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Jonathan L. Pompan

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May 20, 2013

### CFPB Targets Service Provider in Real Estate Kickback Enforcement Action

*The CFPB continues to use its enforcement power on service providers, including companies involved in advertising and marketing and lead generation*

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The Consumer Financial Protection Bureau (the "CFPB") announced it ordered a service provider to surrender the full amount he received in kickbacks for referring mortgage origination business to a bank and a mortgage company, on May 17, 2013. The CFPB is also prohibiting the service provider, a homebuilder, from engaging in future real estate settlement services, including mortgage origination.

This enforcement action signals that the CFPB continues to use its enforcement power on both direct providers of consumer financial products and services and their service providers, including companies involved in advertising and marketing and lead generation, including homebuilders.

According to the CFPB, the kickbacks were passed through two sham entities back to the homebuilder through profit distributions and as a payment through a "service agreement." The CFPB alleged that the two entities were set up with the bank and mortgage company to allow the homebuilder to receive payments from mortgage origination business he referred to the entities. As part of the alleged sham, the CFPB said the work was actually performed by the bank and mortgage company.

The settlement resolves violations of the Real Estate Settlement Procedures Act ("RESPA"). RESPA prohibits giving and receiving kickbacks for services involving federally related mortgages. Pursuant to authority granted under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB has the authority to enforce RESPA.

Under the terms of the settlement, the homebuilder has agreed to pay the full amount of money he received since early 2010 from the kickback schemes. The Federal Deposit Insurance Corporation ("FDIC") separately fined the bank for its role in the alleged RESPA violations.

#### Key Takeaways

The CFPB became aware of the homebuilder's conduct through a referral from the FDIC.

The CFPB continues to scrutinize service providers. The CFPB has enforcement jurisdiction over service providers to bank and nonbank providers of consumer financial products and services. In addition, the CFPB has said in its "Service Provider Bulletin" that it "expects supervised banks and nonbanks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer financial law."

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[Click here](#) to view a copy of the CFPB's Consent Order.

[Click here](#) for additional information about the CFPB's scrutiny of service providers.

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***Jonathan L. Pompan**, a partner in the Washington, DC office of Venable LLP, co-chairs the firm's Consumer Financial Protection Bureau Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, nonprofit organizations, and trade and professional associations, before the CFPB, the FTC, state Attorneys General, and regulatory agencies.*

*This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.*