

HOW TO USE THIS HANDBOOK

Supervision of a bank's marketing program and advertising materials is a complicated task in both the money-center or super-regional institution or the community bank. Banks large and small face a formidable array of regulatory provisions that significantly affect advertising campaigns. Failure to comply with provisions can lead to regulatory enforcement actions as well as costly consumer suits.

The *Federal Advertising and Marketing Law Guide* is intended to serve both as a guide and a reference source for the use of marketing, compliance, and other persons responsible for preparing or supervising financial institutions' marketing programs and advertising material.

The *Guide* is divided into 22 chapters as well as a section presenting the Marketing Communications Code of Ethics Statement. Each chapter begins with a Chapter Overview, which is intended to introduce and summarize the regulatory requirements covered in that chapter. In many cases, referral to a Chapter Overview is all that will be needed to resolve a question about a particular issue. Each chapter also sets forth relevant statutory, regulatory, and interpretive provisions following its Chapter Overview. Inclusion of these provisions enables those using the *Guide* to refer to the underlying provisions in the area being researched.

Access to material in the handbook is obtained through these finding aids:

- (1) A *table of contents*, at page v. A more detailed table of contents appears at the beginning of each chapter.
- (2) A *table of citations* for statutes and regulations, at page Cites-1, at the back of the manual.
- (3) An *index*, at page Index-1, at the back of the manual.

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Recent developments discussed in *Federal Advertising and Marketing Law Guide* include the following:

Endorsements

- The Federal Trade Commission has asked for public comment on its Guides Concerning the Use of Endorsements and Testimonials in Advertising. The FTC asked about the "overall costs, benefits, and regulatory and economic impact of the Guides, including possible conflicts with state, local, or other federal laws, and what effects, if any, have changes in relevant technology, such as email and the Internet, or economic conditions had on the Guides." The FTC also asked about consumers' expectations regarding compensation of celebrity endorsers who endorse a product outside the context of a traditional advertisement, and whether knowledge of such compensation might affect the credibility of the endorsement. (See Chapter 6.)

Gift Cards

- On February 28, 2007, the Office of Thrift Supervision issued CEO Letter 254 to provide guidance detailing the agency's supervisory expectations for savings associations' gift card programs. The OTS guidance makes several points relevant to thrifts' advertising and marketing practices. (See ¶ 8-1.07.)

Telemarketing

- On June 14, 2007, the FFIEC's Consumer Compliance Task Force revised the interagency consumer compliance examination procedures for the Telephone Consumer Protection Act (TCPA) and the Junk Fax Prevention Act (JFPA). These revisions clarify the specific responsibilities of institutions that make telemarketing calls only to existing customers, as well as the responsibilities of those that make calls to noncustomers. The revisions also update the procedures to reflect the 2006 amendments to the rules implementing the JFPA. (See ¶ 12-1.00, ¶ 12-4.00, and ¶ 12-5.00.)

Adware

- On January 29, 2007, New York Attorney General Andrew Cuomo announced that New York has reached groundbreaking settlements with three major online advertisers (Priceline.com Incorporated, Travelocity.com LP, and Cingular Wireless LLC) for promoting products and services on the Internet through deceptively installed programs known as "adware." Cuomo said the enforcement action marked "the first time law enforcement has held advertisers responsible for ads displayed through adware." (See ¶ 20-1.00.)

Unfair or Deceptive Acts or Practices

- On August 6, 2007, the Office of Thrift Supervision published an advance notice of proposed rulemaking to elicit comments on the need for additional guidance on unfair or deceptive acts or practices. OTS also said it was considering whether to expand its advertising rule by providing more comprehensive guidance. (See ¶ 22-1.02.)

Mortgage Ads

- On September 11, 2007, the Federal Trade Commission announced that it was sending warning letters advising more than 200 advertisers and media outlets that some mortgage ads are potentially deceptive or in violation of the Truth in Lending Act. The ads were identified in June during a nationwide review focused on claims for very low monthly payment amounts or interest rates, without adequate disclosure of other important loan terms. (See ¶ 22-1.02.)

Subprime Loans

- Federal bank regulators adopted the *Statement on Subprime Mortgage Lending* in final form in the *Federal Register* of July 10, 2007. In adopting the statement, the agencies cautioned institutions that lenders offering predatory loans "face an elevated risk that their conduct will violate Section 5 of the Federal Trade Commission Act (FTC Act)..." (See ¶ 22-1.10 and ¶ 22-8.00.)

Refund Anticipation Loans

- On January 3, 2007, California Attorney General Bill Lockyer announced that Jackson Hewitt, Inc. will pay \$5 million, including \$4 million in consumer restitution, to settle a lawsuit filed by Lockyer that alleged the nation's second-largest tax preparation firm violated state and federal laws in marketing high-cost refund anticipation loans (RALs) mainly to low-income customers. (See ¶ 22-1.03.)

Mortgage Trigger Leads

- Connecticut enacted legislation (HB 7073) that, effective October 1, 2007, prohibits lenders and brokers of first and second mortgages from engaging in any unfair or deceptive act or practice when soliciting a mortgage secured by residential property in Connecticut if the solicitation is based in any way on a mortgage trigger lead. (See ¶ 22-1.03.)