



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Thomas E. Black, Jr., P. C.*

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

Shawn P. Black **

Regina M. Uhl

Senior Lawyers

David F. Dulock

Diane M. Gleason

Associates

Peter B. Idziak **

Daniel S. Engle***

Of Counsel

David M. Tritter

Benjamin R. Idziak **

* Also Licensed in Iowa, New York,
Washington and West Virginia

** Also Licensed in New York

***Licensed Only in New York

October 8, 2015

To: Clients and Friends

From: David F. Dulock

Subject: CFPB Compliance Bulletin 2015-05– Marketing Services Agreements

On October 8, 2015, the Consumer Financial Protection Bureau (CFPB) issued Compliance Bulletin 2015-05 (Bulletin, [click here](#)) regarding Marketing Services Agreements (MSA). The purpose of the Bulletin is to advise the mortgage lending industry of the substantial risks posed by entering into MSAs and, based on the CFPB's investigative efforts, that it appears many MSAs are designed to evade the RESPA prohibition on the payment and acceptance of kickbacks and referral fees. The Bulletin provides an overview of the RESPA prohibition on mortgage kickbacks and referral fees, and describes examples from the CFPB's enforcement experience as well as the risks faced by lenders entering into MSAs.

The Bulletin points out that MSAs are usually framed as payments for advertising or promotional services, but in some cases the payments are actually disguised compensation for referrals. The Bulletin also points out that efforts to adequately monitor MSA activities is inherently difficult and the risk of violating RESPA is significant, even when MSAs are carefully drafted to be technically compliant with RESPA.

The Bulletin advises that mortgage industry participants should undertake a more careful consideration of legal and compliance risk arising from MSAs, especially since whistleblower complaints about MSAs that violate RESPA have been increasing.

The Bulletin concludes with the warning that the CFPB intends to continue actively scrutinizing the use of MSAs and related arrangements in the course of its enforcement and supervision work.

You may download and print the complete text of Bulletin 2015-05 by clicking on the above hyperlink.

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