Compliance in the Digital Age: What Credit Unions Need to Know

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Disclaimer

This presentation is for informational purposes only. Any remarks delivered by the presenter should not be construed as legal advice on any particular set of facts or circumstances. Please consult your credit union’s attorney if you require legal advice.
Marketing & Compliance

- Oil & Water!
- Sometimes?!
- Collaborative Partners!
- Compliance: Help you get to YES!
- Marketing: Involve Compliance at the Onset!
Examples

• New Products & Services
• Ad Copy/Disclosures
• New Promotions & Business Development Ideas
• Regular Contact, Forms, Processes, Dialogue
• Compliance Committee Discussions
The Good Old Days...

- Magazines, newsletters, statement stuffers, flyers, direct mail pieces
- MAYBE: TV and radio advertisements
- Traditional media advertisements – remember newspapers? Telephone directories?
- Trade shows, conferences, hand-outs
Fast Forward...

• All the “old” methods AND:
• Web advertising, social media, multimedia (videos, podcasts, etc.), E-mail, text messages, blogging
• Examples: Facebook, Twitter, LinkedIn, Periscope, Pinterest, Instagram, Snapchat, MySpace, Google Plus, etc.
• Google, Bing, MSN - SEO – Search Engine Optimization, Google Analytics, etc.
By the numbers:

Facebook:
- 1.591 billion active users
- 1.038 billion daily active users

Twitter:
- 100 million daily active users
- 65 million Twitter users in the U.S.

LinkedIn:
- Over 25 million accounts are viewed daily
- 1 out of 3 professionals on the planet has a LinkedIn profile
Digital Compliance - Agenda

- FFIEC Consumer Compliance/Risk Management Guidance on Social Media
- Social Media Policies
- Social Media Advertising – Terms & Conditions
- Member Questions/Complaints
- UDAAP
- Digital Advertising Compliance: Share Accounts, Lending, Others
- Record Retention
- Resources
FFIEC Social Media Guidance

• Effective: December 2013
• Social Media: “...interactive online communication in which users can generate and share content through text, images, audio, and/or video.”
• NOT: Emails and texts “standing on their own”
• Risk-focused in nature; impact of laws and regulations on social media
FFIEC Guidance - #2

- Risk Management Program: Compliance, IT, legal, HR and Marketing specialists
- Multiple components for risk identification and mitigation
- Due diligence for 3rd party service providers, internal controls, employee training, just to name a few...
FFIEC Guidance—#3

Regs, Regs and More Regs:

- Truth in Savings
- Share Insurance
- ECOA, Fair Housing Act
- Truth in Lending/Regulation Z
- RESPA
- UDAAP
- Nondeposit Investment Products
- EFTA/Regulation E
- UCC Article 4; Regulation CC

- BSA/AML
- Privacy
- CAN-SPAM
- Telephone Consumer Protection Act
- Children’s Online Privacy Protection Act (COPPA)
- Fair Credit Reporting Act
- Fair Debt Collection Practices Act
FFIEC Guidance - Risks

- Reputation Risk:
  - Fraud and Brand Identity
  - Third Party Concerns
  - Privacy Concerns
  - Consumer/Member Complaints and Inquiries
  - Employee Use of Social Media Sites
Operational Risk:

- “Risk of loss resulting from inadequate or failed processes, people or systems.”
- Root cause can be either internal or external events
- Involves use of IT, which encompasses use of Social Media
FFIEC Guidance – Risks (Cont.)

• Compliance Risk:
  – Nonconformance with laws, regulations, prescribed practices, internal policies and procedures and ethical standards
  – Potential for defamation or libel risk when there are broad distribution of information exchanges
  – Can expose credit unions to enforcement actions and/or civil lawsuits
Is the Sky Falling?

• Not yet!
• Social Media Policy – Can Make or Break You!
• Hint: Don’t copy the one from down the street!
• Involve a cross-functional team in building (or reviewing)
Social Media Policy

• Considerations of what to include:
  – Posting rules (who, what, when, where, how?)
  – Employee usage, access and responsibility requirements
  – Pictures & images
  – Monitoring/auditing
  – Enforcement provisions
  – Reporting tools (management, Board)
  – Response requirements for member complaints/negative or inappropriate postings
Social Media Policy (Cont.)

- Consider involving outside counsel
- Review on a periodic basis
- Test: Does the rubber meet the road?
- Compliance staff – Review for products and services – disclosures on posts
- What else?
Social Media Policy - Caution

• National Labor Relations Act (NLRA) Concerns:
  – Overly broad social media policies violate NLRA
  – Examples: Prohibiting employees from making “disparaging comments about the company through any media, including online blogs and other electronic media.”
  – Allowing only “appropriate” discussion of working conditions.
Enhance your image with game-changing ideas
COMPLIANCE COMMUNITY

LIBRARY

SHARED FILES

RE: BSA/OFAC TRAINING
BY: MARY HIGGINS 03-08-2016
POSTED IN: COMPLIANCE COMMUNITY

RE: OPENING A NEW ACCOUNT FOR A POLITICAL CAMPAIGN
BY: KATHERINE MUSHET 03-08-2016
POSTED IN: COMPLIANCE COMMUNITY

RE: MLA POLICY
BY: KAYE MCMULLIN 03-03-2016
POSTED IN: COMPLIANCE COMMUNITY

159 Files Shared
8,038 Views
11,748 Downloads
120 days since launch
Social Media – The “Fine Print”

• Social media outlet rules, terms and conditions
• Facebook – at least 8 pages – only on ads:
  • Example “Don’t use the Facebook logo in place of the word “Facebook.”
    – Ad review process
    – Using text in images; photos and promotion rules
    – “Things You Should Know”
    – “Prohibited Content”
• Doesn’t include their “terms and conditions”
Member Questions/Complaints

- Monitoring and Tracking Procedures
- Employee Training
- Reporting Considerations
- CFPB: Complaint Management System - Part of Overall Compliance Management System
- Part of further regulatory requirements?
Member Questions/Complaints - #2

• CFPB Mortgage Rules:
  – RESPA Error Resolution Requirements
  – Information Request Requirements
  – Payoff Request Requirements
  – Strict timelines associated with each

• Billing Disputes (Reg Z) and Error Resolution Requirements (Reg E)
Social Media – General Considerations

• Who’s saying what and where is it occurring?
  – Monitor Social Media Outlets

• Social media management software
  – Free tools: Google Alerts, Hootsuite, SocialMention, etc.

• Member Education

• Posting Management Requirements
  – Offer good through...
Social Media – General Considerations #2

Pictures:

– Diversity
– Permission – awards, contests, etc.
– Background Implications
– Appropriate use and non-use considerations
– Copyright considerations
Digital Advertising Compliance: General

• What to comply with? “All applicable federal, state, and local laws and regulations.”

• Clear and proper disclosures of actually available terms to comply with each regulation

• Critical: Compliance audits and monitoring

• Avoid Reputation Risk: Be proactive rather than reactive on all things involving digital advertising compliance and social media
UDAAP

• Unfair, Deceptive or Abusive Acts and Practices
• Important: Be accurate and do not mislead
• Unfair or misleading ads: How can you spot them?
  – Possible Examples:
    • Get preapproved before you shop!
    • We will save you money!
    • We’ll drop your rate by X%!
    • We’ll beat the competition!
    • All of your family members can join!
UDAAP (Cont.)

“Unfair” Acts or Practices include:

- Dishonoring credit card convenience checks without notice to the consumer
- Misrepresentation of loan terms
- Refusing to release a mortgage lien after a consumer makes the final payment on a mortgage
- Processing payments for companies engaged in fraudulent activities
“Deceptive” Acts or Practices:

An act or practice is deceptive where:

• A representation, omission or practice misleads or is likely to mislead the consumer;

• A consumer’s interpretation of the representation, omission, or practice is considered unreasonable under the circumstances; and

• The misleading representation, omission or practice is material
Examples of deceptive acts or practices include:

- Claiming “lifetime interest rate guaranteed” on a variable rate loan.
- Advertising a cash back reward as 6% but making that reward almost impossible to earn by limiting it to purchases in the $40,000-$50,000 range.
- Advertising a 3% interest rate on a 30 year mortgage to get consumers in the door, knowing that very few applicants will be able to qualify. Once the consumers inquire about the product, the agent proceeds to offer them only much higher rates.
UDAAP (Cont.)

The 4 “P”s for evaluating likeliness to mislead in terms and disclosures:

• **Prominence**: is it big enough for consumers to notice and read?
• **Presentation**: is wording and format easy to understand?
• **Placement**: is it where the consumer would look for it or expect to find it?
• **Proximity**: is it near the claim it qualifies?
UDAAP (More...)

Section 1031 of Dodd Frank Act:

• Added the concept of “abusive” acts to create UDAAP from UDAP (FTC)

• Transferred enforcement authority from FTC to CFPB
  – CFPB has broad enforcement authority- UDAAP standards are designed to be broad and flexible in order to address emerging acts or practices that are not otherwise prohibited or restricted by specific regulation

• An “abusive” act or practice is one that materially interferes with the ability of the consumer to understand a term or condition of a product or service or takes unreasonable advantage of a consumer
UDAAP (More...)

How Does UDAAP Affect Credit Unions?

- UDAAP puts elements of clarity, honest dealing, and disclosure into legal requirements.
- UDAAP is an affirmative mandate for credit unions to make every practice fair, transparent, and appropriate for consumers, including those considered “vulnerable” due to factors like income, age, and financial sophistication or distress.
- UDAAP governs virtually everything a credit union offers to consumers due to its broad definition and mandate.
How Does UDAAP Affect Credit Unions?

• UDAAP Penalties for Noncompliance:
  – The CFPB’s enforcement authority includes civil money penalties of up to $1 million per day.
  – These penalties are in addition to the authority to require corrective action, payment of restitution and “education funding or public service” and the potential for reputational harm resulting from public notification of the violation, among other forms of relief.

• Credit unions need to take actions to understand, monitor and reduce UDAAP risks.
UDAAP – Federal Trade Commission

• Native Advertising: Content that bears a similarity to the news, feature articles, product reviews, entertainment and other material that surrounds it online.”

• Can consumers differentiate ads from other content?

• Enforcement Policy Statement on Deceptively Formatted Advertisements
Complaints
Complaints

- Responding to complaints is required by Section 1034 of Dodd-Frank
- Timely response required by the regulators to consumer complaints and the regulated institutions have a duty to respond to the Bureau
- CFPB has online complaint database
- Consumer complaints play a key role in the detection of UDAAP
- Complaints can indicate weaknesses in an institution’s internal compliance management
- When consumer’s repeatedly complain about a product or service, examiners may flag the issue for further review
Expectations for Complaint Management Programs

- The institution has complaint recordkeeping protocols including:
  - Written policies and procedures that define “complaint,”
  - Identify when to record and track them, and
  - Capture complaints and inquiries at the first point of contact, and not just when passed along to a manager.

- Complaints are addressed and resolved promptly.

- Appropriate escalation of complaints involving potential consumer harm from unfair treatment or discrimination, or other regulatory compliance issues.

- Complaint data drives adjustments to business practices.
High Risk Areas...

- Advertising and Marketing
- Disclosures
- Debt Collection Practices
- Complaints
- Vendor Management
NCUA Share Insurance Disclosure

• NCUA Part 740.4
• Required in ads promotions share or share-related accounts
• Official Sign: Must be legible
NCUA Share Insurance Disclosure (Cont.)

- Official Advertising Statement:
  - Long Version: This credit union is federally insured by the National Credit Union Administration
  - Short Statement: Federally insured by NCUA
  - Can’t use language from official sign without using the sign itself
Exceptions

• Official sign or statement not required for:
  – Credit union supplies/stationery
  – Signs in CU or attached to building
  – Radio and TV ads less than 15 seconds
  – Ads not related to member accounts (loan ads)
  – Trinkets
Share Account Related Compliance

• NCUA Part 707 – Truth in Savings (TIS)
• Annual Percentage Yield – Spelled Out – Trigger Term
• Abbreviated as APY if phrase is used at least once in the advertisement
Share Account Related Compliance (Cont.)

- Disclosures: Variable rate, time APY offered (or statement that the APY is accurate as of a specified date), minimum balance requirements (to open and to earn the APY), statement that fees may reduce earnings
- Also: Bonus disclosure requirements (value greater than $10)
- Term share accounts: Include term of account and statement that penalty will or may be imposed for early withdrawal
Truth in Savings - Exceptions

• Broadcast, electronic media, billboards
• Indoor signs
• Newsletters sent to existing members
• NO exception for social media
TIS – Prohibited Terms

• “Free” if any maintenance or activity fee can be charged
• Deposit Account (FCU and some SCCUs)
• CD, Certificate of Deposit, Time Account, Time Deposit (FCU and some SCCUs)
• Approved Synonyms: Savings Account, Checking Account, Money Market Account, Certificate, Share Certificate, Certificate Account
• Interest (FCU and some SCCUs)
Common Advertising Errors

• Disclosures more than one-click away from ad
• No official sign/statement
• No effective dates/lack of expiration date
• APR and APY confusion/misuse
• Fine Print Errors: Clear & Conspicuous/Logos
Non-Deposit Investment Ads

• Mutual Funds, annuities, stocks, bonds
• Must disclose that investments:
  – Are not federally insured
  – Are not obligations of the credit union
  – Are not guaranteed by the credit union
  – Involve investment risk
• Disclosures must be in close proximity to investments being advertised
• NCUA Letter 10-FCU-03
Loan Product Compliance

• Reg Z Trigger Terms – Closed-end loans: amount or % of any down payment (credit-sale transactions only), # of payments, period of repayment, payment amount, amount of any finance charge

• “Triggers” additional disclosures
Loan Product Compliance

• Which ones?
  – Repayment terms - #, timing and amount of payments (Ex.: “48 monthly payments of $27.83 per $1,000 borrowed.”)
  – The annual percentage rate (APR)
  – If variable rate: the fact that it’s subject to increase after the loan docs are signed
  – The amount or percentage of any down payment (in credit-sale transactions only).
Annual Percentage Rate

• Can be abbreviated as “APR”
• Important to remember that this isn’t the same as the loan rate in many cases.
• Remember the clear and conspicuous standard!
Equal Housing Requirements

• Fair Housing Act: Prohibits discrimination on basis of race, color, religion, sex, familial status, national origin, or handicap.

• FCU: Equal Housing Lender Logo

• SCCU: Equal Housing Opportunity Lender Logo

• Radio/TV Ad: XYZ Federal Credit Union is an Equal Housing Lender
Housing Logos

Equal Housing Lender

Equal Housing Opportunity
One Click Rules - Shares

• Truth in Savings: Most share account disclosures can be one click away from ad itself. Example: APY in social media

• DOES NOT apply to share insurance statement

• Twitter Hint: Include the share insurance statement in an image and attach to the post to save characters
One Click Rules - Loans

• Regulation Z, loan and other disclosures can be one click away from actual advertisement

• DOES NOT apply to Equal Housing Logo

• Remember clear and conspicuous standard still applies

• Commentary to 1026.16 and 1026.24
Online/Mobile Banking

- FFIEC Authentication Requirements
- Regulation E & EFTA Apply – appropriate disclosures required (can be part of account agreement or provided separately)
- Risk assessments are important (Jan 2012 NCUA Report)
- Advertising rules apply (TIS, TIL and others)
- Terms and conditions of usage – a good idea
- Likely more to come with concerns around cyber and data security
Record Retention

• Social media and digital ads are no different than traditional methods and delivery channels

• Consider appropriate period to retain, based on regulatory requirements

• Tracking ads using social media? Government monitoring info for mortgage apps?

• Include digital compliance and social media in record retention and social media policies
Resource Links

• FFIEC Guidance: *Supervisory Guidance Social Media: Consumer Compliance Risk Management Guidance (2013)*
  https://www.ncua.gov/newsroom/Press/FFIEC20130122SocialMedia.pdf

• FFIEC booklet: *Outsourcing Technology Services (2004)*

• FFIEC booklet: *Information Security (2006)*
Resource Links #2

- Facebook Community Standards [https://www.facebook.com/communitystandards](https://www.facebook.com/communitystandards)
- Twitter Terms of Service [https://twitter.com/tos?lang=en](https://twitter.com/tos?lang=en)
- Twitter Rules [https://support.twitter.com/articles/18311](https://support.twitter.com/articles/18311)
- Twitter Policies [https://support.twitter.com/categories/284/331](https://support.twitter.com/categories/284/331)
Resource Links #3

- **Authentication Guidance:**


- **Federal Trade Commission:**

- **CU Magazine:**
Thank you!

For more information regarding these and other Compliance issues, please visit the CUNA website ([www.CUNA.org](http://www.CUNA.org)) and click on Compliance.

If you would like to follow-up with any questions or comments, please send them directly to Jared Ihrig via email at jihrig@cuna.coop.