



Marketing Compliance Risk Landscape Rapidly Evolving



The regulatory environment impacting bank marketing programs and practices continues to evolve, expand, and intensify. At the same time, bank marketing teams are shifting more of their time and resources toward digital and ‘performance marketing’ programs to optimize both campaign performance and ROI. These digital tools, including social media platforms, have become critical components in the marketing toolkit. However, this shift brings with it a heightened level of regulatory and compliance scrutiny and risk, requiring new approaches, systems, and processes to ensure appropriate levels of regulatory compliance while still maximizing marketing effectiveness.

A Rapidly Shifting Regulatory Landscape

Historically, marketing programs and processes have not been the primary focus of most regulatory examinations. However, this is changing, and changing rapidly. For instance:

- Regulators have expanded their focus to not just look at the compliance factors associated with creative assets (triggering terms, regulatory bugs) but to review a full range of campaign components – media mix, targeting models and algorithms, tracking and reporting methodologies, etc. Often these reviews are triggered by examining data that may indicate unintended bias regarding protected classes, but not always.
- Regulators have also expanded their definitions of UDAAP, bringing a whole new level of compliance-related issues to additional product lines – e.g., the CFPB’s application of UDAAP to include fair lending and redlining concepts to deposit product campaigns – this requires expansion of internal compliance procedures;
- Regulators have said that financial institutions have culpability for actions taken on their behalf by their third-party digital marketing agencies; and
- The use of Affirmative Marketing programs to supplement BAU marketing activities to ensure proactive outreach and penetration of majority-minority census tracts is increasingly being

required to manage risks posed by targeted digital marketing.

Failure to comply with these rapidly evolving regulatory guidelines, expectations and requirements can have serious negative implications for an institution and result in enforcement actions, remediation requirements and/or monetary fines. As a result, Compliance personnel are increasing their oversight of marketing campaigns and campaign components and requiring additional and more detailed documentation to assess overall campaign risk and illustrate how that risk is being managed and mitigated.

Quickly Assessing Potential Risk of Current Process

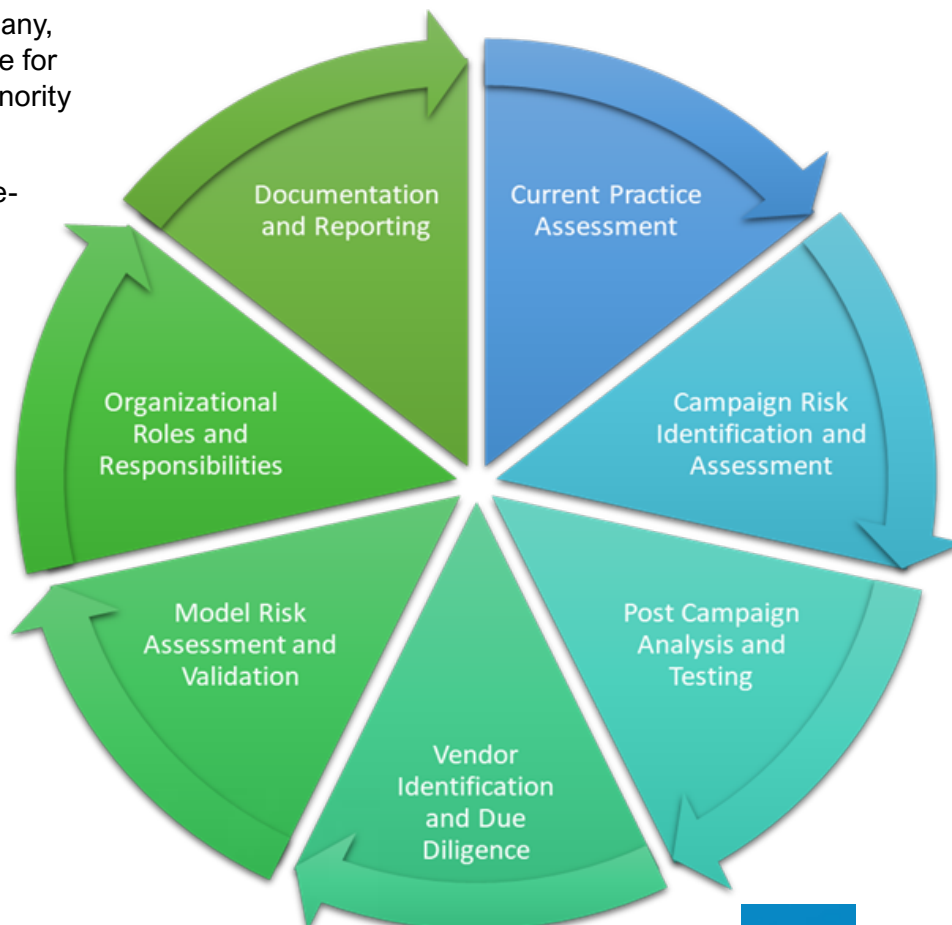
Several of CPG’s national and regional bank clients have decided to be proactive and perform an audit of their current marketing compliance processes to both minimize risk and improve efficiency. Typically, these engagements begin with an assessment of current practices compared to the latest regulatory landscape and guidance and identify compliance risk-related issues that may be specific to the client’s business model, marketing approach, and future plans. This analysis, typically conducted hand-in-hand with the client’s Compliance and Marketing teams, identifies any gaps that may exist in its current practices and creates a plan to implement new practices and programs to ensure the bank is well-positioned to maintain strong compliance performance going forward. The approach usually follows three steps:

- Identify new and emerging marketing regulatory risk-related issues relative to market focus, media mix, business strategy, and regulatory expectations;
- Review existing marketing regulatory risk management processes and practices and identify potential gaps and enhancements; and
- Create a roadmap and implementation plan to help guide the development of new capabilities, practices and processes to address emerging marketing-related regulatory risk issues and/or improve current risk management processes.

The Seven Areas of Evaluation

The scope of this assessment typically focuses on practices in seven areas of the marketing process:

1. **Planning** – What type of annual planning process does Marketing undertake, how is that plan updated throughout the year, and to what extent are Compliance personnel involved and risk management issues identified and evaluated?
2. **Campaign Development** – What process does Marketing follow in developing campaigns, when and how is Compliance involved in the process, do reviews require multiple iterations, what aspects of risk (creative assets, audience targeting, modeling, digital media optimization, etc.) are assessed, and how are Compliance consideration and reviews documented?
3. **Post Campaign Review** – What type of back-end measurement and reporting is conducted by Marketing to ensure that audience targeting and results were executed according to plan, and was any disparate treatment delivered unintentionally? What corrective action, if any, was recommended and taken to remediate for underrepresentation in LMI or majority minority communities?
4. **Social Media** – What standards and guidelines are established for employee use of social media channels? How is social media used in marketing campaigns, and what care is taken in audience targeting to ensure and document that disparate treatment of protected classes does not occur?
5. **Vendor Management** – What vetting and selection processes, due diligence, ongoing management and training of third-party vendors are in place to ensure that vendors are aware of and complying with all bank regulations?
6. **Organizational Roles and Responsibilities** – How is the compliance responsibility distributed between Marketing, Compliance, Data Analytics and third-party organizations, and how is this process managed to identify and mitigate compliance risk? How is acceptable risk tolerance established that meets risk management standards while also allowing Marketing to leverage digital marketing and media to optimize revenue growth? Is there an escalation process in place and documented to allow for business management risk acceptance?
7. **Documentation and Reporting** – How are campaign-related risk issues, compliance reviews, and approvals documented and reported? Is there a system in place to archive all the supporting material used to review campaign risk components, identify mitigating factors, and document approvals? Can this material be retrieved easily to comply with examination requests?



Creation of Enhanced Risk Assessment and Management Processes and Capabilities

The outcome of this comprehensive review is identification of specific compliance-related risk management gaps in the various stages of the marketing and compliance development and review cycle. The goal is to identify what is working well and what needs to be enhanced to help focus program development activities on the right issues. We focus program development activities across multiple functions.

While specific recommendations vary by client, often they address:

- Processes to obtain internal consensus regarding regulatory-related risk definitions and tolerances relative to the Bank's overall business model, marketing objectives and priorities;
- Campaign-level risk rating systems that take into account the risk levels associated with various campaign components;
- Marketing's campaign development process to embed appropriate regulatory-related risk questions and issues at an early stage in the process;
- Regulatory risk analysis for each type of audience targeting model used by both internal teams and external vendors;
- Tracking and reporting metrics;
- Due diligence processes to confirm vendor compliance and knowledge of emerging regulatory risk issues and focus areas; and
- Clarification of compliance-related roles, responsibilities, and authority levels of the various departments and personnel involved in the Marketing and Compliance process.

Once recommendations are finalized and approved, CPG can assist with the development of specific Marketing Compliance-related program components. Our implementation assistance has included:

- Development and installation of an automated campaign risk rating system;
- Vendor due diligence questionnaires and attestations;
- Creation of comprehensive Affirmative Marketing plans and programs;

- Organizational design of a "First Line of Defense", including job descriptions, roles and responsibilities and process descriptions;
- Development of analytical tools to assess the compliance risk related to the use of internal and external targeting models and algorithms.

CPG's Marketing Compliance and Review process uses proven techniques and tools to provide clients with a number of significant and tangible benefits. These include:

- **Consistency** -- Ensuring that all programs and campaigns go through the same risk identification and assessment process and that the right level and types of reviews are focused on the right types of risk -- each time, every time.
- **Efficiency** – Providing automated solutions and eliminating multiple reviews and duplication of effort to help reduce costs and accelerate speed to market.
- **Clarity** – Developing clear organizational roles and responsibilities, escalation processes and risk-acceptance authorities.
- **Documentation** – Creating a system to manage marketing compliance-related documentation, report risk levels and issues, and retrieve material needed to support internal reviews and external examinations.

The Landscape is Changing Rapidly – Making Enhancements Today Will Avoid Problems Tomorrow

Marketing professionals are now faced with a whole new array of compliance-related challenges and responsibilities that require new approaches, skill sets, and processes. These challenges will only increase as the use of new media and marketing programs expand and regulatory agencies intensify and broaden the scope of their oversight practices. As a result, it is imperative that Marketing leadership take a proactive approach to develop new processes, programs and policies that create a more consistent and efficient approach to marketing compliance-related risk identification, assessment, mitigation and documentation.