

## → Consumer Finance

Sheppard Mullin partners with clients in the financial services industry on regulatory, enforcement, transactional, litigation, and consumer protection matters. Our seasoned team of attorneys is focused on the constantly evolving federal and state statutes and regulations governing our clients' products and services.

- Our clients include depository institutions and their holding companies, mortgage companies, auto lenders, private equity firms, investment banks, credit and debit card companies, and fintech companies, including money transmitters and payment processors.
- Our knowledge of the consumer finance regulatory framework, informed by our prior experience in government, allows our clients to anticipate the changing expectations of the banking agencies, and other federal and state regulators. Many of our attorneys have also served in in-house roles and understand the practical implications of evolving regulations.
- Our attorneys practice before the Consumer Financial Protection Bureau, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Trade Commission, the Department of Housing and Urban Development, the Department of Justice, state Attorneys General, and other federal and state financial services regulators.
- Our experience covers the full spectrum of consumer financial services, including all forms of consumer credit, credit reporting, privacy and data security, unfair, deceptive, or abusive acts or practices, fair lending and fair servicing, licensure, debt collection and buying, payment products and payment systems, and deposit products.
- We help clients manage and respond to federal and state examinations, and respond to Civil Investigative Demands, subpoenas, and other regulatory inquiries. We represent clients in CFPB, DOJ, and FTC investigations, enforcement actions, and settlement negotiations. Our attorneys also work on consumer litigation matters, including disputes pertaining to class action and appellate matters, consumer credits, bank operation and fraud claims, and discriminatory/predatory lending.
- We regularly advise clients on consumer financial services regulatory issues related to mergers and acquisitions, licensing and joint venture agreements, bank partnerships, and other transactions.

In sum, we understand the unique business and legal challenges faced by clients in the consumer financial services industry and that is why clients turn to us when a thorough understanding of the industry is required to deliver valuable advice and solutions in real time.

We pride ourselves on the integrated nature of our offering. We address the regulatory, enforcement, transactional, litigation and consumer protection issues faced by our financial services clients at a senior level, and provide central coordination to craft a strategy which recognizes and respects federal and state differences.

### **Our Expertise**

## Enforcement & Investigations

Sheppard Mullin attorneys successfully manage and resolve a wide range of government enforcement actions, investigations, and examinations for our consumer financial services clients, including large national banks, mortgage lenders and servicers, credit card issuers, auto lenders, payment processors, and FinTechs companies. We assist with investigations, responding to civil investigative demands and subpoenas, and other matters involving the Department of Justice and U.S. attorneys' offices, Consumer Financial Protection Bureau, Federal Trade Commission, Department of Housing and Urban Development, state attorneys general, and other prudential bank and state regulatory agencies. These matters range from alleged violations of consumer financial statutes and claims alleging unfair, deceptive, or abusive acts or practices, to allegations of fraud under the False Claims Act and Financial Institutions Reform, Recovery, and Enforcement Act.

## Transactions

As a core strength, Sheppard Mullin assists financial services companies, including private equity firms, credit and prepaid card issuers, payment processors, merchants, partner banks, and FinTechs to structure and negotiate complex transactions. These transactions often involve a mix of transactional and regulatory issues as well as the need for counsel on strategic investment issues. Our experience includes:

- Mergers and Acquisitions
- Equity Investments and Debt Financing
- Bank Partnerships
- Asset Sales and Secondary Market Transactions
- Regulatory Due Diligence
- FinTech Payment Systems
- Joint Ventures and Strategic Alliances
- Vendor Agreements

## Supervisory Examinations

We assist companies in federal and state examinations, including all types of financial products and services before federal agencies (such as the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency, the Federal Reserve, and the Federal Deposit Insurance Corporation), and state agencies, (including the California Department of Financial Protection and Innovation and the New York Department of Financial Services). We help companies prepare for regulatory examinations, and manage the complex issues involved when our clients must engage with regulators. We help clients with examinations pertaining to mortgage origination, including requirements related to loan disclosures and terms, advertising and marketing, and fair lending. We also support clients in examinations pertaining to mortgage servicing, compliance management review, auto finance, debt collection, credit reporting, and prepaid account management.

## Regulatory & Compliance

Sheppard Mullin works hand-in-hand with banks, and non-bank financial services providers such as credit unions, private equity funds, and FinTech companies, to conduct comprehensive compliance reviews to identify and fill compliance gaps. Our attorneys are on the ground with C-suite leaders and in-house legal and business team members during high-stakes regulatory and compliance reviews to better understand specific business goals and to maintain continuity and consistent client support. We provide regulatory advice involving the development of new products, conducting M&A due diligence, assisting with the chartering and licensing of new financial services companies, drafting compliance policies and procedures, conducting compliance reviews, and counseling on privacy and cybersecurity matters. We counsel clients while respecting the myriad of complex consumer financial services laws, including the Dodd-Frank Act and the enumerated consumer laws, such as ECOA, EFTA, RESPA, and TILA, to name a few.

## Consumer Litigation

We vigorously represent clients in consumer class actions, single-plaintiff claims, regulatory proceedings, and complex mortgage litigation. We have a distinguished track record in handling complex lawsuits involving truth in lending claims, interest computation, alleged discriminatory lending practices, prepayment charges, overdraft fees, debit cards, private mortgage insurance, and privacy rights. Our attorneys handle cases involving federal and state law claims, including claims brought under California's Gift Card Law, the Song-Beverly Credit Card Act, the Telephone Consumer Protection Act, the Consumer Legal Remedies Act, California's Rosenthal Act and other statutory claims.

## Experience

### Enforcement & Investigations

- Represented indirect auto finance company in a DOJ and state AG investigation into subprime auto loan origination and securitization practices.
- Represented several card issuers in CFPB enforcement actions relating to unfair billing tactics and deceptive marketing with respect to credit card add-on products.
- Represented a large student loan servicer in parallel federal government investigations, focusing on issues related to UDAAP and SCRA compliance.
- Represented a credit reporting bureau in a CFPB enforcement action alleging UDAAP violations relating to the marketing of credit scores to consumers.
- Represent financial institutions in connection with data breach and cyber matters, including in connection with related state regulatory and enforcement investigations into breaches.
- Represent multiple companies stemming from a CFPB sweep of investigations, which led to enforcement actions and negotiated settlements, alleging violations of the CFPB prohibition against deceptive acts and practices, the MAP Rule, and Regulation Z.
- Represented multiple mortgage companies in FCA and FIRREA investigations by the DOJ, various U.S. attorneys' offices, HUD, and VA, concerning compliance with the Fair Housing Administration (FHA) Direct Endorsement Lender program guidelines, VA loan requirements, HECMs, and Fannie Mae and Freddie Mac origination and servicing guidelines.

- Represented a non-bank in a confidential bank regulator enforcement matter based on a referral from the CFPB to the DOJ for alleged fair lending violations.
- Responded to FDIC investigation subpoena on behalf of a national bank alleging RESPA violations arising out of co-marketing agreements and desk rentals.

## Transactions

- Represented private equity companies in acquisitions and regulatory due diligence of mortgage, commercial equipment, automobile, and specialty finance company targets.
- Represented “challenger banks” and other fintech platforms in bank partnership agreements.
- Represented helped equipment lessors in financing transactions and state regulatory and licensing matters.
- Represented mortgage companies in warehouse financings, affiliated business arrangement joint ventures, and loan purchase and sale agreements.
- Represented fintech companies preparing for funding rounds and initial public offerings.
- Represented financial institutions in acquiring core provider, information technology, and business process outsourcing services from domestic and foreign-based service providers.
- Participated on due diligence teams to assess regulatory risks related to the acquisition of financial services entities, including mortgage originators and servicers.

## Examinations

- Represented banks and nonbanks in CFPB, FTC, OCC, FDIC, and state regulatory examinations involving bank vendor activities.
- Represented several banks and non-banks through CFPB examinations and pre-enforcement matters and responding to Proposed Action and Request for Response (PARR).
- Representing large financial institution in connection with CFPB supervisory examination into fair lending activities.
- Represented a bank in connection with an FDIC examination that alleged RESPA violations.

## Regulatory & Compliance

- Assisted financial institutions to develop new products and services, including consumer and small business financing products, banking services, point-of-sale financing options, and home acquisition and investment alternatives.
- Advised multiple non-banks on issues related to their advertising and marketing practices in compliance with TCPA, TILA, the MAP Rule, and UDAP/UDAAP
- Advised a FinTech payments processor on matters related to disclosure delivery, advertising and marketing compliance, and risk management.
- Represented a major card issuer in identifying, self-reporting to CFPB, and remediating UDAAP non-compliance, resulting in the avoidance of a consent order and civil money penalties.
- Helped a card issuer redesign existing rewards program, create benchmarks against best in class standards, conduct risk assessments, integrate grandfathered balances, and terminate legacy programs.

- Advised credit, debit, and prepaid card issuers in compliance management, deferred interest, and technical compliance with consumer financial laws and regulations.

## Consumer Litigation

- Major auto finance companies in consumer class actions challenging financing and leasing issues, including Toyota Financial Services, GM Financial, Nissan Motor Acceptance Corporation, Consumer Portfolio Services and Santander Consumer USA, among others. E.g. *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, 785 F. Supp. 2d 883, 904 (C.D. Cal. 2011) (granting motion to dismiss with prejudice); *AmeriCredit Financial Services, Inc. (now GM Financial), including Bankston v. AmeriCredit*, 2011 WL 89730 (N.D. Cal.) (granting dismissal for lack of standing); and *Wright v AmeriCredit*, 2010 WL 5058345 (S.D. Cal.) (upholding validity of notice and dismissing action).
- Defended residential mortgage lender in FCA qui tam litigation in Southern District of California regarding the FHA government-insured loan program.
- Represented several national retailers (in separate cases) against class action complaints challenging clients' gift card policies.
- Represented several national retailers and restaurants (in separate cases) against class action complaints challenging clients' respective credit card policies under the Song-Beverly Credit Card Act and California's unfair competition law.
- Represented several clients in defense of (separate) complaints asserting alleged violations of the Telephone Consumer Protection Act based on calls made by autodialers and allegedly unsolicited text messages.