



# Social Media Compliance for Banks & Credit Unions

Meeting online compliance regulations with ease

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# CONTENTS

---

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS &  
REWARDS

RECORDKEEPING RULES &  
REGULATIONS

CONSEQUENCES OF NON-  
COMPLIANCE

SOCIAL MEDIA COMPLIANCE  
CHECKLIST

THE UNIQUE CHALLENGES OF  
COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT

INTRODUCTION	3
ONLINE COMMUNICATION RISKS & REWARDS	4
RECORDKEEPING RULES & REGULATIONS	5
CONSEQUENCES OF NON-COMPLIANCE	8
SOCIAL MEDIA COMPLIANCE CHECKLIST	9
THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA	10
AREN'T BACKUPS ENOUGH?	12
THE DATACOVE SOCIAL SOLUTION	13
CONTACT TANGENT	16

---



# INTRODUCTION

---

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATA COVE SOCIAL SOLUTION

CONTACT TANGENT

As marketing and business communications move increasingly online, the implications of record retention laws are of growing concern. Web and social networking technologies can provide banks & credit unions with efficient dissemination of information, heightened engagement with consumers and better communication within the organization. However, there are risks associated with the use of these tools for organizations that fail to maintain records of their online marketing and communication activities.

Banks, in particular, face increasing regulations from regulators like FFIEC, NCUA, FINRA, SEC, and FTC as sellers of banking services, investments, and mortgages. As organizations customers instill a lot of trust in, banks must manage their own risk profiles by additionally making efforts to maintain their reputation and trust with those who depend on them.

Most banks & credit unions have some type of retention system in place for e-mail. But what about the website, blog, customer forum, and social media accounts like Twitter, Facebook, and YouTube? These, along with all other web content, are subject to regulation and e-discovery.

This whitepaper examines the unique challenges associated with online business communications and social media for banks & credit unions and explains the role of social media compliance in addressing these difficulties. It is intended to assist you in understanding current electronic records regulations, their implications and the best practices for implementing solutions to simplify the compliance process.

We hope this document serves as a starting point in helping to strengthen your compliance efforts and improve your recordkeeping processes.

# 2

## ONLINE COMMUNICATION RISKS & REWARDS

WITH THE EXPLOSION OF SOCIAL MEDIA PLATFORMS LIKE TWITTER, FACEBOOK, LINKEDIN, THE WEB IS RECOGNIZED AS A COLLABORATIVE AND INTERACTIVE MEDIUM THROUGH WHICH BANKS & CREDIT UNIONS CAN CONNECT WITH CUSTOMERS ON A TARGETED SCALE.

Many prestigious banks (Wells Fargo, Citibank, and Bank of America, to name just a few) have established a Twitter presence to keep customers updated on special offers, post helpful financial advice, and more. But at the same time, organizations are discovering that corporate usage of social media has different ramifications and risks from personal usage and requires careful implementation.

Subject to additional regulations and reputation risks, banks must take extra care regarding social media. First, since all information relayed through a social network is available for public scrutiny. Secondly, due to increasing regulations as the result of a recent recession and its underlying causes - regulators around the world are focusing more heavily on the governance of financial institutions.

.....  
*“Social networking sites and blogs raise new regulatory challenges, particularly in the areas of supervision, advertising and books and records requirements.” - Rick Ketchum, FINRA Chairman and CEO*  
 .....

Since regulation enforcement will continue to increase as firms conduct more business online, it simply makes sense to understand

records retention requirements and implement appropriate policy proceedings. It is important to have complete and exportable documents of all online activity to expedite the resolution process.



As new social media platforms and online technologies evolve and grow in popularity, banks absolutely must educate themselves concerning these requirements and anticipate enforcement actions to stay on top of their compliance game

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATA COVE SOCIAL SOLUTION

CONTACT TANGENT



# RECORDKEEPING RULES & REGULATIONS

AS SELLERS OF BANKING SERVICES, INVESTMENTS, AND MORTGAGES, BANKS PLAY IMPORTANT ROLES WHICH MUST BE CAREFULLY SUPERVISED. A NUMBER OF REGULATORS HAVE ESTABLISHED REQUIREMENTS FOR RECORDS RETENTION.

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATAOVE SOCIAL SOLUTION

CONTACT TANGENT

## WEB & SOCIAL MEDIA COMPLIANCE FOR BANKING SERVICES

The FFIEC, composed of various regulatory bodies, acts as the regulator of the banking industry. The FFIEC released a guide: [“Social Media: Consumer Compliance Risk Management Guidance”](#) (Dec 2013) to help banks & credit unions understand compliance and legal risks associated with the use of social media and how to manage them..

The guide defines social media broadly, encompassing social media networks to forums, blogs, and customer review websites. This all-encompassing definition creates a strong need to have all bases covered when it comes to archiving web materials.

According to the FFIEC guidelines, banks must:

- Develop a succinct social media strategy
- Establish formal social media policies and procedures
- Establish an employee social media training program
- Regularly report social media ROI
- Determine a social media monitoring process
- Closely manage relationships with third parties to ensure compliance on all ends
- Adopt a risk management program that helps it find and control the risks related to their social media usage.

Of importance to banks are the risks below, adapted from the guide.

### 1) REPUTATION RISKS AND COMPLAINTS

As feedback both positive and negative is instantaneous on social media channels, banks must be ready to respond quickly when negative posts start to go viral that could damage their reputation for the long run.

### 2) COMPLIANCE & LEGAL RISKS

There are no exceptions to existing regulations when an action is taken on social media. Banks must be acutely aware of how the following laws and acts they are subject to apply to the digital world:

- Fair lending
- Truth-in-Savings
- Truth-in-Lending
- RESPA
- CAN-SPAM
- Telephone Consumer Protection Act
- Fair Debt Collection Practices Act
- Electronic Funds Transfer Act (Reg. E)
- Bank Secrecy Act

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS &amp; REWARDS

RECORDKEEPING RULES &amp; REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT

### 3) OPERATIONAL RISKS

Many things can go wrong with processes, people or systems when dealing with digital properties. Banks need to be extra careful in protecting their systems from hackers, viruses, etc. This makes it necessary to make social media an important consideration when evaluating IT partners, processes, and programs

## WEB & SOCIAL MEDIA COMPLIANCE FOR INVESTMENT SERVICES

As sellers of investment products and managers of investment portfolios for customers, banks also need to comply with the specific social media regulations set by the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

### 1) THE SECURITIES AND EXCHANGE COMMISSION (SEC)

The most distinct rules regarding online communications are set by the SEC, as part of the [Securities Exchange Act \(SEA\)](#). Under SEC [Rules 17A-3 and 17A-4](#):

Firms are required to archive all marketing related communications, including media content. They outline specific operational and technical requirements including written retention policies, readily retrievable data, searchability of data, and storage of data onsite and on WORM media. They also require third party access to electronic records for regulatory purposes and the preservation of certain records for not less than three years, the first two in an easily accessible place.

### 2) THE FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

Supporting the rules laid out by the SEA, FINRA has set additional standards and offered guidance in meeting SEC requirements.

[FINRA Rule 4511](#) and [3110](#) explicitly state that firms must retain records of all business-related communications to remain compliant with the Securities Exchange Act. Similarly, it requires record preservation for six years. FINRA Rule 3110 makes it mandatory for banks to establish a system to supervise employees engaged in the compliance process.

Providing guidance on social media compliance, FINRA's regulatory notice [10-6](#) and [11-39](#) discuss expectations on FINRA member's use of social media, covering recordkeeping responsibilities, supervision needs and important considerations with third party posts and links.

## SOCIAL MEDIA COMPLIANCE FOR MORTGAGE BROKERS

Operating in an highly sensitive market that sells mortgages, banks are subject to further regulations to ensure accurate representation of mortgage products to customers online.

The Federal Trade Commission (FTC)'s Mortgage Acts and Practices states that mortgage brokers, as well as any organizations who engage in mortgage advertising, are required to keep copies of all commercial communications and mortgage advertisements for 24 months. ([16 CFR Part 321](#)). Commercial communications include sales scripts, training materials, marketing materials, and any documents describing mortgage credit products and additional services available.



---

 NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS &amp; REWARDS

RECORDKEEPING RULES &amp; REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT



## ADVERTISING IN SOCIAL MEDIA

The FTC aims to prevent business practices that are deceptive to consumers. Its rules apply to any blogs, social media networks, and websites where advertising exists; easily applicable to banks. One of its most sweeping regulations is Section 5 of the [Federal Trade Commission Act](#), which addresses appropriate commercial speech to help put an end to deceptive advertising. Here is an overview of some expectations:

1. Endorsements apply to social media and new technology as it evolves. For Twitter, with a 140 character count limit, the use of hashtags #ad #paidad can be sufficient.
2. Disclosures for videos are not sufficient in the video descriptions or only at the beginning of the video. Disclosures must be displayed throughout the video for all to see at any point they tune in.
3. Social media contests that require entrants to tweet or share for a chance to win must incorporate disclosures as part of the contest, and share messaging and contest terms.

4. Free products given to customers for online reviews (positive or negative) are considered endorsements. This should be mentioned on review pages.

The FTC released the [Guides Concerning the Use of Endorsements and Testimonials in Advertising](#) and following Q&A document [“What People Are Asking”](#) to serve as a framework for complying with the relevant FTC regulations.



# CONSEQUENCES OF NONCOMPLIANCE

In 2015, FINRA issued \$96 million in fines related to electronic communication, including social media. This broke a new record, up 200% from \$32 million in 2014. The agency has levied massive fines against both organizations and individuals for compliance violations, including \$9 million for not complying with archiving rules, \$5,000 for a Facebook post that was “not fair and balanced,” and \$10,000 for misleading Tweets.

NCUA issues administrative orders for violations to the guidance or associated



regulations, stating that there are “penalties for noncompliance with internal policies and regulatory requirements.” Specific penalties can be found in the [NCUA Regulations Manual](#).

The FTC, in particular, has had a ruthless approach to enforcement, issuing hefty fines for practices that fall outside of its guidelines. Penalties for non-compliance can range from a written warning letter to a fine of \$11,000 per incident. In other cases, these penalties have been much higher; as in the case of

Legacy Learning Systems, a popular provider of guitar-lesson DVDs, [charged with \\$250,000](#) for advertising products through paid online affiliate marketers, and having them falsely pose as actual customers. Machinima also [settled similar charges](#) with the FTC for paying YouTube video creators up to \$30,000 for their video reviews without disclosing so.

To protect themselves from fines and penalties as such, banks must cover their compliance bases by paying careful attention to what is communicated online, while having quality archives of their online history on hand at all times.

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATA COVE SOCIAL SOLUTION

CONTACT TANGENT





# SOCIAL MEDIA COMPLIANCE CHECKLIST

While there are a number of regulations, the points below is a summary of the recurring expectations across the board. This checklist should be used as your guidance to ensuring the right things are in place for your bank's web and social media compliance.

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## NAVIGATION PANEL

### INTRODUCTION

### ONLINE COMMUNICATION RISKS & REWARDS

### RECORDKEEPING RULES & REGULATIONS

### CONSEQUENCES OF NON-COMPLIANCE

### SOCIAL MEDIA COMPLIANCE CHECKLIST

### THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

### AREN'T BACKUPS ENOUGH?

### THE DATACOVE SOCIAL SOLUTION

### CONTACT TANGENT

- ✓ Have a social media policy in place
- ✓ Disclose relationship with advertisers if your blog, web page or social media message promotes 3rd party products and contains images, video, and links to the 3rd party websites
- ✓ Archive all your public social media, blogs, forums, websites daily
- ✓ Collect data in original file format (HTML, PDF etc.)
- ✓ Collect metadata
- ✓ Sign all data with digital signatures and timestamps
- ✓ Ensure data indexed and full-text searchable
- ✓ Store data on duplicate media
- ✓ Retain data for a minimum of 3 years
- ✓ Invest in a reliable archiving software to get all the above taken care of automatically!



# THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

SOCIAL MEDIA POSES UNIQUE ARCHIVING CHALLENGES THAT NEED TO BE CONSIDERED BY BANKS AS WELL AS ALL OTHER ORGANIZATIONS UTILIZING PLATFORMS AS A COMMUNICATION CHANNEL. LET'S EXPLORE:

## MULTIFACETED NATURE

Unlike other forms of content, social media can often contain videos, images, comments and likes. For this reason, it's important to use an archiving solution that captures all this content.

## DEEP-LINKED CONTENT

A good 30% of social media messages contain links to third party website content. These links can change quickly over time, or, if shorted with a URL shortener (i.e. bit.ly) will only be valid for a designated time period before they invalidate as links.

Also, web pages that are linked to can commonly be deleted or changed over time. This makes capturing actual URLs and linked web pages a difficult task. An ideal solution not only collects the social media messages but is also able to look up the original URL and automatically collect the deep-linked web page for later reference.

## EVER-EVOLVING PLATFORMS

Although social media networks like Twitter, Facebook and LinkedIn may have much in common (like the ability to hashtag), they are also extremely unique. A common issue with archiving this content is that these platforms continue to change without any heads-up.

Once a method for collecting content is determined, another update or new social media platform develops. It is difficult hard to keep up and customize without knowing what's coming!

## REAL-TIME ACTIVITY

The beauty of social media is the speed in which it operates. With content being posted on Twitter every second archiving technologies need to be on the crawl regularly, capturing the absolute most recent content as it comes about.

## INTEGRATION REQUIREMENTS

Since simple screen shots won't suffice in court, organizations need the APIs of these networks to be able to integrate with their own applications to gather the information needed. APIs are unique to each network.

## METADATA COLLECTION

In simple terms, metadata is "a set of data that describes and gives information about other data"; and in the world of digital evidence, there are 4 primary types:

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT

---

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS &  
REWARDS

RECORDKEEPING RULES &  
REGULATIONS

CONSEQUENCES OF NON-  
COMPLIANCE

SOCIAL MEDIA COMPLIANCE  
CHECKLIST

THE UNIQUE CHALLENGES OF  
COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATAOVE SOCIAL SOLUTION

CONTACT TANGENT

---

- 1. Client Metadata (who collected it)**  
i.e Browser, operating system, IP address, user
- 2. Web Server/API Endpoint Metadata (where and when it was collected)**  
i.e URL, HTTP headers, type, date & time of request and response
- 3. Account Metadata (who is the owner)**  
i.e Account owner, bio, description, location
- 4. Message Metadata (what was said when)**  
i.e Author, message type, post date & time, versions, links (un-shortened), location, privacy settings, likes, comments, friends

Metadata as such can give tremendous insight into who you are, where you live, and where else you spend your time online; and it can have numerous applications, from allowing marketers to retarget you with specific content tailored to aiding in cases from insurance fraud to IP infringement, and divorce & family matters.

Metadata can help to provide essential and contextual information about the when's and where's of actions related to a legal case and is key to proving data authenticity and integrity in court. Working with systems and technologies that capture metadata in the right formats is a huge requirement for banks working with online content.





# AREN'T BACKUPS ENOUGH?

Should you need to access the history of your social media presence, how confidently would you be able to do so? How easy would it be to produce non-refutable records from a specified date? And would you be able to view the content (including links, rich media, feeds, etc.) just as it appeared when created?

A big issue with backups is that they do not capture essential information like digital signatures and metadata, limiting their ability to meet important data integrity and authenticity standards should the data ever need to be used in litigation cases.

Backups also lose out when it comes to accessibility of data. Should an urgent need to retrieve information arise, pulling data from backups would require a dependency on IT teams.

In a nutshell, backups are not built for compliance. A small investment in a complete social media archiving services can yield a massive return in solving these limitations before they bottleneck the online compliance process.

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATAOVE SOCIAL SOLUTION

CONTACT TANGENT

	Website & Social Media Archiving Software	Backups
Collect Metadata	✓	✗
Digital Signatures for legal authentication	✓	✗
Easy web-based access to archives	✓	✗
Live replay	✓	✗
SEC 17a-4 compliant data storage	✓	✗
Accessibility	Instant, 24x7	Takes hours
Solution for	Compliance, Legal	IT



# THE DATACOVE SOCIAL SOLUTION

TANGENT IS PLEASED TO OFFER A COST-EFFECTIVE, SAAS-BASED ARCHIVING SOLUTION WHICH PROVIDES FOR THE SPECIFIC NEEDS OF BANKS & CREDIT UNIONS - DAILY AUTOMATIC ARCHIVING OF YOUR CORPORATE WEB PRESENCE, PERFECT REPRODUCTION AND REPLAY OF THOSE ARCHIVES, EXCELLENT SEARCH AND RETRIEVAL FUNCTIONALITY AND COMPLIANCE WITH SEC, SOX AND FINRA REGULATIONS RELATED TO WEBSITES AND SOCIAL MEDIA COMMUNICATIONS.

Implementing a web archiving policy requires considerable investigation and forethought, given the various options now available in archiving technology. How will you know which archiving service is covering all the bases?

There are several key components to consider. The ideal archiving solution:

## EMPLOYS A POWERFUL CONTENT CAPTURE METHOD

To provide comprehensive archiving of even complex or hard-to-reach content, DataCove Social utilizes archival crawlers (deriving from search engine crawling technologies) and harvesters (for real-time archiving) to capture pages. DataCove Social's crawl and harvest technologies are industry strength and work well in a wide range of circumstances and platforms.

## PROVIDES PERFECT REPRESENTATION OF DIGITAL CONTENT

Today's Social Media Platforms employ all manner of technologies - Javascript, Flash, Web 2.0, AJAX and much more - making it difficult to secure archives that can be viewed as exact representations of the original versions. DataCove Social supports

the capture of all complex content (including Flash). The perfect copies are stored unchanged which is of particular importance in a legal context.

## ELIMINATES DEPENDENCY ON PUBLISHING SOFTWARE AND DATABASES

The preservation and storage of digital content is best approached using the SaaS (Software-as-a-Service) model -- everything happens online with nothing to install or configure.

## ALLOWS FOR POWERFUL SEARCH FUNCTIONALITY ACROSS ALL ARCHIVED MATERIAL

Discovering and analyzing specific archives is simple within DataCove Social's platform agnostic SMTP delivery which allows for detailed keyword searches and filtering commands across your entire archive from your current preferred archiving solution.

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT



---

 NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS &amp; REWARDS

RECORDKEEPING RULES &amp; REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT

## GUARANTEES SECURE ARCHIVE STORAGE

Responsible handling of your organization's sensitive data is of vital importance. DataCove Social stores your archives on a fault-tolerant data cloud at our SAS70 Type II compliant data center then mirrors the information to a geographically remote second location as an added precaution while delivering your archives to your local archiving platform for search and Discovery. Archives will not be changed or destroyed during the duration of your company's subscription.

## ENSURES DEFENSIBLE DIGITAL RECORDS

DataCove Social provides each post with a digital timestamp, synchronized with certified atomic clocks, to prove the content was online at a specified date (data authenticity). These precautions guarantee the admissibility of your archived records.

## SUPPORTS THE LITIGATION HOLD PROCESS

When used with the DataCove Email Archiving Solution, legal holds can be placed on any social media content that has been captured. In the case of legal action or e-discovery proceedings, DataCove can provide exports of archived content. Using readily available export to EML and PDF, your legal counsel can receive a well-prepared package including searchable PDF files and the native files with our digital timestamp and signature, providing the defensible evidence required in court. Export methods for other archiving platforms may vary based on vendor.







# CONTACT TANGENT

## DISCLAIMER

This document was created to provide information about a specific issue. This document does not take a position on any particular course of action or proposal, nor is it intended to endorse any particular vendor or product. Every effort has been made to present accurate and reliable information; however, Tangent assumes no responsibility for consequences resulting from the use of the information herein.

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WE HOPE THIS DOCUMENT HAS BEEN HELPFUL IN CREATING A DISCUSSION AROUND THE PRESSING ISSUE OF ONLINE RECORDS RETENTION FOR FINANCIAL SERVICE AGENCIES.

NAVIGATION PANEL

INTRODUCTION

ONLINE COMMUNICATION RISKS & REWARDS

RECORDKEEPING RULES & REGULATIONS

CONSEQUENCES OF NON-COMPLIANCE

SOCIAL MEDIA COMPLIANCE CHECKLIST

THE UNIQUE CHALLENGES OF COLLECTING SOCIAL MEDIA DATA

AREN'T BACKUPS ENOUGH?

THE DATACOVE SOCIAL SOLUTION

CONTACT TANGENT