

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: CDD and U.S. PIRG Education Fund Comments on “Social Media:
Consumer Compliance Risk Management Guidance”
(Docket Number FFIEC-2013-0001)**

The Center for Digital Democracy¹ and the U. S. PIRG Education Fund² respectfully submit the following comments to the Federal Financial Institutions Examination Council in response to the its request for comment on the proposed guidance entitled “Social Media: Consumer Compliance Risk Management Guidance.” The FFIEC’s guidance to financial institutions, including the Consumer Financial Protection Bureau (CFPB), on the use of social media is critically important. Such a review is both needed and timely. Nine in ten adults online (including seniors) access social media at least once a month, according to Experian, with the majority showing support for a product, a service, or a company by becoming a “fan.” Facebook was the most-visited website in 2012, with 79.1 billion visits. Google+, Tumblr, Twitter, YouTube, and Pinterest also saw significant growth in user visits.³ Citibank, Bank of America, MasterCard, and Visa, among others, have their own YouTube Channels.⁴ With the increased use of smartphones and other online

¹ CDD is recognized as one of the leading consumer protection and privacy organizations in the United States. See Center for Digital Democracy, <http://www.democraticmedia.org/> (viewed 23 Mar. 2013).

² The U. S. PIRG Education Fund conducts research and public education on behalf of consumers and the public interest. Our research, analysis, reports and outreach serve as counterweights to the influence of powerful special interests that threaten our health, safety or well-being. See U. S. PIRG Education Fund, <http://www.uspirgedfund.org/>. (viewed 23 Mar. 2013).

³ Experian, “The 2013 Digital Marketer Report and Webinar Series,” <http://www.experian.com/marketing-services/2013-digital-marketer-report.html> (viewed 23 Mar. 2013).

⁴ eMarketer, “After the Crunch: How Credit Card Issues Market to Consumers Online,” Jan. 2011 (personal copy). See also “Citi,” YouTube, <http://www.youtube.com/user/CITI>; “Bank of America,” YouTube, <http://www.youtube.com/user/bankofamerica>; “MasterCard’s Channel,” YouTube, <http://www.youtube.com/user/MasterCard> (all viewed 23 Mar. 2013).

services to conduct financial transactions—including applying for loans and other major forms of credit—it is time for a thorough review in this area.⁵ The U.S. financial services industry will significantly increase its online ad spending, including for social media, from \$3.84 billion in 2011 to \$6.82 billion by 2016. Social media marketing is one of the highest priorities for financial executives, and already generates a significant source of Facebook revenues.⁶

As U.S. PIRG Education Fund and the Center for Digital Democracy (CDD) will explain, consumers are unaware of the risks they face in their use of social media, including the loss of privacy and exposure to unfair and questionable marketing tactics. The regulatory structure has not kept pace with social media developments, the increasing use of sophisticated and largely non-transparent “social intelligence” techniques, and the impact of these techniques on consumer decision-making. The transformation of the consumer financial marketplace, made possible by Big Data-related techniques in combination with the major shift to digital media, now enables the creation of complex consumer-targeting models. Through data-mining, machine-learning, and predictive analytics, an individual’s social behavior and actions are captured by digital profiles in order to target them both online and off.⁷

Contemporary marketing practices enable financial services to collect previously unimaginable amounts of data on a consumer—as well as on their friends and other networks. Social, PC, and mobile data—including location—can be seamlessly added into profiles that include a diverse array of online and offline financial data. Superfast data mining tools enable insights to be delivered to financial companies (and others) in real time, enabling greater precision for microtargeting. Advances in digital marketing now permit highly personalized marketing content (so-called “dynamic creative”) to be created and changed “on-the fly,” as insights derived from a consumer’s behavior are gathered and analyzed. Social media campaigns targeting individuals can be “optimized” (made more effective based on captured behavior), in order to move a person through the marketing “funnel.”⁸ Increasingly, consumers are sold in milliseconds to the highest marketing bidder via the use of “Real-Time

⁵ The FFIEC should especially examine the role of social media in promoting so-called “peer-to-peer payments,” used for money-transfer and other services that impact at-risk consumers. See eMarketer, “Bigger Money on the Small(er) Screen: How Smartphones and Tablets Change the Way Consumers Manage Their Finances,” Oct. 2012 (personal copy).

⁶ eMarketer, “The US Financial Services Industry: Digital Ad Spending Forecast and Key Trends,” Apr. 2012 (personal copy).

⁷ See, for example, “Compass Labs Announces New Version of CLIQ Social Media Advertising Platform,” 8 Fe. 2012, <http://www.compasslabs.com/newsroom/press-release-compass-labs-announces-new-version-of-cliq-social-media-advertising-platform/> (viewed 23 Mar. 2013).

⁸ See, for example, Webtrends, “Social Optimization,” <http://webtrends.com/solutions/conversion-optimization/social-optimization> (viewed 23 Mar. 2013).

buying” (RTB) services. Financial services companies are using such methods to acquire customers and offer products, without the necessary transparency and consumer control required.⁹

Many of the social media practices used today by the financial industry raise troubling questions—requiring regulatory and self-regulatory intervention. Consumers face a surveillance system that closely monitors their online social activities, as banks and others engage in “sentiment mining” and similar practices. The use of social media to make predictive judgments involving “scoring” a consumer—indicating whether they may have positive or negative future financial prospects, or should be given a higher rate of interest—is another area requiring serious scrutiny. This includes the growing role of invisible “E-Scores” and “Lifetime Customer Value” measures identifying the potential worth of an individual.¹⁰ Social data can also be used to “score” the value of “online leads” to help determine the kinds of financial products and services a customer may be offered.¹¹ Financial services companies, recognizing that social data “is a fresh, constant stream of human opinion, unfiltered and easy to tap into,” use many of these state-of-the-art practices.¹²

⁹ See, for example, DataXu, “DataXu MarketPulse: Using Demand Side Platforms to Find Your Most Profitable Customers,” <http://www.dataxu.com/2011/07/21/dataxu-marketpulse-using-demand-side-platforms-to-find-your-most-profitable-customers/>; “Business Insider Reaches 45% CPM Growth Generated from PubMatic’s Private Marketplace,” 13 Mar. 2013, <http://www.pubmatic.com/press/2013/Business-Insider-Reaches-45pct-CPM-Growth-Generated-from-PubMatic-Private-Marketplace.php>. See also eMarketer, “Marketing the Need for Speed: How Social Analytics Support Real-Time Marketing,” Feb. 2013 (personal copy); Natasha Singer, “Your Online Attention, Bought in an Instant,” *New York Times*, 17 Nov. 2012, <http://www.nytimes.com/2012/11/18/technology/your-online-attention-bought-in-an-instant-by-advertisers.html?pagewanted=all&r=0> (all viewed 23 Mar. 2013).

¹⁰ U.S.PIRG and CDD provided information to the New York Times on the use of E-Scores. Natasha Singer, “Secret E-Scores Chart Consumers’ Buying Power,” *New York Times*, 18 Aug. 2012, <http://www.nytimes.com/2012/08/19/business/electronic-scores-rank-consumers-by-potential-value.html?pagewanted=all&r=0>. Additionally, the authors of this Comment have written a forthcoming law review article on many of these. Edmund Mierzwinski and Jeffrey Chester, “Selling Consumers, Not Lists: The New World of Digital Decision-Making and the Role of the Fair Credit Reporting Act,” *Suffolk University Law Review*, forthcoming, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2188560 (both viewed 24 Mar. 2013).

¹¹ Econsultancy, “Marketing Automation Buyer’s Guide 2013,” Nov. 2012, <http://econsultancy.com/us/reports/marketing-automation-buyers-guide> (purchase required).

¹² See, for example, PointRoll, “Leading Financial Services Company Wins Customers with Highly Targeted Dynamic Ads,” http://blog.pointroll.com/wp-content/uploads/2012/02/PointRoll_CaseStudy_Financial-Services.pdf (viewed 24 Mar. 2013).

Social media, and the expansive set of advertising, measurement, and content-creation services that have evolved to serve it, has quickly become a principal way companies—including financial entities—interact with consumers.¹³ The FFIEC should acknowledge that it cannot analyze social media in isolation. Contemporary multichannel marketing practices now incorporate and operationalize social media data within Customer Relation Management (CRM) and Data Management Platform (DMP) marketing automation platforms.¹⁴ Information and insight gathered from social media sources (e.g., Facebook, blogs, Twitter) are seamlessly incorporated by DMPs into data collected on a consumer’s use of websites, mobile devices, third-party data sources, and the like.¹⁵ Information on consumers and their friends, culled from “social sharing” analysis, enables companies to identify the various ways social communications are passed and adopted through a network of connected individuals.¹⁶ Advances in contemporary financial marketing practices, including even the targeting of consumers at the subconscious level, are one element of this new landscape.¹⁷ In addition, through developments in real-time testing and

¹³ See the annual reports on online lead generation revenues, as well as on financial digital marketing, “IAB Internet Advertising Revenue Report conducted by PricewaterhouseCoopers (PWC),” http://www.iab.net/insights_research/industry_data_and_landscape/adrevenue-report (viewed 24 Mar. 2013).

¹⁴ There are a variety of tools used by financial marketers to gather “360-degree” insights on individual consumers. See, for example, Causata, “Financial Services,” <http://www.causata.com/industries/financial-services> (viewed 24 Mar. 2013).

¹⁵ Adobe, “Adobe Social,” <http://www.adobe.com/au/products/social.html>; Lotame, “The Data Management Platform for Ad Networks,” <http://www.lotame.com/data-management-platform/ad-networks>. For an example of Big Data-oriented analytical platforms used today, see IBM, “IBM Netezza Data Warehouse Appliance Solutions for Digital Media,” <http://www-01.ibm.com/software/data/netezza/industry/digital-media/>; Chris O'Hara, “Best Practices in Data Management,” Dec. 2012, <http://econsultancy.com/us/reports/best-practices-in-data-management>; Econsultancy, “Marketing Automation Buyer's Guide 2013,” (all viewed 24 Mar. 2013).

¹⁶ See the work of the Interactive Advertising Bureau to establish metrics for targeting consumers using social and other media. IAB, “Social Media,” <http://www.iab.net/guidelines/508676/801817>. The FFIEC must also review the work to advance both the conceptual theories and practical applications of contemporary marketing, especially in today’s multiplatform era. See, for example, Advertising Research Foundation, “Defining Engagement Initiative,” <http://thearf.org/research-arf-initiatives-defining-engagement>; IAB, “IAB Digital Ad Engagement Whitepaper: An Industry Overview and Reconceptualization,” <http://www.iab.net/adengagement> (all viewed 24 Mar. 2013).

¹⁷ Sapient Nitro, “Storyscaping,” <http://www.sapient.com/en-us/sapientnitro/about/storyscaping.html>; Experian, “The 2013 Digital Marketer Report and Webinar Series,” <http://www.experian.com/marketing-services/2013-digital-marketer-report.html>. For the use of neuromarketing techniques in financial marketing, see “Results of Neurological Testing of Advertising Effectiveness,” a case study from Neurofocus (owned by Nielsen), <http://www.neurofocus.com/BrandImage.htm> (all viewed 24 Mar. 2013).

measurement of digital marketing campaigns, financial companies are able to more precisely create online environments designed to trigger consumer behavior. For example, E*Trade uses a digital marketing system to “collect valuable data about how visitors reach and then interact ... [enabling it] to determine which pages were the most successful in contributing to conversion events—such as opening a new account” US Bank also uses the same digital marketing service to “integrate online and offline data [T]he system determines exactly how deep ... [user] engagement is and what time it took place—including how many pages deep into the site the visitor saw, what tools were used during that visit, and where the drop-off point was. ... [T]his information is captured in real time ... to help refine the targeting of future content and offers” U.S. Bank captures data for “leads” that are “enhanced” and “scored.”¹⁸

Key Issues

Among the key issues that the FFIEC should address are the following:

Social Media Surveillance: The emergence of social media campaign management and analytics tools involving “listening platforms” and “sentiment engines” enables financial and other companies to collect and analyze individual consumer’s social media activity.¹⁹ Techniques employed by social media marketing to identify and “activate” “influencers,” including through new forms of viral (word-of-mouth) marketing and designed to transform consumers into “brand advocates,” are conducted without sufficient disclosure on why and how an individual was selected. Financial and other companies are using social media to engage in “conversation monitoring” to understand customers’ interest in financial services. Social media is used to establish “conversations” with users, as part of “earned media” strategies, where an individual again isn’t informed or has consented with full knowledge of the goal.²⁰ Social media monitoring products enable companies to discover “What

¹⁸ Adobe, “Adobe Social,” <http://www.adobe.com/products/social.html>. See also Adobe, “U.S. Bank: Know It All,” Oct. 2012, <http://www.images.adobe.com/www.adobe.com/content/dam/Adobe/en/customer-success/pdfs/usbank-case-study.pdf>; Adobe, “E*TRADE Sees 5:1 Return on Investment with Adobe Digital Marketing Suite,” Dec. 2011, <http://www.images.adobe.com/www.adobe.com/content/dam/Adobe/en/customer-success/pdfs/etrade-case-study.pdf> (all viewed 24 Mar. 2013).

¹⁹ Crowd Factory, “Social Campaigns That Get People Talking,” <http://crowdfactory.marketo.com/platform/social-campaign/> (viewed 24 Mar. 2013).

²⁰ Unified, “Why the Social Operating Platform?” <http://www.unifiedsocial.com/our-platform/why-the-social-operating-platform/>; Tracx, “tracx Social Intelligence Platform for the Modern Enterprise,” 24 Jan. 2013, <http://www.youtube.com/watch?v=59ZuM0eSR-4>; ExactTarget, “Social,” <http://www.exacttarget.com/products/social-media-marketing> (all viewed 24 Mar. 2013).

was said? What is it about? (ie, product, service, brand, experience) Is it a common sentiment? What are the trends on this topic? Who said it? What is their value? How engaged are they? What is their influence? How do I respond? Was my response effective?"²¹ Using sentiment analysis, companies can identify where to target their conversational marketing. For example, the top sources for "conversations on credit cards" include "Twitter, pissedconsumer, customerservicesscoreboard, Facebook, , Ficoforums.myfico."²²

Chase and eBay, for example, access social media tools that enable them to use "sophisticated natural language processing, predictive analytics and artificial intelligence technologies to parse the vast flood of user status updates, mentions, check-ins, offer claims and other forms of actions and expressions to deliver the right audience ... turn[ing] public social chatter into targetable audience segments, deriving precise user interests from real-time status updates, allowing you to target your audience far beyond basic keyword and category targeting."²³ Dozens of financial service companies are using social media marketing services provided by Radian6 (now owned by Salesforce). Among its capabilities are tools for "listening" to consumers, measuring the "sentiment," and seeing "who is doing the talking ... [C]ompanies can monitor and respond to social conversations in near-real-time. ..." As Salesforce noted, the use of such social media tools can "[T]urn Your Bank's Haters into Lovers."²⁴

Social Media data are now incorporated by financial marketers for the creation of consumer digital profiles for targeted marketing: Financial data on consumers are at the core of much of digital marketing. Third-party data providers,

²¹ Paul Barrett, "10 Questions CMO's Need to Ask about Social Media," Teradata Aster, 26 Apr. 2012, <http://www.asterdata.com/blog/2012/04/10-questions-cmos-need-to-ask-about-social-media/>. See also, for example, IBM, "IBM Social Sentiment Index," <http://www.ibm.com/analytics/us/en/conversations/social-sentiment.html?CT=ISM0056> (both viewed 24 Mar. 2013).

²² Serendio, "What Can Banks Learn From Social Media?" <http://www.serendio.com/index.php/case-studies>. Serendio counts Citibank, U.S. Bank, and HSBC among its clients. Serendio, "Some of our Customers," <http://www.serendio.com/index.php/partners-customers> (both viewed 24 Mar. 2013).

²³ Compass Labs, "Ads Manager," <http://www.compasslabs.com/cliq-ads-manager/>; Compass Labs, "Social Media Advertising Case Studies and Whitepapers," <http://www.compasslabs.com/raves-and-resources/>. To see how social media data are used to create predictions on consumers, see Prosodic, "Audience Analytics in Real Time," <http://prosodic.com/> (all viewed 24 Mar. 2013).

²⁴ "Bigger Financial Institutions Need Better Social Media Tools," The Financial Brand.com, 20 Feb. 2012, <http://thefinancialbrand.com/22377/monitor-social-mentions-crm-radian6/>; Julie Meredith, "Turn Your Bank's Haters Into Lovers With Social Media," Salesforce Marketing Cloud, 11 July 2012, <http://www.salesforcemarketingcloud.com/blog/2012/07/turn-your-banks-haters-into-lovers-with-social-media/> (both viewed 24 Mar. 2013).

along with more “traditional” information brokers, provide social and other data used for financial marketing. For example, Alliant Cooperative Data Solutions collects data from many sources for its “Digital Marketing Optimization” and related services. Among the segments it has created for targeting are “Financial performance-challenged,” “credit-challenged,” “risky consumers,” “credit card rejects,” and “Payment Score: Bottom 5%.”²⁵ Alliant has allied with data providers who incorporate both financial social media data into their products for consumer targeting.²⁶ For example, it works with BlueKai, which provides “actionable audience data on more than 300 million users” in the U.S., including “intent data” related to “Financial services (ie. loans, mortgages, investment products)”; IXI uses “proprietary measures” so “consumers [can be] grouped by their estimated financial characteristics Examples include Income, Discretionary Spending, Economic Cohorts, Economic Spectrum, Ability to Pay, etc.,” and “Social (e.g. Social Behavior, Social Signals, Interest between Friends).” BlueKai’s data partners include Experian, TruSignal (which targets underbanked consumers), Monetate, and social media sources Janrain and Gigya.²⁷ Alliant also works with Lotame, whose data partners include Acxiom and MasterCard Advisors.²⁸ Acxiom itself works with data partners

²⁵ Alliant, “Target Online Ads with Direct Marketing Metrics,” <http://www.alliantdata.com/solutions/digital-marketing-optimization-3/alliant-online-audiences/>. For its alliance with Adobe, which incorporates social data, see “Alliant Data within the Adobe Online Marketing Suite, Powered by Omniture, Lets Online Marketers Segment Consumers for Relevant Website Experiences,” <http://www.alliantdata.com/solutions/digital-marketing-optimization-3/adobe-omniture-partnership/> (both viewed 24 Mar. 2013); “Alliant Online Audiences Segment Selector” (personal copy).

²⁶ “BlueKai, Alliant Announce Agreement to Offer Alliant Online Audiences & Exclusive Target Segments to Major Brands & Online Advertisers,” 5 Oct. 2012, <http://www.alliantdata.com/2012/10/bluekai-alliant-announce-agreement-to-offer-alliant-online-audiences-exclusive-target-segments-to-major-brands-online-advertisers/> (viewed 24 Mar. 2013).

²⁷ BlueKai, “Data Activation: The Data Exchange,” <http://www.bluekai.com/bluekai-exchange.php>; BlueKai, “Data App Partners,” <http://www.bluekai.com/data-app-partners.php>; TruSignal, “TruAudience Syndicated Segment: Underbanked Consumers,” <http://www.tru-signal.com/audiences/syndicated-segment-underbanked-consumers>; Monetate, “Financial Services,” <http://monetate.com/industries/financial-services/#axzz2OCCNj5I8>; Janrain, “Janrain User Management Platform,” <http://janrain.com/products/>; Gigya, “Social Infrastructure,” <http://www.gigya.com/> (all viewed 24 Mar. 2013).

²⁸ Lotame, “Integrated Partners,” <http://www.lotame.com/integrated-partners>. MasterCard Advisors is expanding its data alliances with online marketing. See Exponential, “About Us,” <http://www.exponential.com/about-us/news-detail.html?id=8573>; Mastercard Advisors, “Specify MasterCard Audiences For Your Online Buys,” http://www.mastercardadvisors.com/media_audiences.html (all viewed 24 Mar. 2013).

that provide social media data as well.²⁹ Experian also incorporates social media data for its digital marketing services.³⁰

Hallmarks of this new real-time consumer-targeting era include the expansion of leading data brokers to serve the online audience and an ever-growing alliance of first- and third-party information providers to help target consumers.³¹ IXI Digital (Equifax), which provides a myriad of financially targeted online marketing products, includes “social network user: Households likely to participate in online social networks,” as a targeting option.³²

The use of social media for scoring and predictive modeling, which may violate the Fair Credit Reporting Act or require additional regulation: Big Data techniques incorporating social media information on consumers enable the creation of new forms of “risk scores,” which can be used to make decisions on a person’s credit standing, for example. The growing use of scoring raises troubling questions about potential discriminatory and unfair practices. Companies such as MasterCard Advisors feed their customer data to data brokers, who combine it with myriad sources of other information, Exelate, MasterCard’s data partner, explains that it create scores to target consumers involving “hundreds of millions of cookies using tens of thousands of attributes.”³³

Webtrends explains that “behavioral scoring” involves assigning “value to visitors based on how much or how often they do something. That something can be almost any significant activity—from registration to product purchases to dollars spent to pages viewed by topic. Scores from different activities can be combined and any activity can be weighted based on the perceived or measured value. Scoring has some very distinct advantages compared to conditional filtering. Because a Score accumulates for an individual, the more a customer or prospect does something, the higher their score.”³⁴ U.S. Bank’s scoring models captured from online lead

²⁹ Acxiom, “Acxiom Partners,” <http://www.acxiom.com/about-acxiom/partners/>; see especially ThinkVine, <http://thinkvine.com/> (both viewed 24 Mar. 2013).

³⁰ Experian, “Integrated Social Media,” <http://www.experian.com/cheetahmail/integrated-social-media.html> (viewed 24 Mar. 2013).

³¹ See, for example, Acxiom Digital, <http://www.acxiomdigital.com/>; Experian Marketing Services, <http://www.experian.com/marketing-services/digital-advertising.html>; and the Brilig data exchange, <http://www.brilig.com/> (all viewed 24 Mar. 2013).

³² Equifax, “IXI Digital Targeting Options,” <http://www.ixicorp.com/ixi-digital/ixi-digital-targeting-options/> (viewed 24 Mar. 2013).

³³ eXelate, “eXelate Turns Big Data into Smart Data for Marketers with Revolution Analytics and IBM PureData for Analytics,” 27 Feb. 2013, <http://exelate.com/news/exelate-turns-big-data-into-smart-data-for-marketers-with-revolution-analytics-and-ibm-puredata-for-analytics/> (viewed 24 Mar. 2013).

³⁴ Experian, “Harnessing the Power of Big Data: Experian’s Guide to Big Data for Financial Services,” 2012, “<http://www.experian.co.uk/assets/consumer-information/white->

generation techniques “include the level of customer engagement, the quality and temperature of the lead, and the product and customer value to the bank.”³⁵

The role of Facebook: Much of the social media “ecosystem” revolves around Facebook, which operates an essential platform to reach consumers. Despite the Federal Trade Commission’s 20-year consent decree requiring Facebook to be more transparent and provide consumers greater control over their data, Facebook has not yet made its marketing system effectively visible and under its members’ control. Facebook has continually expanded its relationship with credit-related data companies and third-party data brokers providing financial information.³⁶ For one financial services company embarking on a “socially-enabling” campaign designed to turn “customers into fans,” it turned to one of the many social media marketing specialist firms. The campaign used Facebook’s new “Custom Audiences to create targeting segments” from a base of over 2 million email addresses. It analyzed “thousands of relevant audience data points” to identify potential “brand loyalists.” The financial company (which is unnamed in the case study) also used the data to target “friends of its fans.” As Experian explains, Facebook Exchange (FBX) enables marketers to “retarget Website browsers (based on a cookie match from the Website to Facebook).” Facebook’s “Custom Audience” service “allows the targeting of ads to specific Facebook user IDs and enables those IDs to be targeted.” Financial services companies can “create Custom Audiences for both high-income and low-income customers and tailor messaging accordingly to each.” As Facebook itself explained in launching its Exchange, “For many advertisers in industries like ... financial services, Facebook Exchange is a great way to drive conversions from Facebook based off consumer insight data.”³⁷ Financial advertisers’ spending on

papers/Harnessing%20the%20power%20of%20Big%20Data.pdf; Webtrends, “Database Marketing with Online Behavioral Data Made Simple,” <http://webtrends.com/files/whitepaper/Whitepaper-DatabaseMarketingWithOnlineBehavioralDataMadeSimple-Webtrends.pdf>.

³⁵ Adobe, “U.S. Bank: Know It All.”

³⁶ Federal Trade Commission, “FTC Approves Final Settlement With Facebook,” 10 Aug. 2012, <http://ftc.gov/opa/2012/08/facebook.shtm>. For an examination of Facebook’s services for advertisers, see the videos available at Facebook Studio, <http://www.facebook-studio.com/education/videos> (both viewed 24 Mar. 2013).

³⁷ Experian, “The 2013 Digital Marketer Report and Webinar Series”; Experian, “Retarget on Facebook,” <http://www.experian.com/social-marketing/retargeting.html>; Nanigans, “Facebook Advertising Case Study—Custom Audiences,” 16 Oct. 2012, <http://www.nanigans.com/2012/10/16/facebook-advertising-case-study-custom-audiences/>; Optimal, “Socially-enabling Financial Service Customers,” Optimal. http://wpc.2483.edgecastcdn.net/002483/adserving/facebook/Optimal_FS_CustomAudiences.pdf; Facebook, “Introducing Facebook Exchange,” 13 Feb. 2012, <http://www.facebook-studio.com/news/item/introducing-facebook-exchange> (all viewed 24 Mar. 2013).

Facebook is “significantly higher relative to other industries,” and reflects their interest to “acquire business with high lifetime value.”³⁸

We believe few consumers targeted by the financial firm understand that their data—and their behaviors on Facebook and other online services—were being gathered and assessed for such microtargeting. A thorough review of Facebook, its marketing partners, and financial services companies is warranted.

Social media via mobile devices is being used for real-time, locational-based, decision-making: Increasingly consumers use their mobile phones to research financial services and engage in transactions (from mobile banking to applying for a credit card). Today’s mobile phone user is increasingly connected to their social networks via Facebook, Google+, and other services, all of which offer a suite of services for marketers. As Google explained in an interview last year, “In the mobile areas, financial services is a leader in spending, focused mostly on direct response and customer acquisition”³⁹ A plethora of mobile “apps” also provide financial services that connect to one’s social network. “LocalResponse, for instance, connects cookies to social media accounts ... allowing brands to target consumers based upon what they share. If a user tweets that she’ll soon be filing her taxes from her Galaxy S III, LocalResponse can serve her a TurboTax ad next time she sits down to peruse the New York Times on her iPad.”⁴⁰ In addition, the rise of the use of “Mobile Wallets” raises additional questions, not only about the collection and use of social network data⁴¹ but about the adequacy of the application of consumer protection responsibilities under law to the various parties involved in the transactions.

The growing use of geo-location targeting, which offers the ability to closely monitor and target individual consumers regardless of where they may be, is a major issue that requires a range of regulatory safeguards.⁴²

³⁸ eMarketer, “The US Financial Services Industry: Digital Ad Spending Forecast and Key Trends.”

³⁹ Vijaye Raji, “Introducing New Mobile Ads for Apps,” Facebook Developer Blog, 7 Aug. 2012, <https://developers.facebook.com/blog/post/2012/08/07/introducing-new-mobile-ads-for-apps/>; Google Mobile, “Google+,” <http://www.google.com/mobile/+/> (both viewed 24 Mar. 2013); eMarketer, “The US Financial Services Industry: Digital Ad Spending Forecast and Key Trends.”

⁴⁰ John McDermott, “Can Mobile Targeting Ever be as Accurate as Cookies on the Desktop?” *Ad Age*, 21 Mar. 2013, <http://adage.com/article/digital/mobile-targeting-accurate-cookies-desktop/240464/>; LocalResponse, <http://localresponse.com/> (both viewed 24 Mar. 2013).

⁴¹ Andrew R. Johnson, “What’s in Your Digital Wallet? Lucrative Data,” the Wall Street Journal, 25 Mar. 2013, <http://online.wsj.com/article/SB10001424127887324557804578376442341437254.html> (viewed 25 March 2013).

⁴² See, for example, the growing role of “geo-fences” and other mobile practices, as well as financial mobile marketing. Placecast, “How it Works,” <http://placecast.net/platform/impl.html>; “Financial Services,” *Mobile Marketer*,

Role of rewards and virtual gaming to acquire customer data: Financial service online campaigns, integrating social communications, increasingly use rewards, sweepstakes, and other incentives to attract consumers to disclose—without meaningful consent—more of their information (which can be used later to target them, for example). Chase’s Freedom Facebook site offers to enter you for a \$1000 gas gift card sweepstakes by “Liking” it. American Express has partnered with social gaming company Zynga (the creator of Farmville and other popular games) to offer a prepaid card that generates rewards “to help you grow your virtual world.”⁴³ Foursquare, a social media “community” featuring a “check-in” app, is now working with Visa, MasterCard, and various bank debit cards by integrating offers and payments (all tied to location). The use of various “point of influence” techniques delivered at the time of purchase, especially those involving social media in financial services transactions, requires review.⁴⁴

Recommendations

Ensure compliance with the Fair Credit Reporting Act when social media and other new forms of pre-screening are used: The transformation of the financial services marketplace, with new forms of consumer pre-screening using online data, requires effective FCRA enforcement. The Federal Trade Commission, for example, has weighed in to help ensure that companies gathering social data, including through mobile apps, as part of an employer background screening process are compliant with the FCRA.⁴⁵ Further, in the credit decision-making space, it is very clear that the development of online behavioral scoring mechanisms deserves significant regulatory scrutiny, since firms may be using e-scores for pre-screening,

<http://www.mobilemarketer.com/cms/sectors/financial-services.html> (both viewed 24 Mar. 2013).

⁴³ “Chase Freedom \$1,000 Sweepstakes,” Facebook, https://www.facebook.com/ChaseFreedom/app_138506879567016; Serve, “Earn Zynga Serve Rewards,” <https://www.serve.com/zynga/?extlink=us-serve-zynga15-PressRelease-Microsite-201205> (both viewed 24 Mar. 2013).

⁴⁴ Foursquare, “Start Saving Money with New Seamless Foursquare Specials for Your Credit Card,” 26 Feb. 2013, <http://blog.foursquare.com/2013/02/26/start-saving-money-with-new-seamless-foursquare-specials-for-your-credit-card/> (viewed 24 Mar. 2013).

⁴⁵ See Closing Letter, Social Intelligence Corporation, File No. 112 3014, FTC, May 2011, <http://www.ftc.gov/os/closings/110509socialintelligenceletter.pdf> (viewed 24 Mar. 2013), holding that a firm’s activities made it a Consumer Reporting Agency regulated under the FCRA. Tony Rodriguez and Jessica Lyon, “Background screening reports and the FCRA: Just saying you’re not a consumer reporting agency isn’t enough,” <http://www.business.ftc.gov/blog/2013/01/background-screening-reports-and-fcra-just-saying-youre-not-consumer-reporting-agency-i> (viewed 25 Mar. 2013). (viewed 25 Mar. 2013).

which would make them Consumer Reporting Agencies subject to the FCRA. We urge the FFIEC to carefully review how financial services companies are using E-scores and other predictive measures to evaluate how consumers are treated by the marketplace. It should work to more effectively enforce the FCRA or call on Congress to revise whatever new consumer safeguards are required.⁴⁶

Regulate practices that undermine consumer privacy in the financial marketplace, and support federal privacy legislation (including on the role of data brokers): Despite the regulatory and self-regulatory rules, such as those by FINRA, that address social media communications by financial services entities, there is sufficient evidence to illustrate that consumers require meaningful safeguards to control their personal information and effectively determine how their financial decision-making is structured. The ever-increasing profiles of individuals containing diverse and continuous sources on their financial status raise serious privacy concerns. Sentiment and conversation monitoring without consumer consent is a major privacy concern. Use of measurement tools evaluating a consumer's actions also requires safeguards. It is time to define how such data and techniques—including the myriad offline and online financial information readily available today which can be used to target consumers across all platforms—can be placed back in the control of the individual. It is essential that CFPB and other institutions engage in rulemakings designed to empower consumer decision-making about their data. The data broker industry also requires further scrutiny and regulation, especially given its significant expansion into the digital arena.⁴⁷ This month, Federal Trade Commissioner Julie Brill echoed our concerns about the potential for charging some consumers more, or less, or offering some consumers different choices than others, in financial marketing: “One area of growing concern is discriminatory marketing offers—qualifying some consumers to be eligible for discounts or other benefits, based on behavioral data, and disqualifying others, all without giving consumers the opportunity to ensure that the information on which these decisions are based is accurate.”⁴⁸ As FFIEC member regulators seek to achieve the goal of reducing the number of the unbanked, policies and regulations need to ensure that social networking data are used to help, not harm, consumers.

⁴⁶ For further discussion and analysis, see Mierzwinski and Chester, “Selling Consumers, Not Lists: The New World of Digital Decision-Making and the Role of the Fair Credit Reporting Act,” forthcoming *Suffolk University Law Review*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2188560 (viewed 25 Mar. 2013).

⁴⁷ Both the FTC and GAO are examining the data broker industry. Craig Timberg, “FTC Orders Data Brokers to Explain Use of Consumer Profiles,” *Washington Post*, 18 Dec. 2012, http://articles.washingtonpost.com/2012-12-18/business/35908312_1_data-brokers-id-analytics-mobile-apps; Natasha Singer, “Senator Opens Investigation of Data Brokers,” *New York Times*, 10 Oct. 2012, http://www.nytimes.com/2012/10/11/technology/senator-opens-investigation-of-data-brokers.html?_r=0 (both viewed 24 Mar. 2013).

⁴⁸ Brill, Julie, “The Perfect Gift,” Keynote address before the Direct Marketing Association, 12 Mar. 2013, <http://ftc.gov/speeches/brill.shtm> (viewed 25 Mar. 2013).

Establish special safeguards for vulnerable, as well as multicultural, consumers: There is already evidence about the growing targeting of at-risk consumers for payday loans and other harmful financial products.⁴⁹ Sophisticated techniques to target, for example, Hispanics (including Spanish-speaking) and African Americans online have been developed. The FFIEC should review how such online multicultural marketing is being used to target both low-income and ethnic/racial groups.⁵⁰ Such comprehensive data profiles on individual users, which can contain a broad range of personal and other unique digital information, raise serious concerns. The use of any consumer data collected via online transactions and behavior for such scoring should not be permitted without an individual's affirmative and informed opt-in consent

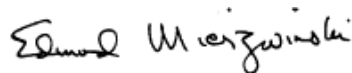
Address COPPA and the special needs of adolescents: While children 12 and under have some protection of their privacy under the Children's Online Privacy Protection Act, data collected from teens are unprotected. Adolescents are heavy users of social media, including Facebook. As developmental research shows, adolescents are especially vulnerable to marketing campaigns. The FFIEC should issue guidelines on how financial marketing to young consumers 13-17 should be conducted, as well as review compliance with COPPA when new, stronger FTC rules come into effect in July 2013.

Both U.S. PIRG Education Fund and CDD offer this brief overview to assist in a critical conversation—and action plan—that should be developed by the FFIEC to protect consumers in the social media marketplace.

Respectfully submitted,



Jeff Chester
Executive Director
Center for Digital Democracy
1718 Connecticut Ave. NW
Suite 200
Washington, DC 20009



Edmund Mierzwinski
Consumer Program Director
U.S. PIRG Education Fund
218 D St. SE
Washington, DC 20003

⁴⁹ See for example, TruSignal, "Audiences," <http://www.tru-signal.com/audiences/syndicated-segment-underbanked-consumers>; Pew Charitable Trusts, "Who Borrows, Where They Borrow, and Why," 19 July 2012, <http://www.pewstates.org/research/reports/who-borrows-where-they-borrow-and-why-85899405043> (both viewed 24 Mar. 2013).

⁵⁰ For background, see Center for Digital Democracy, "Digital Target Marketing to African Americans, Hispanics and Asian Americans: A New Report," 18 Feb. 2013, <http://www.democraticmedia.org/digital-target-marketing-african-americans-hispanics-and-asian-americans-new-report> (viewed 24 Mar. 2013).