

# Consumer Financial Services, Data and Technology (CFS+)

## Practices

Akerman's Consumer Financial Services, Data and Technology (CFS+) Practice Group assists financial services clients with a broad range of legal needs, from ordinary to unique, simple to complex. Our experience is deep and comprehensive. We counsel clients at every stage of corporate life, from multinational banks engaging with regulators and defending lawsuits to start-ups securing seed funding and developing compliance building blocks.

Our attorneys honed their skills during some of the most tumultuous periods for the industry, as outside counsel, on in-house teams, and as regulators. We continue participating at the forefront of industry change, through court action, regulatory development, and business innovation.

Our CFS+ litigators and enforcement attorneys are unmatched in consumer financial services, with successes in industry-shaping matters and countless individual lawsuits and arbitrations. Our litigators

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## Connect With Us



**William P.  
Heller**

Chair, Consumer  
Financial  
Services, Data  
and Technology  
(CFS+) Practice  
Group  
+1 954 759 8945

## Our Team

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## Welcome to CFS+

A rebrand  
demonstrating growth  
and pointing to new  
legal challenges in  
financial services,

are among the largest legal teams supporting consumer financial service providers in the United States. Through our national platform we protect clients in all 50 states. We are heavily experienced with every-state rapid response projects, risk management, issue escalation, and direct case handling. We cover litigation (from high-stakes to high-volume) with recognized appellate and trial court results.

We also handle federal and state investigations and enforcement on a wide range of regulatory matters and challenges involving key regulators (e.g., CFPB, DOJ, OCC, NY DFS, CA DFPI, and state attorneys general). We lead regulator investigations to successful outcomes, and also help avoid disputes by effectively responding to inquiries and civil investigative demands and working cooperatively with government agencies.

Whatever consumer finance or technology-related need arises, Akerman's CFS+ team has it covered. From litigation to enforcement, regulatory compliance to vendor management and new products to licensing, we are the industry's go-to legal team.

## **Our Litigation and Enforcement Coverage Includes:**

### **Appellate**

CFS+ has seasoned appellate lawyers who consult on trials, handle briefing, and argue in state and federal appellate courts nationally. Our team has demonstrated success handling law-shaping appellate proceedings on loan origination, servicing, and foreclosure, together with a wide range of procedural and substantive issues relating to disclosures, origination, and servicing practices, products and fees, affiliated or related businesses, lien priority and validity, and statutes of limitations. Partnering with our firm's national powerhouse

technology, data  
security

[Learn More](#)



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## **Stay On Top of Industry News!**

Explainer Things, our consumer finance newsletter, covers the latest news on payments, crypto, fintech, cards, and more, with our quick takes on why that news matters to you. [Click here.](#)



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## **Recent News**

[The System Works: Why the President and the Federal Reserve Rarely Get Along—and That's the Way It Should Be!](#)

[Saved by the Bell: Eleventh Circuit Vacates FCC's One-to-One Consent Rule Days Before Effective Date](#)

appellate practice and former appellate judges and law clerks, we offer complete support for appeals in all financial services cases before any court or agency. Select recent appellate opinions include:

- *U.S. Bank, N.A. v. Thunder Properties, Inc.*, 138 Nev. Adv. Opinion 3 (Nev. 2022). On a certified question from the U.S. Court of Appeals for the Ninth Circuit, the Nevada Supreme Court held the statute of limitations for a quiet title action by a mortgage holder against a rival claimant does not begin running until the rival claimant affirmatively repudiates the validity of the mortgage.
- *2000 Presidential Way, LLC v. The Bank of New York Mellon*, 326 So. 3d 64 (Fla. 4th DCA 2021). In an issue of first impression, the Florida Fourth District Court of Appeal held a third-party purchaser took title subject to unrecorded loan modification agreements where it was on notice from the recorded security agreement such modifications might exist.
- *Alpert v. Nationstar Mortgage LLC*, 494 P.3d 419 (Wash. 2021). On a certified question from the U.S. Court of Appeals for the Ninth Circuit, the Washington Supreme Court held the filed-rate doctrine extends to lender placed insurance despite the premiums being paid through an intermediary.
- *CitiMortgage, Inc. v. Ramirez*, 192 A.D.3d 70 (N.Y. 3d Dep't 2020). In an issue of first impression, the New York Appellate Division, Third Department held the statute of limitations on an action for a money judgment on the note is tolled during the pendency of an action to foreclose the mortgage.

## Class Actions

CFS+ class litigators concentrate on defending complex claims related to federal consumer finance laws, including the Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Fair Debt

[CFPB Proposes  
Extending Consumer  
Protections to Accounts  
Holding Stablecoins,  
Video Game Currency,  
and Rewards Points](#)

[CFPB Finalizes Open  
Banking \(Section 1033\)  
Rule](#)

[California Court Checks  
Enforcement Authority  
of New Privacy Agency](#)

[Akerman's CFS+  
Practice Group  
Continues Expanding  
with Partner Dennis  
Lueck](#)

[The Tides They Are A-  
Changin': Two Major  
Developments in  
Florida Telemarketing](#)

[CFPB Proposes Non-  
Bank Registration  
System for Reporting of  
Enforcement Orders](#)

[Fifth Circuit Affirms  
CFPB's Rulemaking  
Authority Despite  
Holding the Agency  
Unconstitutional](#)

[Consumer Regulators'  
Role in Biden  
Administration's  
Framework on Digital  
Assets](#)

[CFPB Outlines Potential  
UDAAP Liability for](#)

Collection Practices Act, Real Estate Settlement Procedures Act, Telephone Consumer Protection Act, Truth in Lending Act and all state versions of those federal laws. This includes defending class actions challenging loan disclosures, lender-placed insurance, payment processing convenience fees, estimated fees, alleged attempts to collect time-barred or discharged debt, compliance with TCPA auto-dialer and do-not-call restrictions, credit-access policies, and foreclosure/collection processes. Property preservation, consumer privacy, and state statutes of limitations are also areas where we have extremely deep experience on a national scale.

## **Trials and Complex Litigation**

CFS+ offers a national platform designed for high-stakes, high-volume litigation in all 50 states. We defend individual cases before any court or forum, at all exposure levels, raising a wide range of consumer finance laws. Examples include the Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Fair Debt Collection Practices Act, Real Estate Settlement Procedures Act, Telephone Consumer Protection Act, Truth in Lending Act, and all state versions of those federal laws. We have extensive experience defending claims challenging loan disclosures, pricing and foreclosure processes, and fees. Property preservation, consumer privacy, state statutes of limitations, title defect and fraud recovery, and loan-servicing technology are areas, among these others, where our experience is profound. We also handle litigation and arbitration involving financial services trade secrets and technology, unfair competition, and other business practices. Our jury expertise distinguishes us. CFS+ lawyers lead high-stakes jury trials nationally with the capability to join late-stage cases and effectively first chair or consult on trials in virtually every state.

## **Regulatory Enforcement (CFPB, DOJ, OCC, State Regulators and Attorneys General)**

Digital Marketing  
Companies

*The American Lawyer:*  
"Akerman Rebrands  
Consumer Finance  
Practice as Evolving  
Fintech, Crypto Lap  
Regulation," April 28,  
2022

Akerman Associate  
Jessica Riley Awarded  
Presidential Citation by  
the Dallas Bar  
Association

William P. Heller Talks  
With *Law360* for Article  
Highlighting Akerman  
as a 2021 Florida  
Powerhouse

JFI Medical Appoints  
Former United States  
Surgeon General Dr.  
Jerome Adams as  
Senior Public Health  
and Community  
Outreach Advisor

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## **Recent Results**

Akerman Team  
Supports Shellpoint  
Successfully Reversing  
Texas Trial Court  
Opinions Voiding Liens  
Based on Statute of  
Limitations



CFS+ attorneys help clients successfully navigate the complex and even perplexing world of regulatory enforcement. When a regulator issues a civil investigative demand, threatens suit, or sues, our attorneys can explain processes, assist with critical decisioning, understand and anticipate the regulator's motives and reactions, and tactfully negotiate and litigate to ultimately obtain the best outcome.

A few things to consider:

- Last year, regulators increased their enforcement scope and aggressiveness. We saw a significant increase in civil investigative demands and enforcement actions at the CFPB in particular. We expect the trend to continue.
- One area of increased focus is BSA/AML, including CIP/KYC programs review. If you have questions about whether or not you are meeting these increased standards, we can review your program for compliance.
- If you are a vendor to a regulated entity, then you know that entity expects full compliance with critical regulations. This is becoming increasingly important as fintech-as-a-service continues to expand and regulators' scrutiny of these partnerships intensifies. Can your compliance management system withstand regulator or client's scrutiny?
- Small-dollar lenders and others offering short-term liquidity (including earned wage access and other non-recourse products) are increasingly coming under regulatory scrutiny, especially from the CFPB. Your compliance management system must be up to par for your company's size and complexity.

CFS+ can help you to:

- Defend and assist in responding to civil investigative demands (CID), notice and opportunity to respond (NORA) letters, potential action and request for response (PARR) letters, and other regulator inquiries.
- Defend in and against regulator investigations and enforcement actions.
- Negotiate early resolution of potential enforcement actions.

Representative experience:

- Managed defense of two CFPB enforcement actions resulting in stipulated judgments.
- Defended multiple state regulators' inquiries into client's earned wage access program.
- Represented client in CFPB inquiry into client's buy-now-pay-later program.
- Defended against aggressive state attorney general civil investigative demand seeking redress for matters dating back to foreclosure crisis, ending with agreed-upon redress and consent order.
- Provided critical defense strategy to OCC enforcement actions against national banks resulting in consent orders.

Our regulatory compliance attorneys bring invaluable perspective gained from years of experience at regulatory agencies and leadership within financial institutions. We appreciate that differing business models, varying technology, and changing economic capabilities require individualized guidance. Our attorneys provide a pragmatic approach to the laws, regulations, and other standards governing the industry. We understand client needs, but know limitations and the real-world impact of our legal advice.

Regulatory compliance in the payments sector is a particular area of focus for CFS+. The number and variety of new payments technologies continues growing due to increased investment and innovation in fintech. Startups and incumbents are pushing inventive ideas forward to improve how people and businesses transact. These companies use mobile applications, APIs, public and private blockchains, bank partnerships, existing and new payments rails, combined with leading-edge regulatory approaches to confront deficits in legacy payment systems and improve customer lives and financial well-being.

We have authentic experience with payments technologies and applicable laws. Our clients offer the full range of payment products, including mobile payments, crypto accounts, bank accounts, credit cards, and other fintech offerings. A member of our team, while Managing Counsel for Regulations at the Consumer Financial Protection Bureau, led the development and implementation of rules for remittance transfers and prepaid accounts, two of the most important consumer payments regulations of recent years. We leverage this experience and insight to counsel providers of traditional payment and deposit account products, emerging payment products, and cryptocurrency products and services. We also advise payment processors, giftcard issuers, and licensed money transmitters on compliance with new and emerging regulations.

## **Our Regulatory Coverage Areas Include:**

### **Lending and Lending Alternatives**

CFS+ has leading-edge experience working with all types of consumer lenders (regulated, small loan, etc.) and facilitators in alternative-credit markets. We also have substantial experience with lending alternatives, such as earned wage access. We assisted an earned wage access pioneer in obtaining

the first ever regulatory sandbox approval from the CFPB for an earned wage access program.

Whether you are setting up a new lending company and need a licensing strategy, negotiating a partnership, preparing for an exam, looking for assistance with a regulatory investigation/inquiry, or simply in need of compliance guidance, our team is here to help.

Our CFS+ team can:

- Provide clear and pragmatic regulatory guidance to help you comply with complex laws and regulations.
- Advise on licensing issues or obtain lending and servicing licenses in all 50 states.
- Support your growth plans and goals, whether to expand credit to unbanked and underbanked individuals or to offer credit building financial health products to customers relying on alternative credit-rating agencies.
- Assist with answers to regulator inquiries to help you avoid scrutiny and a possible civil investigative demand or other enforcement process.

## Blockchain and Crypto

The growth of crypto and the expansion of decentralized ledger technology may well reshape numerous industries. CFS+ will support you in tapping the potential of these technologies with our expanding blockchain/crypto practice. We can assist with your corporate formalities and funding needs, and advise on compliance with relevant laws and regulations, including FinCEN, BSA/AML, among others. Our CFS+ team provides the knowledge and experience to help you successfully wade through the complexities blockchain and crypto present so you can play a part in reshaping industry.



Our crypto experience includes:

- Advising a public company fintech lender on establishing its first crypto product.
- Counseling a crypto exchange on licensing and BSA issues.
- Assisting a media organization evaluating NFT issues.
- Guiding a startup on a crypto gift-card product.

### Emerging Payments and Cards (Credit, Debit and Prepaid)

CFS+ includes leaders in the card industry, whether credit, debit or prepaid. Our team represents issuers and servicers across the country, with products ranging from single-use prepaid cards to branded credit cards to program-managed bank debit cards. Our knowledge of the applicable federal and state laws and regulations (e.g. TILA, ECOA, FCRA, EFTA) is leading-edge. Our card platform is led by a formerly managing counsel for regulations at the CFPB where he ran the agency's payments regulatory work, including for prepaid cards and money transfers.

Our card experience includes:

- Compliance with state money transmitter and other laws applicable to prepaid cards and other payment products.
- Deep practical knowledge of relevant electronic transfer laws and federal regulations, including EFTA and Reg. E, E-Sign Act, BSA/AML, TILA and Reg. Z, EFAA, Reg. CC, TISA, Reg. DD, and others.
- Preparation and review of vendor agreements, master services agreements, and other critical contracts.
- Drafting terms and conditions, privacy policies, and marketing materials.

- Analysis and guidance for marketing campaigns for card promotion, including sweepstakes and other contests.
- Working with clients to develop and manage their anti-money laundering obligations under the BSA and FinCEN rules.
- Advising clients on managing requirements of state law, including state money transmission, lending, escheatment, consumer protection, data privacy, and UDAAP laws.
- Assisting clients in development and implementation of their state licensing strategy. As needed, we efficiently prepare clients' licensing applications.
- Counseling clients in evaluating and understanding regulatory sandboxes, no action letters and related fintech initiatives from the CFPB, OCC, and other federal and state regulators.

## CFPB

CFS+ routinely guides consumer financial services companies through the CFPB gauntlet, from interpreting CFPB rules, advising during examinations to assisting with consent order compliance, and defending against enforcement actions. Our CFS+ team includes former members of CFPB leadership and a former head of legal for a company that settled 2 CFPB lawsuits in 14 months. Our CFPB practice is not only deep, it provides real-world perspective and practical solutions against what can seem like very difficult odds.

Working and dealing with the CFPB can be intimidating. Having Akerman's CFS+ team on your side will provide peace of mind that you reach the optimal solution to a complicated experience.

Our CFPB experience includes the following industry sectors:

- Mortgage servicers
- Fintech lenders
- Earned wage access providers
- Remittance transfer providers
- Credit card issuing banks
- Mortgage lenders
- Payment processors
- Unsecured lenders
- Program-managed digital banks and neobanks

We have also advised several trade associations on CFPB-related issues, including drafting several comment letters on key CFPB rulemakings and related inquiries.

## Consumer Banking

Whether you provide traditional banking or digital banking products, our CFS+ team is poised to tackle your challenges and needs. We have thousands of combined hours advising banking clients on regulatory compliance and industry best practices. We have a former head of legal from a challenger bank who guided and advised on product development from idea stage through marketing and launch.

Our team can also guide your compliance with federal and state unfair, deceptive and abusive acts and practices laws. These UDAAP laws (or UDAP for those statutes that do not address abusive acts and practices) can impact all aspects of your consumer offerings. Our UDAAP experience comes from our time as regulators, in-house counsel, and advising clients. We will keep you updated on the changing scope of UDAAP laws, and advise on designing products appropriately to avoid UDAAP concerns. We assist you in developing compliant products and written materials describing and advertising those products. And we provide staff and third-party

provider training on communicating with customers in a compliant manner.

We counsel on the full range of consumer finance statutes and regulations that apply to all facets of consumer banking, including:

- TILA / Regulation Z
- RESPA / Regulation X
- FCRA / Regulation
- EFTA / Regulation E
- HMDA / Regulation C
- ECOA / Regulation B
- TISA / Regulation DD
- EFAA / Regulation CC
- CFPB's small-dollar lending rule
- TCPA and CAN-SPAM Act
- GLBA and other federal and state privacy laws
- State licensing laws
- FinCEN MSB requirements
- BSA/AML
- CIP/KYC
- Consumer arbitration agreements

## Examination and Supervision

Our team is experienced in the conduct of examinations from federal prudential regulators—the OCC, FDIC, and the Federal Reserve—to the CFPB and state examiners. We can guide you through best exam preparation, including performing risk assessments entailing reviews of compliance management systems and relevant policies and procedures. When examinations begin, we will advise you on how to marshal responsive materials and prepare responses to regulators' requests and concerns. We have successfully assisted multiple

clients limit the impact of examination findings and avoid exams leading to enforcement actions.

In particular, Akerman's CFS+ team can help you:

- Prepare for routine and non-routine exams.
- Comply with supervisory matters, including consent orders and MRAs.
- Conduct pre-exam reviews, including by providing CMS and transaction-level assessments.
- Review responses to examiner inquiries for compliance and privilege issues.
- Respond to PARR letters and other escalated requests.

## Fintech

Fintech's growth over the last decade has impacted financial services in myriad ways. Fintech providers can be more dynamic and agile than traditional financial services companies, which makes them more efficient but also creates unique and complex regulatory compliance issues. CFS+ is equipped to handle the complexities the fintech industry presents and the speed at which it moves. If you plan to develop a new product or expand on an existing one, let us help you to do so in an efficient and compliant matter.

The following emerging technologies have experienced significant growth in the past few years, and we anticipate similar trends going forward:

- Fintech as a service—service platforms are the current growth area and trend—not directly under regulatory thumb, but providing services to regulated companies. The industry expects fintech-as-a-service providers to be compliant with applicable laws and regulations. CFS+ is equipped to help you satisfy those expectations.



- Challenger banks and proprietary cards and card platforms—new players rely on service-provider platforms, at the same time larger and seasoned players are moving on from the traditional program-managed structure to licensed-bank platforms. We can help you build or expand your current program to best position your company for success.
- Relationships are critical to fintechs. We have substantial experience working with fintechs in developing bank partnerships with many of the key fintech-focused banks. Let us help make those connections.
- Expanding credit access to underbanked and unbanked consumers is both admirable and key to industry growth. Our team has helped numerous fintechs develop and market viable financial products to traditionally underserved sectors.
- If you are looking to acquire another business or perhaps you expect to be acquired, we are here to help guide you through either process.
- Buy now pay later—a high-growth sector and increasingly on regulators’ radar. If you are a BNPL provider, do not be caught off guard when a regulator starts making inquiries. CFS+ is experienced and adept at navigating regulator requests.

Akerman’s CFS+ team has deep knowledge and experience in numerous fintech coverage areas, including:

- Blockchain/crypto
- BSA/AML
- Privacy, data security
- Enforcement
- Regulatory engagement on policy development

- E-sign and related digitization
- Mobile transactions
- Cross-border consumer and commercial payments
- Prepaid/deposit account alternatives
- Crypto wallets
- Card services
- Digital lending
- Factoring, accounts receivables and merchant cash advance products
- B2B payments and credit products
- Earned wage access and other forms of payroll advance products
- Challenger banks and bank partnerships (including FBO account structures)
- State licensing (money transmission and lending)

## Licensing

You can rely on CFS+ to satisfy every licensing need, from application through NMLS and the various states, to renewals and bonds, to resolution of complex licensing questions—like whether or not a license is a requirement for your product. The NMLS centralizes licensing, but, at the same time, can make the licensing process confusing, especially if you are seeking licenses in multiple states or need multiple license types. Our CFS+ team will provide clear guidance and get you the results you desire.

Let CFS+ help you with:

- State licensing strategy—does your product require a license? Is the NMLS required? What are the financial considerations? We can assist you to develop and implement your state licensing strategy, including, if necessary, preparing your licensing applications.

- Payments industry licensing questions—we are at the forefront of money transmission requirements in the US. If you have questions, we have the answers.
- Commercial lending—the growth in multifamily and rehab property investment has been extensive over the last decade. We partner with lenders to create lending packages that comply with state laws across the country and provide guidance on licensing requirements for commercial lending. We also assist other commercial lenders and receivables purchasers on their licensing needs.

What to expect for licensing going forward:

- State licensing agencies will expand license requirements to capture new industries (e.g. crypto money transmitters).
- State licensing agencies will attempt to hold non-depository institutions to the same standards as the depository institutions.

## Mortgage Lending/Servicing

Building on our strengths in representing clients in mortgage origination and servicing litigation, CFS+ is an industry leader on compliance, implementation and operationalization of financial services requirements, including the Home Mortgage Disclosure Act, fair lending and servicing, the TILA/RESPA Integrated Disclosure, and other state-mandated disclosures. Our CFS+ team includes former regulatory drafters and in-house counsel with meaningful experience assisting clients with implementation and operationalization of regulatory requirements. We also advise banks, mortgage lenders, and other consumer finance companies on compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and other fair lending laws.

## Privacy and Data Security

Our CFS+ team represents clients internationally with cybersecurity and privacy issues, data breach, and ransomware responses. Clients increasingly rely on evolving data sets and analysis methods—we help craft comprehensive and flexible solutions, ensuring data programs and practices comply with current laws and are adaptable to the changing data privacy and security landscape. As data breach first responders and cybersecurity incident managers, we help operational teams, senior management, and boards of directors develop practical, legally defensible solutions. Collaborating with technologists, operational leaders, and in-house lawyers, we will partner with you in the fight against ever-changing, well-funded attackers, understanding constantly mutating vectors and vulnerabilities and continuously developing and deploying countermeasures to enhance legal defenses.

Some areas of focus for companies' privacy and data security programs:

- Assessing existing and new products and services for compliance with the California Consumer Privacy Act/California Privacy Rights Act, while monitoring and preparing for new data privacy laws rolling out across the country.
- Increased regulatory scrutiny on privacy practices. We have seen a substantial uptick in inquiries, particularly from the CFPB. Big tech is responding by hiring numerous privacy attorneys and compliance professionals.
- Consumer PII represents significant value in the industry but is operationally challenging with CCPA/CPRA, GLBA, GDPR and regulator focus on non-compliant sharing. Is your company's data secure? Are your company's privacy policies and procedures up to par?
- We can expect future enforcement actions in the areas of privacy and data security. Is your

company susceptible? If so, are you ready to defend against a regulatory investigation involving data breaches and privacy issues? What about consumer lawsuits raising similar claims?

## Corporate/Transactional

Akerman's CFS+ and Corporate Practice Group combine to make our firm a one-stop-shop for your financial services and tech company corporate and transactional needs. We represent innovators who buck industry norms but need rapid and accurate legal counsel. Our attorneys stay at the forefront of industry product innovation. When you partner with Akerman, you get attorneys who not only understand your product functions, but who are also familiar with the technology and processes required to support them.

Akerman provides the following services to financial services and tech companies:

- Due diligence for providers and their investors in connection with corporate transactions involving financial services and fintech providers.
- General legal guidance from seed funding through IPOs.
- External general counsel services for early-stage companies.
- Actual understanding of client technology and systems with attorneys experienced at all levels of in-house practice, including a former head of legal at a Google Ventures-backed fintech.
- Deep experience in corporate governance and formalities.
- Adept document preparation, from master services agreements and vendor contracts to customer-facing collateral documents.
- Collateral reviews for proper disclosures and content.



- Product marketing review, including for use on social networking sites and events.
- Product review for compliance with mobile phone application provider and platform requirements.

## Vendor Management

Vendors present particular risk in the heavily regulated financial services industry. As a service provider, your vendors' lack of compliance may present a gap in your institution's compliance management system. Likewise, as a vendor, you may be expected to comply with regulatory requirements applying only to the service provider you support. CFS+ counsels and guides both consumer service providers and their vendors to maintain sufficiently robust compliance management systems to meet both regulator and customer standards.

In addition to providing regulatory compliance guidance and counsel, we also provide hands-on assistance when creating a vendor management program. Our team has traveled across the country vetting vendors and performing due diligence audits. We have an incredibly savvy team of professionals who offer the full suite of vendor management services, from agreements and contracts to due diligence to onsite management and process reviews.