Five Most Common Telemarketing Compliance Challenges

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As the General Manager of PossibleNOW's compliance and audit services division, I have a unique view of industry-wide challenges for telemarketing compliance. Our on-site compliance assessments have included several Fortune 500 sellers as well as numerous service provider operations.

We have found companies struggling with these top five challenges:

1. **Knowledge of the Rules:** The myriad of state and federal rules and lack of pre-emption is often the number one obstacle of compliance. This is particularly true for companies that have diverse telemarketing programs and conduct multi-state campaigns. Often, compliance with telemarketing regulations is thrust upon the already burdened shoulders of corporate compliance staff. While compliance with SOX, GLB or HIPAA may be within their scope of expertise, telemarketing compliance may not.

If your compliance processes and procedures are not written, trained, monitored and enforced, you do not have a compliance program.

   Here are just a few questions your company must be able to answer:

   a. Is our telemarketing activity regulated by the FCC, FTC or both?

   b. If your company has several divisions, how many versions of the National Registry (SAN) are you required to purchase?

   c. Are you registered in states that require sellers (with no in-house, outbound calling) and telemarketers to register as a telemarketer and/or purchase their DNC lists?

   d. Are you complying with the multitude of state EBR rules that are more stringent than federal rules?

   e. Does your company meet the provisions for DNC and Call Abandonment Safe Harbor?

   f. Are agents that are calling on your behalf complying with certain state requirements to disclose your telemarketer registration number upon a sale?

2. **Possessing Written Compliance Guidelines:** This is one of the most important documents you need should you ever have to respond to a CID. Unfortunately, during a recent compliance assessment for a major corporation that utilized 18 outbound call centers, none could provide a compliance guidelines document.

   The foundation of any viable compliance program is the corporate compliance guidelines document, yet few companies have invested the resources to create it. This document describes what rules the company must comply with and how compliance is achieved. It also assigns responsibility and includes training requirements as well as monitoring and enforcement methodology. If your compliance processes and procedures are not written, trained, monitored and enforced, you do not have a compliance program.

3. **Meeting Recordkeeping Requirements:** This observation stems from experiences in compliance assessments as well as performing forensic data analysis in support of attorneys who are defending clients under investigation. Just as important as having written compliance guidelines is the necessity to have records of compliance. Again, if you cannot prove compliance, you may be found to be out of compliance.

Many campaign related records are required to be maintained for at least 2 years, while DNC records must be maintained for up to 10 years. But maintaining records for your own defense should go well beyond the minimal regulatory requirements. This is particularly important when sellers and call centers share the compliance burden.

If your company is being investigated for alleged violations that occurred two years ago, can you produce records of scrubbing activity, scripts, campaign management, calling records, call abandonment rates, required disclosures, etc? Do you have the compliance records from clients or call centers you no longer do business with?

4. **Possessing Mutually Supportive Due Diligence:** Some major enforcement actions have highlighted the importance of this requirement. However, we still see far too many companies that lack sufficient due diligence, including monitoring and enforcement processes. Compliance must be mutually supportive. Sellers and call centers must understand the entire scope of the requirements, define which party is responsible for each element and then monitor and enforce compliance.

   Sellers must provide compliance documentation to call centers to include event triggers and dates for EBR campaigns. Call centers must ensure DNC requests and DNC policy fulfillment activities are reported back to clients. Sellers should approve scripts before use. Both the seller and the call center should monitor and enforce script content and adherence. The call center should monitor call abandonment rates and report this to the seller on a regular basis.

5. **Having a Defendable Position:** No one possesses unlimited resources for compliance. But, too often, we see companies that throw their resources at compliance with no overarching plan to achieve a defendable position.

   A defendable position means that you possess sufficient written guidelines, compliance processes and monitoring and enforcement procedures to reduce or even eliminate enforcement action liability. These procedures demonstrate due diligence and ongoing efforts in a convincing fashion.

   Attaining a defendable position should be the minimal first rung on the ladder to compliance best practices. Companies must determine their compliance gaps and the associated risks. Risk levels can be reasonably determined through an analysis of enforcement history, level of non-compliance and magnitude of the potential fine or public relations damage. A defendable position ensures that the essential compliance processes, procedures, training and record-keeping are in place. A defendable position is inclusive of DNC and Call Abandonment Safe Harbor.

   Finally, monitoring and enforcing all of the above challenges rounds out a solid and defendable position program.

■ About PossibleNow

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For questions about these challenges or other marketing compliance topics, you may contact Ken Sponsler via e-mail at ksponsler@possiblenow.com.

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