NAFCU Credit Union Compliance

ADVERTISING GUIDE

NAFCU

National Association of Federally-Insured Credit Unions

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Welcome to NAFCU's Credit Union Advertising Compliance Guide

Creating compliant advertisements that communicate a credit union's products and services in a way that appeals to consumers can be challenging. To help credit unions, NAFCU's Regulatory Compliance team developed this resource for navigating the complex federal regulatory framework that applies to advertising products like share accounts and consumer loans.

This resource provides an overview of the rules that apply to the various products that credit unions offer. It also provides an in-depth look at the specific disclosure requirements for advertisements that state particular terms or account features. While this resource does provide an explanation of the federal laws and regulations governing advertisements, credit unions may still need to review other applicable laws, such as state laws.

We have written the guide to be useful for those in marketing creating advertisements and those in compliance reviewing advertisements, and it may also help with training new staff in these areas. It can also be used as a research tool for seasoned marketing and compliance staff to answer questions that may come up. Each chapter is designed to be used independently of the other chapters, so some information may seem repetitive.

This is an electronic resource, so we have included links to applicable federal laws, regulations and other guidance. There is also an appendix with helpful charts, including a summary of trigger terms and media exceptions.

Finally, if you have any suggestions on how we can improve the guide, just let us know. NAFCU members can also reach out to compliance@nafcu.org for direct assistance with federal regulatory compliance issues.

Sincerely,

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Prior to joining NAFCU, Mr. Park counseled clients on consumer financial services litigation matters related to residential loan servicing operations and foreclosure efforts. He began his career in Cleveland, Ohio working for a law firm that handled consumer financial services litigation for a national bank before moving to the Washington, D.C. metropolitan area and moving in-house with an industry utility for the mortgage industry. From there, the focus of Mr. Park's career shifted to providing in-house legal support for mortgage servicing day-to-day operations. He is familiar with federal and state requirements governing residential mortgage loans.

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KEY ABBREVIATIONS AND ACRONYMS

APR	Annual Percentage Rate, used for credit products
APY	Annual Percentage Yield, used for deposit products
CFPB	Consumer Financial Protection Bureau
CAN-SPAM	Controlling the Assault of Non-Solicited Pornography And Marketing
ECOA	Equal Credit Opportunity Act
FCC	Federal Communications Commission
FCRA	Fair Credit Reporting Act
FCU Act	Federal Credit Union Act
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FTC	Federal Trade Commission
GLBA	Gramm-Leach-Bliley Act
HUD	Department of Housing and Urban Development
NCUA	National Credit Union Administration
NMLS	Nationwide Multistate Licensing System
RESPA	Real Estate Settlement Procedures Act
TCPA	Telephone Consumer Protection Act
TILA	Truth in Lending Act
TISA	Truth in Savings Act
TSR	Telemarketing Sales Rule
UDAAP	Unfair, Deceptive or Abusive Acts or Practices

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OVERVIEW

Credit unions use a wide variety of methods to reach their members – everything from newsletters to emails to social media. Whichever method a credit union chooses, it is important to understand which ones are subject to special rules. Some of these special rules have already been addressed in the content-specific rules covered in the previous chapters, such as television and radio. The special rules for other methods are covered in this chapter.

TELEPHONE CALLS AND TEXT MESSAGES

Both the TCPA and the TSR provide rules for credit unions who use telephone calls to sell their products and services. The TCPA also covers text messages. All credit unions are covered under the TCPA while only state-chartered credit unions are covered under the TSR. This means federal credit unions only need to comply with the requirements outlined in the TCPA and state-chartered credit unions need to comply with both the TCPA and the TSR. If a federal or state-chartered credit union hires a third party to make calls on its behalf, that third party must generally comply with both the TCPA and the TSR. The rules for each are covered in this section.

TCPA

The TCPA has three main provisions, each with different requirements and exceptions. First, it requires credit unions to establish and maintain a company-specific do-not-call registry. Second, it requires consent for certain telemarketing calls and text messages made using an autodialer, artificial voice or pre-recorded message. Third, it provides rules for when telemarketing solicitations can be made. The TCPA also restricts certain unsolicited advertisements sent to fax machines. Each of these rules is addressed below.

Research Hint: When researching TCPA-related issues, it is important to remember that the FCC had issued a number of interpretive orders explaining various parts of the regulations. These orders should be reviewed in addition to the regulations, specifically the 2012 Order and the 2015 Order.

Before discussing these provisions, it is important to review one key definition – telemarketing. Under section 64.1200(f)(12), a call or text message is considered "telemarketing" when it is for the purpose of encouraging the purchase of goods or services. This includes calls to tell members about a new account or to encourage them to obtain a loan. It may also include those calls or messages that simply provide information about an account or service if the purpose of providing that information is to get the member to purchase a good or service. These are generally referred to as "marketing" calls as the FCC's Orders makes a distinction between "marketing" and "informational" calls. Informational messages are those such as account balance information, fraud alerts, debt collection calls, calls made by a loan servicer regarding the servicing of a consumer loan or home loan modification and research or survey calls. Where a call or text message provides both marketing and informational content, it is considered telemarketing.

Company-Specific Do-Not-Call Registry

Under section 64.1200(d), credit unions are prohibited from making any call for telemarketing purposes unless it has established a company-specific do-not-call registry. The registry is a list of persons who have indicated they do not want to receive telemarking calls from the credit union or any third party calling on behalf of the credit union. The registry must cover both landlines and cell phones. The rule also requires credit unions to maintain registry procedures that include the following:

- A written policy for maintaining a do-not-call list;
- Training for personnel engaged in telemarketing regarding the existence and use of the list;
- Recording a request not to be called and placing the member's name and phone number on the list;
- Identifying the name of the individual caller, the name of the person or entity on whose behalf the call is being made and a telephone number or address at which the person or entity may be contacted; and
- Maintaining a record of a request not to receive telemarketing calls.

If a credit union, or anyone engaged in telemarketing on their behalf, receives a do-not-call request, the request must be recorded and the member's name and phone number placed on the list at the time the request is made. The request must be honored within a reasonable time from when it is made, but no later than 30 days from the request, and is valid for five years.

A do-not-call request will typically not apply to affiliates unless the member would reasonably expect the affiliate to be included given the identification of the caller and the product being advertised. For example, the request may apply to a closely-affiliated CUSO but may not apply to an insurance company that occasionally does business with the credit union.

Consent

The TCPA generally requires consent before a credit union may make telemarking calls or send telemarketing text messages using an autodialer, artificial voice or pre-recorded message. Exactly what constitutes consent depends on whether a landline or cell phone is involved and the purpose of the call or message. Before discussing the consent rules, it is important to review a key definition.

Autodialer. Under section 64.1200(f)(2), an "autodialer" is "equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers." In the past, the FCC interpreted this broadly to include a wide array of items, including smartphones. This interpretation was stuck down in a 2018 court order and the FCC was asked to revisit its interpretation. The FCC has not yet issued any guidance on what constitutes an autodialer under a more conservative interpretation. In the interim, courts have taken various positions on what constitutes an autodialer, so credit unions may want to work with their attorney to determine whether their equipment is considered an autodialer.

For calls made to landlines, prior express written consent is required only if the telemarketing call contains "marketing" content and is made using an artificial voice or prerecorded message. No consent

is required if the call contains only "informational" content. Consent is also not required if the call is made using an autodialer, even if it contains marketing content.

For calls made or text messages sent to a cell phone, prior express consent is required if an autodialer, artificial voice or pre-recorded message is used. If the call or message contains "marketing" content, the consent must be written. If the call or message contains only "informational" content, the consent may be verbal or written. This chart illustrates the various consent requirements:

Type of Phone Line	Technology Used for the Call	Purpose of the Call	Type of Consent Required
Landline	Artificial voice or prerecorded message ("robocall")	**Marketing** Including calls to promote products like credit card add-ons or new accounts to members, following up on direct mail campaigns, etc.	Prior Express Written Consent
Landline	Autodialer, artificial voice or prerecorded message ("robocall")	**Informational** Includes collection calls, fraud alerts, money transfer notices, etc.	No Consent Required
Cell	Autodialer, artificial voice or prerecorded message ("robocall")	**Marketing** Including calls to promote products like credit card add-ons or new accounts to members, following up on direct mail campaigns, etc.	Prior Express Written Consent
Cell	Autodialer, artificial voice or prerecorded message ("robocall")	**Informational** Includes collection calls, fraud alerts, money transfer notices, etc.	Prior Express Consent (written or verbal)

Under section 64.1200(f)(8), prior express written consent requires a written agreement signed by the member who will receive the calls. The written agreement must clearly and conspicuously disclose the following:

1. By signing the agreement, he or she authorizes the credit union to deliver, to a designated phone number, telemarketing calls using an autodialer, artificial voice or pre-recorded message; and
2. By signing the agreement, or agreeing to enter into it, is not a condition of purchasing any goods or services.

Credit unions may deliver the disclosure electronically with proper E-SIGN consent. The credit union may also accept an electronic signature.

Under the 2015 TCPA Order, members must be able to revoke their consent to receive telemarketing calls and text messages. The order also states members may revoke consent using "any reasonable means," including both verbal and written revocation. As a result, credit unions may suggest a method of revocation, but cannot require members to revoke via a particular method. For example, a credit union cannot require members to submit their revocation in writing.

A do-not-call request triggering compliance with the company-specific do not call registry is a revocation of consent to be called. The rule prohibits credit unions from calling any person on the registry. In the past, there was an exception that allowed credit unions to call a person on the registry if there was an established business relationship between that person and the credit union; this exception no longer applies.

In addition to requiring consent, section 64.1200(b) requires certain disclosures be included in all artificial and prerecorded messages. At the beginning of the message, it must state the identity of the party responsible for initiating the call. Either during or after the message, it must state the telephone number of the party. That telephone number cannot be that of the autodialer, a 900 number or any other number where the charge exceeds local or long distance charges. If the message is to a landline, the number must be one where the called person may make a do-not-call request.

The artificial or prerecorded message must also include an interactive opt-out mechanism, with a brief description on how to use it, within two seconds of stating the identity of the party initiating the call. If the called person elects to opt-out, the mechanism must automatically record that person's telephone number on the company-specific do-not-call registry and immediately terminate the call. If the artificial or prerecorded message is left on an answering machine, the message must include a toll-free telephone number where the person may opt-out.

Handy Resource: The FCC's TCPA Small Entity Compliance Guide discusses various provisions of the 2012 Order, including the written consent and interactive opt-out requirements.

Telephone Solicitations

Section 64.1200(c) includes certain rules for telephone solicitations. Under section 64.1200(f)(14), a "telephone solicitation" is defined in the same manner as telemarketing but with two important exceptions: calls made with permission and calls to someone the credit union has an established business relationship with. These exceptions are discussed below along with the specific rules for telephone solicitations.

Any call that is made with the called person's permission is not a telephone solicitation and exempt from the rule discussed below. As noted on the previous section, the TCPA requires consent for most telemarketing calls. As a result, only those calls made to a landline using an autodialer, calls made to a landline without using any technology and calls made or text messages sent to a cell phone without

using any technology can be considered telephone solicitations. If the credit union obtains consent, in writing or verbally, to make a call or send a text message using any of these methods, it will not be a telephone solicitation.

Calls made to a person with whom the credit union has an established business relationship are also not telephone solicitations. An established business relationship exists when there is or has been voluntary two-way communication regarding a purchase or transaction within eighteen months before the call or voluntary two-way communication regarding an inquiry or application within three months before the call. An established business relationship will typically not extend to affiliates unless the person would reasonably expect the affiliate to be included given the nature of goods and services offered and the identity of the affiliate. A do-not-call request trigging compliance with the company-specific do-not-call registry terminates the business relationship.

Section 64.1200(c)(1) prohibits credit unions, and anyone making a solicitation on their behalf, from making telephone solicitations before 8 a.m. or after 9 p.m. (local time at the called person's location). Section 64.1200(c)(2) prohibits credit unions from making any call to a telephone number listed on the national do-not-call registry. All registrations on the national do-not-call registry must be honored indefinitely or until the registration is cancelled by the subscriber. However, credit unions may call a telephone number listed on the national do-not-call registry if it obtains the person's prior express invitation or permission. The permission must be in writing, signed by the person to be called, state the person agrees to be called and list the telephone number to which calls may be placed.

Faxes

The TCPA also places restrictions on sending advertisements to fax machines. Section 64.1200(a)(4) prohibits credit unions from using a telephone facsimile machine, computer or other device to send unsolicited advertisements to fax machines, unless the credit union has an established business relationship with the recipient and obtained the fax number through a voluntary communication by the recipient or a public directory.

The advertisement must contain a clear and conspicuous notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. The notice must appear on the first page of the advertisement; include a statement that the recipient may request not to receive any further advertisements; an explanation of the content requirements for the request; and a domestic telephone number and fax number the request may be sent to. If neither the telephone number nor fax is toll-free, the notice must also include a separate cost-free mechanism to send a request, such as a website.

TSR

The TSR also has three main provisions. First, it prohibits calls to persons on the company-specific and national do-not-call registries. Second, it imposes limitations on when calls can be made and requires certain identifying information be supplied. Third, it provides specific rules for prerecorded messages. Each of these rules is addressed below.

The TSR applies to any person who makes or receives a telemarketing call. Section 310.2(gg) explains that "telemarketing" is a plan or program designed to get customers to purchase a good or service via more than one interstate telephone call. This means both calls a credit union makes and calls it receives may be covered. For example, if a member calls the credit union to get information about their account balance and the credit union has a policy to offer every inbound caller a credit card or line of credit, those inbound calls may be covered under the rule. However, as indicated below, certain parts of the rule only apply to outbound calls. The definition of telemarketing limits the scope of the TSR to interstate calls, or, only those calls made where the caller and called person are in different states. Intrastate calls, those made within the same state, are covered under the TCPA rules discussed above. It is up to the credit union to establish the location of the called person and determine whether the TSR applies.

Do-Not-Call Registries

Section 310.8 requires credit unions to access the national do-not-call registry before it may make any outbound telemarketing call. The rules require credit unions to update their call lists at least every 31 days. There is an annual fee to access the national registry.

Section 310.4(b)(1)(iii) prohibits credit unions from making any telemarketing call to any person on either the company-specific do-not-call registry or the national do-not-call registry. These rules apply only to outbound calls and cover both landlines and cell phones.

For persons on the national do-not-call registry, section 310.4(b)(1)(iii) provides two exceptions. These persons may be called if the credit union either obtains the person's consent or has an established business relationship with the person. If the credit union obtains consent, that consent must be in writing, signed by the person to be called, state the person agrees to be called by the credit union and list the telephone number to which calls may be placed.

Handy Resource: The FTC's Q&A for Telemarketers webpage provides answers to FAQs regarding the do-not-call rules.

A credit union may also make calls to a person on the national do-not-call registry if it has an established business relationship with that person. An established business relationship exists if the called person has purchased a good or service from or conducted a transaction with the credit union within the eighteen months prior to the call. An established business relationship also exists if the called person has inquired about or applied for a product or service within three months before the call. A do-not-call request trigging compliance with the company-specific do-not-call registry terminates the business relationship.

Calling Restrictions and Requirements

Section 310.4(c) prohibits credit unions from making any outbound calls to persons before 8 a.m. or after 9 p.m. (local time at the called person's location). Credit unions may call during these restricted times only if it has the called person's prior consent. The rule does not specify whether the consent must be writing. However, given the steep penalties for noncompliance, credit unions relying on verbal consent may want to ensure the consent is properly documented.

Where the called person uses a caller identification service (commonly referred to as "caller ID"), section 310.4(a)(8) requires credit unions to identify, at a minimum, their own telephone number. If the caller identification service also allows credit unions to include their name, that must be included as well. Where a third party is calling on behalf of the credit union, the credit union's telephone number and name may be used instead of the third party's telephone number and name.

Prerecorded Messages

Section 310.4(b)(1)(v) generally prohibits credit unions from making any telemarketing call that delivers a prerecorded message, unless two conditions are met. First, the called person's consent must be obtained. The consent must:

1. Be obtained after the credit union has provided a clear and conspicuous disclosure that the consent is to receive prerecorded messages from the credit union;
2. Not be obtained as a condition of purchasing a good or service;
3. Show the called person wants to receive prerecorded messages from the credit union;
4. Be in writing;
5. Include the called person's telephone number; and
6. Be signed by the called person.

The FTC's TSR Compliance Guide provides the following model form for the consent:

> "I would like to receive telephone calls that deliver prerecorded messages from [ABC Co.] that provide special sales offers such as _____ at this telephone number (___)_____.
>
> Yes_____ No_____
>
> [Signature] _____

As the consent must identify a specific caller, a separate consent is required for each third party hired to make calls on the credit union's behalf. The consent may be obtained electronically in compliance with E-SIGN. The credit union may also accept an electronic signature.

Second, the rule requires the call to comply with each of the following:

1. The credit union lets the telephone ring for either fifteen seconds or four rings before disconnecting an unanswered call;
2. The prerecord message is played within two seconds of the called person completing their greeting;
3. The prerecorded message discloses:
    a. The identity of the caller,
    b. The purpose of the message is to sell goods or services,
    c. The nature of the goods and services,
    d. If the call is a prize promotion where a purchase will not increase the odds of winning, that no purchase is necessary; and
4. The message provides an interactive opt-out mechanism where the called person can submit a do-not-call request.

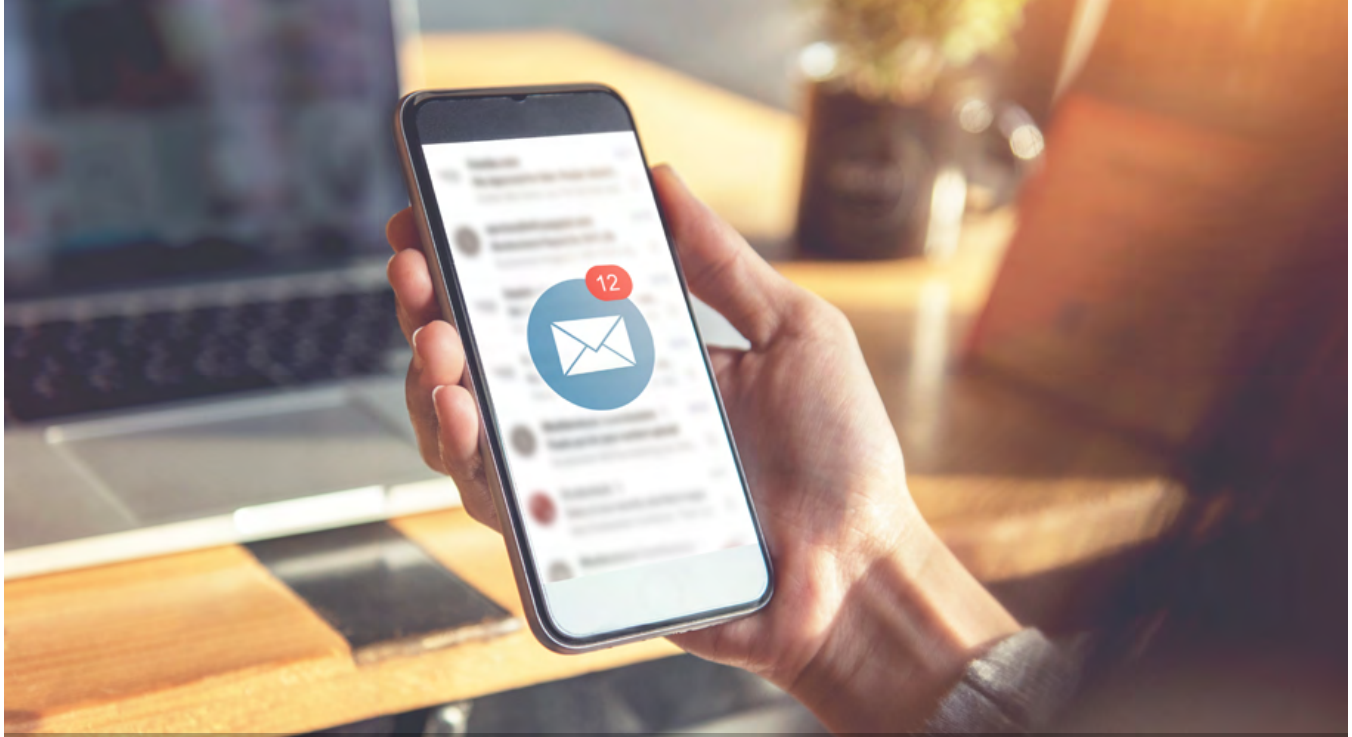
The opt-out mechanism in item 4 above must automatically record that person's telephone number on the company-specific do-not-call registry and immediately terminate the call. The called person must be able to use the opt-out mechanism at any point during the call. If the prerecorded message is left on an answering machine, the message must include a toll-free telephone number where the person may opt-out.

These rules apply even if the prerecorded message is played or selected by a live operator.

EMAIL

The CAN-SPAM Act provides rules for commercial emails. An email is considered a "commercial" email if its primary purpose is to provide an advertisement or promote a product or service. An email that provides only transactional or relationship content is not a commercial email. Transactional and relationship content includes content that meets one of the following:

- Confirms a transaction the recipient has already agreed to;
- Delivers goods or services as part of a transaction the recipient has already agreed to;
- Gives information about a change in terms, features or account balance information regarding a membership, account, loan or other ongoing commercial relationship, or
- Gives security information about a product or service.



An email is considered a "commercial" email if its primary purpose is to provide an advertisement or promote a product or service.

When an email contains both commercial content and transactional or relationship content, the primary purpose of the message is the deciding factor for whether CAN-SPAM applies. The FTC's Compliance Guide provides the following test:

> "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."

When a message contains both kinds of content, a credit union will need to look to the subject line of the email or the first content to appear in the message to determine whether the primary purpose of the email is commercial or transactional.

For all commercial emails, CAN-SPAM provides a number of requirements. The Compliance Guide provides an explanation of each requirement which can be summarized as follows:

1. **Don't use false or misleading header information.** The "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.
2. **Don't use deceptive subject lines.** The subject line must accurately reflect the content of the message.

3. **Identify the message as an ad.** The law gives a lot of leeway in how to do this, but the sender must disclose clearly and conspicuously that the message is an advertisement.
4. **Tell recipients where you're located.** The message must include the sender's valid physical postal address. This can be a current street address, a post office box registered with the U.S. Postal Service or a private mailbox registered with a commercial mail receiving agency established under Postal Service regulations.
5. **Tell recipients how to opt out of receiving future email from you.** The message must include a clear and conspicuous explanation of how the recipient can opt out of getting email 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. Senders may create a menu to allow a recipient to opt out of certain types of messages, but an option to stop all commercial messages must be included. The sender should ensure its spam filter doesn't block these opt-out requests.
6. **Honor opt-out requests promptly.** Any opt-out mechanism offered must be able to process opt-out requests for at least 30 days after the message is sent, meaning people must have at least 30 days from the date the message is sent to submit an opt-out request. Senders must honor a recipient's opt-out request within 10 business days after receiving the request. Senders can't charge a fee, require the recipient to provide 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 indicated they don't want to receive more messages, senders can't sell or transfer their email addresses, even in the form of a mailing list. The only exception is that the addresses may be transferred to a company the sender has hired to help with CAN-SPAM Act compliance.

Both the entity that sends the commercial email and the entity whose products are promoted in the message are responsible for ensuring the email complies with these requirements. If a credit union uses a third party to send commercial emails on its behalf, the credit union can be held liable for a compliance violation as its products are being advertised. Likewise, if a credit union sends a commercial email for itself or on behalf of someone else, it can also be held liable for a compliance violation as it sent the message. Credit unions will want to carefully monitor both messages sent on its behalf and messages it sends.

PRESCREEN OFFERS

Prescreening can be an effective marketing method as it allows credit unions to both promote its products and services and inform members that they qualify for those products or services. When a credit union uses a consumer report to determine whether a member qualifies for a particular product or service, the FCRA imposes certain requirements. This section addresses these requirements.

Permissible Purpose

The FCRA requires credit unions to have a permissible purpose to obtain and use a consumer report. The consumer's consent, credit transactions involving consumer, transactions initiated by the consumer and account review are all permissible purposes that allow a credit union to obtain a consumer report. Once a credit union properly obtains a consumer report, it may only use that report for that permissible purpose. As cross-selling or marketing are not permissible purposes, credit unions usually rely on section 1681b(c) to obtain consumer reports for prescreen offers. Section 1681b(c) explains that credit unions may obtain and use a consumer report in connection with a credit or insurance transaction that the consumer does not initiate only if the transaction consists of a firm offer of credit or insurance. A firm offer must be made to each person appearing on the prescreen list.

Under section 1681a(l), a firm offer is any offer that will be honored if the member meets the predetermined creditworthiness criteria. However, a firm offer does not have to be honored if the member is not creditworthy or insurable or cannot furnish required collateral, provided that the credit union determines the underwriting criteria in advance and applies it consistently. Credit unions are also allowed to obtain a second consumer report on anyone responding to the offer to verify the member continues to meet the predetermined creditworthiness criteria. If the member no longer meets the criteria or cannot provide the required collateral, the credit union does not have to honor the offer.

Handy Resource: The FTC's FCRA Guidance provides additional details on the prescreen rules. While the CFPB has since taken over interpreting the FCRA, it has not issued any guidance. In the absence of any CFPB guidance, the FTC's guidance can be a useful tool.

Opt-Out Notice

Section 1681b(e) requires nationwide consumer reporting agencies to jointly operate an "opt-out" system where consumers can elect to be excluded from prescreened lists using a toll-free telephone number. Section 1022.54 of Regulation V, which implements the FCRA, requires credit unions to provide an opt-out notice with each firm offer of credit. The rule requires both a "short" notice and a "long" notice and provides model forms in Appendix D.

The short notice must:

1. State the member has the right to opt-out of prescreened offers;
2. Provide the toll-free telephone number the member can call to opt-out; and
3. Direct the member to the existence and location of the long notice, including stating the heading for the long notice.

Model notice (a)(1) in Appendix D provides the following sample language for the short notice:

> "You can choose to stop receiving 'prescreened' offers of credit from this and other companies by calling toll-free [toll-free number]. See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers."

The short notice must not contain any information other than the required disclosures. The disclosures must be stated clearly and conspicuously and in a simple and easy to understand manner. The short notice must appear on the first page of the principal promotional document or, for electronic offers, in close proximity to the principal marketing statement. It must be located and formatted so that it is distinct from the other text on the page, such as inside a border; in a type size larger than the type size used for the principal text on the same page, but no smaller than 12-point font and in a type style distinct from the principal style used on the same page, such as in bold, italics, underline or a different color.

For the long notice, section 1022.54(c)(2) points to section 1681m(d) of the FCRA for the content requirements. The long notice must state:

1. Information in the member's consumer report was used in connection with the transaction;
2. The member received the offer because they met the creditworthiness criteria;
3. The credit may not be extended if the member does not meet the criteria used to select them for the offer, any applicable creditworthiness criteria or does not furnish the required collateral, if applicable;
4. The member has the right to opt-out; and
5. The member may opt-out via the credit reporting agency's notification system.

Model notice (a)(2) in Appendix D provides the following sample language for the long notice:

> "PRESCREEN & OPT-OUT NOTICE: This 'prescreen' offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable collateral]. If you do not want to receive prescreened offers of credit from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address]."

The long notice must not contain any other information that interferes with, detracts from or contradicts the information in the notice. The disclosures must be stated clearly and conspicuously and in a simple and easy to understand manner. The long notice may appear anywhere in the offer and must use the heading "Prescreen and Opt-Out Notice" in capital letters and underlined. It must be set apart from the other text on the page, such as including a blank line above and below it or indenting the margins; in a type size no smaller than the type size used for the principal text on the same page, but no smaller than 8-point font and in a type style distinct from the principal style used on the same page, such as in bold, italics, underline or a different color.

While prescreen offers can be an effective method for promoting a credit union's credit products, it is important to ensure each member on the list receives a firm offer and all required notices are included in the offer. Where the prescreen offer is for a credit card, the offer must also comply with the solicitations disclosures required by Regulation Z. The solicitation disclosures are discussed in Chapter 5, Section 2.

SOCIAL MEDIA

While many of the advertising rules discuss traditional forms of advertising, such as print and radio, the rules have yet to specifically address how to comply with the requirements using social media platforms. Given the substantial lag between technological changes and regulatory changes, there is unlikely to be any meaningful regulatory change in the near future. As a result, the FFIEC has provided some guidance on using social media.

While the State Liaison Committee signed on to the guidance, not all states have adopted it. State-chartered credit unions may want to look to their state regulator to determine whether this guidance has been adopted or other guidance has been issued.

The FFIEC's guidance explains how credit unions can use social media in compliance with the applicable regulations. For purposes of the guidance, social media is "a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video." This includes platforms such as Facebook, Twitter, Yelp, YouTube and LinkedIn. Email and text messages are not considered social media.

As a starting point, the guidance suggests credit unions that use social media should have policies in place that explain how the credit union will use social media, including any impermissible uses, and outline the compliance requirements for social media. When it comes to advertising, the guidance reminds credit unions that social media advertisements are considered advertisements and none of advertising rules provide exemptions for social media. The guidance also reminds credit unions that both Truth in Savings and Regulation Z allow them to use the "one-click away" rule when trigger terms are stated in an advertisement delivered electronically which includes social media.

When it comes to advertising products where the official advertising statement is required, the guidance explains that the same general requirements apply to social media. The words "Federally Insured by NCUA" or "Insured by NCUA" or the official sign must appear in the advertisement. The "one-click away" rule does not apply to the official advertising statement.

In addition to the FFIEC's guidance, other requirements may also apply. For example, if a credit union is running a contest or promoting its products using Facebook, Facebook may have rules and requirements for doing so. As a result, it is important to also review the terms of use of each social media platform the credit union uses to determine whether any additional rules exist.

SWEEPSTAKES AND GIVEAWAYS

Sweepstakes can be a great way to promote the credit union and its products and services. However, they come with their own unique compliance challenges. While there is one applicable federal law, sweepstakes are, for the most part, governed by state law. Before running any contest, credit unions will want to review their state's law to determine the permissible terms and conditions and any required disclosures.

Before diving into the rules, it is important to note that lotteries are illegal under both federal and state law. When someone is required to provide consideration (such as an entry fee or purchasing a product) for the chance to win a prize, it is generally considered a lottery. To ensure its sweepstakes are not considered lotteries, credit unions may want to have an attorney assist in developing the terms and conditions.

The Federal Sweepstakes Law

The Deceptive Mail Prevention and Enforcement Act (Act) provides prohibitions and requirements for sweepstakes promoted or implemented via mail. The Act generally prohibits credit unions from using any language:

- Suggesting the sweepstakes is approved or endorsed by the Federal Government;
- Claiming someone has won a prize unless they have actually won;
- Requiring an entrant to make a purchase to enter the sweepstakes or receive future sweepstakes opportunities; and
- Mailing void checks unless the check clearly states it is non-negotiable and has no cash value.

The Act also requires credit unions to make certain disclosures regarding the sweepstakes. In each mailing that promotes, contains entry forms or otherwise implements a sweepstakes, the following disclosures must be "clearly and conspicuously displayed":

1. A statement that no purchase is necessary to enter and that a purchase does not increase the chances of winning;
2. The terms and conditions of the sweepstakes, including the rules and entry procedures;
3. The sponsor or mailer of the sweepstakes and their principal place of business or other contact address;
4. Estimated odds of winning each prize;
5. The quantity, estimated retail value and nature of each prize; and
6. The schedule of any payments made over time.

The Act also has rules regarding skill contests promoted or implemented via mail. A skill contest is any puzzle, game, competition or other contest where a prize is awarded based on the skill of the contestant and a purchase or payment is required to enter. Even though a purchase is required to enter, a skill contest is generally not an illegal lottery as it is not based solely on luck to win. In all skill contest

mailings, the following disclosures must be "clearly and conspicuously displayed":

1. The terms and conditions of the contest, including the rules and entry procedures;
2. The sponsor or mailer of the contest and its principal place of business or other contact address;
3. The number of rounds and the cost to enter each round, whether subsequent rounds will be more difficult and the maximum cost to enter all rounds;
4. Percentage of entrants who may correctly solve the contest;
5. Identity of the judges and the method used in judging;
6. The date the winner will be determined;
7. The quantity, estimated retail value and nature of each prize; and
8. The schedule of any payments made over time.

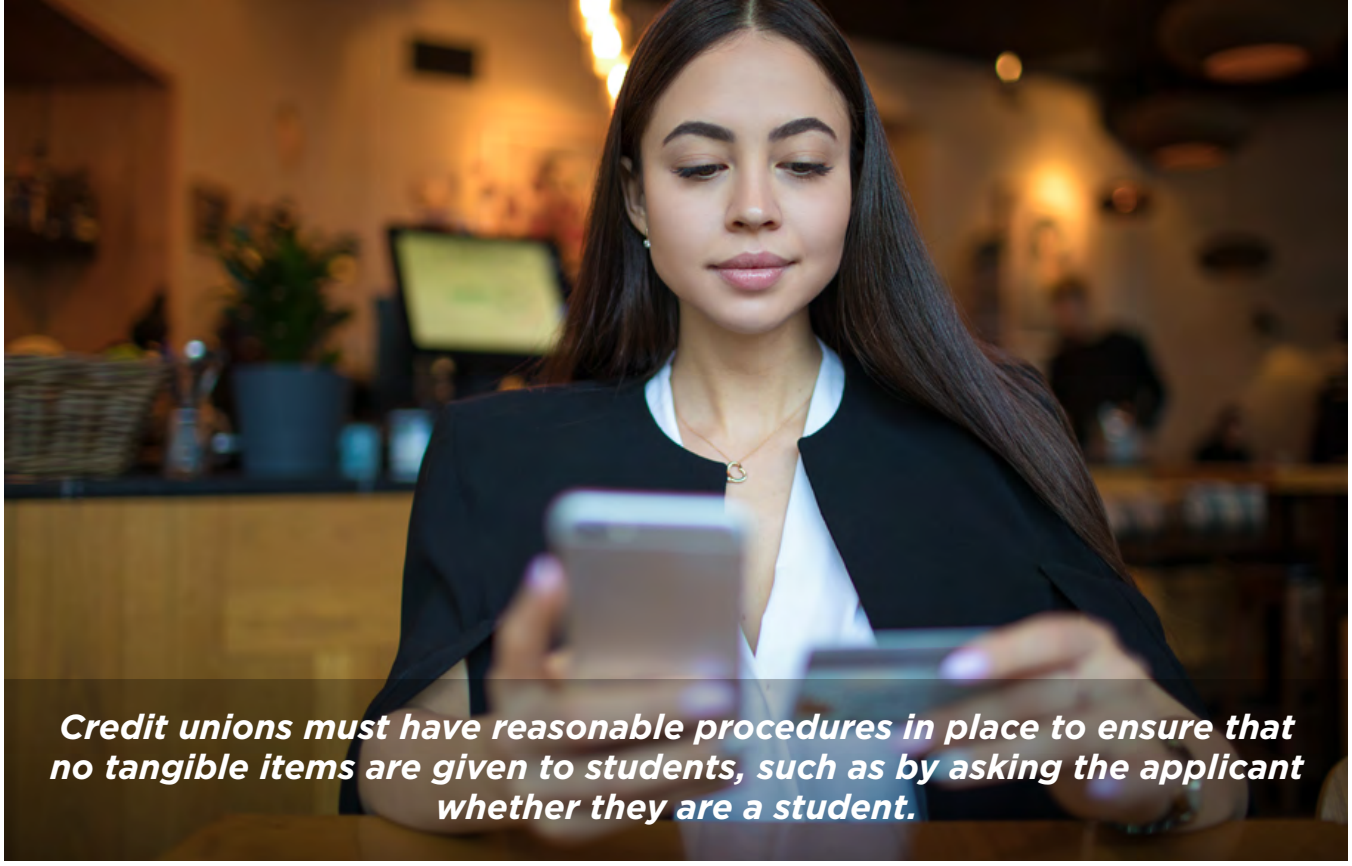
The Act requires credit unions to provide the opportunity to opt-out of future sweepstakes or skill contest mailings. The telephone number or mailing address where an opt-out request can be submitted must be included in the mailing. The Act also requires credit unions to maintain procedures that ensure no mailings are sent to persons who have opted-out.

Penalties for noncompliance can reach up to $1 million, so credit unions who use the mail to promote sweepstakes and contents will want to ensure it does not engage in any prohibited practices and all mailings provide the required disclosures.

State Law Considerations

Each state can also have its own rules and requirements for sweepstakes or contests. These state laws can include disclosure requirements, prohibited terms and conditions, entry requirements, age limitations or advertising rules. Credit unions will want to carefully review their state laws to ensure any sweepstakes and contests are designed in compliance with all applicable rules. Credit unions who offer sweepstakes and contests in multiple states may need to review the laws of each state. A list of some of the applicable state laws can be found in Appendix F.

UDAAP principles will also apply to sweepstakes and contests. State attorneys general have the authority to enforce the federal UDAAP laws so credit unions may want to review the UDAAP section in Chapter 2 before designing sweepstakes or contest or drafting advertisements for them. State UDAP laws may also apply so those should be reviewed as well.



Credit unions must have reasonable procedures in place to ensure that no tangible items are given to students, such as by asking the applicant whether they are a student.

MARKETING ON COLLEGE CAMPUSES

Regulation Z has a special rule for marketing open-end consumer credit plans on college campuses. The rule covers all open-end plans, such as credit cards, unsecured lines of credit and home-equity lines of credit.

Section 1026.57(c) generally prohibits credit unions from offering a college student any tangible item to induce them to apply for or open an open-end credit plan. The commentary explains that a tangible item is any physical item. This includes gift cards, t-shirts or magazine subscriptions. Items such as discounts, rewards or promotional terms are not tangible items and may be offered. A tangible item is offered as inducement when it is offered only if the student applies for or opens a credit plan. Any tangible item that is offered regardless of whether the student applies for or opens a credit plan is not offered as inducement and is permissible.

This general prohibition applies to any offer that is made on or near a college campus or at an event sponsored by or related to the college. Any offer that is made within 1,000 feet of the border of the campus is made near the campus. Mailed offers are also covered by the rule. For example, an offer mailed to an address on or near campus is covered. An event is sponsored by or related to the college if the marketing of the event uses the name, emblem, mascot or logo of the college or uses any words, pictures or symbols that imply the college endorses or sponsors the event.

Credit unions may offer tangible items on or near the campus or at a college event if the person applying for or opening the credit plan is not a student. For example, tangible items may be offered at an alumni event held on campus, even if students also attend the event. The commentary explains that credit unions must have reasonable procedures in place to ensure that no tangible items are given to students, such as by asking the applicant whether they are a student. The commentary permits credit unions to rely on the applicant's statement regarding whether they are a student.

Credit unions are generally free to market their open-end credit products to students. However, when those marketing activities are conducted on or near campus or at a college event, credit unions will want to ensure they are not providing tangible items to students.

ABOUT NAFCU

NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS

Founded in 1967, the National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. The association's specific, overriding focus is to directly shape the laws and regulations under which federally-insured credit unions operate.

NAFCU provides regulatory compliance assistance to its member-credit unions through a multi-faceted program, including direct access to the association's compliance and regulatory affairs divisions. For more information on NAFCU's compliance resources, please visit our compliance homepage.