

CONSUMER FINANCIAL
SERVICES HIGHLIGHTS **2020**



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Dear Clients and Friends

Virtually all major law firms provide legal advice in an array of matters ranging from the adversarial to the transactional and lots of disciplines in between. Mayer Brown, of course, is no exception; however, among other areas, we have a unique ability to provide integrated legal services to the regulated industry of consumer financial services. Providing effective legal services to a regulated industry requires an in-depth knowledge of the underlying business—how it makes money and how it can lose money— and the overlay of law and regulations that inform how that business must operate.

In the area of consumer financial services, Mayer Brown brings an unparalleled understanding of how the pieces fit together—how our clients extend, administer, enforce, buy, sell, and securitize consumer credit; how they finance their operations; how they protect and defend their assets and business; how they use, provide and receive third-party services; how they maneuver within and around the labyrinth of federal and state laws and regulations and the specter of government enforcement; and how they position themselves within the industry, with their customers and in matters of public policy that drive their very existence and their future.

This knowledge of both law and business enables Mayer Brown to serve as a trusted advisor to our clients in the consumer financial services industry, a role that we cherish and constantly strive to improve. In the pages that follow, we are pleased to offer a snapshot of our consumer financial services work in 2020—a particularly challenging environment due to the COVID-19 pandemic. Hopefully, these representative engagements will help demonstrate how Mayer Brown can assist clients with navigating the complex world of consumer financial services. We look forward to continuing to work, or working for the first time, with you this year and in the years to come. Thank you for this privilege.

Sincerely,

Mayer Brown

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Consumer & Small Business Compliance

In 2020, Mayer Brown's Financial Services Regulatory & Enforcement practice helped clients navigate regulatory and commercial environments that were impacted by COVID-19 and advised on day-to-day compliance and new product and service roll-outs.

Our lawyers combined extensive knowledge of federal and state laws applicable to a wide range of consumer and small business financial activities and products, as well as tracked and advised on COVID-19 relief efforts in real-time. We helped clients maneuver through changing policies and laws for government-backed and conventional mortgages, credit cards and general purpose unsecured consumer loans, student loans, retail/solar/home improvement financing, SBA PPP and other small business loans, non-traditional financing products, and non-credit consumer financial activities. The Firm regularly analyzed policies and procedures for compliance with applicable federal and state laws; designed and evaluated enterprise risk, due diligence and quality control systems; assisted companies in obtaining necessary state licenses and approvals; and provided regular compliance counseling across a variety of federal and state laws.

- Provided compliance advice in the development of **mortgage programs**, including advising lenders, servicers, and investors on licensing and compliance policy development.
- Served as counsel to **mortgage originators, title insurance companies, settlement agents, and investors** regarding compliance with the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure (TRID) rule, including associated liability and penalties under the rule.
- Served as compliance counsel to **mortgage lenders, real estate brokerage companies, iBuyers, home builders, title insurance companies, appraisal management companies, other settlement service providers, and technology companies** on compliance with RESPA's anti-referral fee provisions, including the review of affiliated business arrangements, advertising services agreements, office rental arrangements, technology and data services arrangements, and other business arrangements.
- Advised **mortgage lenders and secondary market investors** on compliance with the CFPB's Ability-to-Repay requirements for qualified mortgage loans (QMs) and non-QMs, including with regard to higher-priced mortgage loans, Federal Housing Administration-insured (FHA) loans, Veterans Affairs-guaranteed (VA) loans and loans made by small creditors.
- Advised **banks and mortgage companies** on compliance with restrictions on mortgage loan originator and branch manager compensation, including prohibitions against loan-term-based compensation.
- Advised **banks and mortgage companies** regarding mortgage servicing requirements, including the servicing and loss mitigation requirements under RESPA and Regulation X, the National Flood Insurance Program, the SCRA, and the FDICPA.

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- Advised **lenders** regarding federal and state requirements applicable to offering home equity lines of credit, including structuring HELOCs to avoid claims of spurious open-end credit, and disclosure requirements for HELOCs.
- Counseled **lenders, servicers, and investors** regarding compliance obligations under HMDA, ECOA, the Fair Housing Act and UDAAP standards.
- Performed fair lending compliance reviews and risk assessments for **mortgage lenders and servicers**, and provided compliance advice related to fair lending compliance for banks and non-bank lenders in connection with auto loans, student loans, credit cards, small business loans, and unsecured consumer loans.
- Assisted a **mortgage originator and servicer** in the enhancement of its compliance management system, policies and procedures related to compliance with federal consumer protection laws, and refining enterprise risk procedures for compliance review and remediation.
- Advised numerous **debt buyers, loan investors and lenders** on issues related to bank partnership structuring and compliance (e.g., “true lender” and Madden risks), including with respect to OCC and FDIC rulemaking developments, as well as federal and state litigation developments.
- Tracked and advised **mortgage originators and mortgage servicers** regarding the impact of the CARES Act and COVID-19 relief measures on the origination of government and conventional mortgage loans and the offering of forbearance and loss mitigation to borrowers experiencing financial hardship.
- Served as counsel in the development of, and day-to-day compliance implementation for, **marketplace and other unsecured consumer lending, point-of-sale (POS) retail financing, home improvement financing, medical financing, payroll advance, security deposit alternative, and debt**

management programs, including regarding product structure, licensing and usury issues, disclosures and consumer documentation, and design and implementation of compliance management systems and compliance policies and procedures.

- Advised a **credit card company** regarding licensing, bank partnership structure, state law requirements, requirements imposed and flexibility granted for account servicing under COVID-19 relief bills, and general compliance with various federal consumer financial laws, including ECOA, FCRA, and UDAAP standards.
- Advised **clients** on licensing, disclosure, practice requirements, and COVID-19-related developments for student loan programs.
- Advised a **company** on the development of a HELOC accessible by credit card, including with respect to licensing, consumer disclosures and agreements, electronic delivery of financial services and e-mortgage approaches, and compliance with federal and state consumer financial laws.
- Advised a **telecommunications and mobile service provider** on compliance implications in connection with the sale of a business line involving, among other things, the extension of consumer credit through retail installment sales.
- Advised **federally chartered depository institutions** on the preemption of state laws by federal banking laws and other federal statutes.
- Advised **clients** on the development and enhancement of arbitration clauses in consumer agreements to mitigate litigation risks.
- Advised **lenders and other consumer financial companies** on licensing obligations under state consumer credit laws; advised on licensing and change-of-control provisions in connection with clients’ potential acquisitions; and assisted clients in obtaining

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licenses and federal approvals and registrations to engage in mortgage and non-mortgage consumer financial activities.

- Advised **lenders, borrowers, and investors** on program requirements under the SBA's Paycheck Protection Program (PPP).
- Advised **multiple clients** on the development and implementation of SMB financing models, including commercial loans (offered under direct and bank partnership lending approaches), business-purpose retail installment contracts, and factoring and merchant cash advances.
- Advised **lenders, borrowers, and investors** on program requirements under the SBA's Paycheck Protection Program (PPP).
- Advised **clients** on compliance with the TCPA in connection with the marketing, originating, and servicing of loans and other consumer financial products and services.
- Advised **financial institutions and other consumer financial services providers** regarding compliance with privacy and

cybersecurity requirements, including the privacy and safeguards requirements under the GLBA, the identity theft, fraud alert, and discrepancy investigation requirements of the FCRA, the California Consumer Privacy Act (CCPA), and New York's cybersecurity program requirements.

- Counseled **financial institutions** regarding UDAAP risks in connection with sales practices, ancillary products, auto loans, and small business loans.
- Provided licensing and policy development guidance to **mortgage originators, purchasers, and servicers**.
- Evaluated non-QM underwriting guidelines on behalf of **mortgage lenders and investors** in mortgage companies and mortgage loan portfolios.
- Advised **large agricultural lender** regarding the impact on its business of the proposed California disclosure requirements for commercial lending activities.

Top 5 Consumer Financial Services Legal Updates

[CFPB Replaces Cordray-Era MSA Guidance with New RESPA Section 8 FAQs](#)

[What a Biden Presidency Will Mean for Structured Finance](#)

[FHA Responds to COVID-19: Temporarily Waives Face-to-Face Interview Requirement and Extends Annual Recertification Deadline](#)

[US Treasury and Federal Reserve Announce Two New Corporate Credit Facilities for Large Employers](#)

[California Intends to Establish Its Own CFPB](#)

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Consumer Regulatory Diligence

Mayer Brown's Financial Services Regulatory & Enforcement lawyers helped lenders and investors capitalize on opportunities and avoid missteps in 2020 by providing regulatory compliance transactional diligence services backed by the Firm's deep understanding of applicable regulatory requirements and ability to analyze evolving regulatory and commercial environments.

We advised banks, funds, insurance companies, investment banks, private equity funds and hedge funds, across a wide range of asset classes and business structures. Our analysis identified regulatory risks and informed mitigation embedded in transaction structures and conditions relating to consumer financial and consumer protection laws. Our representative transactions ranged from financings to complete mergers and acquisitions and included a diverse set of investment targets offering consumer and small business financial products and services in several major classes.

- Conducted multiple mortgage regulatory and general corporate diligences of **mortgage lenders** in connection with potential acquisitions.
- Performed multiple consumer compliance reviews of mortgage servicers on behalf of **investors and owners** of master servicing rights.
- Conducted multiple consumer regulatory diligences of **shared equity and shared appreciation product providers**.
- Acted as regulatory counsel, including conducting regulatory diligence and advising on SEC filings and transaction documentation, to **lead underwriter** in IPO of a s of fintech companies, consumer marketplace lenders and mortgage lenders.
- Conducted multiple consumer financial regulatory diligences of **credit card issuers and servicers** in connection with the purchase of retail credit receivables and/or financing of credit card programs.
- Conducted multiple consumer financial regulatory diligences of **marketplace lenders**, including evaluation of bank partnership structures for Madden and "true lender" risks, and servicers of marketplace loans.
- Acted as regulatory counsel, to the **purchaser of a remote consumer goods rent-to-own company**, including conducting regulatory diligence and advising on transaction structure and regulatory compliance protections.
- Conducted multiple consumer financial regulatory diligence of **consumer retail financing programs**, and advised clients offering buy now/pay later point-of-sale (POS) and financing during the course of regulatory diligence by their investors.
- Conducted multiple consumer regulatory diligences of **retail, home improvement, and solar financing programs**, including direct lenders, sales finance companies, and lending platforms involving bank partnerships, and including reviews of the servicing and collection of home improvement loans and installment sales contracts.

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- Conducted multiple consumer financial regulatory diligence of **wage advance products**, including non-recourse purchases of earned wages and salary-based lending products.
- Conducted multiple consumer regulatory diligences of **student lenders and student loan servicers** in connection with clients' acquisition of loans from, or financing of, the target companies, including companies tailored to the financial needs of foreign nationals studying in the US.
- Conducted regulatory diligence of a **small business lender** offering a COVID-19 relief lending product.
- Conducted multiple regulatory and customer protection diligences of business-purpose **"fix-and-flip"** lenders on behalf of investors and other counterparties.
- Conducted multiple regulatory and customer protection diligences of **business-purpose lenders and servicers**, including programs operating under state-licensed, bank partner, and/or choice of law models, in connection with a clients' contemplated acquisition of loans from, or provision of financing to, target companies.
- Conducted financial regulatory diligence of an **e-vaulting and e-documentation service provider** in connection with client's acquisition of the company.
- Advised **multiple clients** on licensing and change of control requirements in connection with mergers, acquisitions, and substantial, non-majority equity investments.
- Counseled **mortgage investors and servicers** on state licensing and annual renewals for mortgage lender licenses held to acquire residential mortgage loans and hold servicing rights.
- Advised **commercial loan servicers** regarding state servicing and collection agency licensing requirements.
- Advised **multiple clients** on the regulatory content of disclosures used in connection with securitization of loans acquired after transactions involving regulatory diligence.
- Advised a **primary dealer bank** in connection with its due diligence obligations pursuant to lending under the TALF Program.
- Advised **acquirer** in connection with due diligence and remediation measures, including the filing of SARs, associated with proposed acquisition. Also advise on the implementation of new compliance protocols for the acquired entity.
- Conducted financial regulatory diligence of **an affiliated group of automobile dealerships** in connection with an extension of credit to the dealership group.

RANKED BAND 1 FOR FINANCIAL SERVICES REGULATION – CONSUMER FINANCE
(COMPLIANCE AND LITIGATION)

– CHAMBERS USA

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Fintech & Payments

FINTECH

Mayer Brown's Fintech group brings together an integrated multi-practice team to support clients with transactions, disputes and regulatory matters at the intersection of financial services and technology. Our deep substantive experience in consumer finance and payments law, coupled with our bank regulatory experience, allowed us to provide our clients with practical advice concerning the products and services being offered, and the alternative vehicles for offering, these products and services, including bank partnerships, bank charters and state licenses. In 2020, consumer adoption of cutting-edge technology solutions for financial transactions accelerated dramatically, in part due to the impact of the COVID-19 crisis and the need to deploy the US Congress-passed CARES Act and its massive stimulus programs, including the Paycheck Protection Program (PPP), quickly.

- Advised **LendingClub**, a pioneer in marketplace lending, on the establishment of its levered certificate program, which has experienced significant investor demand. The program enables LendingClub to issue securities, backed by the company's loans, to private investors without the need for offering documents, which do not always add a lot of value to a transaction and can add liability and slow execution. In the nine months since the platform was launched, LendingClub has used it for 18 offerings with a total value of about \$1.1 billion.
- Advised **numerous clients** in connection with bank partnership arrangements for lending platforms. We regularly provide clients with advice to help them evaluate the risks and benefits of bank partnerships with respect to their particular business models. Some of our representations included:
 - » **Square**, as a PPP lender under the CARES Act, and Celtic Bank Corporation on structuring a bank partner arrangement whereby the PPP loans originated under the terms of that arrangement have been sold in flow arrangements to third-party investors.
 - » A **fintech platform** in negotiation of its bank partner agreement for small business merchant loans.
 - » A **fintech platform** in amendment and restatement of its bank partner agreement for consumer loans.
- Represented **hedge fund** in a whole loan finance facility of loans originated pursuant to the CARES Act's PPP.
- Represented **Loanpal**, a market-leading point-of-sale platform for sustainable energy in homes, in connection with its fractional loan participation program. The program enabled Loanpal to reach a broader investment base of community banks.
- Advised **Affirm, Inc.**, financial technology company, on its first capital markets securitization of the company's point-of-sale consumer loans.
- Advised **multiple clients** on arrangements with banks or licensed MSBs to handle funds transfers in connection with the clients' payments platforms. Often, fintech companies want to avoid the need to get licensed as money transmitters at the state level, which generally is required for a company that is

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actually handling money in connection with payment transactions. A properly structured arrangement with a bank or licensed MSB—which holds funds and handles the actual transfer of funds on customers’ behalf—can make it unnecessary for the platform provider to be licensed as a money transmitter. These relationships have come under scrutiny by money transmitter regulators in recent years, but there is still broad acceptance of them in principle among regulators. We both advise clients on the regulatory issues in connection with these arrangements and assist them with structuring and negotiating the terms with the partner institutions (which often can involve complex technical integration issues, in addition to requiring extensive and nuanced terms related to funds flow and transaction settlement).

- Successfully represented a **major fintech company** in a multi-year grand jury investigation by the US Attorney’s Office for the Eastern District of New York of alleged money laundering and Bank Secrecy Act offenses. Even after the expenditure of

considerable investigative and prosecutorial resources, we were able to convince the prosecutors to decline prosecution entirely, thereby avoiding any adverse legal consequences, negative press attention, or impact on shareholder value.

- Achieved an important and high-profile Commodity Futures Trading Commission registration for **Bitnomial Exchange, LLC**, a futures exchange approved to offer margined bitcoin futures subject to physical delivery. We worked closely with Bitnomial in regard to business formation, product review, rulebook drafting, application submission, and regulatory advocacy as part of a four-year effort.
- Lead representation of **Bitnomial** in seeking to become registered as a futures commission merchant (FCM) with the Commodity Futures Trading Commission for the purpose of brokering cryptocurrency contracts.

Financial Times has ranked Mayer Brown as one of the top 10 “Most Innovative Law Firms” in the publication’s 2020 report. Mayer Brown also ranked among the top 20 “Most digital firms,” based on use of data and technology.

FINTECH – TIER 1 – *LEGAL 500 USA*

FINTECH LEGAL USA – BAND 2 – *CHAMBERS FINTECH*

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PAYMENTS

Mayer Brown's Payments practice has extensive knowledge and experience advising clients on a wide variety of issues related to traditional payment products, as well as emerging and evolving payment technologies. We regularly counsel clients on the full range of laws that regulate the payments industry, including the Electronic Fund Transfer Act and Regulation E; the Bank Secrecy Act and Financial Crimes Enforcement Network regulations, as well as the analogous anti-money laundering regimes in countries around the world; TILA (including the CARD Act provisions) and Regulation Z; Financial Conduct Authority regulations; US state laws on money services businesses, credit and consumer protection; and laws prohibiting unfair, deceptive or abusive acts or practices. In 2020, legal and regulatory developments, such as the one-year anniversary of the CFPB prepaid account rule moratorium (with significant impacts to digital wallets and other payment products capable of storing funds) were overshadowed by the COVID-19 pandemic. Consumers began using new payment technologies on an unprecedented scale, as these technologies made payments to recipients across the country and around the world as easy as paying cash in-person at a local merchant.

- Advised **several clients** in connection with the development of payment platforms for online gambling transactions, which have increased substantially during the pandemic, as gamblers shift from casinos and other in-person gambling establishments to online gaming. Setting up these platforms requires a deep understanding of the complex regulatory regimes governing payments and gambling, respectively, and the intersection between the two.
- Advised **several financial institutions** on their obligations in connection with unemployment insurance benefits fraud involving direct deposits into accounts held by our clients. This topic arose in connection with a broader investigation by the US Secret Service and multiple state unemployment benefit agencies (which was not targeting our clients).
- Represented **several institutions** in connection with their entry into the Zeller P2P payment system.
- Conducted multiple regulatory diligences of **payments companies**, including diligence on the US and European activities of an international money transmitter and provision of advice on structuring a secured financing within constraints of relevant licensing laws, as well as diligences of companies involved in the facilitation of residential rent payments and other tenant obligations.
- As noted in the Fintech section, we advised **multiple clients** on arrangements with banks or licensed MSBs, pursuant to which the bank or MSB partner handles the funds for payment transactions managed through the clients' portals.

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TOP 10 CONSUMER FINANCIAL SERVICES BLOG POSTS

[Department of Defense Reinterprets Military Lending Act Guidance on Auto Financing](#)

[Flood Insurance Policy Renewal Grace Period Extended by FEMA, and One Regulator Applies this Grace Period to Force Placement Notices](#)

[CFPB Increases Civil Penalty Maximums](#)

[Nationwide Safe Water Requirements for FHA-Insured Loans](#)

[HUD Updates FHA TOTAL Mortgage Scorecard](#)

[FHA Changes Course on PACE Obligations](#)

[Fannie and Freddie to Relax Servicer Advance Requirements for Loans in Forebearance](#)

[Carpe Per Diem Disclosure – California Department of Business Oversight Clarifies its Position](#)

[California Enacts Two Bills with Significant Impacts on Mortgage Licensees in the State](#)

[SBA Releases Guidance on PPP Small Business Loans](#)



Government & Regulatory Enforcement

Our Financial Services Regulatory & Enforcement practice regularly represents banks, independent mortgage companies and non-bank financial services companies in a wide variety of government supervisory and enforcement matters.

In 2020, we represented clients in numerous enforcement investigations conducted by the CFPB, Department of Justice (DOJ), Department of Housing and Urban Development (HUD), SIGTARP, state agencies, and state attorneys general, among others. Before these agencies, we represented clients in investigations and reviews involving mortgage origination, mortgage servicing, online lending, bank deposit activities, auto loan servicing, fund transfers, overdraft protection, debt collection and other activities regulated under federal and state laws. We also represented numerous clients in connection with supervisory activities conducted by banking regulators. Our deep substantive experience in consumer finance law, coupled with our regular appearance before these agencies, allows us to provide our clients thoughtful advice that accounts for the regulator's expectations and the evolving state of the law. We work with our clients to help communicate with regulators and law enforcement, narrow the scope of investigations, develop the facts, defend depositions and construct legal arguments that lead to positive results. When necessary, we draw on the knowledge of colleagues in our litigation department to ensure that we are prepared for litigation in the event that we cannot achieve a satisfactory resolution directly with the agency. Our extensive knowledge of the regulations and regulator expectations uniquely qualifies us to work with clients to implement corrective actions that remedy issues identified in the course of examinations and investigations.

- Represent a **national bank** in a CFPB investigation and examination related to deposit-account-related activities.
- Represent a **residential mortgage servicer** in a CFPB investigation related to practices in Puerto Rico.
- Represented a **residential mortgage servicer** in Massachusetts Attorney General settlement involving debt collection practices.
- Represent an **online lead generator** in a CFPB investigation related to FCRA compliance.
- Represent a **national bank** in a joint investigation by the Department of Justice and the Special Inspector General for the Troubled Assets Relief Program (SIGTARP).
- Represented **mortgage lenders** and servicers in connection with fair lending and fair servicing complaints filed with HUD and other state agencies alleging discrimination on the basis of race, national origin, disability, and maternity leave.
- Advised **bank** in connection with an OCC examination and follow-up requests related to auto lending, servicing and add-on products.
- Represented **banks** in connection with PARR letters issued by the CFPB concerning Regulation E error resolution practices, overdraft protection, and auto loan servicing and collection issues.
- Performed CFPB Readiness Assessment for **auto lender and servicer** in preparation for upcoming CFPB examination.

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- Advised **parent bank holding company and bank subsidiaries** in connection with examiner criticism of certain AML procedures.
- Represented **multiple FHA-insured lenders** in connection with FCA investigations by the US Attorney's Office and the DOJ, involving FHA mortgage insurance, including the origination and servicing of FHA loans and the reverse mortgage, or HECM, program.
- Represented **multiple clients** in responding to inquiries from HUD's Mortgagee Review Board, Quality Assurance Division, Office of Inspector General and National Servicing Center in connection with the origination and servicing of FHA-insured loans.
- Represented **multiple mortgage lenders** in responding to inquiries from the Department of Veterans Affairs (VA) and the VA's Office of Inspector General regarding the origination of and refinancing of VA-guaranteed loan transactions.
- Represented **homebuilder** in connection with a fair housing investigation by the Florida Commission on Human Relations.
- Represented a **mortgage lender** in responding to a Civil Investigative Demand from the Illinois Attorney General.
- Performed CFPB Readiness Assessment for a **mortgage loan servicer** in preparation for upcoming CFPB examination.
- Represented **two national title insurance companies** before the Illinois Department of Financial & Professional Regulation in connection with a cease-and-desist action and a market conduct audit.
- Representing a **former bank president** in connection with an ongoing DOJ grand jury investigation of alleged mortgage loan fraud and money laundering, as well as in related securities class action litigation.
- Represented a **major mortgage loan servicing company** in an investigation by the House Financial Services Committee into actions in response to the pandemic and in light of the CARES Act.
- Represented a **major company** in the single family rental market in an investigation into activities in that market by the House Financial Services Committee.

Named to *Global Investigations Review's* "GIR 30"

For the ninth consecutive year, Mayer Brown was included in *Law360's* "Global 20" list, which recognizes 20 global law firms that are "trusted by clients to handle their most challenging cross-border matters, from multibillion-dollar mergers to bet-the-company litigation.

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[COVID-19: Mortgage Servicing Advance Facilities – What to Watch For](#)

[COVID-19: New Guidance from the GSEs and Federal Agencies Impacting Mortgage Loans and Program Requirements](#)

[COVID-19: A Storm's a Brewin'! – The Inevitable Government Regulatory Scrutiny of Pandemic Response](#)

[COVID-19: The Main Street Lending Program – The Federal Reserve's Revised Proposed Terms](#)

[COVID-19: Next Steps for PPP Borrowers – Navigating the Loan Forgiveness Process and Mitigating Enforcement Risk](#)

[A New Era for Qualified Mortgages: CFPB Finalizes QM Rules](#)

[CFPB Update – Consumer Protection in the Age of Coronavirus](#)

[Madden and True Lender: Potential Impact of Recent Developments](#)

[COVID-19: Mortgage Servicing Advance Facilities – Ginnie Mae's COVID-19 Pass-Through Assistance Program](#)



Litigation

CONSUMER CLASS ACTIONS

Mayer Brown's Consumer & Class Actions group continued to represent consumer credit and financial service providers in high-stakes consumer class-action lawsuits that span the country.

We routinely defend against consumer credit-related and other class actions arising under the TILA, SCRA, FCRA, ECOA, Fair Housing Act, RESPA, Fair Debt Collection Practices Act, Telephone Consumer Protection Act (TCPA) and various state and federal unfair and deceptive trade practices statutes. We continue to pioneer ways to attack proposed class claims at the pleading stage in an attempt to obtain dismissals and lower fees and costs and to reduce overall litigation time. Moreover, we work closely with Mayer Brown's Financial Services Regulatory & Enforcement practice to prevent and/or limit litigation resulting from regulatory scrutiny. We have defended against hundreds of class and mass actions in the past decade and have a strong record of victories.

- Secured an industry-leading victory for **Citi** on whether CPA firms and other agents who allegedly assisted businesses with loan applications under the CARES Act's Paycheck Protection Program are statutorily entitled to agent fees from lenders. In the Citi class action, consolidated with five other class actions, Judge Jed S. Rakoff (S.D.N.Y.) granted our motion to dismiss and held that, as a matter of law, agents are not entitled to agent fees and that, instead, an agent must have a contractual agreement with the lender. Judge Rakoff's ruling served as precedent for several other courts, including another win for Citi that we secured when Judge Otis D. Wright II (C.D. Cal.) dismissed a similar PPP agent fee class action. Both wins for Citi have continued to serve as industry-leading precedent in the approximately 50 similar class actions around the country seeking billions of dollars in agent fees.
- Represent **bank** in a putative class action in the Western District of Missouri challenging bank's methodology for assessing overdraft fees. The lawsuit alleges that the bank should have used the ledger balance to determine whether an overdraft fee should be assessed on checking account transactions rather than the available balance. The Mayer Brown team is currently briefing class certification.
- Represent **bank** in a putative class action in the Eastern District of Arkansas challenging bank's assessment of overdraft and NSF fees when a merchant resubmits a checking account transaction through the ACH network. The lawsuit alleges that the bank is only entitled to assess one fee, despite how many times the merchant submits a transaction. The matter is currently in the class discovery phase.
- Represent **mortgage servicing company** in Fair Housing Act claim in the Northern District of Illinois related to the property preservation and maintenance of Real Estate Owned (REO) properties in certain Deutsche Bank trusts. The matter is currently in the fact discovery stage.
- Represent **global financial institution** in putative class action challenging amount of insurance expenses charged as part of redemption payments because such charges covered an annual

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policy period rather than a 3-month period. Plaintiffs were mortgage loan borrowers who allegedly redeemed mortgaged properties following judicial foreclosures. We are briefing a motion to dismiss the complaint.

- Represent **bank** in a putative class action challenging the use and disclosure of a temporary buydown agreement for residential mortgage loans. The buydown agreement, executed at origination, operates to lower the effective interest rate and required monthly payment for up to the first three years of a borrower's mortgage. The parties are currently in the fact discovery stage.

- Represent **bank** in putative class action in Missouri state court challenging assessment of overdraft fees when checking account transactions were authorized on sufficient funds but later settled when the balance on the account was negative. The parties are in the class discovery stage.

SUPREME COURT & APPELLATE

Mayer Brown has led the way in developing the law under the Federal Arbitration Act (FAA) surrounding the enforceability of arbitration agreements that waive class actions, which allows businesses and consumers alike to benefit from the lower costs, expediency and informality that arbitration provides as a means for resolving disputes compared to litigation in court. The Firm's path-breaking 2016 victory in *Spokeo, Inc. v. Robins* also continues to pay dividends across the consumer finance sector and beyond, ensuring that lawsuits against businesses must be based on actual harms, not technical missteps. And our Supreme Court & Appellate team routinely handles appeals and files amicus briefs in major cases that affect the consumer financial services industry.

- Secured a victory for **PayPal** in the Second Circuit, which upheld the dismissal of a lawsuit seeking to hold PayPal responsible for identity theft. The plaintiff, a cosmetic surgeon, claimed that her former office manager had improperly used the plaintiff's personal information to set up PayPal accounts and steal from her. The district court and Second Circuit agreed with our arguments that, under New York law, PayPal did not owe any duty to the plaintiff and did not cause the plaintiff's injury.
- Successfully represented **The Bank of New York Mellon** in a rare federal appellate decision addressing a trustee's duties under a

trust for residential mortgage-backed securities. On July 27, 2020, a three-judge panel for the Tenth Circuit affirmed a lower court's decision dismissing all claims brought by investor American Fidelity Assurance Co. against the bank.

- Secured a complete victory on behalf of **The Bank of New York Mellon** as trustee for 278 RMBS trusts after an investor alleged that BNYM had been incorrectly calculating payments. In a proceeding for judicial instruction in New York Supreme Court's Commercial Division, the court approved the method that BNY Mellon has been using to make payments to interest-only certificates.

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WELCOME



Andrew Olmem
Partner, Washington DC
+1 202 263 3006
aolmem@mayerbrown.com

Andrew Olmem is a partner in Mayer Brown's Washington DC office and a member of the Public Policy, Regulatory & Political Law practice. Prior to joining Mayer Brown, he served as the Deputy Assistant to the President for Economic Policy and Deputy Director of the US National Economic Council (NEC) where he oversaw the development and coordination of all domestic economic policies, including for financial services, technology, telecom, energy and infrastructure.



Vivek K. Mohan
Partner, Palo Alto
+1 650 331 2054
vmohan@mayerbrown.com

Vivek Mohan is a partner in Mayer Brown's Cybersecurity & Data Privacy practice in Northern California. Prior to joining Mayer Brown he was with Apple Inc., where he was a senior attorney on the company's global privacy law & policy team and head of information security law.



Cybersecurity & Data Privacy

Mayer Brown's global Cybersecurity & Data Privacy practice provides full-spectrum, global coverage of the range of operational, legal and financial risks posed by cyber threats—from ransomware and cyber extortion attacks to car hacking, threats to connected infrastructure, and nation state-sponsored cyber espionage.

Our practice assists clients as they respond to cybersecurity threats and helps clients navigate data privacy developments such as the European Union's GDPR, the California Consumer Privacy Act (CCPA), the California Consumer Privacy Rights Act (CPRCA), and an array of other state and federal laws and regulations that require dramatic shifts in how companies approach data privacy and cybersecurity. We focus on the following core areas: incident preparation and breach response, litigation and government investigations, strategic counseling and corporate governance, vendor and supply-chain management, contracting, and data transfers, regulatory and compliance and policy and advocacy.

- Advised a large **number of financial services companies** (including banks, branches and agencies of foreign banks, insurance companies, mortgage lenders/servicers and money services businesses) regarding their compliance, notification and vendor management obligations under the New York Department of Financial Services cybersecurity regulation.
- Advised **large foreign bank** regarding its third-party vendor risk management and information security considerations arising from an incident involving a third-party service provider.
- Developed information security and privacy program for new **joint venture** offering financial products and services to US customers.
- Advised **several financial services companies** (including banks, insurance companies and mortgage lenders/servicers) regarding compliance with CCPA, including notice obligations, customer deletion requests, possible exemptions for information covered by the Gramm-Leach-Bliley Act and the Fair Credit Reporting Act and the potential impact of CPRCA.
- Advised **numerous financial services companies** in connection with the development of incident response plans and actions required as a result of an actual or suspect cybersecurity event, including consumer and regulatory notification obligations, mitigation of litigation and regulatory risks and third-party vendor management.

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Financial Institutions M&A

Lawyers in our Financial Institutions M&A practice handled consumer finance transactions involving the world's largest banks, financial sponsors, mortgage companies, lending institutions, investment firms, hedge funds and insurance companies.

In 2020, we handled matters ranging in size and complexity from small-and mid-sized transactions within a single national or regional market to multibillion-dollar transactions involving public-traded companies.

Our team members have a thorough understanding of the underlying financial products and services of financial institutions, including product lines, asset structures, business, technology and legal risks, and regulatory issues and how such matters impact deal terms and transaction risk. We note that 2020 was a turbulent year for M&A activity in the financial services industry, which is driven by the COVID-19 pandemic and its effect on economic and credit markets. M&A activity increased significantly during Q3 and Q4 2020 driven by strategic investors and IPO/SPAC transactions. We expect to see similar trends and deal volume in 2021.

- Represented **Ocwen Financial** in its agreement with funds managed by Oaktree Capital Management, L.P. to form a strategic relationship that will acquire and hold mortgage servicing rights through a licensed entity, or MSR asset vehicle. The newly-formed company is expected to invest up to \$250 million of equity capital into the MAV to acquire Fannie Mae and Freddie Mac MSRs.
- Represented **Ally Financial** in its Series D investment in Better Holdco, Inc., an online lender with a \$4 billion valuation that raised \$200 million in its Series D round.
- Represented **TD Securities** the acquisition of Kimberlite Group, LLC, a strategic real estate advisory and private capital raising firm.
- Represented **Investnet** in an investment in Dynasty Financial Partners, LLC, a provider of wealth management and technology platforms for select independent financial advisory firms.
- Represented **independent mortgage lender** in connection with an internal reorganization and minority investment by a strategic partner.
- Represented a top-ranked **non-bank owner of servicing rights** in its ongoing program for acquisition of Fannie Mae, Freddie Mac and Ginnie Mae mortgage servicing rights under existing and new bulk and flow purchase agreements, including in connection with rapid rollout of adjustments for market fluctuations and new governmental, investor and mortgage insurer requirements in response to COVID-19 pandemic.

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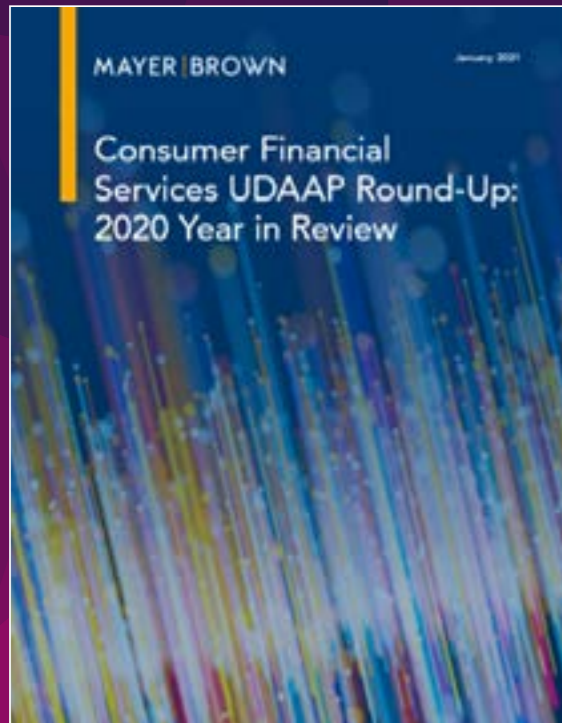
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Named by **Law360** for the fifth year in a row as a "Law Firm of the Year" and won "Practice Group of the Year" awards in categories including Banking, Project Finance and Structured Finance.



THOUGHT LEADERSHIP



Consumer Financial Services UDAAP 2020 YIR



Consumer Financial Services Highlights 2019



Fair Lending Newsletter Fall 2020



Fair Lending Newsletter Winter 2021



Securitization and Structured Finance

Mayer Brown's Financial Services Regulatory & Enforcement practice worked closely with our market-leading Structured Finance group to close more securitizations in 2020 than any other law firm.

In addition, we helped our clients develop and implement a variety of credit facilities, repurchase facilities, derivatives, participations and other structured finance arrangements. Our 2020 securitization and other structured finance transactions included virtually every consumer-related asset class, including forward and reverse residential mortgages, servicing advances, servicing rights, student loans, credit card receivables, auto loans and leases, marketplace consumer loans, single-family rental properties, unsecured personal loans, retail installment contracts and other consumer receivables. Whether we represent issuers, underwriters, servicers, investors or other counterparties, we cooperate closely with our securitization lawyers to ensure compatibility between our client's compliance and financing strategies and to help identify and solve potential issues as early as possible in the transaction process. Together, we helped our clients adapt to and implement a wide variety of new and existing laws and regulations that impact the financing of consumer financial assets and navigate, interact with and even challenge a multitude of applicable government agencies and bodies, including the US Securities and Exchange Commission, Office of the Comptroller of the Currency, CFPB, HUD, government-sponsored enterprises (GSEs), US Internal Revenue Service and various other federal, state and local government agencies and regulators.

During 2020, our experience included representing clients in connection with myriad non-financing transactions related to the origination, investment in or the management of consumer financial assets. In helping our clients negotiate asset purchase and sale agreements, servicing agreements, subservicing agreements, joint-marketing agreements, management agreements, custodial agreements and other agreements that facilitate the financing and ultimate realization of consumer financial assets, we apply the same integrated and team-oriented approach across all of our applicable practice areas to deliver consistent high-quality service through all phases of their business plans, from origination to securitization.

Throughout 2020, we represented multiple issuers, underwriters and initial purchasers in connection with the issuance of credit card asset-backed securities. We also performed extensive consumer regulatory diligence in connection with the origination and servicing of pools of secured and unsecured consumer loans acquired by funds and finance companies.

With respect to residential mortgage loans, this past year we represented various clients in connection with the acquisition, sale of and financing of mortgage servicing rights and servicing advances, including advice regarding GSE and Ginnie Mae compliance in connection with the foregoing. We also represented several sponsors and investors in connection with the formation of servicing rights investment vehicles. Our experience included representing various issuers and other counterparties in connection with multiple

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securitizations, warehouse facilities and other financing of residential mortgage loans, including non-qualified mortgages, prime jumbo, reverse, non-performing and re-performing mortgage loans. We also provided multistate licensing advice in connection with the origination, holding and servicing activities of numerous funds and financial institutions active in the residential and commercial mortgage loan and single-family rental markets.

- Represented the US Federal Reserve's in its new Term Asset-Backed Securities Loan Facility (TALF) established in March 2020. TALF was designed to facilitate the issuance of asset-backed securities (ABS) and improve market conditions for such ABS. Under TALF, a subsidiary of the Federal Reserve Bank of New York (FRBNY), made loans to investors in eligible ABS bonds through securities dealers known as TALF Agents. TALF Agents are responsible for performing diligence on the investor borrowers and acting as the intermediaries between borrowers and the FRBNY.

On behalf of **The Structured Finance Association**, Mayer Brown created the form Customer Agreement to be used as the starting point for agreements between the borrowers and the TALF Agents. The firm represented the following TALF Agents, among others: BofA Securities, Wells Fargo Securities, RBC Capital Markets, BNP Paribas Securities, Societe Generale, Mizuho Securities and Nomura Securities. Our TALF Agent representation work covered both soup-to-nuts negotiation of customer agreements with all TALF customers and advisory work in assisting clients with the development of internal diligence and conflicts policies and procedures in compliance with TALF. The firm also represented the initial purchasers in the first transactions done under the new TALF program, consisting of \$500M and \$310M, respectively, of fixed rate notes backed by insurance premium finance loans, as well as the initial purchasers of \$300M of TALF eligible, floating-rate dealer note asset backed notes issued by Navistar Financial Dealer Note Master Owner Trust II 2020-1.

- Advised **LendingClub**, a pioneer in marketplace lending, on the establishment of its levered certificate program, which has experienced significant investor demand. The program enables LendingClub to issue securities, backed by the company's loans, to private investors without the need for offering documents, which do not always add a lot of value to a transaction and can add liability and slow execution. In the nine months since the platform was launched, LendingClub has used it for 18 offerings with a total value of about \$1.1 billion. Since Mayer Brown created LendingClub's levered certificate program, several other companies have approached the firm to design similar programs.
- Represented the **Structured Finance Association** to Co-Chair a Task Force formed to address issues relating to adverse "Valid-When-Made" court decisions in Colorado and New York. As a result of our participation, Mayer Brown represented SFA in connection with the filing of an amicus briefs jointly with the Bank Policy Institute in a Class Action lawsuit in New York federal courts. We also joined with SFA staff in meeting with the OCC and FDIC and preparing comment letters, the result being that in 2020 both the OCC and FDIC issued final regulations providing protection to bank originators and secondary market purchasers with respect to the adverse effect of the Madden decision. The class action lawsuits in New York in which SFA filed amicus briefs were dismissed by the courts in September 2020 and appeals were subsequently withdrawn by the plaintiffs.
- Represented **Goldman Sachs'** in the securitization financing of Brazilian small business loans to merchants on the MercadoLivre platform. The deal had everything: fintech, cross-border and the

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expansion of marketplace lending to an emerging market, etc. MercadoLibre is the e-Bay of Latin America; merchants sell their goods on the platform. MercadoLibre's biggest investor is PayPal. Because MercadoLibre owes money to the merchants for their sales on the platform and can deduct the merchant's required payments on the merchant loan from the amount MercadoLibre owes to the merchant, the merchant is more creditworthy to MercadoLibre than to other potential lenders. Also, MercadoLibre has all of the data about the weekly sales by these merchants on the platform to enable MercadoLibre to determine appropriate loan sizes and interest rates. This deal follows a previous securitization in which we represented Goldman Sachs for the MercadoLibre platform in Mexico.

- Assisted **Square Capital** in becoming a Paycheck Protection Program lender under the federal government's CARES Act, and entering into whole loan flow sale programs with multiple investors.

- Represented **Upstart** in connection with the establishment of its co-sponsored levered certificate platform, which has issued seven transactions since its inception. The loans in the facility were consumer originations from multiple bank partners.
- Represented **Loanpal** in connection with the establishment of a fractional participation platform to securitize its solar panel loans. The transaction enabled Loanpal to issue participation interests to community banks.
- Represented a group of unsecured personal lenders, including **OneMain, LendingClub, Affirm, Lendmark and the Marketplace Lending Association** to lobby for greater assistance during the crisis for personal loan borrowers.

NAMED "BEST SECURITIZATION LAW FIRM OF THE YEAR" – **GLOBALCAPITAL'S** 2020 US SECURITIZATION AWARDS

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Technology Transactions

Mayer Brown’s Technology Transactions practice is at the forefront of helping banks and other financial institutions accelerate digital transformation and improve operation efficiency through data, digital, outsourcing and software transactions.

We work with our clients to strategically achieve value from third-party relationships while helping to mitigate third-party risks. Our depth in technology, sourcing, privacy and cybersecurity, combined with our Firm’s signature strength in representing banks and other financial institution clients, makes for an unparalleled team. The 50 lawyers in our Technology Transactions practice have assisted the customer in thousands of technology transactions, with an aggregate total contract value of well in excess of than \$250 billion. This volume of deals equips our lawyers with market knowledge that is unmatched.

In 2020, our Technology Transactions practice worked closely with Mayer Brown’s Financial Services Regulatory & Enforcement, Fintech and Financial Institutions M&A practices. Our extensive knowledge of the regulatory and business environment in which banks and other financial institutions operate means that we are highly qualified to represent their interests in matters ranging in size and complexity from small and mid-sized transactions within a single national or regional market to multibillion-dollar cross-border transactions.

- Represented a **diversified bank** in a multi-pronged digital transformation project to modernize its internal-and external-facing technology capabilities. We represented the bank in the drafting, negotiation and execution of a multi-year agreement with Amdocs, a multinational software services company, for the outsourcing of the bank’s software development and maintenance functions. This includes the development of new digital capabilities to meet evolving customer needs as well as implementation of technology solutions to address regulatory requirements. In addition to the agreement with Amdocs, Mayer Brown also represented

the bank in the drafting, negotiation and execution of a master services agreement with IBM for ancillary services.

- Represented a **private fund** focused on trading consumer debt using advanced analytics in inbound and outbound data licenses, data analytics services agreements, and platform arrangements. These generally were in connection with new investment opportunities.
- Represented a **US bank** in contracting with an industry-leading broker-dealer provider for delivery of brokerage and advisory services and associated digital solutions to customers of its investment advisory arm.

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“BAND 1” RANKING IN IT/OUTSOURCING NATIONWIDE FOR 16 CONSECUTIVE YEARS 2004-2020

– CHAMBERS USA

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REGULATORY COMPLIANCE & ENFORCEMENT



STEVEN M. KAPLAN

Partner
Washington DC
skaplan@mayerbrown.com
+1 202 263 3005



JEFFREY P. TAFT

Partner
Washington DC
jtaft@mayerbrown.com
+1 202 263 3293

LITIGATION



MATTHEW D. INGBER

Partner
New York
mingber@mayerbrown.com
+1 212 506 2373



LUCIA NALE

Partner
Chicago
lnale@mayerbrown.com
+1 312 701 7074

TRANSACTIONAL



JON D. VAN GORP

Partner
Chicago
jvangorp@mayerbrown.com
+1 312 701 7091



ELIZABETH A. RAYMOND

Partner
Chicago
eraymond@mayerbrown.com
+1 312 701 7322

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

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