



February 22, 2013

FFIEC Social Media Guidance

EXECUTIVE SUMMARY

The Federal Financial Institutions Examination Council (FFIEC), which includes NCUA, has issued proposed guidance entitled “Social Media: Consumer Compliance Risk Management Guidance” (Guidance). The Guidance addresses the applicability of federal consumer protection and compliance laws, regulations and policies to activities conducted via social media by credit unions, other federally regulated financial institution and nonbank entities supervised by the Consumer Financial Protection Bureau (CFPB). The guidance also serves as a warning to the risks of the use of social media.

The Guidance defines social media as “a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille).” Further, the Guidance states that social media can be distinguished from other online media because the communications tend to be more interactive. The Guidance notes that the social media tends to be informal and occurs in a less secure environment, it presents unique challenges to financial institutions.

CUNA Questions

The Guidance seeks comment to three broad questions. CUNA requests that credit unions provide feedback on the definition of social media and whether it impacts any other communication systems that are not open to the public or do not advertise credit union services and products.

1. Are there other types of social media, or ways in which credit unions are using social media, that are not included in the proposed guidance but that should be included?
2. Are there other consumer protection laws, regulations, policies or concerns that may be implicated by credit unions’ use of social media that are not discussed in the proposed guidance but that should be discussed?

3. Are there any technological or other impediments to financial institutions' compliance with otherwise applicable laws, regulations, and policies when using social media of which the FFIEC agencies should be aware?

CUNA welcomes other comments to this Guidance from credit unions.

- Comments on the proposal are due to FFIEC by March 25, 2013; **please submit your comments to CUNA by March 20, 2013**
- Please e-mail your comments to SVP/Deputy General Counsel [Mary Dunn](#) or Assistant General Counsel [Lance Noggle](#).
- For further details, please visit the Federal Register notice for the [proposal](#).

Background

The FFIEC agencies believe social media has the potential to improve market efficiency and thus is a useful tool in the operation of a financial institution. They further state that “social media may more broadly distribute information to users of financial services and may help users and providers find each other and match products and services to users’ needs.” The uses for social media include advertising and marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers, for example by receiving and responding to complaints, or providing loan pricing. The FFIEC agencies state “this form of customer interaction tends to be both informal and dynamic, and occurs in a less secure environment, it presents some unique challenges to financial institutions.”

The Guidance states that financial regulations and other requirements do not contain any exceptions for social media. Moreover, most regulations and agency guidance have not been updated to incorporate social media. Thus, the Guidance lists all regulations that should be considered when a credit union uses social media and attempts to clarify several regulations for financial institution using social media.

General Recommendations

The Guidance makes several general risk management recommendations that are similar to the recommendations for most other services or programs at a credit union. The recommendations are:

- A credit union should have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media.
- A credit union that relies heavily on social media to attract and acquire new members should have a more detailed program than one using social media only to a very limited extent.

- The risk management program should be designed with participation from specialists in compliance, technology, information security, legal, human resources, and marketing.
- A credit union that has chosen not to use social media should still be prepared to address the potential for negative comments or complaints that may arise within the many social media platforms described above and provide guidance for employee use of social media.
- A credit union should have employee training program that incorporates the institution's policies and procedures for official, work-related use of social media, and potentially for other uses of social media, including defining impermissible activities.
- An oversight process for monitoring information posted to proprietary social media sites administered by the financial institution or a contracted third party.

Risk Areas

The Guidance states “that the laws discussed in this [G]uidance do not contain exceptions regarding the use of social media.” Most of these requirements were put into place before the popularity of social media. The information summarized below describes how credit unions can meet requirement for a few regulation and warns credit unions how they can violate specific regulations with the use of social media.

- Truth in Savings, Section 707.2
 - If a triggering term in an electronic communication, such as “bonus” or “APY,” the rule requires the advertisement to clearly state certain information, such as the minimum balance required to obtain the advertised APY or bonus. *The proposed guidance states that an electronic advertisement can provide the required information via a link that directly takes the consumer to the additional information.*
- Fair Lending Laws: Equal Credit Opportunity Act/Regulation and Fair Housing Act
 - The Equal Credit Opportunity Act, as implemented by Regulation B, prohibits creditors from making any oral or written statement, in advertising or other marketing techniques, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application. *As with all prescreened solicitations, a creditor must preserve prescreened solicitations disseminated through social media, as well as the prescreening criteria, in accordance with Regulation B.*
 - Creditors may not, with limited exceptions, request certain information, such as information about an applicant's race, color, religion, national

origin, or sex. Since social media platforms may collect such information about participants in various ways, a creditor should ensure that it is not requesting, collecting, or otherwise using such information in violation of applicable fair lending laws.

- 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 race, color, national origin, religion, sex, familial status, or handicap. This prohibition applies to all advertising media, including social media sites. *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 guidance doesn't state how to advertise on Twitter.*
- Regulation Z
 - For electronic advertisements, such as those delivered via social media, Regulation Z permits providing the required information in a table or schedule that is located on a different page from the main advertisement if that table or schedule is clear and conspicuous and the advertisement clearly refers to the page or location.
- Share insurance
 - *Advertising and Notice of NCUA Share Insurance.* Each federally insured credit union must include the official advertising statement of NCUA membership, usually worded, “Federally insured by NCUA” in advertisements regardless of delivery channel, unless specifically exempted. An advertisement is defined as “a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.” The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used in other portions of the advertisement intended to convey information to the consumer. If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility. Each insured credit union must display the official NCUA sign on its Internet page, if any, where it accepts deposits or opens accounts.
- Payment systems
 - Under existing law, no *additional* disclosure requirements apply simply because social media is involved (for instance, providing a portal through which consumers access their accounts at a financial institution).

- Privacy
 - Gramm-Leach-Bliley Act Privacy Rules and Data Security Guidelines require a financial institution using social media should clearly disclose its privacy policies as required under GLBA.
 - Children’s Online Privacy Protection Act (COPPA)
 - Certain social media platforms require users to attest that they are at least 13, and a financial institution using those sites may consider relying on such policies. However, the financial institution must still take care to monitor whether it is actually collecting any personal information of a person under 13, such as when a child under 13 manages to post such information on the financial institution’s site.
 - A financial institution maintaining its own social media site (such as a virtual world) should be especially careful to establish, post, and follow policies restricting access to the site to users 13 or older, especially when those sites could attract children under 13. This may be true, for instance, in the case of virtual worlds and any other features that resemble video games.
- Fair Credit Reporting Act.
 - The Fair Credit Reporting Act (FCRA) contains restrictions and requirements concerning making 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 these activities.

Credit unions were also advised to be mindful of several other regulation and requirements without giving specific requirements. These are:

- Real Estate Settlement Procedures Act
- Fair Debt Collection Practices Act
- Unfair, Deceptive, or Abusive Acts or Practices
- CAN-SPAM Act²⁶ and Telephone Consumer Protection Act