

CONSUMER FINANCIAL SERVICES

From regulatory and compliance advice through litigation defense, Husch Blackwell represents clients across the spectrum of consumer financial products and services. We counsel clients of all shapes and sizes, including auto finance companies, installment loan companies, state and national banks, credit unions, mortgage lenders, brokers and servicers, credit card companies, short-term lenders, and private equity companies, and we routinely advise on the “alphabet soup” of federal and state consumer credit laws, including the Dodd-Frank Act, ECOA, FCRA, FDCPA, GLBA, RESPA, TILA, TCPA, EFTA, CLA, Uniform Commercial Code Articles 2A, 3, 4, 4A, and 9, and state unfair and deceptive practices acts.

Our experienced team of regulatory and litigation attorneys bring together comprehensive, customized advice to help clients manage risk while achieving their objectives. We speak your language and understand the numerous, overlapping laws that affect your business.

Our guidance to clients in the consumer financial services sector includes:

Regulatory & Compliance

We advise clients on the “alphabet soup” of federal and state consumer credit laws, including the Dodd-Frank Act, ECOA, FCRA, FDCPA, GLBA, RESPA, TILA, TCPA, EFTA, CLA, Uniform Commercial Code Articles 2A, 3, 4, 4A, and 9, and state unfair and deceptive practices acts. Using our knowledge of and relationships with regulators to resolve questions, we shepherd clients



“Working with the Husch Blackwell team on a wide range of legal issues has consistently exceeded my expectations. I would sum up their services as knowledgeable, thorough, direct and, best of all, easy to manage.”

— Gear Fisher,
Former CEO,
Peaksware —

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through examinations and defend against enforcement actions. We help clients evaluate consumer financial marketing materials, policies, procedures, disclosures, and other documents for compliance with the banking and credit laws referenced above, as well as the CAN-SPAM Act, TSR, and the FTC Act.

Litigation & Dispute Resolution

We develop cost-effective and winning strategies for litigation of individual cases and class actions in arbitration and state or federal courts, as well as in bankruptcy proceedings. We manage all aspects of consumer financial litigation from initial case assessment through appeal, including arguing cases of first impression and successfully asserting novel defenses.

Card Programs

We serve clients launching new credit, debit, and prepaid card programs, products, and features by drafting and/or advising on disclosures, agreements, advertising campaigns, policies and procedures, forum selection clauses, arbitration provisions, and other relevant documents. We provide counsel for credit card issuers and servicers on the CARD Act, TILA, EFTA, FCBA, ECOA and FCRA, the payment card brand rules, and applicable state laws. Additionally, we advise clients on checks, ACH, wire transfers, credit and debit cards, gift, prepaid and stored-value cards, mobile, telephonic and online bill payment, cryptocurrency, and other types of emerging payment and value-transfer systems.

Financing & Leasing

Financing. Our team advises sales finance companies on the overlapping framework of state and federal regulations affecting licensing, interest rates, retail installment contracts, and collection activities. We

counsel consumer financial services clients in the development of forms and processes to maximize their business interests while minimizing their exposure in litigation. We represent auto finance companies in self-help repossession disputes, title disputes, and suits affecting lien interests. In addition to auto finance companies, we defend auto dealerships in consumer actions and dealer auction activities.

Consumer Leasing. We counsel companies offering leases for a variety of consumer products, including auto, solar panels, and traditional heating and air conditioning units. We advise companies on true leases versus disguised consumer credit agreements, and we draft compliant disclosures. We also defend individual and class action cases involving auto and other types of consumer leases. We litigate nationwide class claims brought under the Consumer Leasing Act and state consumer protection statutes challenging lease disclosures and lease-end fees, and we represent purchasers of consumer leases from independent brokers in commercial disputes involving disputed ownership, security interests, and titling difficulties.

Installment Lending. Our team advises traditional finance companies on the specific state statutes and regulations that govern installment lending, including licensing and form requirements. We also draft agreements and disclosures and develop policies and procedures. We assist with regulatory audits, administrative investigations and actions; appeal zoning decisions; and defend individual and class lawsuits.

Short-term lending. We represent short-term lenders on all consumer finance laws applicable to them. We advise, for example, on licensing and form requirements and underwriting standards imposed by such laws, and any required documentation and disclosures. We also

assist with zoning issues and appeals.

Data Privacy, Security, & Breach Response

Our multidisciplinary Data Privacy, Cybersecurity, & Breach Response team features members specifically focused on consumer financial services. Our team crafts information security programs and policies to comply with regulatory requirements and effectively manage company risk, including drafting privacy notices under the GLBA, GDPR, and CCPA; preparing vendor agreements; and counseling clients regarding the appropriate collection, use, sharing, transmission, correction, protection, retention, and destruction of personal consumer information. We also routinely advise on breach incidents and coordinate breach responses, including navigating breach response plans, conducting internal investigations, drafting required notices, and coordinating with law enforcement.

Product Development & Operations

We guide clients as they develop new consumer financial products and services and enter new markets by navigating increasingly complex regulatory issues; drafting credit-related documents; advising on policies and procedures; reviewing potential licensing requirements; drafting consumer agreements and disclosures; preparing AML, KYC, and CIP programs; advising on collection practices; ensuring loan products are enforceable; and counseling on consumer-facing best practices.

Representative Experience

Served as regulatory and lending counsel to investment firm in its all-cash, \$67 million take-private acquisition of

provider of online credit solutions for credit-constrained consumers.

Secured dismissal in federal court for national auto lender in case involving discrimination claims brought by consumers.

Counseled bank and nonbank mortgage lenders and servicers in litigation involving federal and state banking and credit laws, claims arising from nonjudicial foreclosures, and violations of RESPA, Texas Property Code, and home equity provisions of Texas Constitution.

Advised clients regarding claims brought pursuant to consumer protection statutes including FCRA, FDCPA, TILA, TCPA, Texas Debt Collection Act, Texas Deceptive Trade Practices Act, and Texas Finance Code.

Assisted lenders, debt buyers, debt collectors, and other participants navigate marketplace post-Madden v. Midland Funding where in order to maximize enforceability of their contracts while minimizing risk.

Reached favorable settlement in borrower's suit to invalidate lien and disgorge all loan payments under Texas constitutional home equity provisions, affirming enforceability of lien and protecting lender from disgorgement.

Conducted multistate loan document review for first fintech company to originate residential real property-backed loans that live on blockchain rather than being tokenized.

Assisted sales finance company in development of its

compliance management system (CMS).

Advised various consumer finance companies on “gap” between Gramm-Leach-Bliley Act (GLBA) and California Consumer Privacy Act (CCPA).

Counseled lender on compliance with Equal Credit Opportunity Act (ECOA) in community property states and tenancy by entirety of states.

Counseled banks on contours of national and state bank preemption pertaining to online loan programs, including rate exportation.

Reviewed and revised government-sponsored entity residential mortgage forms for compliance with Wisconsin statutes and regulations.

Reviewed and revised residential mortgage forms for Islamic financing entity to ensure compliance with Wisconsin statutes and regulations.

Advised bank regarding compliance with adverse action notice requirements under ECOA and Fair Credit Reporting Act (FCRA).

Represented online loan company facing license revocation, negotiating less stringent penalties, and allowing client to operate while implementing corrective action.

Counseled lenders regarding precomputed statutes and regulations and advised on refunding unearned interest at time of prepayment or refinancing.

Represented major credit union in successfully resolving several potentially significant claims asserted by state

regulators. Successfully resolved all issues so it could continue to operate its indirect lending program.

Represented credit union in dissolution proceedings before regulators. Communicated with credit union members to dissolve both in compliance with state law and to benefit members.

Obtained dismissal for mortgage service provider alleged to have violated Fair Debt Collections Practices Act. Decision was upheld at appeal level. *Johnson v. Carrington Mortg. Servs.*, 638 Fed.Appx. 523 (7th Cir. 2016).

Secured victory on appeal on behalf of a lender affirming a dismissal of a consumer's claims on summary judgment in a case challenging the lender's repossession and service of the required notices prior to repossession and appealing an award of sanctions in favor of our client against the opposing lawyer for pursuing a frivolous claim.