



Credit Union National Association

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March 25, 2013

Ms. Judith Dupre
Executive Secretary
Federal Financial Institutions Examination Council
L. William Seidman Center
Mailstop: B-7081a
3501 Fairfax Drive
Arlington, VA 22226-3550

Re: FFIEC-2013-00001 Social Media Comments

Dear Ms. Dupre:

The Credit Union National Association (“CUNA”) appreciates the opportunity to comment on the Federal Financial Institutions Examination Council’s (“FFIEC”) proposed Social Media: Consumer Compliance Risk Management Guidance (“Guidance”). By way of background, CUNA is the nation’s largest credit union trade organization, representing approximately 90 percent of our nation’s 7,000 state and federal credit unions, which serve over 96 million members.

We agree that social media has the potential to improve market efficiency by more broadly distributing information to users of financial services, and we encourage any media platform that makes communication more effective and efficient. The Guidance demonstrates that the FFIEC and the regulatory agencies that comprise the FFIEC (the “Agencies”) also recognize the importance of social media and the challenges to financial institutions that use social media to communicate and interact with their members and customers.

Although consumer protection laws have not been recently amended to specifically address social media, they do govern the use of social media by financial institutions. In this connection, we are concerned that the Guidance adds additional burdens that could stifle innovation and cause undue hardships to financial institutions regardless of whether they even use social media. As social media matures, more financial institutions will use them to interact with members and customers. The Guidance should not represent a barrier to these financial institutions, but should offer a framework to make the implementation of social media programs easier for financial institutions.

The Guidance should be a useful tool for implementing existing regulations and not an additional set of requirements impeding the use of social media by financial institutions.



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We have three major concerns with this Guidance and one concern with the use of guidance in general.

1. The Guidance is overbroad because it seeks to define social media with examples instead of offering a true definition that can be applied to new products and services as they appear in the marketplace.
2. The Guidance creates additional duties for financial institutions.
3. The Guidance offers little in ways of information that can actually help financial institutions comply with current laws.
4. The Guidance may effectively be treated as law by regulators when they examine credit unions.

Definition of Social Media

Currently federal consumer protection laws and regulations do not define “social media.” By default the Guidance will become the social media definition used by regulators and others seeking to consider social media for the purposes of consumer financial regulations. Social media are in their infancy with rapid changes in products and uses likely, so a flexible definition not dependent on examples would offer more consistency as social media platforms evolve.

Our concern is that a static definition will adversely impact financial institutions relying on the Guidance to demonstrate adequate compliance programs for the use of social media. An overly prescriptive definition can also stifle innovation if social media providers or financial institutions feel they must operate within the confines of a definition that is not flexible enough to encompass new products. Conversely, an overbroad definition can increase a financial institution’s regulatory burden because a larger number of services that normally might not be considered social media might be subject to regulatory review.

The Guidance should exclude from the definition of social media private internal communications that are not generally considered social media. These include internal network systems, emails, email distribution lists (whether internal or external) and other types of communications developed in the future that are not meant for distribution over a social network. In all probability, the Agencies do not intend to cover private communications, but clarification is needed to ensure the proper application of the Guidance.

To ensure clarity, we suggest that the Agencies rework the definition to define the exact characteristics of social media that give the Agencies concern. The Agencies should remove references to specific social media platforms because social media services offered now could easily morph into something that is not considered social media, but they would still be considered social media for the purposes of this Guidance. The Guidance also states that social media “can be distinguished from other online media in that communication tends to be more interactive.” This is too broad and general, encompassing almost any website.

Broadly descriptive terms like this offer little help in defining social media and should be removed.

Additional Requirements for Financial Institutions

Although the Guidance does not amend regulations or create new regulations, it does create new requirements for users and non-users of social media by requiring that “a financial institution 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.” We understand this to mean that the Guidance seeks to require that all financial institutions must monitor social networks for negative information either from the general public or employees. The latter implies that financial institutions may be required to monitor or at least train employees on the use of social media

The risk to financial institutions that choose not to use social media from negative comments posted on social networks is minimal. The lack of an official presence on a social media platform greatly limits the chances that a member or customer has to find negative comments because they would have no central location in which to view the comments. The risks to financial institutions from third-party comments on social media appears very similar to the risks the financial institutions are subject to from third-parties using traditional media and the internet, which have not been problematic in the past. We are unaware of any requirement or duty to monitor other channels of communication for third-party comments from members and customers. This is an additional or new requirement created by the Guidance, which we think has no basis in law or regulation. There is no benefit in this requirement so it should be removed or modified to incorporate a risk-based approach.

Credit unions vary greatly in size and sophistication. Some will make business decisions choosing not to use social media. These reasons may be based on resource allocation, technical sophistication of members or necessity. Placing requirements on these institutions that choose not to use social media is unnecessarily burdensome and oversteps the bounds of guidance in general. As mentioned above, we favor a risk-based approach to the requirements with the view that not using social media means that there is no risk from social media. This is similar to the treatment of any other media available to the public because social media does not present any new risks to financial institutions; it is just another type of media in which traditional risks are present.

Guidance for the Use of Social Networks

The Guidance cites almost every law and regulation that could possibly be impacted by the use of social media and provides a short summary of each that serves as a primer to those unfamiliar with each regulation. The Guidance provides few details on compliance risks that each regulation presents to financial institutions from the use of social media. The Agencies should provide a thorough

explanation of the risks under each regulation or statements as they apply to the use of social media.

Many credit unions and community banks are smaller organizations that have limited resources, which make it difficult to ferret out every possible issue in every regulation. Since innovation is a resource-intensive activity, these institutions must rely on the work of innovators, vendors and other sources of information developed to meet new challenges. They also rely on guidance and other information from regulators to assist with compliance and the implementation of new services. For these reasons the Agencies should also focus on providing information that helps financial institutions use social media.

Also, a companion website to this Guidance that documents known compliance issues with each regulation could be useful, especially to smaller organizations. Moreover, a publication helping financial institutions comply with federal consumer protection regulations would be helpful to financial institutions struggling with the use of social media. We see no benefit in offering summaries of regulations unless they detail the actual risks to financial institutions and offer compliance guidance. Even this type of information would be more appropriate on a website or other publication that is updated more frequently.

In addition, because existing consumer financial regulations have not been updated to address social media, their staff commentaries have also not been updated. Financial institutions rely on these commentaries as a valuable resource to assist them with compliance. These commentaries should be updated to reflect social media compliance.

The Guidance Should not be Enforced as Regulation

The Guidance states that it “does not impose additional obligations on financial institutions.” In a strict legal sense this may be true. Nonetheless, in practice credit union examiners do look to guidance during the credit union examination process. These examiners often document in examination findings instances in which credit unions do not comply with guidance. In light of this, we are concerned credit unions may be held responsible during examinations for provisions detailed in the Guidance.

Responses to Specific 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?**

The proposed examples may prove to be limiting in the future as specific platforms change, merge or are overtaken by new services. Financial institutions would be better served if the Guidance is able to encompass new services as they come online.

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?

The Guidance appears to address consumer protection laws that could impact the use of social media.

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 Agencies should be aware?

As you know, various factors impact the amount of control a financial institution may have over social media. We urge the FFIEC to clarify that under no circumstances would a financial institution be responsible for the actions of a third-party regarding a social network that the financial institution does not control.

Thank you for the opportunity to comment on the FFIEC's social media guidance. If you have any questions concerning our letter, please feel free to contact me at (202) 508-6736.

Sincerely,



Mary Dunn
Senior Vice President and Deputy General Counsel