

**WEINER
BRODSKY
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Mortgage Marketing Through the Use of Social Media

Social Media - Agenda

- What Is Social Media?
- What Laws Apply?
- Regulations and Regulatory Guidance
- Common Issues
- Best Practices

Social Media

- FFIEC Guidance
 - Social Media - defined in a number of different ways

 - A form of interactive online communication in which users can generate and share content through text, images, audio, and/or video

 - Can take many forms,
 - 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)

Social Media

- FFIEC Guidance
 - Social media
 - Dynamic
 - Constantly Evolving Technology
 - Therefore, any definition can be seen as illustrative and not exhaustive
 - So, other forms of social media may emerge in the future that financial institutions will also have to consider
 - However, under the Guidance, traditional emails and text messages, standing alone, are not social media
 - Nonetheless, messages sent through social media channels are social media

Social Media

- FFIEC Guidance
 - Guidance for Regulators' Review, not Rules
 - Risk Management
 - Consumer protection practices
 - Consumer Compliance and Legal Risks
 - Reputation and Operational Risks
 - Mostly For Banks, but instructive for Others
 - The CFPB and the State Liaison (which includes reps from CSBS) are part of the FFIEC
 - Guidance does not discourage use of Social Media, but encourages Risk Management approaches
 - Guidance is a bit dated (2013) but still instructive
 - Guidance recognizes that Social Media has the potential to improve marketing efficiency

Some Applicable Laws

- MAP Rule
- SAFE Act and State Licensing Laws
- TILA
- RESPA
- ECOA / Fair Lending
- UDAP & UDAAP
- Privacy
- FCRA
- Employment Law

Regulations and Regulatory Guidance

- FTC
 - .com Disclosures
 - Clear and Conspicuous - The “4 P’s”
 - Multi-Media
 - Format of Disclosures should Match format of Claims
 - Display Visual Disclosures for Adequate Time Period
 - Understandable Language
 - Challenges with Space Constraints
 - Endorsements
 - Third Party and Internet Review Sites

Regulations and Regulatory Guidance

- CFPB Enforcements
 - Consent Order against Amerisave Mortgage (2014)
 - \$19 million fine - Held Company and its management jointly liable for failing to enact quality control measures in the Company's online marketing efforts
 - Redefined responsibility of institutions to dig deep and monitor the details of their advertising initiatives
 - Partly the result of an internet-based marketing plan designed to generate leads based on deceptively low interest rates and programs for which most of the responding consumers would not qualify
 - Bureau took issue with internet-based violations of mortgage advertising rules and found that the lack of control resulted in violation of MAP Rule

Common Challenges

- Allowing the Use of Social Media
- Policies and Procedures, and Monitoring Use
- RESPA Issues
- Facebook User Guides

Social Media – Best Practices

- Risk Management
 - Company must have a program in place that allows it to:
 - Identify
 - Measure
 - Monitor, and
 - Control the risks related to social media
 - The size and complexity of the risk management program should be commensurate with the breadth of the financial institution's involvement in Social Media

Social Media – Best Practices

- Risk Management
 - Governance structure (clear roles and responsibilities with board of senior management oversight and establishment of controls and ongoing of risk assessment);
 - Policies and procedures;
 - Risk management process (e.g. selecting and managing third-party relationships);
 - Employee training on policies and procedures for use of social media;
 - An oversight process for monitoring information posted on social media sites;
 - Audit and compliance functions; and
 - Parameters for providing reporting to board or senior management including periodic evaluation of social media program(s)

Social Media – Best Practices – Questions to Ask

1. What do you classify as social media in your policies and procedures?
2. What social media is your company using?
3. What does your company allow in terms of use of social media by your LOs?
4. Does the company or the loan officer sign up for a business account, for instance with Facebook?
5. How do you deal with Facebook's policies, finance, and housing?
6. Do you monitor LO's personal FB pages?
7. Do you monitor you LO's comments sections for non-complaint posts ? Do you treat complaints placed in comments sections to be consumer complaints? If so, how do you handle and respond ?
8. Do you use a CRM vendor to assist and manage your social media strategy ?
9. If so, does your CRM provide tools for pulling reports? Do you review those reports? Any stories or experiences there that you have heard from friends or colleagues that you want to share there on findings

Social Media – Best Practices – Questions to Ask

10. CRMs – what is your system of record for determining an app and to monitor info to analyze ? Does your company track activity, capture GMI data prior to an app occurring in an LOS – can some CRMs trigger an app? Is all info stored and does it migrate to the LOS?
11. Link to disclosures – other disclosures - ARMs coming back – lots of info there – how do you deal with space constraints?
12. Must contract be in company’s name, or can it be in LO”s name? Who pays?
13. Who creates materials to be posted?
14. Who approves joint marketing? Does your company assure that the third party provider and not the co-marketer are paid?
15. Do you have sponsorship or co-marketing in-take “application” forms?
16. Logos – do you allow the American flag ?
17. Do you “secret shop”?

Resources

- <https://www.ffiec.gov/press/pr121113.htm>
- [.com Disclosures: How to Make Effective Disclosures in Digital Advertising \(ftc.gov\)](https://www.ftc.gov/press/2013/07/13-disclosures)
- <https://www.facebook.com/business/help/298000447747885>

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