

## Overdrafts, Reg Z & Advertising

Answer by: John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** We want to offer a student account for college students. If we advertise in our pamphlet that we will pay any checks that take them a hundred dollars in the negative can we also advertise the overdraft fee is 20.00? Once they surpass a hundred dollars we would not pay the check but would only charge them 15.00.

**Answer:** If you contractually (express or implied, in today's litigious environment) agree to pay overdrafts up to a certain amount, you are probably treading on Regulation Z territory. That will require open-end credit disclosures at account opening, and you will really need to review how the per check fee will affect the APR. A \$20 fee on a quickly-covered overdraft balance, even without any calculated interest, will yield a pretty stiff APR on the monthly statement.

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## HELOC Rules & Advertising "Variable Rate Tied To Prime Rate"

Answer by Lucy Griffin, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** We are planning a home equity/home improvement brochure which gives basics for each product. Under HELOC terms, can we say "competitive variable rate tied to the prime rate" without it triggering more disclosure? I would have thought so, but I am asking a 'guru' because there are two differing thoughts on the bankers' thread postings. Obviously, we are trying to have this brochure generic enough to not have to update it each time the prime rate changes.

**Answer:** This idea skates on very thin ice and that is probably why you see debate among compliance managers. The question is really whether saying that your margin is competitive states a rate. The conservative view says yes, the daredevils say try it. Before running such an ad, it would be a good idea to test it on your regulators. If they have no concerns, go ahead. However, if they express any concerns, I would recommend a more careful approach that is less likely to be interpreted as a trigger term.

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## HELOC Advertisement

by Rick Wemmers, BOL Guru

[Guru BIOS](#)

**Question:** For print advertising of a HELOC product with an introductory (6 month) rate which reverts back to prime plus one, what is the proper verbiage for the ad disclaimer? Are there unique requirements for the ad?

**Answer:** I would suggest you follow what credit card ads do on this point...in small print note that this is an introductory rate and will be changed at a given point in time to another specific rate, based on certain criteria.

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## HELOC Marketing

Answer by: Rick Wemmers

**Question:** Where can a person get a sample HELOC brochure showing all requirements to be in compliance?

**Answer:** Try collecting those from your local competition. Does two things among others: gives you what your competition is offering and info you requested.

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## Advertising Loan Rates Without an APR

by David Dickinson and Richard Insley, BOL Guru

[Guru BIOS](#)

**Question:** When can you advertise a loan rate without an APR?

**Answer by David Dickinson:** If you promote a rate to consumers, you must state it as an APR. See §226.24(b) for closed-end loans and §226.16(b)(2) for open-end loans.

**Answer by Richard Insley:** If the credit is promoted exclusively to businesses or for business purposes, these rules do not apply.

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## Graduated Payment or Variable Rate Ad

by Richard Insley, BOL Guru

[Guru BIOS](#)

**Question:** I am confused by the Truth in Lending rules and FTC Guidance (How to Advertise Consumer Credit) on how to advertise the following product: 10/1 LIBOR ARM. Repayments are "interest only" for 10 years with a fixed rate, then for the remaining 20 years (30-year loan), the rate becomes variable and the loan is amortized for principal and interest payments.

At a minimum, our line of business wants to advertise the amount of the monthly payment. Is this a Graduated Payment feature loan, or a Discounted Variable Rate Plan or something else? Any real-life examples are appreciated.

**Answer:** It is an ARM if the APR can increase after closing. Depending on whether the note rate is lower, higher or equal to the fully indexed rate as of the disclosure date, you have a discounted, premium, or par variable rate loan. Assuming your ads will include a trigger term, they will need to contain disclosures for a representative deal, including the APR and a complete payment schedule (not just the interest-only payment.)

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## Reg Z Advertising Disclosure Rules For In-Branch Posters

by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** Do Reg Z advertising disclosure rules apply to advertisements placed in the office, such as a poster which can only be seen upon entering the facility? Is this considered indirect advertising to the consumer and does that affect the applicability of the rules?

**Answer:** The [Commentary](#) to Section 226.2(a)(2) elaborates on the definition of the term "advertisement" by including example 1.(i)(D): "Direct mail literature or other printed material on any exterior or interior sign." Much of the "heavy lifting" in Regulation Z is done in the definitions. Always start there when researching a question.

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## Reg. Z Ad Triggering Terms

by Richard Insley, BOL Guru

[Guru BIOS](#)

**Question:** If a Realtor were to describe a property, a single family residence, and also state "Special Financing 5% Down, No PMI, \$1612.06/Mo." would the requirement to disclose an APR be triggered? If so, what would be the violation for not doing so? Incidentally, this is an advertisement on a \$429,900 listing.

**Answer:** Disclosing the amount of monthly payment triggers a complete advertising disclosure under Section 226.24. Assuming this is NOT a credit sale, you ignore the reference to downpayment. That leaves you with requirements to disclose the number and amount of monthly payments (including a balloon and any ARM "steps") and the APR.

Reg Z's advertising requirements apply to the advertisement, not the creditor. Therefore, the realtor is responsible for complete and accurate advertising disclosures, even though s/he is not the creditor.

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## When Must APR Be Disclosed

Answer by Richard Insley and John Burnett, BOL Guru

[Guru BIOS](#)

**Question:** I am an assistant manager at an in-store branch. The bank compliance officer tells me I can't advertise our mortgage or auto rates without disclosing the APR. It was my understanding that this must be disclosed when actually PROCESSING a specific loan. I thought I had seen newspaper ads w/o the disclosed APR. He told me they were probably mortgage companies. Is he correct? Must we disclose the APR even in advertisements? If so, are there restrictions on HOW it is disclosed, such as spreading the fees over the life of the loan vs. using the first year only (which makes the APR higher)? Are there any fees that we can leave out of the APR?

**Answer by Richard Insley:** If you advertise rates, you MUST disclose the APR. It is calculated by exactly the same method you use to compute the APR that goes on each disclosure form you give out when making a loan. If you see ads by other businesses that quote rates but do not include the APR, they are violating Reg. Z. Section 226.24 of Reg. Z contains the advertising rules for closed-end loans.

**Answer by John Burnett:** There are also certain "trigger terms" that, if found in an ad for closed-end credit, will require that other information -- such as the APR -- be disclosed.

The trigger terms for closed-end loan ads are found in section 226.24(c) of Regulation Z. Among them are the amount or percentage of any down payment (applies only if advertiser is selling and financing), the number of payments or period of repayment, the amount of any payment, and the amount of any finance charge.

In my experience, the "number of payments or period of repayment" trips banks up often, since we love to advertise "30-year terms available," for example.

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## Advertising APR

Answer by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** For purposes of advertising an APR does the advertised APR need to take into account all pre-paid finance charges? How would per diem interest be appropriately disclosed? Also is this topic specifically addressed in the TIL Act or Regulation Z or Commentary?

**Answer:** All applicable Finance Charges must be factored into your calculations for advertising disclosures. Odd-days' interest is a wash. If you leave out both the extra interest and the extra days it purchased, the APR is rarely affected by more than a basis point.

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## Solicitation Letter, APR, and Disclosures

by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** We are planning a solicitation for an open ended lending product. We are planning on sending a letter for cross sell purposes that will state an initial APR. Will I need additional disclosures in the letter due to the APR being stated in the letter?

**Answer:** Yes. Your letter is an advertisement subject to Section 226.16 and the APR is a trigger term for open-end credit ads.

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## Loan Fees & APR

Answer by Andy Zavoina and Richard Insley, BOL Guru

**Question:** When you have a loan administrative fee or a loan fee how do you disclose the APR? The fee is not included in with the amount financed, but is included in with the finance charge and it does raise the APR. For example a loan of \$4,000.00 at a rate of 6.90%, \$20.00 loan administrative fee, has an APR of 7.1596%. A loan at \$5,000.00 at a rate of 6.90%, \$20.00 loan fee, has an APR of 7.1061%. If you are running a loan special what APR do you use if they are different?

**Answer by Andy Zavoina:**

[BIO AND CONTACT INFO](#)

You are correct that the admin fee needs to be included in your advertising.

### §226.24 Advertising.

4. Use of examples. Footnote 49 authorizes the use of illustrative credit transactions to make the necessary disclosures under §226.24(c)(2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by §226.24(c). The examples must be labeled as such and must reflect representative credit terms that are made available by the creditor to present and prospective customers.

**Answer by Richard Insley:**

[BIO AND CONTACT INFO](#)

Use a typical loan amount and resist the temptation to use a large loan example that dilutes the effect of the flat fee.

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