

Practical Tips for Launching a Consumer Finance Product in the U.S.

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Whether you are an existing domestic company expanding to offer a consumer finance product or service, a new domestic company looking to enter the space as a start-up, or a foreign company looking to expand into the U.S. market, there are a number of important considerations facing your business during the planning phase. Below is a list of some of the factors your business should think about *while developing your product offering*.

It is critical to understand the complex nature of United States consumer finance law as your product offering is in development. Otherwise, you may find yourself in the unenviable position of reconfiguring key aspects of your business or product to fit legal and regulatory requirements. This list is not at all exhaustive; rather, it is meant to highlight some key questions early on the path to launching a successful product or service.

For the purpose of this Practical Tip Sheet, a consumer financial product or service is defined as any financial service, or a service related to a financial activity, which is offered or provided to an individual for household or consumer purposes.

1. Where will the entity operate? Where will the product/service be offered?

The United States operates under a dual system where both federal and state laws can apply and impact your product offering. Most products require consideration of separate legal requirements in all 50 states, and Washington D.C., in addition to federal law. Understanding how to navigate this system, and how that analysis is directly impacted by the answer to question (2) above, will directly impact requirements or prohibitions that may apply to the entity.

2. Is the entity offering a credit product, a deposit product, a combination of the two, or something entirely different (offering of cryptocurrency, for example)?

The nature of your product will dictate which federal and/or state laws and regulations will apply to your business.

3. Will the entity offer the product or service themselves or will they partner with another organization?

This is a critical early decision that greatly impacts the next steps. Understanding what obligations each party has, both contractually and from a regulatory/legal perspective, will not only help to keep your program compliant but also improve efficiency and speed to market.

4. What licenses are required for this activity and who will hold them?

If an entity decides to partner with a chartered or licensed entity, it should take caution to understand what benefits, and detractions, come with making this decision. A key factor to remember: Partnering with a chartered or licensed entity means that the entity holding the charter or license may engage in chartered or licensed activity, but that charter or license cannot be “used” by the non-chartered or non-licensed entity. The non-licensed entity must still determine whether their specific activity requires its own set of charters or licenses, and the program must be structured in a manner that ensures the chartered or licensed entity is the only entity engaging in chartered or licensed activity.

5. Who is responsible for the consumer journey?

Ensuring compliant marketing, disclosures, and application flows, validating operational maintenance and/or servicing/collection processes for compliance, identification and apportionment of responsibility for the numerous federal and state laws, and the handling of consumer complaints and regulatory examinations are all highly scrutinized by regulators. Thought should be given to the care and custody of these activities, and to protecting consumer data and privacy.

If you consider the above factors as you develop your product and engage legal advice early, your business will be in a much better position to plan and negotiate the best path to introduce a new consumer financial service or product efficiently, quickly, and in a compliant manner.

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