

Lending Laws and Regulations

Fair Housing Act

The Fair Housing Act (FHA), prohibits discrimination based on race, color, national origin, religion, sex, familial status, or handicap in the sale and rental of housing, in mortgage lending, and in appraisals of residential real property. In addition, the FHA makes it unlawful to advertise or make any statement that indicates a limitation or preference based on these criteria. This prohibition applies to all advertising media, including bank use of social media. For example, if a financial institution engages in residential mortgage lending and maintains a presence on Facebook, the Equal Housing Opportunity logo must be displayed on its Facebook page, as applicable.

The ECOA and Regulation B

The Equal Credit Opportunity Act and Regulation B, prohibit creditors from making any oral or written statement in advertising that would discourage applicants from applying for credit. In addition, a financial institution cannot use images in an advertisement that indicate a preference for a certain class of customer.

Example: If Friendly Bank includes stock images on its Facebook page, those images should show both women and men of all ages and races.

Note

This does not apply to candid photos taken of actual customers—for example, pictures of bank customers attending a bank event.

Banks using social media must still observe the time frames outlined under Regulation B for notifying applicants of the outcome of their applications or requesting additional information for incomplete applications.

When denying credit, a creditor must provide an adverse action notice detailing the specific reasons for the decision or notifying the applicant of his or her right to request the specific reasons for the decision. This requirement applies whether the information used to deny credit comes from social media or other sources.

It is also important to note that creditors may not, with limited exceptions, request certain information, such as an applicant's race, color, religion, national origin, or gender. Although, social media sites may reveal such information, a creditor should take care to ensure that prohibited information is not requested, collected, or otherwise used in violation of applicable fair lending laws.

If your bank's social media site is maintained by a third party that may request or require users to provide personal information such as age or gender, or use data mining technology to obtain such information, the creditor should ensure that bank employees and lending staff do not improperly request, collect, or use such information or give the appearance of doing so.

Community Reinvestment Act

A bank that is subject to the Community Reinvestment Act (CRA) must maintain a public file that includes, among other items, all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the institution's performance in helping to meet community credit needs. The institution must also include in the CRA file any bank response to those comments. This requirement also applies to comments received through social media sites run by or on behalf of the bank. A depository institution subject to the CRA should ensure that it has policies and procedures addressing how to monitor, identify, respond, and archive comments.

However, under the CRA, comments about the institution made on the Internet through sites that are not run by or on behalf of the institution are not necessarily deemed to have been received by the depository institution and would not be required to be retained as CRA comments. Rather, the institution should retain comments for the CRA file that are (1) made on social media sites run by or on behalf of the institution, and (2) specifically relate to the institution's performance in helping to meet community credit needs.

Other lending laws and regulations

Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) and its implementing regulations contain restrictions and requirements concerning solicitations using eligibility information, responding to direct disputes, and collecting medical information in connection with loan eligibility. The FCRA applies when social media is used for solicitation, responding, and collection activities in connection with a loan. For example, if a customer tweets @FriendlyBank's Twitter account stating that information the bank reported to the credit bureau about a loan was inaccurate, the bank may be obligated to investigate the dispute within the timeframes stipulated under the FCRA.

The FCRA also covers sharing information with affiliates and requires the bank to provide a notice and opt out before information obtained from a third party or information to be used for marketing purposes is shared with affiliated entities. For example, if an individual posted information on a bank's Facebook page that he is looking for a mortgage, the bank may not provide his information to its mortgage affiliate so that it may market mortgage loans to him without offering an opportunity to opt out of that information sharing.

Truth in Lending Act and Regulation Z

Any social media communication in which a creditor advertises credit products must comply with Regulation Z's advertising provisions. Regulation Z broadly defines advertisements as any commercial messages that promote consumer credit, and the official commentary to Regulation Z states that the regulation's advertising rules apply to advertisements delivered electronically. The Regulation Z rules contain triggering term requirements for both open end and closed end credit, as well as a requirement that any advertisements relating to credit be presented in a clear and conspicuous manner. It includes requirements regarding the proper disclosure of the annual percentage rate and other loan features. Like Regulation DD, Regulation Z provides that triggered disclosures can be "one-click" away by weblink, if that disclosure is clear and conspicuous.

In addition, Regulation Z is designed to promote the informed use of consumer credit by requiring disclosures of loan terms and costs. Further, additional requirements apply to certain classes of loans such as private education loans, home secured loans, and credit card accounts.

Regulation Z also requires that, for consumer loan applications taken electronically, the financial institution must provide the consumer with all Regulation Z disclosures within required time frames. There is no exemption from Regulation Z for applications taken via social media.

Real Estate Settlement Procedures Act and Regulation X

Section 8 of the Real Estate Settlement Procedures Act (RESPA) prohibits certain activities in connection with federally related mortgage loans. These prohibitions include fee splitting, as well as giving or accepting a fee, kickback, or object of value in exchange for referrals of settlement service business. For example, Friendly Bank cannot run a promotion on its Facebook page offering \$50 to anyone who refers a potential mortgage customer to the bank. RESPA also has specific timing requirements for certain disclosures. These requirements apply to applications taken electronically, including via social media.