

CFPB Bulletin 2012-03

Date: April 13, 2012

Subject: Service Providers



1801 L Street NW, Washington, DC 20036

Are You Ready For the

**CFPB?**

The Consumer Financial Protection Bureau (“CFPB”) expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm. The CFPB’s exercise of its supervisory and enforcement authority will closely reflect this orientation and emphasis.

## CFPB Scrutiny of Service Provider Relationships – Are You Ready?

“The Consumer Financial Protection Bureau ... expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law, which is designed to protect the interests of consumers and avoid consumer harm.”

“(T)he mere fact that a supervised bank or nonbank enters into a business relationship with a service provider does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm.”

“To limit the potential for statutory or regulatory violations and related consumer harm, supervised banks and nonbanks should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers.”

~ CFPB Bulletin 2012-3  
April 13, 2012



The CFPB has made it clear that it expects to see documentation reflecting the management of service provider relationships to “ensure” compliance with federal law and the CFPB’s regulations. If you are a CFPB-supervised institution (i.e., a large bank, payday lender, mortgage lender or servicer, student lender, large debt collector, or debt buyer), you need to make sure that your service provider relationships are appropriately structured. If you are a service provider, your ability to continue to operate will depend on the systems you have in place to satisfy your clients that your operations do not “present unwarranted risks to consumers.”

The CFPB has examination authority over both its supervised institutions and their service providers, and has made it clear that it intends to use that authority. How will your relationships measure up against the CFPB’s standards? Use these checklists to find out.

## **For Financial Institutions**

- Is there documentation showing that you conducted “thorough due diligence” of the service provider to assess the service provider’s compliance management system and record of compliance?
- Are the service provider’s policies, procedures, internal controls, and training materials properly documented, and did you review those items?
- Does your contract contain specific terms governing legal and regulatory compliance, with enforceable consequences for violations?
- Does your contract protect you from the consequences of a compliance-related termination of the agreement?
- Are you conducting regular audits of the service provider to ensure ongoing compliance, to respond to complaints, or to address new issues?
- If there have been compliance issues, have you required the service provider to take appropriate corrective action?

## **For Service Providers**

- Do you have documentation that you can provide for your clients to conduct “thorough due diligence” of your compliance management system and record of compliance?
- Are your policies, procedures, internal controls, and training materials properly documented, containing all of the elements examined by the CFPB?
- Are you ready to enter into a contract in which you undertake specific duties governing legal and regulatory compliance, with enforceable consequences for violations?
- Are you ready to be examined by your client, or the CFPB, on all aspects of consumer compliance implicated by your operations?
- Have you engaged in a compliance risk assessment, including a fair lending risk assessment?

## We Can Help

Ballard Spahr has unrivaled experience concerning the CFPB. Our blog, *CFPB Monitor*, provides the most relevant and up-to-date information about developments at the CFPB. Additionally, we are helping numerous clients deal with the CFPB by:

- Designing and overseeing compliance self-assessments
- Conducting compliance audits of service providers for CFPB-supervised institutions
- Drafting, reviewing, and revising compliance policies and procedures
- Counseling during a CFPB examination
- Handling responses to civil investigative demands

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