



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

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

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

**Gregory S. Graham, P. C.**

**David F. Dulock**

**Diane M. Gleason**

**Benjamin R. Idziak \*\***

**Shawn P. Black \*\***

**Margaret A. Noles**

**Robert J. Brewer**

**Regina Uhl**

**Of Counsel**

**David M. Tritter**

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

*\*\* Also Licensed in New York*

April 17, 2012

**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Consumer Financial Protection Bureau (CFPB) to Hold Financial Institutions Accountable for their Service Providers Compliance with Federal Consumer Financial Law – CFPB Bulletin 2012-03

On April 13, 2012, the CFPB released the above referenced Bulletin notifying financial institutions under CFBP supervision that, depending on the circumstances, the CFPB may hold these financial institutions legally responsible for violations of Federal consumer financial law by the service providers with whom they have a business relationship.

This memorandum attempts to summarize the Bulletin's main provisions, but you are advised to read the Bulletin, which may be found at the following web site: [http://files.consumerfinance.gov/f/201204\\_cfpb\\_bulletin\\_service-providers.pdf](http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf).

In the Bulletin the CFPB recommends that CFPB supervised financial institutions take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. These steps include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;
- Requesting and reviewing the service provider's policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process.

The Bulletin uses the following terms, the meaning of which are important in order to understand the applicability of the Bulletin. For this reason we have provided explanations of these terms in greater detail than that provided in the Bulletin.

“*Supervised banks and nonbanks*” – the following entities supervised by the CFPB:

- Large insured depository institutions, large insured credit unions, and their affiliates, as defined in 12 USC §5515, in pertinent part, as follows: “(1) an insured depository institution with total assets of more than \$10,000,000,000 and any affiliate thereof; or (2) an insured credit union with total assets of more than \$10,000,000,000 and any affiliate thereof.”
- Certain non-depository consumer financial services companies, as defined in 12 USC §5514, in pertinent part, as follows: “any covered person<sup>1</sup> who - (A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; (B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2); (C) the Bureau [CFPB] has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 5493(b)(3) of this title or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; (D) [~~Deleted - as it refers to offering or providing private education loan~~]; or (E) [~~Deleted - as it refers to offering or providing payday loan~~.]”

“*Service provider*” as defined in 12 USC §5481(26), in pertinent part, as follows:

- “(A) In general

The term ‘service provider’ means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service<sup>2</sup>, including a person that - (i) participates in designing, operating, or maintaining the consumer financial product or service; or (ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).”

“(B) Exceptions

The term ‘service provider’ does not include a person solely by virtue of such person offering or providing to a covered person - (i) a support service of a type provided to businesses generally or a similar ministerial service; or (ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.”

“*Supervised service providers*” – the following entities supervised by the CFPB:

- Service providers to supervised banks and nonbanks (see 12 USC §§5515, 5514 above).
- Service providers to a substantial number of small insured depository institutions or small insured credit unions, which institutions and credit unions are defined in 12 USC §5516,

in pertinent part, as follows: “(1) an insured depository institution with total assets of \$10,000,000,000 or less; or (2) an insured credit union with total assets of \$10,000,000,000 or less.”

“*Federal consumer financial law*” as defined in 12 USC 5481(14), in pertinent part, as follows:

- “The term ‘Federal consumer financial law’ means the provisions of this title, the enumerated consumer laws<sup>3</sup>, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau [CFPB] under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act [15 U.S.C. 41 et seq.]”

**This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.**

---

<sup>1</sup> The term “covered person” is defined in 12 USC §5481(6) as “(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.”

<sup>2</sup> The term “consumer financial product or service” is defined in 12 USC 5481(5) as “any financial product or service that is described in one or more categories under - (A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or (B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A). 12 USC §5481(15)(A) describes various financial products and services to include (but not limited to) (i) making and servicing loans, including, selling, purchasing, and brokering loans; (iii) providing real estate settlement services and performing real estate appraisals; (iv) deposit-taking activities, transmitting or exchanging funds, acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer; (vii) providing payments or other financial data processing products or services to a consumer by any technological means, including but not limited to payments made through an online banking system or mobile telecommunications network; (viii) providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services, including consumer credit counseling and assisting a consumer with debt management or debt settlement, loan modification, or foreclosure avoidance; (ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, except to the extent that a person collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person, or provides that information to an affiliate of such person, or provides information that is used or expected to be used solely in any decision regarding the offering or provision of a non-consumer financial product or service, and the information is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer; (x) consumer debt collecting.

<sup>3</sup> The term “enumerated consumer laws” is defined in 12 USC 5481(5) as follows: “Except as otherwise specifically provided in section 5519 of this title, subtitle G or subtitle H, the term ‘enumerated consumer laws’ means - (A) the

Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.); (B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.); (C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act [15 U.S.C. 1693o-2]; (D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); (E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.); (F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w); (G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.); (H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.); (I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)[(b)]-(f)); (J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802-6809) except for section 505 [15 U.S.C. 6805] as it applies to section 501(b) [15 U.S.C. 6801(b)]; (K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.); (L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note); (M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.); (N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.); (O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); (P) the Truth in Savings Act (12 U.S.C. 4301 et seq.); (Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111-8) [12 U.S.C. 5538]; and (R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).”