

# Rid Your Institution of Website and Social Media Compliance Violations

By John Zasada

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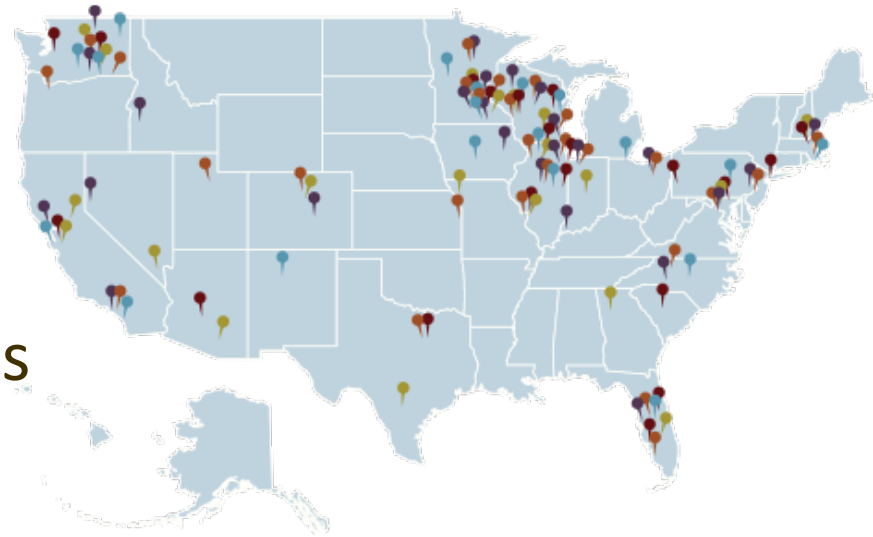
# Housekeeping

- If you are experiencing technical difficulties, please dial: **800-422-3623**.
- Send questions to your CLA compliance consultant
- The **PowerPoint presentation**, as well as the **webinar recording**, will be sent to you within the next 10 business days.
- Please complete our online survey



# About CliftonLarsonAllen

- A professional services firm with three distinct business lines
  - Wealth Advisory
  - Outsourcing
  - Audit, Tax, and Consulting
- More than 5,000 employees
- Offices coast to coast
- Serve 1,500+ financial institutions



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# Speaker Introduction

## John Zasada

John Zasada is a principal with the CliftonLarsonAllen LLP (CliftonLarsonAllen) Financial Institutions team specializing in all aspects of financial institution compliance. John has more than 22 years experience assisting financial institutions nationwide in complying with consumer protection regulations including establishing regulatory compliance programs, conducting compliance assessments, training staff on federal consumer protection regulations, performing website compliance assessments, and BSA/AML/OFAC independent testing. Prior to joining CliftonLarsonAllen, John was employed by a large consulting firm as Managing Director.

John is a frequent speaker on regulatory compliance trends, BSA/AML, compliance management, advertising compliance, social media compliance and website compliance. John has also been the lead instructor for the National Credit Union Administration (NCUA) Regulatory Compliance School and trained over 300 examiners on regulatory compliance.

John attended Utica College of Syracuse University, University of Colorado at Boulder, University of Copenhagen, Denmark, and Vermont Law School.



# Agenda

- General compliance environment
- Website compliance management
- Risks
- Compliance requirements
- Examples of violations
- E-SIGN



# Top Compliance Violations

- Regulation Z
- RESPA
- TIS
- HMDA
- Flood



# Context

- Top regulatory compliance risk?
- Not website compliance

BUT...





# What to Comply With?

- Truth-In-Lending Act (Regulation Z)
- Truth-In-Savings Act Regulation
- Non-Deposit Investment Guidelines
- USA Patriot Act
- Equal Credit Opportunity Act (Regulation B)
- Reserve Requirements (Regulation D)
- Expedited Funds Availability Act (Regulation CC)
- Real Estate Settlement Practices Act
- Fair Credit Reporting Act
- Fair Housing Act
- Electronic Funds Transfer Act (Regulation E)
- Overdraft Protection Requirements
- UDAAP



# UDAAP

- Unfair, Deceptive or Abusive Acts or Practices
- Compliance with regulations not enough
- Please examiners and consumers
- Objective to subjective
- 4 Ps
- 3<sup>rd</sup> party relationships
- Footnotes



# UDAAP

- Look at ethical behavior versus legal requirements
- Something can be legal but is it ethical?
- That is what can get you into trouble



# Clear as Mud

- Guidance?
- Hits every part of the product life cycle
- Tip of the iceberg



# UDAAP Examples

- Police report
- CD renewal
- Increase in non-interest income sparks scrutiny
- Disclosures fair?



# Eyes and Ears

- Beyond technical violations to overall fairness
- Can one person do it?
- Each department
- Each staff person



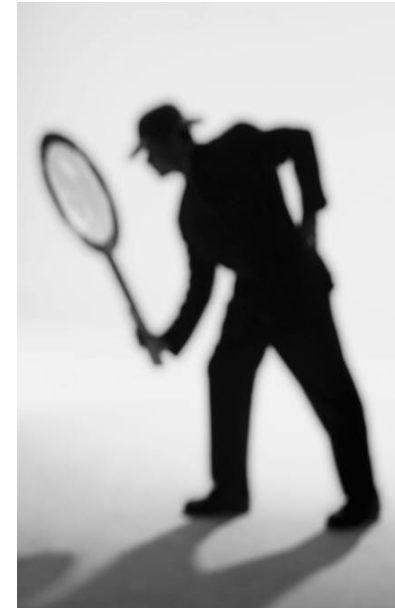
# Managing Advertising Compliance

- Wait and see
- Clean past exam
- New world
  - CFPB
  - UDAAP



# What's the big deal?

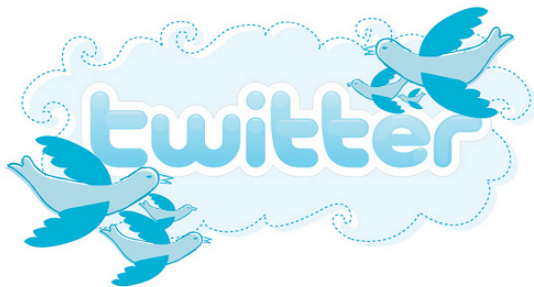
- Closer scrutiny
- Advertising is indicative of overall compliance
- An examiner can look at your advertisements and website and in a few minutes get a good idea of how firm a grasp you have on regulatory compliance





# Social Media

- Facebook, Twitter, LinkedIn...
- Purpose can be different than other forms of advertising
- Product disclosures and advertisements
- More work



# Identify and Train

- Who can post?
- What can they post?
- Train on compliance requirements



# Social Media Guidance

- FFIEC Guidance
- Policy and procedures
- Applicable regulations
- UDAAP



# Records Retention

- Incorporate into your overall records retention schedule
- Regulation B, Z, TIS



# Truth-in-Lending APR

- Must use “Annual Percentage Rate” or “APR”
- If it is variable, indicate as such



## Problem:

*New Car Loans as low as 4%*



**Solution:**

*New Car Loans as low as 4% APR*



# Keep Updating

- Actually Available Terms
  - Can only market terms that consumers can actually get
  - Update website
- Clear and Conspicuous





# Truth in Lending – Closed End Trigger Terms

- Advertising Trigger Terms:
  - The amount or percentage of any down payment
  - **The number of payments or period of repayment**
  - The amount of any payment
  - The amount of any finance charge



# Truth in Lending – Closed End Required Disclosures

- The amount or percentage of the down payment
- The terms of repayment
- The annual percentage rate, using that term, and, if the rate may be increased after consummation, that fact



## Problem:

Mortgage Loans up to 30 years  
to repay



## Solution:

Mortgage Loans up to 30 years to repay at 4.50% APR with 10% down payment would have monthly payments of \$5.07 per \$1,000 borrowed

*[Click here for payment calculator](#)*



# Remember

- “We have a variety of terms for our auto loans,” does not trigger additional disclosures
- Electronic Marketing: You can provide the required disclosures on a different webpage if:
  - You clearly indicate where to go find the required disclosures AND
  - There is a link that takes the member directly to the required disclosures
- APR is not a trigger term



# Payment Amount

- If you disclose any payment amount...
  - All payments that could apply over the life of the loan, including any balloon payment
  - The period of time each payment would apply
  - **If it is a first lien, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater**



# Truth-in-Lending Trigger Terms - HELOCs

- Any ad containing any terms from initial disclosure requires:
  - Finance Charge
  - APR, variable rate, maximum APR
  - Membership or participation fee
  - An estimate of fees for opening plan
  - Balloon payment information
  - Tax advisor information



# Truth-in-Lending Trigger Terms - HELOCs

Any term required to be disclosed under §1026.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of §[1026.40](#) triggers additional disclosures under this section





## Problem:

Our HELOCs have no annual fee  
and no points!



## Solution 1:

Our HELOCs have no annual fee  
and no points!

- Low variable rate of 5% APR with maximum rate of 18% APR
- Interest paid may be tax deductible, please consult your tax advisor



## Solution 2:

We've got really good deals on  
HELOCs;  
phone us for details



# More Rules for HELOCs

- Minimum payment
  - If it could, then state it will
- Discounted, premium rates, promotional rates
  - Duration and current rate
  - Close proximity



# Home Equity Lines of Credit

- HELOC Applications
  - If you provide an application with a written or electronic ad, you must also provide:
    - ◇ HELOC Early Disclosure
    - ◇ HELOC Early Brochure: “What You Should Know About Home Equity Lines of Credit”
- Remember to update the 15 year historical example



# Truth-in-Lending Trigger Terms – Open End

Any ad containing terms from initial disclosure requires:

- Finance Charge
- APR, if variable rate
- Membership or Participation Fee



# Truth-in-Lending Trigger Terms – Open End

Any lending term required to be disclosed initially, whether affirmatively or negatively, in an advertisement triggers additional disclosures



# Implicit Terms

- Implicit terms also count as trigger terms:
  - If the triggering term is not stated explicitly, but may be readily determined from the advertisement.
    - ◇ Prime +1





# Fixed Rate

- Fixed Rate
  - Cannot use the word “fixed” unless:
    - ◇ You include a specific period of time the rate will be fixed or
    - ◇ The rate will not increase while the plan is open



## Problem:

Our Credit Cards have no annual fee!



## Solution

# Our Credit Cards have no annual fee!

- 12.00% APR
- \$25 cash advance fee
- 1% Foreign Transaction fee



# Promotional Rate and Fee

- Promotional Rates and Fees
  - If you have a promotional rate or fee:
    - ◇ Must disclose the following in a prominent location, with close proximity to the FIRST listing of the promotional rate/fee:
      - When the promotional rate or promotional fee will end
      - The annual percentage rate that will apply after the end of the promotional period
      - The fee that will apply after the end of the promotional period



# Credit Card Application Disclosures

- Annual percentage rate for purchases, balance transfers, cash advances
- Penalty APR and when it applies
- How to avoid paying interest on purchases
- Minimum interest charge
- For credit card tips from the CFPB
- Fees
  - Annual fee
  - Transaction fees
  - Penalty Fees
  - Other fees
- How we will calculate your balance



# Credit Card Application / Solicitation

## G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
<b>Annual Percentage Rate (APR) for Purchases</b>	<b>8.99% to 19.99%</b> when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
<b>APR for Balance Transfers</b>	<b>15.99%</b> This APR will vary with the market based on the Prime Rate.
<b>APR for Cash Advances</b>	<b>21.99%</b> This APR will vary with the market based on the Prime Rate.
<b>Penalty APR and When it Applies</b>	<b>28.99%</b> This APR may be applied to your account if you: <ol style="list-style-type: none"> <li>1) Make a late payment;</li> <li>2) Go over your credit limit twice in a six-month period;</li> <li>3) Make a payment that is returned; or</li> <li>4) Do any of the above on another account that you have with us.</li> </ol> <b>How Long Will the Penalty APR Apply?:</b> If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
<b>How to Avoid Paying Interest on Purchases</b>	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
<b>Minimum Interest Charge</b>	If you are charged interest, the charge will be no less than \$1.50.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	<b>To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="http://www.consumerfinance.gov/learnmore">http://www.consumerfinance.gov/learnmore</a></b>

Fees	
<b>Annual Fee</b>	None
<b>Transaction Fees</b>	
• Balance Transfer	Either <b>\$5</b> or <b>3%</b> of the amount of each transfer, whichever is greater (maximum fee: <b>\$100</b> ).
• Cash Advance	Either <b>\$5</b> or <b>3%</b> of the amount of each cash advance, whichever is greater.
• Foreign Transaction	<b>2%</b> of each transaction in U.S. dollars.
<b>Penalty Fees</b>	
• Late Payment	Up to <b>\$35</b> .
• Over-the-Credit Limit	Up to <b>\$35</b> .
• Returned Payment	Up to <b>\$35</b> .
<b>Other Fees</b>	
• Required Account Protector Plan	<b>\$0.79</b> per \$100 of balance at the end of each statement period. See back for details.

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)."



# Truth-in-Savings (TIS) Free Accounts

- Do not call it “free” if it isn’t
- Maintenance and activity fees



## Problem:

We offer free checking accounts  
(as long as you maintain a  
minimum balance of  
\$500 each month)





## Solution:

We offer low-cost checking accounts (as long as you maintain a minimum balance of \$500 each month)



# TIS Rate Disclosure

- Truth in Savings permits the abbreviation "APY" as long as the term "annual percentage yield" is stated at least once in the advertisement
- Dividend/Interest rate



Problem:

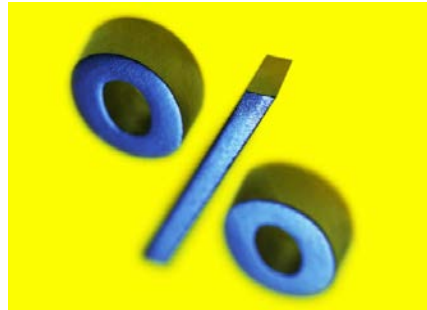
Savings 1.01% APY



**Solution:**

**Savings 1.01% APY**

**APY = Annual Percentage Yield**



# TIS Trigger Terms

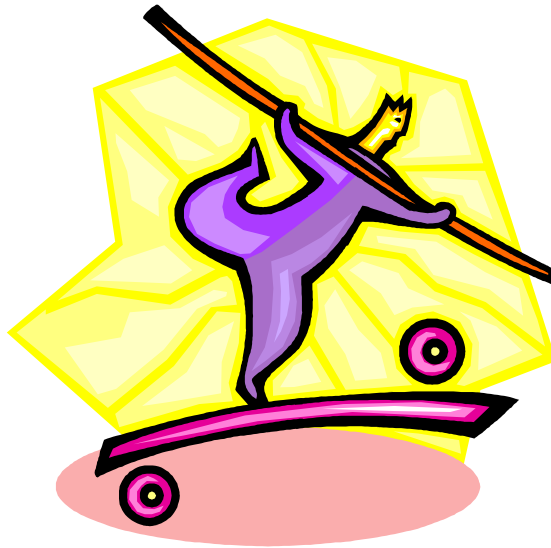
- APY triggers:
  - Variable rate information
  - Time offered
  - Minimum balance to earn the advertised annual percentage yield.
  - Minimum opening deposit
  - A statement that fees could reduce the earnings on the account
  - For CDs:
    - ◇ The term of the account.
    - ◇ A statement that a penalty will or may be imposed for early withdrawal.



## Problem:

CDs 3.25% APY

APY = Annual Percentage Yield



# Solution:

## CDs 3.25% APY

Minimum Balance to Open & Earn APY - \$5,000

Minimum Term – 18 Months

Penalty for Early Withdrawal

This Rate Accurate as of 03/01/17

APY = Annual Percentage Yield



# TIS Links

You can use a link to more detailed disclosures but the link must “clearly refer” to the location

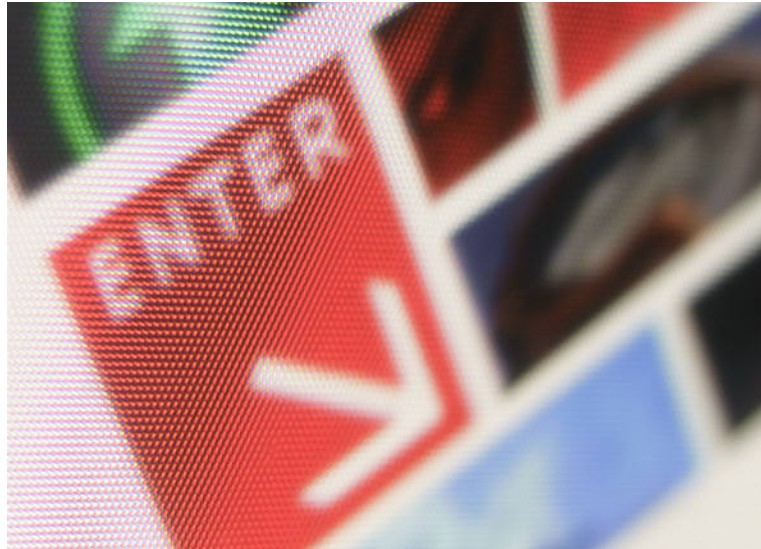




**Problem:**

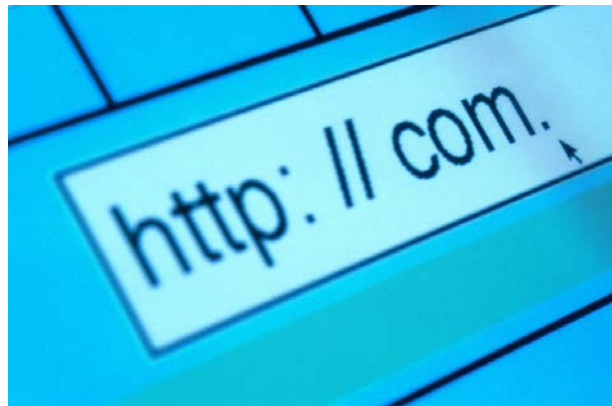
# 3.50% APY Certificate

[Click here](#)



## Solution:

3.50% APY Certificate  
Click here for Truth in  
Savings Disclosures



# Update Disclosures

- Disclosures on websites can become inaccurate over time
- When you change printed disclosures, change disclosures on the website
- Periodically review online disclosures
- Regulation D example



# Footnotes

- Be careful using footnotes
- Often content is copy and pasted onto website and social media posts
- Footnote explanation not included after the copy and posts
- Violations as a result
- “1.05% APY<sup>1</sup>”



# Complaints

- Complaint management system
- Track complaints made over social media
- Train staff on what constitutes a complaint and who to report complaints to
- Analyze each complaint
- Root cause



# Advertising Discrimination

- Indirectly discouraging persons from applying for credit based on a prohibited basis under Regulation B? Suppose an advertisement contains pictures of people. It is possible that someone could allege that by not including persons of a protected class in these pictures, the financial institution is discouraging them from applying for credit.



# Advertising Discrimination

- The commentary to Regulation B states:
  - Practices prohibited by this section include:
    - “Use of words, symbols, models or other forms of communication in advertising that express, imply or suggest a discriminatory preference or a policy of exclusion in violation of the act.”
- Consequently, financial institutions should consider what pictures of people they include on advertisements in terms of Regulation B and fair lending



# Common Fair Lending Deficiency

- Age-based deposit account with credit feature
- Senior accounts for those 50 and older





## Problem:

# Super Seniors Club

Members age 55 and older receive a special newsletter, free travelers' checks, and discounts on loan rates



## Solution:

# Super Seniors Club

Members age 55 and older receive a special newsletter, and free travelers' checks.

OR

Members age 62 and older receive a special newsletter, free travelers' checks, and discounts on loan rates.



# Courtesy Pay Programs

- Advertisements for overdraft programs require:
  - The fee or fees for the payment of each overdraft;
  - The categories of transactions for which a fee for paying an overdraft may be imposed;
  - The time period by which the customer must repay or cover any overdraft; and
  - The circumstances under which the financial institution will not pay an overdraft.



# Problem:

## Fee Schedule:

• Cashiers Checks	\$2.00
• Money Orders	\$1.00
• Copy of Quarterly Statement	\$3.00
• Print out of account	\$3.00
• Courtesy Pay Fee	\$28.00



# Solution:

## Fee Schedule:

• Cashiers Checks	\$2.00
• Money Order	\$1.00
• Copy of Quarterly Statement	\$3.00
• Print out of account	\$3.00
• Courtesy Pay Fee	\$28.00

## Courtesy Pay Disclosures:

- Payment by the financial institution is a discretionary courtesy and not a right of the consumer or an obligation of the financial institution. This privilege for consumer checking accounts will be limited to a maximum amount of \$300 overdraft (negative) balance. Transaction types that are eligible for courtesy pay include and are limited to: ACH transactions, Drafts and On-Us Checks at the Teller Counter. You must bring your account balance to a positive balance within every thirty (30) day period for a minimum period of 24 hours. The financial institution, in its discretion, can cancel this protection and cease paying overdrafts at any time without prior notice of reason or cause.



# E-SIGN

- Several years since E-SIGN passed
- Still represents an opportunity to reduce expenses, enhance consumer convenience, but...
- A lot of financial institutions still don't do it right!
- But...not required in some cases
- Do you know the difference?



# E-SIGN Act

- Substitute Electronic Delivery for paper:
  - If “written” delivery is a legal requirement, and
  - Paper will be discontinued, and
  - Financial institution will transmit items electronically, then
  - You have “e-delivery” or E-D!



# E-SIGN Act

- Pull ED:
  - Financial institution sends an alert message
    - Email that announces “Your disclosure is posted on our web site”
    - URL or reference to location of disclosure
    - Length of time disclosures will remain available
  - Consumer
    - Logs into web site
    - Downloads, reads and saves/prints disclosures
      - Keep disclosures in a secure area - online banking platform is usually most secure area





# E-SIGN Act

- Push ED:
  - Financial institution sends an alert message
    - E-mail that announces “here are the disclosures”
      - use encryption for sensitive information
    - The disclosures themselves can appear in the e-mail message or in an attached file
  - Consumer
    - Receives e-mail
    - Opens message or attached file
    - Reads and saves/prints disclosure



# E-SIGN Act

- Requirements to Comply:
  - Must Provide Disclosure to your customers/members and
  - Obtain consent (Opt-In)



## E-SIGN Act Disclosures:

- E-D for current transaction or more?
- Availability of paper delivery
  - Now
  - Later, if consumer would like to go back to paper
  - Fees for paper
- Necessary hardware/software
- How to withdraw consent at a later date
- How to notify financial institution when email address changes



# E-SIGN Act Consent

- Need affirmative consent - DECLARE
- Must demonstrate electronic success - DEMONSTRATE
  - Cannot automatically opt members in!
  - Cannot opt consumers in over the phone, or through a paper disclosure, or in person!
- Declare - I want E-D
  - ½ of consent process
  - Can be done via paper or electronically
  - **Still must “demonstrate” success**



# Thank you!

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