



**YOUR VOICE - By STEPHEN MARGRETT**

# Compliant Marketing

**T**he battle for the borrower is intensifying once again. The MBA's latest projection for 2012 shows residential loan originations at their lowest level in living memory, with little improvement expected in 2013.

Competition for a worthwhile slice of this shrinking pie is sure to be fierce. So lenders will need to use all the marketing tools at their disposal if they are to prosper.

There's a new and serious challenge, however. A tidal wave of legislation and regulation is seriously impacting how lenders are allowed to reach out for new business.

To disregard the requirements is dangerous. The newly established Consumer Financial Protection Bureau (CFPB) has been given real teeth and all indications are that it intends to use them to enforce the multitude of new laws.

The central mission of the CFPB is "to make markets for consumer financial products and services work for Americans — whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products. Above all, this means ensuring

that consumers get the information they need to make the financial decisions they believe are best for themselves and their families—that prices are clear up front, that risks are visible, and that nothing is buried in fine print."

The bottom line is that lenders are operating in an environment where mortgage marketing attracts greater scrutiny than ever before – not only

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by regulatory authorities, but also by trade associations and consumer groups.

The inescapable reality is that the days are gone when a mortgage lender could turn loan originators loose to do their own marketing. In the new world order this model presents unacceptable risk.

So management has to take a much more active role in ensuring its company's brands and products are correctly and compliantly represented in the marketplace. Outbound communications with prospects, customers and even referral partners – whether driven from the center or by originators – must be controlled, but without inhibiting genuine creativity and individual initiative.

How does a mortgage lender establish a controlled environment that ensures sales and marketing people adhere to the new rules and regulations, but at the same time allows ingenuity and enterprise to flourish? Oversight of all outbound marketing – including variable communication content, such as personalized copy and graphics – might be a good start, but it's not enough. Nor is it enough to issue policy statements to originators and/or require them to obtain approval before doing anything.

These approaches are cumbersome and inefficient. They are expensive to administer and wasteful of human resources. They are also impractical inasmuch as speed to market is lost. New business opportunities come and go so quickly in today's roller-coaster market that even a brief delay in addressing them can be disastrous.

What's needed is rules-driven technology – a compliance-centric marketing solution – that handles the regulatory requirements, thereby minimizing reliance on human intelligence. In the writer's view,

this technology needs to provide graded levels of control over the players in the marketing process. Management simply has to decide what degree of control to exercise in relation to each of the system's key functions.

The levels of management control might follow the pattern below, working down from the most to the least restrictive:

**1. Prohibition:** Different types of users can be prevented from accessing specific system functions by means of a customizable "permissions" capability.

**2. Authorization:** Marketing materials created by users at lower levels in the corporate hierarchy cannot be implemented until approved at the center.

**3. Alerts:** A defined set of fields is monitored and changes reported via an online feed, enabling quick action to remedy any departure from company policy.

**4. Oversight:** Users at higher levels in the hierarchy can view users at lower levels, giving management an instant window on the activities of originators.

**5. Reporting:** A dashboard of mission-critical metrics provides information that allows management to hold users at lower levels accountable for their performance.

**6. Audit trail:** Providing online access to a real-time log of actions taken by users, including copies of all outbound marketing communications.

Finally, in order to close the circle, management should implement a regime of regular instruction and training on current law and how the company's marketing technology enables compliance – ensuring that everyone involved remains fully conversant with their role and responsibilities in mitigating the inherent risks.

It's the FTC's "MAP – Final Rule" that has pushed marketing compliance to the top of every lender's agenda. This became effective August 19, adding a new component (Part 321) to the pre-existing MAP Rule. Of particular interest is section 321.3, which "prohibits any material misrepresentation, whether made expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product."

To support the rule's enforceability, section 321.5 sets out "recordkeeping requirements" defining various categories of

records that persons covered by the rule are required to retain. Specifically:

"For a period of 24 months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, covered persons must retain ... copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period."

A "person" is defined in section 321.2(f) as "any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity" – in other words, everyone who's reading this!

In addition to MAP, there's an array of other mortgage-specific regulations that constrain marketing activity. Specifically, the SAFE Act of 2008 led to

the establishment of the National Mortgage Licensing System (NMLS) and Registry. An originator's NMLS number must now be displayed in specific relationship to their name and contact information on all outbound marketing communications. What's more, marketing communications must incorporate the relevant legal disclosure per jurisdiction in which the lender operates. How and where this information is displayed is typically specified in state law, down to details such as minimum point size.

Looking beyond the mortgage arena, yet more regulations come into play (at both the federal and state level).

The Financial Services Modernization Act (commonly known as Gramm-Leach-Bliley, or simply GLB) became federal law in 1999. Title V of the Act covers issues of data privacy, including giving consumers certain opt-out rights regarding their personal information. It's clear from the Act's language that the responsible party is deemed to be the financial institution rather than individual sales agents or marketing executives.

The Telephone Consumer Protection Act of 1991 was the first to introduce controls on the unwelcome attentions of telemarketing operators. Many states have introduced complementary measures, including Do Not Mail legislation that typically creates a consumer registry at the state level.

So, it's a big, complicated world that requires technology. ❖

The bottom line  
is that lenders  
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**mortgage marketing**  
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