

FFIEC PROPOSES GUIDANCE FOR USE OF SOCIAL MEDIA BY BANKS

By Kevin C. Taylor

The primary bank regulatory agencies, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Consumer Financial Protection Bureau and the State Liaison Committee of the Conference of State Bank Supervisors (collectively, the Federal Financial Institutions Examination Council, or “FFIEC”) recently proposed guidance for their respective regulated financial institutions regarding the use of social media. Comments on the proposed guidance are due on or before March 18, 2013. Note, the guidance does not apply to SEC regulated entities.

The FFIEC defines social media as a form of “interactive online communications” by which users can create and share text, pictures, audio, video or other forms of content. Examples include Facebook, Twitter, Instagram, YouTube, LinkedIn, and even social games like FarmVille.

The use of social media by financial institutions may include marketing, advertising, offering prizes or other incentives, facilitating transactions and applications, providing pricing information or otherwise interacting with customers or potential customers or the public at large. The FFIEC feels that these activities will create risks for banks, including legal and compliance risks, operational risks and reputational risks. These risks may stem from poor due diligence and poor control by the financial institution.

As a tool to increase communication with customers, and potential customers, the regulators feel that social media has the potential to increase market efficiency as well. An increase of information into the marketplace will only help consumers and other market participants make better decisions.

The FFIEC recommends banks establish risk management programs to identify, measure, monitor and control the use of social media risks, depending on the depth/degree to which the bank makes use of social media.

According to the bank regulators, social media risk management programs should have the following: (i) a governance structure with roles and procedures for the use of social media within the institution’s strategic goals; (ii) policies and procedures for the use of social media in accordance with all other applicable consumer protection laws and regulations and to address the mitigation of associated risks; (iii) a due diligence process for managing third party providers of social media and social media related services; (iv) employee training programs to educate employees on appropriate and inappropriate uses of social media for interactions with customers and potential customers; (v) oversight, audit and compliance functions; and (vi) appropriate parameters for reporting to the bank’s senior management and/or board of directors regarding the use of social media by the institution.

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The proposed guidance goes on to list certain laws and regulations that may come into play with social media which can be found via the FFIEC website at <http://www.ffiec.gov/>.

The FFIEC invites comments on the proposed guidance and specifically requests comments addressing the following questions:

1. Are there other types of social media, or ways in which financial institutions 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 financial institutions' use of social media that are not discussed in the proposed guidance but that should be discussed? ◆

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