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January 27, 2015 **REV.** February 25, 2015

(Revision: Bulletin 2015-01 now published in Federal Register [80 FR 10072](#))

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** CFPB Bulletin 2015-01 - Treatment of Confidential Supervisory Information

On January 27, 2015, the CFPB issued Bulletin 2015-01 as a reminder that, with limited exceptions, persons in possession of confidential supervisory information (CSI) are prohibited from disclosing CSI to third parties. To view and/or print the bulletin in full, click this [hyperlink](#). Below is a redaction of the main points of the bulletin:

1. The CFPB has issued regulations that govern the use and disclosure of CSI, which are contained in 12 CFR part 1070, and expects all supervised financial institutions and other persons that may come into possession of CSI to understand what constitutes CSI and to know and comply with these regulations.

2. Supervised financial institutions are those persons that are or that may become subject to CFPB supervisory authority – *e.g.*, (i) depository institutions and credit unions with assets over \$10 billion, and their affiliates; (ii) nonbanks, such as mortgage lenders, brokers, and servicers, and (iii) service providers – *i.e.*, anybody that provides a material service to any of the above persons in connection with that person’s offering or providing of a consumer financial product or service.

3. Under the CFPB’s regulations, CSI means:

- Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;
- Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other Federal, State, or foreign government agency in the exercise of supervisory authority over a financial institution, and any supervision information derived from such documents;
- Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB’s supervision of the institution;
- Any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. §5481, or is subject to the CFPB’s supervisory authority; and/or
- Information that is exempt from disclosure pursuant to 5 U.S.C. §552(b)(8) – *i.e.*, “matters that are ... contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions[.]”

4. Examples of CSI include, but are not limited to:

- CFPB examination reports and supervisory letters, including CFPB supervisory actions, such as memoranda of understanding between the CFPB and an institution, and related submissions and correspondence;
- All information contained in, derived from, or related to those documents, including an institution’s supervisory Compliance rating;

- Communications between the CFPB and the supervised financial institution related to the CFPB’s examination of the institution or other supervisory activities, including supervisory information requests from the CFPB to a supervised financial institution, along with the institution’s responses; and
- Other information created by the CFPB in the exercise of its supervisory authority, including work papers or other documentation that CFPB examiners have prepared in the course of an examination.

5. CSI does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess.

6. There are certain exceptions to the general prohibition against disclosing CSI to third parties. A supervised financial institution may disclose CSI of the CFPB lawfully in its possession to:

- Its affiliates;
- Its directors, officers, trustees, members, general partners, or employees, to the extent that the disclosure of such CSI is relevant to the performance of such individuals’ assigned duties;
- The directors, officers, trustees, members, general partners, or employees of its affiliates, to the extent that the disclosure of such CSI is relevant to the performance of such individuals’ assigned duties;
- Its certified public accountant, legal counsel, contractor, consultant, or service provider;
- To others with the prior written approval of the CFPB’s Associate Director for Supervision, Enforcement, and Fair Lending, or his or her delegee (Associate Director).

The CSI recipients may not, without the prior written approval of the Associate Director, utilize, make, or retain copies of, or disclose CSI for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate. Supervised financial institutions or affiliates disclosing CSI must take reasonable steps to ensure that the CFI recipients comply with the rules governing CSI.

7. A non-disclosure agreement (NDA) entered into by a supervised financial institution with a third party that purports to (1) restrict the supervised financial institution from sharing certain information with a supervisory agency and/or (2) require the supervised financial institution to advise the third party when the institution shares with a supervisory agency information subject to the NDA, do not alter or limit the CFPB’s supervisory authority or the supervised financial institution’s obligations relating to CSI. In addition, a supervised financial institution (i) should not attempt to use an NDA as the basis for failing to provide information sought pursuant to supervisory authority and (ii) risks violating the law if it relies upon an NDA to justify disclosing CSI in a manner not otherwise permitted.

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