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## THE RISKS OF MORTGAGE LENDING IN THE ERA OF SOCIAL MEDIA

*The FFIEC Guidance for financial institutions is intended to help mortgage lenders and other financial services providers manage the increased risks arising from the use of social media. The authors discuss the Guidance and then turn to RESPA and fair lending concerns in social media activities. They close discussing other federal laws that apply to social media and digital advertising.*

By Eric Goldberg and Kaja Elmer \*

Social media has intruded into almost all facets of the contemporary world. In our society, we have moved well past a time when social media merely was a way to share baby and pet photos with family and friends. Today, social media includes dozens of different networks and apps, and it shapes every area of modern life. For those working in the mortgage industry, social media can be a great opportunity to interact with colleagues, clients, and potential clients. For example, social media can help mortgage originators, service providers, and real estate professionals target just the customers they want with relatively low cost, efficiency, and speed not offered by more traditional advertising media. However, mortgage lending is highly regulated and these regulations apply to the social media activity of those working in or near the mortgage industry. This article highlights some of the legal challenges posed by those using social media as part of their mortgage or real estate businesses, and offers suggestions on how to remain compliant with FFIEC<sup>1</sup> guidance, RESPA,<sup>2</sup> the

Fair Housing Act<sup>3</sup> and related state antidiscrimination laws, and other advertising laws relevant to social media.

### FEDERAL AGENCY GUIDANCE ON SOCIAL MEDIA

#### **FFIEC Guidance**

The FFIEC issued social media consumer compliance risk management guidance in December 2013 after a public comment process.<sup>4</sup> The purpose of the Guidance

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<sup>2</sup> Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601, *et seq.*

<sup>3</sup> Fair Housing Act of 1968, 42 U.S.C. § 3601, *et seq.*

<sup>4</sup> *Social Media: Consumer Compliance Risk Management Guidance*, FFIEC (Dec. 11, 2013), available at <https://www.ffiec.gov/press/Doc/FFIEC%20Social%20Media%20Guidance.doc>. Its goal is to prescribe uniform principles, standards, and report forms, and to promote uniformity in the supervision of financial institutions (hereafter the Guidance). The FFIEC includes representatives of six federal financial regulators including the Office of the Comptroller of the

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<sup>1</sup> Federal Financial Institutions Examination Council.

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