

Essential Questions Marketing Compliance Review

1. Is this even considered “marketing material?” If not, why not? If yes, continue.
2. If the interest rate is an APR, is it accompanied by the corresponding “annual percentage rate” or its abbreviation “APR”?
3. If the interest rate and corresponding APR are disclosed, is the APR in the same font size or larger than the disclosed interest rate?
4. Is the rate actually available and offered, and can that be evidenced upon request?
5. If a payment is disclosed in the advertisement and does not include amounts for taxes or insurance, does the ad **clearly and conspicuously** state that the disclosed payment does not include amounts for taxes and insurance?
6. Does the ad contain any of the following triggering terms:
 - Amount or percentage of any down payment
 - Number of payments or period of repayment
 - Amount of any payment
 - Amount of any finance charge

If yes, then are all of the following additional terms disclosed **clearly and conspicuously**:

- Amount or percentage of any down payment
 - Terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment
 - The APR
 - If the rate may increase after consummation or statement to that effect
7. Do ads for an adjustable-rate mortgage program contain any of the triggering terms listed above? If so, does the advertisement **clearly and conspicuously** state the following?
 - Each simple rate of interest that will apply, with a rate determined by adding a current index and margin
 - The period of time during which each simple annual rate of interest rate will apply
 - The loan’s APR

8. Is the word "fixed" used to refer to rates, payments, or credit transactions where the payment will increase, such as an adjustable-rate mortgage? If yes, is there every opportunity for the consumer to fully understand that the loan product is an adjustable-rate mortgage, **not** a fixed-rate loan?

For example:

- Do the words "adjustable-rate mortgage" **clearly and conspicuously** appear before "fixed rate" appears in the advertisement?
 - Is there a **clear and conspicuous** statement near the phrase "fixed rate" explaining the term and details of the "fixed rate" period for the loan product?
 - Is it clear to the consumer that the rate and payment may change during the life of the loan?
9. Are all disclosures made in a **clear and conspicuous** manner, with the disclosures being "equally prominent and in close proximity" to the triggering term? This means in the same type size as the advertised rates or payment triggering the required disclosures and located immediately next to or directly above or below such disclosures.
10. Does the advertisement contain the NMLS number for the lending or broker company, and if the mortgage loan originator is identified in the ad, is their NMLS number also included?
11. Does the advertisement disclose the name and address of the advertising lending company or broker?
12. Is this a state with special requirements? If so, did you check those requirements, and are they reflected in this advertisement?
- For example, a state may require disclosing the agency that regulates the lending or brokering company in the state advertised or prohibit the use of the name of the consumer's current lender in the advertisement, and the ad does disclose this.
13. Is the advertisement constructed so that it does not appear to be unfair or deceptive or promote unfair or deceptive acts or practices?
14. Is the advertisement constructed so that it does not appear to promote unfair marketing activities that could cause financial injury to consumers?
15. Is the advertisement constructed so that it does not contain any representation or omission that could mislead consumers?
16. Is the advertisement constructed so that the language does not materially interfere with the ability of the consumer to understand a term or condition of the financial product or

service? For example, it does not say “Low credit scores and high LTV loans,” where these are two different products.

17. Does the ad contain language that takes unreasonable advantage of a consumer's lack of understanding about the product or service's material risks, costs, or conditions? For example, the advertisement does not disclose “pay off short-term debt” without indicating that “paying off short-term debt with this loan may cause the consumer to pay more interest over the life of this loan.”
18. Does the ad appear to be endorsed or sponsored by any governmental agency? Does it contain an emblem, color of payment, official-looking bar codes or reference numbers that have no effect, or words or phrases that suggest it's from an agency?
19. Does the ad display the name of the consumer's current mortgage lender in a manner that appears it is coming from that mortgage lender?
20. Does the ad use phrases that may create an unnecessary or false sense of urgency or relevance, such as **benefit announcement, eligibility advisory notice, status expiration notice, pending authorization, VA loan department**, or similar phrases?
21. Does the ad clearly and prominently include important disclosures? This means using a 10-point font or larger, disclosures printed on the same side of the page as the trigger terms, written in contrasting print, and understandable language and syntax.
22. Will the advertisement target potential borrowers who do not fall within the filter criteria used to generate the details in the ad (such as applicable interest rate/APR), and if so, is this addressed?
For example, if this is a direct mail advertisement and filters are used to create target recipients, does the ad assume a large loan amount but is sent to borrowers with smaller loan amounts? If it's a TV advertisement, is there disclosure language to adjust for this?
23. Does the advertisement make specific or general claims requiring supporting documentation to prove the claims are legitimate? If so, is the evidence retained and readily available in the event the legitimacy of the claim is challenged?
24. Is this advertisement related to or associated with a relationship between parties such that there could be “referral” issues prohibited by federal law?
25. Are there other implications, such as fair lending issues, firm offers of credit, CAN-SPAM, TCPA, and similar laws, that should be considered when deploying this marketing strategy?