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Section 1 General

1.1 Statement of Purpose

[Sample Client] designed these policies and procedures to safeguard their legal responsibility to comply with applicable residential lending laws and regulations. The [board of directors](#) and senior management, through a sound [Compliance Management System](#), ensure the integration of these policies and procedures into the overall framework for product design, delivery and administration across the residential lending origination and service life cycle. Management and employees utilize these policies and procedures to guide their daily responsibilities to effect mitigation of regulatory compliance risk within their job roles.

1.2 Objective

The guidance in this policy applies throughout [Sample Client]'s operations with the objective to mitigate regulatory risk and consumer harm within the standards of [Sample Client]'s compliance program. [Sample Client] requires employees, contractors, and [third-party vendors](#) to comply with these policies and procedures.

1.3 State Law and Agency Guidelines

Federal law may alter, affect, or preempt state laws that are inconsistent with the federal law. Preemption applies only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of a consumer. Wherever state law or local regulations overlap and provide greater consumer protections than federal law or the requirements set out in this policy, [Sample Client] will comply with the more protective law or regulation and will consult with the appropriate legal counsel to set forth [Sample Client]'s policies and procedures for compliance.

In some instances, agencies may overlay guidelines that expand upon the requirements of federal law. [Sample Client] must be cognizant of agency guidelines and incorporate those guidelines into [Sample Client]'s policies and procedures.

Section 2 Summary

The mortgage life cycle begins when a consumer initially shops for a mortgage, whether to purchase a home or real property, refinance an existing mortgage, or obtain a home equity loan or line of credit (HELOC) based on the consumer's equity in the home. Consumers may consider obtaining diverse types of mortgage products.

Consumers receive information about mortgages through many different channels of communication. Some consumers seek out mortgage information on their own, for example, on the internet or by contacting a real estate broker, mortgage lender, mortgage broker, or others. Mortgage lenders, mortgage brokers, mortgage servicers, and real estate brokers market and advertise mortgage products to consumers through print media (newspapers, magazines), television, radio, the internet, billboards, and other methods. They may also send targeted information to particular consumers through direct mail or electronic communications such as e-mail or text message. Mortgage lenders and servicers are particularly likely to market products to their current customers, in addition to prospective customers.

Financial institutions are using [social media](#) as a tool to generate new business and interact with consumers. Social media, as any new communication technology, has the potential to improve market efficiency. Social media may more broadly distribute information to users of financial services and may help users and providers find each other and match products and services to users' needs. To manage potential risks to financial institutions and consumers, however, financial institutions should ensure their risk management programs provide oversight and controls commensurate with the risks presented by the types of social media in which the financial institution is engaged.

The laws, rules, and regulatory requirements contained in this guide work together to protect prospective borrowers by establishing clearer marketing and advertising standards and deterring unlawful behavior.

2.1 Coverage

The laws and regulations within this guide apply to the advertising of dwelling secured closed-end and open-end mortgage products.

Section 3 Requirements

Advertising and marketing can provide consumers with valuable information about mortgage options, costs, and features. This information is critical to the decisions consumers make throughout the mortgage origination process, especially because mortgage products are typically complex. Information is useful for decision making, however, only if it is non-discriminatory, fair, truthful, and non-misleading. Ensuring equal opportunity for consumers, preventing discrimination, and deterring deception in advertisements for mortgages is the focus of the laws, rules, and regulations within this guide.

3.1 Fair Lending Laws and Regulations

[Sample Client] must ensure that its marketing and advertising activities, to include [social media](#), do not violate fair lending laws and regulations as summarized below:

3.1.1 Equal Credit Opportunity Act - Regulation B

[Sample Client] is prohibited from making any oral or written statement, in advertising or marketing, to applicants or prospective applicants that would discourage, on a [prohibited basis](#), a reasonable person from making or pursuing an application. However, [Sample Client] may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from [Sample Client].

[Sample Client] is further prohibited from the use of words, symbols, models, or other forms of communication in a [Sample Client]'s advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of ECOA.

Social Media

In addition to the above, [Sample Client] must ensure that its use of social media does not violate the following Regulation B requirements:

- [Sample Client] must observe the time frames outlined under Regulation B for notifying applicants of the outcome of their applications or requesting additional information for incomplete applications, whether those applications are received via social media or through other channels.
- As with all prescreened solicitations, [Sample Client] must preserve prescreened solicitations disseminated through social media, as well as the prescreening criteria, in accordance with Regulation B.

Deceptive Act or Practice

An act or practice is deceptive when the following occur:

- The representation, omission, act, or practice misleads or is likely to mislead the consumer.
- The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances.
- The misleading representation, omission, act, or practice is material.

A representation, omission, act, or practice that misleads or is likely to mislead includes but is not limited to, making misleading cost or price claims, offering to provide a product or service that is not in fact available, using bait-and-switch techniques, omitting material limitations or conditions from an offer, or failing to provide the promised services.

The FTC's "four P's" test can assist [Sample Client] in the evaluation of whether a representation, omission, act, or practice is likely to mislead:

Is the statement **prominent** enough for the consumer to notice?

Is the information **presented** in an easy to understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere?

Is the **placement** of the information in a location where consumers can be expected to look or hear?

Is the information in close **proximity** to the claim it qualifies?

In determining whether an act or practice is misleading, one also must consider whether the consumer's interpretation of or reaction to the representation, omission, act, or practice is reasonable under the circumstances. In other words, whether an act or practice is deceptive depends on how a reasonable member of the target audience would interpret the representation. When representations or marketing practices target a specific audience, such as older Americans, young people, or financially distressed consumers, the communication must be reviewed from the point of view of a reasonable member of that group.

Moreover, a representation may be deceptive if the majority of consumers in the target class do not share the consumer's interpretation, so long as a significant minority of such consumers is misled. When [Sample Client]'s representation conveys more than one meaning to reasonable consumers, one of which is false, [Sample Client] is liable for the misleading interpretation.

UDAAP Examination Procedures

The CFPB has published and maintains their UDAAP examination procedures. The following is the objective of these procedures:

- To assess the quality of the regulated entity's compliance risk management systems, including internal controls and policies and procedures, for avoiding unfair, deceptive, or abusive acts or practices (UDAAP).
- To identify acts or practices that materially increase the risk of consumers being treated in an unfair, deceptive, or abusive manner, including discriminatory acts or practices.
- To gather facts that help determine whether a regulated entity engages in acts or practices when offering or providing consumer financial products or services that are likely to be unfair, deceptive, or abusive.
- To determine, in consultation with CFPB Headquarters, whether an unfair, deceptive or abusive act or practice has occurred and whether further supervisory or enforcement actions are appropriate.

[Sample Client] is encouraged to compare and contrast the examination criteria in this section to the components of their marketing program to assist in the identification of gaps, or opportunities to enhance the depth of their UDAAP compliance.

[Sample Client]'s understanding of the CFPB's advertising and marketing criteria within an examination may improve their ability to anticipate and proactively mitigate fair lending risk, while providing a better marketing or advertising experience to the consumer or customer.

3.1.3.1.1 Document Review

Based on the results of the risk assessment of the entity, examiners may review for potential unfair, deceptive, or abusive acts or practices, taking into account an entity's marketing programs, product and service mix, customer base, and other factors, as appropriate.

The examination document review specific to advertising and marketing may include the following:

- Marketing programs, advertisements, and other promotional material in all forms of media (including print, radio, television, telephone, internet, or social media advertising).
- Scripts and records telemarketing calls.
- Consumer complaint files.
- Any demographic research or analysis relating to marketing or advertising of consumer financial products or services.

3.2 Mortgage Advertising Rules

Below are the primary mortgage advertising rules as required by the following laws and regulations:

- Mortgage Acts and Practices - Regulation N
- Secure and Fair Enforcement Mortgage Licensing Act
- Truth in Lending Act - Regulation Z

3.2.1 Mortgage Acts and Practices - Regulation N

Mortgage Acts and Practices prohibits [Sample Client] from making any misrepresentations in a commercial communication, regarding terms of any mortgage loan product, including but not limited to misrepresentations about the following:

- The interest charged for the mortgage credit product, including misrepresentations concerning
 - the amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due; and
 - whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer.
- The annual percentage rate, simple annual rate, periodic rate, or any other rate.
- The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including misrepresentations that no fees are charged.
- The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including credit insurance or credit disability insurance.
- The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including
 - whether separate payment of taxes or insurance is required; and
 - the extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer.
- Any prepayment penalty associated with the mortgage credit product, including the existence, nature, amount, or terms of such penalty.
- The variability of interest, payments, or other terms of the mortgage credit product, including misrepresentations of the word "fixed."
- Any comparison between
 - any rate or payment that will be available for a period less than the full length of the mortgage credit product; and

3.2.3 Truth in Lending Act - Regulation Z

Regulation Z defines an advertisement as a commercial message in any medium that promotes, directly or indirectly, a consumer credit transaction. The following examples are included in the definition of advertisement:

- Messages in newspaper, magazine, leaflet, promotional flyer, or catalog.
- Announcements on radio, television, or public address systems.
- Electronic advertisements, such as on the Internet.
- Direct mail literature or other printed material on any exterior or interior sign.
- Point of sale displays.
- Telephone solicitations.
- Price tags that contain credit information.
- Letters sent to customers or potential customers as part of an organized solicitation of business.
- Messages on checking account statements offering auto loans at a stated annual percentage rate.
- Communications promoting a new open-end plan or closed-end transaction.

Generally, the Regulation Z advertising rules require loan product advertisements to provide accurate and balanced information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. Additionally, the rules ban several deceptive or misleading advertising practices, including representations that a rate or payment is “fixed” when in fact it can change during the life of the loan.

For purposes of this section of the guide, the content focuses specifically on the Regulation Z advertising rules for dwelling secured closed-end and open-end mortgage products.

Actually Available Terms

[Sample Client] is prohibited from attracting a consumer to apply for credit with an offer that is not available as advertised. If the advertisement for credit states specific credit terms, [Sample Client] must state those terms, clearly and conspicuously, within the advertisement.

Open End Credit Advertising Rules

The TILA and implementing Regulation Z have additional, specific advertising disclosure requirements for open-end credit plans secured by the consumer's dwelling, also referred to as home equity plans or HELOCs.

An advertisement may not refer to a home equity plan or HELOC as “free money” or contain a similarly misleading term.

For example, such an advertisement could not state “no closing costs” or “we waive closing costs” if consumers may be required to pay any closing costs.

[Sample Client] must prohibit the use of the word “free” in any advertising, marketing or promotional materials advertising home equity plans and HELOC products. Advertisements for HELOCs must state terms in a clear and conspicuous manner.

Triggering Terms

The following triggering terms, when stated affirmatively or negatively in an advertisement for a home equity plan or HELOC, require the following additional disclosures to be included within the advertisement:

- Amount or rate of any finance charge or an explanation of how the finance charge will be determined
- Amount of any charge other than a finance charge that may be imposed as part of the plan

These provisions apply even if the triggering term is not stated explicitly but may be readily determined from the advertisement.

For example, a statement such as “No interest charges until May” or any other statement regarding when interest or finance charges begin to accrue is a triggering term.

[Sample Client] requires that any advertisement that includes a triggering term must also include the following information, as applicable:

- Any minimum, fixed, transaction, activity or similar charge that is a finance charge that could be imposed.
- Any periodic rate that may be applied expressed as an annual percentage rate (APR). If the plan provides for a variable periodic rate, that fact must be disclosed.
- Any membership or participation fee that could be imposed.

In addition, when any of the above triggering terms or the payment terms of the plan, including references to the draw period, length of the plan, how payments are

Closed End Credit Requirements

For requirements specific to closed end credit secured by a dwelling, [Sample Client] must apply the general requirements above with the specific requirements below.

3.2.3.1.5 Advertisement of Rate of Finance Charge

The following rules apply to an advertisement that states a rate of finance charge.

Annual Percentage Rate

Advertised rates must be stated in terms of an “annual percentage rate.” [Sample Client] is not required to include a descriptive explanation of the term and the term may be expressed in abbreviated form (APR).

The advertisement must state that the rate is subject to increase after consummation if applicable, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule.

Simple or Periodic Rates

The advertisement may not simultaneously state any other rate, except that a simple annual rate applicable to an unpaid balance may appear along with (but not more conspicuously than) the annual percentage rate.

For example, in an advertisement for credit secured by a dwelling, a simple annual interest rate may be shown in the same type size as the annual percentage rate for the advertised credit.

A simple annual rate or periodic rate that is applied to an unpaid balance is the rate at which interest is accruing; those terms do not include a rate lower than the rate at which interest is accruing, such as an effective rate, payment rate, or qualifying rate.

Buydowns

If [Sample Client] wants to promote the availability of reduced interest rates (consumer or seller buydowns), the advertised annual percentage rate must be determined in accordance with the commentary to § 1026.17(c) regarding the basis of transactional disclosures for buydowns. The reduced simple interest rate may be advertised, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term. The advertisement may also show the effect of the buydown agreement on the payment schedule for the buydown period, but this will trigger the additional disclosures; see Triggering Terms and Additional Disclosures for requirements.

The following table identifies the triggering terms, includes an example of those terms, and the applicable additional disclosure information required:

Trigger Terms	Examples	Additional Disclosures
Amount or percentage of any downpayment	<ul style="list-style-type: none"> Only 5% down As low as \$100 down Total move in costs of \$800 	The amount or percentage of down payment
Number of payments or period of repayment	<ul style="list-style-type: none"> 48 month payment term 30 year mortgage Repayment in as many as 36 monthly installments 	The terms for repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment
Amount of any payment	<ul style="list-style-type: none"> Payable in installments of \$103 \$25 weekly \$500,000 loan for just \$1,650 per month 	The annual percentage rate, using that term, and if the rate may be increased after consummation
Amount of any finance charge	<ul style="list-style-type: none"> \$500 total cost of credit \$50,000 mortgages, 2 points to the borrower 	

3.2.3.1.7 Disclosure of Rates and Payments in Advertisements

The following rules apply to any advertisement, other than television or radio advertisements, including promotional materials accompanying applications.

Disclosure of Rates

Any advertising or marketing materials that state a simple annual rate of interest where more than on simple annual rate of interest will apply over the term of the advertised loan, [Sample Client] must disclose the following in a clear and conspicuous manner:

- Each simple annual rate of interest that will apply.

3.2.3.1.9 Prohibited Acts or Practices

3.2.3.1.9.1 Misleading Advertising of “Fixed” Rates and Payments

Using 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 the following apply, is prohibited:

- In the case of an advertisement solely for one or more variable-rate transactions where
 - 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
 - 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.
- 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.
- In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions where
 - the phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and
 - each use of the word “fixed” to refer to a rate, payment, or the credit transaction either
 - refers solely to the transactions for which rates are fixed and complies with this section, if applicable; or
 - if it refers to variable-rate transactions, 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.

3.2.3.1.9.2 Misleading Comparisons in Advertisements

The following examples of acts or practices are also prohibited:

- False or misleading comparisons between rates or payments including, but not limited to, comparisons involving cost savings; also includes false or misleading comparisons between rates or payments available for different parts of the loan term.

3.3 Social Media

[Sample Client] may use social media in a variety of ways including advertising and marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers, for example by receiving and responding to complaints, or providing loan pricing. Since this form of customer interaction tends to be both informal and dynamic, and may occur in a less secure environment, it can present some unique challenges.

As with any product channel, [Sample Client] is expected to manage potential institution risks and consumer risk by ensuring that their risk management programs provide appropriate oversight and control to address the following risk areas:

3.3.1 Compliance Risk Management Expectations

[Sample Client] should have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media. The size and complexity of the risk management program should be commensurate with the breadth of the [Sample Client]'s involvement in this medium. For instance, if [Sample Client] relies heavily on social media to attract and acquire new customers they should have a more detailed program than if social media use is used to a very limited extent. However, in accordance with its own risk assessment, if [Sample Client] has chosen not to use social media they should still consider the potential for negative comments or complaints that may arise within the many social media platforms described above, and, when appropriate, evaluate what, if any, action will be taken to monitor for such comments and respond to them.

3.3.2 Risk Areas

The use of social media to attract and interact with customers can impact [Sample Client]'s risk profile, including risk of harm to consumers, compliance and legal risks, operational risks, and reputation risks. Increased risk can arise from poor due diligence, oversight, or control on the part of [Sample Client].

Compliance and Legal Risks

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 [Sample Client]'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

3.3.3 Other Laws and Regulations for Consideration

In addition to complying as applicable to the above fair lending laws and regulations, as well as, the mortgage advertising rules, [Sample Client] must consider the impact of the following laws and regulations when evaluating their social media compliance.

CAN-SPAM Act and Telephone Consumer Protection Act

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) and Telephone Consumer Protection Act (TCPA) may be relevant if [Sample Client] sends unsolicited communications to consumers via social media. The CAN-SPAM Act and TCPA, and their implementing rules, establish requirements for sending unsolicited commercial messages ("spam") and unsolicited communications by telephone or short message service (SMS) text message, respectively. [Sample Client] must be familiar with the provisions of the CAN-SPAM Act and TCPA to evaluate whether social media activities trigger the application of either or both laws.

Children's Online Privacy Protection Act

The Children's Online Privacy Protection Act (COPPA) and the Federal Trade Commission's implementing regulation impose obligations on operators of commercial websites and online services directed to children younger than 13 that collect, use, or disclose personal information from children, as well as on operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13. [Sample Client] must evaluate whether it, through its social media activities, could be covered by COPPA.

- Certain social media platforms require users to attest that they are at least 13; if [Sample Client] utilizes those sites they may consider relying on such policies. However, [Sample Client] should still take care to monitor whether it is actually collecting any personal information of a person under 13, such as when a child under 13 manages to post such information on the financial institution's site.
- [Sample Client] maintaining its own social media site (such as a virtual world) should be especially careful to establish, post, and follow policies restricting access to the site to users 13 or older, especially when those sites could attract children under 13. This may be true, for instance, in the case of virtual worlds and any other features that resemble video games.