consumer financial product or service

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State UDAP Laws (Mini FTC Acts)

Every state has laws prohibiting unfair and deceptive trade practices

States began enacting these laws in the early 1960’s, and more actively after

- 1964 issuance of the Uniform Deceptive Trade Practices Act
- 1967 Model Unfair Trade Practices & Consumer Protection Law

State UDAP laws include consumer private right of action

State courts can sometimes use different standards for interpreting unfairness or deception

Lots of activity by the states beginning in September and October 2010 regarding foreclosure practices

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UDAP

FTC's broad standard – covers any unfair or deceptive practice, toward consumers or businesses

- FTC and courts have developed interpretations of what constitutes an unfair or deceptive act
- No formal regulation implementing UDAP, based more on FTC policy interpretation letters and specific bank guidance by bank regulators
- Practice does not have to be both unfair and deceptive – judged independently

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FTC Credit Practices Rule aka Reg AA

Despite the obvious marketing focus, UDAP was initially applied to banks when the Fed adopted the FTC Credit Practices Rule as Reg AA (which is now rescinded)

Prohibited activities in credit transactions that are not marketing-related:

- Confessions of judgment (agreed to in advance)
- Assignment of future wages (unless part of wage deduction plan)
- Security interest in household goods (other than purchase money)
- Pyramiding of late charges (repeated charges for single act)

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UDAAP (Dodd-Frank Act § 1031)

Enterprise-wide focus on all products or services offered by our financial institutions → expands the scope to include ANY consumer financial products or services provider

Makes it unlawful for ANY consumer financial products or services provider to engage in unfair, deceptive or abusive acts or practices

Frequently added on top of other baseline regulatory requirements (e.g., TISA, TILA, etc.) for citation of regulatory violations

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UDAAP: Intersection of Subjectivity & Penalties

Principles-Based, NOT Rules-Based

Issues are not always obvious and depend heavily on the circumstances

Requires a holistic view

ALWAYS prioritize the consumer's perspective

Control programs are built around technical rules

UDAAP testing must be built around impact analysis

- Analyze the consent orders to find potential impact testing

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UDAAP Comparison Chart

Unfair	Deceptive	Abusive
Likely to cause substantial injury	Likely to mislead (Materiality is presumed)	Lack of understanding of costs, risks or conditions
Injury cannot be reasonably avoided	Acting reasonably	Inability to protect his or her own interests
Net benefits		Reasonable reliance that bank is acting in consumer's best interest

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UDAAP Target: Mainstream & Long-Standing Practices

Add-on products
 Overdraft protection
 Rewards checking
 Identity theft protection

Some practices had been in effect for 10 years at the time the institution received an enforcement action pertaining to them.

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Federal Reserve Examination Procedures

“The prohibition against UDAP not only applies to all products and services offered by banks, but to every stage and activity, from product development to the creation and rollout of marketing campaigns, and to servicing and collections. Therefore, particular focus should be paid to new or modified systems or products and third party arrangements.”

- Similar to the CFPB Exam Manual re: UDAAP

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Comptroller's Handbook

Consumer Compliance

Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices

Version 1.0, June 2020

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OCC Appendix A UDAP/UDAAP Red Flags

Customer complaints

Whistleblower referrals

High levels or rapidly increasing fee income relative to similar banks

High volume of chargebacks or refunds

Inadequate oversight and review of advertisements, marketing materials and scripts, and sales practices

Inconsistencies between account disclosures and bank operating systems

Weaknesses in risk management or internal controls over higher risk products or services

Version 1.0

Appendix B: UDAP and UDAAP Risk Indicators

Examiners may use the following UDAP and UDAAP risk indicators for determining a bank's quantity of risk and quality of risk management regarding UDAP and UDAAP.

Quantity of UDAP and UDAAP Risk Indicators

Examiners can use the following indicators when assessing quantity of UDAP and UDAAP risk.

Quantity of UDAP and UDAAP Risk Indicators		
Low	Moderate	High
Violations of UDAP, UDAAP, and consumer protection-related laws or regulations (e.g., Regulation B, Regulation Z, Regulation DD, and the Fair Debt Collection Practices Act [FDCPA]) or compliance program weaknesses are insignificant in number or do not exist.	Violations of UDAP, UDAAP, and consumer protection-related laws or regulations (e.g., Regulation B, Regulation Z, Regulation DD, and the FDCPA) or compliance program weaknesses exist and represent technical issues with some reimbursement to consumers that are resolved in a timely manner.	Violations of UDAP, UDAAP, and consumer protection-related laws or regulations (e.g., Regulation B, Regulation Z, Regulation DD, and the FDCPA) or compliance program weaknesses are significant in number, resulting in large consumer reimbursements or regulatory fines and penalties.
Volume of complaints, including complaints regarding or received by applicable third parties, is minimal.	Volume of complaints, including complaints regarding or received by applicable third parties, is moderate.	Volume of complaints, including complaints regarding or received by applicable third parties, is high.

Advertising & Social Media

The FTC's Endorsement Guides: What People Are Asking

TAGS: Advertising and Marketing | Endorsements | Online Advertising and Marketing

TABLE OF CONTENTS


- About the Endorsement Guides
- When Does the FTC Act Apply to Endorsements?
- Product Placements
- Endorsements by Individuals on Social Networking Sites
- How Should I Disclose That I Was Given Something for My Endorsement?
- Other Things for Endorsers to Know
- Social Media Contests
- Online Review Programs
- Soliciting Endorsements
- What Are an Advertiser's Responsibilities for What Others Say in Social Media?
- What About Intermediaries?
- What About Affiliate or Network Marketing?
- Expert Endorsers Making Claims Outside of Traditional Advertisements
- Employee Endorsements
- Using Testimonials That Don't Reflect the Typical Consumer Experience

ABOUT THE ENDORSEMENT GUIDES

Do the Endorsement Guides apply to social media?

Yes. Truth in advertising is important in all media, whether they have been around for decades (like television and magazines) or are relatively new (like blogs and social media).

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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS




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ABOUT THE FTC | NEWS & EVENTS | ENFORCEMENT | POLICY | TIPS & ADVICE | I WOULD LIKE TO...

Home » News & Events » Press Releases » CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers

CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers

Owners must disclose material connections in future posts; FTC staff also sends 21 warning letters to prominent social media influencers

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FOR RELEASE
September 7, 2017

TAGS: Bureau of Consumer Protection | Consumer Protection | Advertising and Marketing | Endorsements | Online Advertising and Marketing

Trevor "TmarTn" Martin and Thomas "Syndicate" Cassell, two social media influencers who are widely followed in the online gaming community, have settled Federal Trade Commission charges that they deceptively endorsed the online gambling service CSGO Lotto, while failing to disclose their

The Do's and Don'ts for Social Media Influencers

In English
En Español

EVENTS CALENDAR

Related Cases

CSGO Lotto, Trevor Martin, and Thomas Cassell

Related Actions

CSGO Lotto, Inc. Analysis to Aid Public Comment; Proposed Consent Agreement

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Social Media Influencers

Trevor “TmarTn” Martin and Thomas “Syndicate” Cassell, two social media influencers who are widely followed in the online gaming community, have settled Federal Trade Commission charges that they deceptively endorsed the online gambling service CSGO Lotto, while failing to disclose they jointly owned the company.

They also allegedly paid other well-known influencers thousands of dollars to promote the site on YouTube, Twitch, Twitter, and Facebook, without requiring them to disclose the payments in their social media posts.

The Commission order settling the charges requires Martin and Cassell to clearly and conspicuously disclose any material connections with an endorser or between an endorser and any promoted product or service.

The Do's and Don'ts for Social Media Influencers

FTC RECOMMENDATIONS	PRACTICES TO AVOID
 <p>Clearly DISCLOSE when you have a financial or family relationship with a brand.</p>	 <p>DON'T ASSUME followers know about all your brand relationships</p>
 <p>Ensure your sponsorship disclosure is HARD TO MISS</p>	 <p>Don't assume disclosures BUILT INTO social media platforms are sufficient</p>
 <p>Treat sponsored tags, including tags in pictures, LIKE ANY OTHER endorsement</p>	 <p>Don't use AMBIGUOUS DISCLOSURES like "Thanks," #collab, #sp, #spon, or #ambassador</p>
 <p>On image-only platforms like Snapchat, SUPERIMPOSE DISCLOSURES over the images</p>	 <p>Don't rely on disclosures that people will see only if they CLICK "MORE"</p>

Source: Federal Trade Commission

Four “Heads Up” Points For Influencers

Clearly disclose when you have a financial or family relationship with a brand. “But everybody knows!” No, they don’t. It’s unwise for influencers to assume that people know all about their business relationships.

Don’t assume that using a platform’s disclosure tool is sufficient. Some platforms are starting to offer disclosure tools, but that’s no guarantee they’re an effective way for an influencer to disclose a material connection to a brand. Like so many things on social media, it’s all about context. One key consideration is placement – whether the disclosure attracts viewers’ attention, taking into account where people are likely to look on a particular platform. For example, when paging through a stream of eye-catching photos, a viewer may not spot a disclosure placed above the picture or off to the side. The ultimate responsibility for making clear disclosures is yours. That’s why you want to make sure your disclosures are hard to miss.

Avoid ambiguous disclosures like #thanks, #collab, #sp, #spon, or #ambassador. Clarity counts. When disclosing a material connection to a brand, use language that’s clear and unmistakable. It’s unlikely that abbreviations, shorthand, or arcane lingo will communicate the disclosure effectively to consumers. Think of it like football. Unless the quarterback throws the ball and the receiver catches it, it’s an incomplete pass.

Don’t rely on a disclosure placed after a CLICK MORE link or in another easy-to-miss location. Consider your own viewing habits on social media. Do you click every CLICK MORE link? We don’t either. When disclosing a brand relationship, the better approach is to hit ‘em right between the eyes. Furthermore, on image-only platforms, superimpose your disclosure over the picture in a clear font that contrasts sharply with the background.

Social Media Guide for Financial Institutions

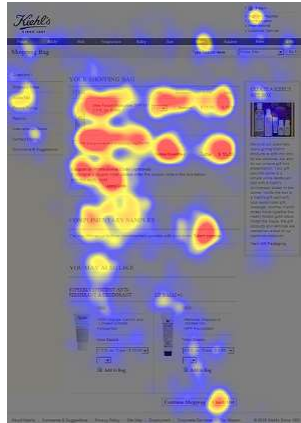
www.ABA.com/Tools/Offer/Document/1Chapman_Social_Media_Guide_Financial_Institutions_0514.pdf

UDAAP: Advertising Online





Visualizing Online Reading



- Eye-tracking heat map shows areas of most focus (red) to least (blue) to none (grey)
- “F” shaped pattern based on scanning navigation, list items, and menus
- Users generally read about 25% of text on a page

Image source: <http://www.useit.com/eyetracking/>; Findings: Nielsen, Useit.com

FTC Publication

Very useful quick reference guide including exhibits of sample marketing and advertising documents to assist in interpreting FTC’s desired business practices



MARKETING YOUR MOBILE APP

GET IT RIGHT FROM THE START



Updated
April 2013



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Questionable Advertising and Marketing

Misleading or deceptive claims

Deceptive use of endorsements, tests, surveys, logos, testimonials, etc.

Non-disclosure of material terms, conditions or product defects

Deceptive pricing claims... "Free"

Product or service misrepresentation



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Types of Advertising Claims

Affirmative Advertising Claims:

- Product or product attribute claims are susceptible to definitive proof
- Claims are likely to influence a purchasing decision by a consumer
- Puffery Claims:
 - Claims are incapable of verification and couched in extraordinary superlatives and grandiose in nature
 - Claims are unspecific and attention getting
 - Claims are unlikely to influence a purchasing decision

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Affirmative Claims

Affirmative Claims are implied or expressly made

- Direct affirmative statements
- Use of illustration or demonstration
- Professional, consumer or testimonial endorsements

Claims are Affirmative if they:

- Provide a level of proof
- Presented in an expert way, implying general acceptance
- Imply a scientific foundation or establishment of the claim, such as “tested”, “established” or “proven”
- Effective use of visual images, such as an advertisement with a pharmacist
- Comparative claims



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UDAAP Lessons re: Claims

Know any and all claims made by your firm -- predicting consumer reactions can be difficult

Have substantiation for the claims you actually convey, not just those you wish to convey

Don't base broad claims on limited results

Be wary of continuity programs

Tell the complete story ("yes...but")

Develop an ad review process in which all the right people participate

- Be sure to enlist an unbiased person that has not been a part of the process

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Testimonials and Endorsements

Endorsements **MUST** contain representations that the advertiser can make directly

Expert endorsements **MUST** be supported by an examination or testing, by experts in the field

Celebrity endorsements **MUST** reflect honest opinions, beliefs, findings or experience of the celebrity

Testimonials should present experiences that are generally obtainable (unless qualified)



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UDAAP: “KISS” Method

CFPB Design Principles:

- Simplicity – “Keep it Simple”
- Transparency – “Make it Clear”
- Honesty – “No Tricks or Traps”
- Research – “Test for the Best”
- Helpfulness – “Help People Help Themselves”



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Weblinking

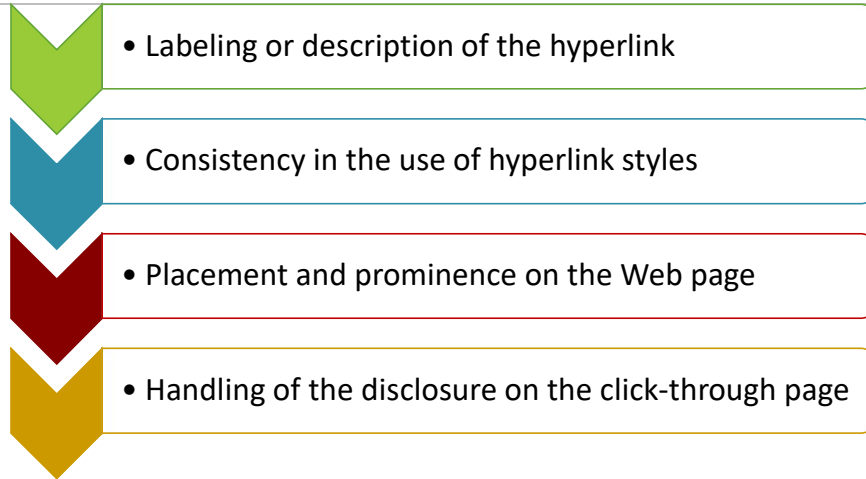


INTERAGENCY GUIDANCE ON WEBLINKING ACTIVITY

FIL-30-2003 & OCC BULLETIN 2003-15

APRIL 23, 2003

Key Considerations for Effective Hyperlinks

- 
- Labeling or description of the hyperlink
 - Consistency in the use of hyperlink styles
 - Placement and prominence on the Web page
 - Handling of the disclosure on the click-through page

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Weblinking - Regulatory Considerations

Many FI's utilize third-party relationships to provide products and services to customers.

When financial institutions use weblinks to connect to third-party websites, the resulting association is called a "weblinking relationship." Financial institutions with weblinking relationships are exposed to several risks associated with the use of this technology.

The most significant risks are reputation risk and compliance risk.

Implement a monitoring program for all weblinking relationships which should include:

- A review of the content of the third-party website
- Process to verify that all links of the FI's site are working correctly.

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Weblinking - Compliance Risk

Compliance risk arises when the linked third party acts in a manner that does not conform to regulatory requirements.

- For example, compliance risk could arise from the inappropriate release or use of shared customer information by the linked third party.

Compliance risk also arises when the link to a third party creates or affects compliance obligations of the financial institution.

Financial institutions with weblinking relationships are also exposed to other risks associated with the use of technology, as well as certain risks specific to the products and services provided by the linked third parties.

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Weblinking - Reputation Risk

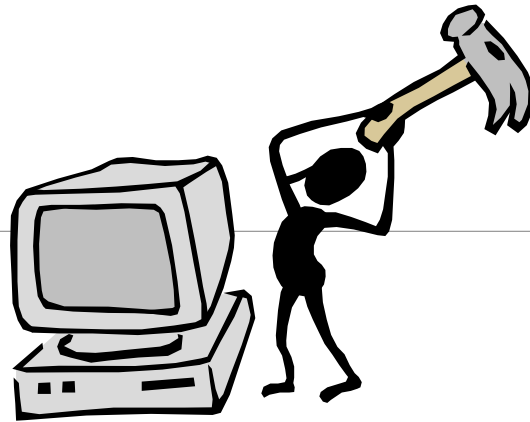
When a customer is sent to a third party website, confusion can be created if the customer does not realize they have left the FI's website.

- Additionally, if the third-party is not in direct control of the vendor, the customer can have expectations regarding the products or services offered
- Additionally, the third-party website may not have similar privacy policies or security protocols.

Clear and conspicuous disclosure to the customer that they are leaving the FI's website such as through an interstitial or intermediate page. These are "small" webpages that have a look and feel of a "popup" but are not "blocked" by a web-browser.

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Social Media: Employees' Individual Presence



Employees' Social Media Presence Risks

Loan officers, mortgage brokers or salespeople want to maintain a personal relationship with customers via personal social media pages

Generates many concerns by presenting bank products in a way that isn't officially sanctioned

Conversations can easily be conducted in unsecure media presenting data security and privacy issues

Difficult to monitor or even to know it's out there

Employee Monitoring

It is not about trust, it's about protection.

Protecting your bank's reputation is vital!!

You cannot stop people from doing stupid thing

You can identify the risky behavior and react quickly.

Delegate authority to a reasonable person with good judgment to analyze the monitoring results.

How many resources do you have to allocate to these types of activities?

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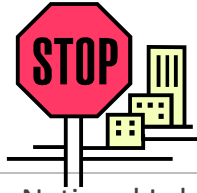
Monitoring Tools

Catch a negative X (Twitter) Tweet, Facebook post or Instagram picture before it spirals completely out of control!

Internet search engine requests can be too labor intensive

Software programs that monitor employees' use of social media, including products such as Actiance, Gremln, Hearsay Social and Salesforce Marketing Cloud are available

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NLRB & Social Media

The National Labor Relations Act protects the rights of employees to act together to address conditions at work, with or without a union. Protection extends to certain work-related conversations conducted on social media, such as Facebook and Twitter.

In 2010, the NLRB began receiving charges related to employer social media policies and to specific instances of discipline for Facebook postings. Following investigations, the agency found reasonable cause to believe that some policies and disciplinary actions violated federal labor law, and the NLRB Office of General Counsel issued complaints against employers alleging unlawful conduct.

- In other cases, investigations found that the communications were not protected and so disciplinary actions did not violate the Act.



NLRB on Employee Social Media Rights

Whether or not you are represented by a union, federal law gives you the right to join together with coworkers to improve your lives at work - including joining together in cyberspace, such as on Facebook.

Federal law protects your right to engage in not only union activity, but also "protected concerted" activity. You have the right to address work-related issues and share information about pay, benefits, and working conditions with co-workers and with a union. You have the right to take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, or seeking help to form a union. Using social media can be a form of protected concerted activity. You have the right to address work-related issues and share information about pay, benefits, and working conditions with coworkers on Facebook, YouTube, and other social media. But just individually griping about some aspect of work is not "concerted activity": what you say must have some relation to group action, or seek to initiate, induce, or prepare for group action, or bring a group complaint to the attention of management. Such activity is not protected if you say things about your employer that are egregiously offensive or knowingly and deliberately false, or if you publicly disparage your employer's products or services without relating your complaints to any labor controversy.

<https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/social-media-0>