



Top Marketing Compliance Issues

2018 IBA Marketing Conference

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Marketing Goals

- Fits into and supports overall business goal
- Are specific and measurable
- Focus on:
 - Revenue
 - Units sold
 - Market share
 - Number of customer relationships
- And Customer Satisfaction
 - Poor choice
 - Lack of good information
 - Bank error



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Customer Satisfaction

Hinges On:

- Matching right product to need
- Clear understanding of product/service
 - Minimums and Maximums (balance, # of transactions, etc.)
- Fees
- Limited time offers
- Requirements related to other products/services
- Notification of change

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Have you EVER?

- Purchased a product that was not as described?
- Purchased a service at a discount only to be charged "hidden" fees?
- Saw an ad for a specific product only to find out that was no longer available?
- Signed up for something only to learn it required other action to avoid a fee?

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So have your customers!

- Marketing = more than disclosing regulatory requirements
 - Includes disclosing information sufficient to make an informed decision
 - Ensuring the product/service meets current and future needs
 - Ensures the customer is receiving what they expected
 - Has the customer's best interest in mind




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HOW??

- Start with the BASICS
- What is required by regulation?
- What else should be added for clarity?



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Deposit Products

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Truth in Savings – Reg. DD

No misleading or inaccurate statements

- ✓ Use of terms “free” or “fees waived”
- ✓ Advertising rates
 - To 2 decimal places (e.g. 1.50%)
 - APY – spell out once
 - Can also include interest rate (no more prominent)

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Reg. DD – Advertising Rates

If ad includes APY –include:

- Statement that rate may change (if variable)
- Period of time APY available
- Minimum balance requirement for APY
- Minimum to open (if GREATER)
- “Fees may reduce earnings.”

Example:

Earn 2.25% APY*. Open a High Yield Checking Today!

*APY (Annual Percentage Yield) effective 4/1/18 and is subject to change. \$25,000 minimum average daily balance required to earn APY. Fees may reduce earnings.


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Reg. DD – Advertising Rates

- What interest structure applies??
- If Ad includes Rate for:
 - ❖ Tiered Rate Accounts, include:
 - Minimum balance and corresponding APY for each tier
 - ✓ Close proximity and equal prominence
 - ❖ Stepped Rate Accounts, include:
 - All interest rates and time period for each rate
 - Representative example if rate dependent on length of deposit

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Example

Rates		\$25,000 Balance
\$1,000 - \$9,999	.25%	Tiered: Rate = 1.25% on full balance Stepped: Rate = .25% on first \$9,999.99 1.25% on \$10,000 - \$25,000 **BLENDED RATE!
\$10,000 - \$49,999	1.25%	
\$50,000 - \$74,999	2.25%	
\$75,000 +	2.25%	

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Tiered/Stepped Rate Ad? Anything missing?


Money Market Deposit Account

Earn up to 6.00%* on balances of \$20,000 or more!

* Amount of interest earned depends on account balance

\$1,000 – \$5,000	3.00%
\$5,001 - \$10,000	4.00%
\$10,001 - \$15,000	5.00%
\$15,001 - \$20,000	6.00%

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Reg. DD - Triggering Terms

For time accounts, also include:

- Term of certificate
- Early withdrawal penalty

Club accounts, also include:

- Term and Maturity
- e.g. "Account matures Dec. 15, 2015; its term varies depending on when account is opened."

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Sample Ad

BUMP-RATE CD
24-Month Variable Rate

1.20%
APY*

Limited time only*


Stop by your local branch today, visit homestreet.com or call 800-719-8080 to learn more.

[HomeStreet] Bank

Member FDIC

homestreet.com

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Compliant?

Our great CD rates really stack up!!

2% RATE* – 12 month CD

2.10% RATE** – 15 month CD

2.25% RATE** – 18 month CD

Limited Time Offer. * 2.02% APY, ** 2.12% APY, ***2.27% APY. Contact bank for details and restrictions. Member FDIC.

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Reg. DD - Bonus

❖ Bonus - any premium, gift, award or other consideration worth more than \$10 in exchange for opening, maintaining, renewing or increasing account balance

❖ Triggers:

- ✓ Annual Percentage Yield
- ✓ Time required to obtain bonus
- ✓ Minimum balance to obtain bonus
- ✓ Minimum to open (if GREATER)
- ✓ When bonus will be provided

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Can a Bonus be Paid?


- Limits apply if bonus (i.e. premium) is given when account is open or funds are added to existing account
- Interest bearing account – okay in any amount
- Non-interest bearing account – limited to:
 - \$10 or less for deposits less than \$5,000
 - \$20 or less for deposits \$5,000 or more
 - Cannot have more than 2 per account in 12 month period
 - Premium/Bonus constitutes interest
- **Exceptions!** Can give in any amount if not directly or indirectly related to or dependent on balance in account or duration of account balance.

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Premium and/or Bonus Flow Chart

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Reg. DD – High Yield Accounts

High Yield Account = Checking account with potential to earn high APY if certain qualifiers are met

❖ FDIC Guidance – FOCUS ON CLARITY!
<http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin12/yield.html>

- Disclose all APYs applicable to all tiers
- Clearly explain qualifications to earn higher interest rate and/or "rewards"
- Clearly explain transaction posting (e.g. debit card transactions will count when posted)
- Clearly explain "online activity" requirements (e.g. just have online banking or must log in and transact)

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Bonus Advertisement


• Open First Bank Total Checking Set Up Direct Deposit and we'll give you \$125 cash bonus!

• For New Checking customers only with \$100 opening deposit and direct deposit



First Bank Total Checking has no monthly fee when you do one of the following: have monthly direct deposit of \$500 or more, have online banking, or keep a daily balance in your checking at or above \$1,500. Member FDIC.

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Reg. DD - Certain Media

For TV, radio, billboards, telephone response machines if mention APY or bonus, must include:

- APY
- Minimum balance to obtain APY (or bonus)
- Term of account (for time accounts) or time required to earn bonus

If no APY or bonus, no specific disclosures required

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Lobby Boards & Indoor Signs

- ❖ Exempt from general advertising rules
- ❖ If include a Rate of Return:
 - ❖ APY
 - ❖ "Contact bank employee for more information about applicable fees and terms."

Includes:

- Lobby computer screen displays
- Banners
- Preprinted posters
- Chalk/Peg Boards

Even if can be viewed from outside!

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FDIC Membership



Advertising: "a message to attract public attention or patronage"

Prohibited in certain ads (Non-Deposit Insurance Products and Investments)

Segregation required for "mixed" ads

Applicable to billboards and websites!

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FDIC Insurance – Yes/No?





First Bank congratulates the Hawks girls softball team for winning state!



Yes

No

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FDIC Insurance – Yes/No?

We are committed to serving you and your financial needs – open a checking account today and ask us about our investment services!

Yes **No**

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FDIC Insurance – Yes/No?

SEE FIRST BANK TODAY FOR DISCOUNTED RATES ON PERSONAL, AUTO AND HOME EQUITY LOANS!

Yes **No**

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Loan Advertisements

You long for the ideal home we'll provide the foundation



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Truth in Lending


Ad = Any commercial message in any medium promoting directly or indirectly, credit transactions

- Includes SOCIAL MEDIA!!!

Exceptions:

- Oral or written communication relating to negotiation of specific transaction, cost estimates, follow-up letters (CAUTION)
- Informational materials (broker rate sheet)
- News articles (not controlled by lender)

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All Closed-End Credit

Advertising Rates

- “APR” by itself does not trigger additional disclosures
- May also state simple annual/periodic rate (not more conspicuous than APR)
- For variable rate: state rate is subject to change
- Discounted variable rates: include “composite” APR

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Consumer Loans – General

- ❖ Advertise only those terms actually available to general public
 - ✓ Advertisement: Rates as low at 1%
 - ✓ PROBLEM: Only those with FICO scores above 800 get rate
- ❖ Disclosures must be clear and conspicuous (legible and “reasonably understandable”)
- ❖ Multiple page advertisements require only a single set of disclosures in table or chart


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ARM Loans

- ❖ If more than one rate will apply over term of loan, disclose
 - ✓ Each rate that will apply
 - ✓ Period of time each rate will apply
 - ✓ APR for loan (based on rate in effect at closing)



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Additional Requirements for Dwelling-Secured Loans

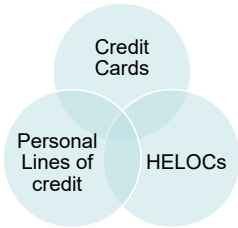

- ❖ If ad states a payment amount, include
 - Amount of each payment over term of loan, including balloon payment, if applicable
 - Period of time during which each payment will apply
- ❖ If credit secured by FIRST LIEN, fact that payments don't include amounts for taxes and insurance and actual payments will be greater
- ❖ Tax implications (deductibility)

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Open-End Loans

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Open-End Credit

Triggering Terms

- **Any:**
- Finance charge information
- Grace period,
- Interest rate
- Method of determining finance charge balance
- Fees
- **Negative and Positive references trigger disclosures**
- e.g. "No annual fee" would trigger disclosures

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Required Disclosure

Must then Disclose All Five


- Any Finance Charges (minimum, fixed, transaction, activity or similar charge) that could be imposed
- Periodic rate expressed as "APR" and if variable
- If variable rate: current APR, APR as of specific date, estimated APR, statement APR may vary
- Membership or participation fees
- If rate is Discount, initial rate, term of initial rate, current index rate, statement rate may vary

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Home Equity Line of Credit General Rules

- ❖ Statement of tax deductibility
 - ❑ "Consult tax advisor"
- ❖ **Equal Proximity – no footnotes, same type and size, immediate next to or directly above/below promotional rate or payment**



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HELOC - Finance Charge

Triggering Terms – Affirmatively or Negatively any finance charge or cost of credit

- Any minimum, fixed transaction/activity charge that is FC
- Any periodic rate and fact it is variable
- Any membership/participation fee
- Loan fees that are % of credit limit
- Estimate of fees related to opening plan
- Maximum APR possible
- Tax deductibility statement, if applicable
- Statement of required insurance, if applicable

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HELOC - Discount/Premium

Triggering Term - discount/premium rate

- Period of time the initial rate is in effect
- Reasonably current APR showing index and margin

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HELOC - Promotional Rate/Term

Triggering Term - promotional rate or payment

- Rate – period of time rate will be in effect; reasonably current APR; any rate that will apply
- Payment – amount and time period of any payments; if variable rate, statement that any minimum payment for promotional period not based on index + margin; for fixed rate, any minimum payment for promotional period if less than other payments

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HELOC - Balloon

Triggering Term - **minimum payment** if balloon

- Statement that balloon payment will result
- Amount and timing of balloon payment

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Non-Deposit Investment/Insurance Products



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Advertising NDIPs

- ❖ Nondeposit Investment Products
 - Investments such as stocks, bonds, US Treasury securities, mutual funds, etc.
- ❖ Required disclosures:
 - Not FDIC insured
 - No bank guarantee
 - May lose value



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Advertising Insurance/Annuities

GLBA consumer protection in bank sales of insurance

Required disclosures (as applicable):

- Not a deposit
- Not FDIC-insured
- Not insured by any federal gov't agency
- Not guaranteed by the bank
- May go down in value

Exception: Ads of general nature NOT listing specific product

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Not Just Regulatory – Think Ethics!



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Unfair & Deceptive Practices

- ❖ Any term that may be **misleading** or likely to mislead consumer
 - ✓ Includes representations, omissions or practices
- ❖ Best Practices
 - ✓ **Full & adequate disclosure** – clear and conspicuous standard
 - ✓ Be sensitive to target market




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Unfair, Deceptive or Abusive

- ❖ **Unfair:** Likely to cause substantial injury (monetary harm) not reasonably avoidable
- ❖ **Deceptive:** Material representation, omission or practice that misleads consumer
- ❖ **Abusive:**
 - ✓ Materially interferes with consumer's ability to understand terms or conditions; or
 - ✓ Takes unreasonable advantage of 1) consumer's lack of understanding of material risks, costs or conditions; 2) consumer's inability to protect own interests; or 3) consumer's reliance on bank to act in consumer's best interest

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Unfair, Deceptive, Abusive Practices

The Requirements

- Advertisement must not be misleading, inaccurate or misrepresentative of contract
- Advertisement must state only those terms that actually are or will be offered
- Terms must be prominent, readily understood, clearly visible or intelligible, proximate to claim being made

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Unfair, Deceptive, Abusive Practices

- ❖ **The Problems**
 - ✓ Qualifying factors are not included in ad
 - ✓ Required disclosures/qualifications displayed in "mouse print" or omitted
 - ✓ Using superlatives to describe features, rates
 - ✓ Failing to provide advertised product or service
 - ✓ Steering to higher cost products/services (bait and switch)



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Internet Advertising

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Unfair, Deceptive, Abusive Practices

❖ **Avoiding the Problems**

- Consider Compliance as part of your team!!
- Here to protect bank from risk:
 - Reputation
 - Monetary
 - Legal
 - Regulatory

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Tools

Advertising Checklists

- [Consumer Closed-End Credit](#)
- [Consumer Open-End Credit](#)
- [Home Equity Lines of Credit](#)
- [Deposit Accounts](#)
- [Investment & Insurance](#)

www.iowabankers.com under Compliance Tab

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Marketing and Compliance – What a great team!



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