



# Consumer Financial Services Compliance

**Our consumer financial services lawyers have both deep and broad experience, advising clients on the full universe of federal and state regulatory and compliance issues.**

McGlinchey is a national leader in the field of financial services law and a one-stop resource for the lending industry, recognized by Chambers USA with a Nationwide ranking in Financial Services Regulation: Consumer Finance (Compliance).

Our multidisciplinary team has both deep and broad experience advising clients on the full universe of operational, regulatory compliance, and transactional issues as well as related litigation. Our attorneys provide leading-edge strategic counsel to mortgage lenders, loan servicers, auto finance companies, and credit card issuers in all areas of federal and state compliance and litigation. From regulatory issues, 50-state licensing, and examinations, to defending individual and class action litigation and enforcement actions, our group has the depth, scale, and experience to navigate this increasingly complex field.

We deliver 50-state advice and solutions to clients in these key areas:

- Ancillary products
- Auto and Personal property finance and leasing
- Bank Secrecy Act and Anti-Money Laundering
- Credit card programs
- Credit reporting
- Cybersecurity and data privacy compliance
- Daily compliance support
- Deposit products
- Education finance
- Electronic contracting
- FinTech
- Manufactured housing
- Manufacturer and seller warranties
- Mortgage Lending Compliance
- Nationwide licensing
- Payment systems and money services businesses
- State and federal examinations and investigations
- Transactional support and due diligence
- Vendor management

**Ancillary products.** McGlinchey represents insurance companies, producers, and lenders in the structuring of credit insurance policies and programs and related products and services, in addition to form, rate, and other filings. We structure, advise, and consult as sole outside counsel for the aftermarket sales of ancillary products, including motor vehicle service contracts, guaranteed automobile protection, tire and wheel protection, and similar products – from inception through cancellation, refund, and runoff responsibility.

**Auto and other personal property finance and leasing.** We handle everything from the initial credit application to the documentation of the lease or sale and financing, through the repossession and disposition of collateral or early lease termination. We develop policies and procedures, compliance management systems, consumer correspondence, nationwide repossession notices, and more. We help clients prepare for Consumer Financial Protection Bureau (CFPB) supervision and implementing and evaluating fair lending programs.

**Bank Secrecy Act and Anti-Money Laundering.** We draft and implement policies and procedures to meet the requirements of the Bank Secrecy Act and anti-money laundering laws. We also assist clients in analyzing anti-money laundering program requirements, customer identification program requirements, and suspicious activity reporting requirements. We regularly consult with financial services providers regarding their obligations under regulations issued by the Financial Crimes Enforcement Network (FinCEN) and Office of Foreign Assets Control (OFAC).

**Credit card programs.** Our team designs credit card programs for banks, merchants, and service providers, and advises these clients on compliance with state and federal law. We advise on compliance and risk management issues that relate to payment systems, network operating rules, merchant processing, marketing, collection, and servicing. We also assist with the development of a wide range of application disclosures, account opening

disclosures, credit agreements, arbitration agreements, periodic statements, and change-in-terms notices for different types of consumer-purpose credit cards.

**Credit reporting.** McGlinchey counsels clients on responsibilities related to the furnishing of credit information, including the creation of Furnisher Rule policies and procedures, related template response letters, and guidance on implementation, including the reporting guidelines established by Consumer Data Industry Association (Metro 2). We negotiate and draft contracts between consumer reporting agencies and parties that use consumer report information, and furnish account tradeline information to consumer reporting agencies. We also advise on laws that affect the content and timing of adverse action and risk-based pricing notices and assist in the drafting of such notices and related policies and procedures.

**Cybersecurity and data privacy compliance.** Our team helps clients develop comprehensive solutions to comply with data privacy and network security laws, including mandatory documentation and best practices to avoid or mitigate risks. Our multidisciplinary team helps organizations comply with applicable regulatory obligations, and prevent and respond to data breaches.

**Daily compliance support.** Our strength, breadth, and diversity of experience make McGlinchey the ideal strategic resource to handle day-to-day compliance questions that arise in the course of business operations. We are just an email or phone call away.

**Deposit products.** McGlinchey provides comprehensive compliance support to numerous national and state-chartered banks, federal savings associations, and other financial institutions. We are also national leaders on issues that arise, with two of our partners having served as Chair and Vice-Chair of the Deposit Products and Payment Systems Subcommittee of the American Bar Association (ABA).

**Education finance.** McGlinchey is generally recognized among the top few national firms in this field, working with lenders and loan program administrators to develop documentation and compliance systems for private student loan programs designed for students attending conventional institutions of higher education, as well as proprietary schools.

**Electronic contracting.** Our team helps clients convert their paper contracts and other documents into electronic and electronically-signed contracts. We also help design credit agreements, disclosures, websites, and applications in a way that complies with the laws that regulate these practices.

**FinTech.** We work with FinTech companies, SaaS providers, and marketplace lenders offering alternative lending and payments solutions to provide legal compliance advice for companies developing a national lending program, whether through a bank partnership program, state lender licenses, or both. We also assist FinTech companies and marketplace lenders on compliance matters involving payments to ensure that the use and acceptance of electronic payments comply with federal regulations and other guidance, the rules and guidance issued by the Electronic Payments Association (NACHA), and the operating rules of the major credit and debit card brands.

**Manufactured housing.** We are a pioneer in this industry, representing manufacturers, retailers, lenders, and community operators. We continuously assist lenders and financing sources in rolling-out new lending programs

and expanding their lending footprints. McGlinchey played an instrumental role in the enactment of titling laws in 14 states and has represented the industry at the Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac.

**Manufacturer and seller warranties.** We advise on structuring, compliance, and operational considerations with regard to manufacturer product warranties – specifically, written warranties under the Federal Magnuson-Moss Warranty Act. We advise on warranty program structure, language for restriction of warranty coverage in limited warranties, and the interplay between federal law and state law implied warranties, particularly motor vehicle warranties.

**Mortgage Lending Compliance.** Our team works with federal and state-chartered banks, mortgage brokers, lead generators, mortgage companies, mortgage servicers and sub-servicers, third-party fulfillment services, and other providers of mortgage products and services to give legal regulatory and compliance advice for all stages of the mortgage process. From the initial stages of licensing and loan origination to disclosures, permissible fees, multi-state loan documentation, and federal and state requirements, we address the full alphabet soup of mortgage origination requirements, as well as related preemption issues. For mortgage servicing, whether it be issues with onboarding, day-to-day servicing matters, servicing transfers, escrow requirements, flood insurance, force-placed insurance, credit reporting, collection, loss mitigation, foreclosure, REO, property preservation, Servicemembers Civil Relief Act (SCRA) and military law, third-party service providers, or anything in between, our attorneys advise clients every step of the way. We also track new legislation and regulations and provide advice on how to adapt to and implement the new requirements.

**Nationwide licensing.** We have provided comprehensive licensing support to our clients for more than 30 years. Our attorneys and dedicated team of licensing professionals analyze applicable laws, regulations, and regulatory guidance to determine which licenses are required, based on the specific details of a client’s business. We complete all required applications and follow up with regulators to expedite approvals.

**Payment systems and money services businesses.** We work with issuers, retailers, creditors, and service providers to create and operate prepaid card products (such as gift cards and bank-issued payroll cards), mobile or e-wallets, and online or phone payment acceptance processes. We help creditors understand the impact of the NACHA Rules and payment card network rules, and help create the online payment flow process to include incorporating and obtaining E-Sign consent. We assist startups and existing companies alike analyzing their product offerings and navigating compliance with state and federal money services business laws.

**State and federal examinations and investigations.** We counsel clients in preparing for an examination and responding to information requests and civil investigative demands. We represent clients in connection with supervisory examinations conducted by the CFPB, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and a host of state regulators. We also defend clients in enforcement actions brought by the CFPB, Federal Trade Commission (FTC), U.S. Department of Justice (DOJ), and state regulators and attorneys general.

**Transactional support and due diligence.** We render regulatory compliance opinions, including opinions required in connection with public offerings of securities by mortgage lending, manufactured housing, and

automotive finance clients. We also represent clients in connection with bank mergers and acquisitions and smaller transactions including servicing and dealer agreements.

**Vendor management.** We work with clients to develop their service provider selection and monitoring programs, to interview service providers, and to evaluate legal compliance and discuss contract commitments. We draft service agreements, including servicing and collection agreements, and amend existing contracts to enhance our clients' audit rights.

## Federal and State Law Experience

Our attorneys possess a keen understanding of pertinent federal and state laws and have particular experience with the following:

- National Bank Act
- Bank Holding Company Act
- Home Owners' Loan Act
- Dodd-Frank Act
- Consumer Financial Protection Bureau (CFPB)
- Unfair, Deceptive, or Abusive Act or Practices (UDAAP)
- Federal Trade Commission (FTC) Act
- Truth in Lending Act (TILA) and Regulation Z
- Equal Credit Opportunity Act (ECOA) and Regulation B
- Real Estate Settlement Procedure Act (RESPA) and Regulation X
- Home Mortgage Disclosure Act (HMDA) and Regulation C
- Fair Credit Reporting Act (FCRA) and Regulation V
- Gramm-Leach-Bliley Act (GLBA) and Regulation P
- Electronic Funds Transfer Act (EFTA) and Regulation E
- National Automated Clearing House Association (NACHA) and Payment Card Network Rules
- Secure and Fair Enforcement (SAFE) Act, Regulations G and H, and state counterparts
- Bank Secrecy Act (BSA) and Anti-Money Laundering (AML)
- Servicemembers Civil Relief Act (SCRA) and state counterparts
- Fair Debt Collection Practices Act (FDCPA) and state counterparts
- Telephone Consumer Protection Act (TCPA)
- Telemarketing Sales Rules (TSR)
- Controlling the Assault of Non-Solicited Pornography (CAN-SPAM) Act
- E-SIGN Act and Uniform Electronic Transactions Act (UETA)
- State banking codes
- State usury laws
- State Unfair and Deceptive Practices (UDAP) laws
- State lender licensing laws
- Uniform Consumer Credit Codes (UCCC)
- Uniform Commercial Code (UCC)

- Consumer Leasing Act and Regulation M
- State leasing laws
- Motor Vehicle and Retail Installment Sales Acts
- State lender, originator, broker, servicer, and debt collection statutes
- Related consumer financial services statutes and regulations
- State Homeowner Bills of Rights Programs

## what our clients say

*"McGlinchey has a good understanding of the business needs that must be considered when assessing legal issues."*

*"All of the team members are efficient, responsive and well educated."*

*"The firm's responsiveness and advice are always timely and thoughtful."*

*Chambers 2023 Client Commentary*

*"The team offers superb responsiveness and care business priorities."*

*"They always promptly respond with care and professionalism and with knowledge we trust."*

*"The attorneys are very knowledgeable about the practice area and local courts."*

*Chambers 2022 Client Commentary*

## Initial Contacts

- Mark S. Edelman

## Related Industries

- Auto Finance
- Education
- Financial Services
- Insurance
- Manufacturing
- Technology
- Transportation and Logistics
- Cannabis
- Energy
- Electric Vehicles

## Related Services

- Class Action Defense
- Consumer Financial Services Litigation
- Cybersecurity and Data Privacy
- FinTech
- Government and Internal Investigations
- Insurance Regulatory and Compliance
- Intellectual Property
- Licensing
- Education Finance
- Mortgage Lending Compliance