

PAYMENT SYSTEMS

OVERVIEW

In recent years, the number of prepaid and emerging payment products in the marketplace have increased rapidly. These include not only prepaid cards (such as “open loop” bank-issued payroll cards, universal gift cards, and general purpose reloadable cards as well as “closed loop” merchant-issued gift cards) but also mobile payments, e-wallets and even virtual currencies. New payment products often build on existing payment infrastructures – including credit, debit, prepaid and merchant acquiring programs. While many emerging payment products are card-based, other programs use contactless radio frequency technology, text messaging, or offer virtual payment products useable only on the Internet or through mobile devices.

As prepaid payment products are booming, state and federal regulators have taken notice. Since 2001, an increasingly large number of state laws regulating gift cards, prepaid cards or electronic payment products have been passed and many more are pending. Since 2009, numerous federal laws and regulations have been proposed and passed, most notably FinCEN’s prepaid access rule, the Dodd-Frank Act, the Durbin Amendment and the CARD Act. Depending on the kind of products offered and the identity of the issuer, prepaid and emerging payment products may be governed by a range of interlocking laws and regulations, including:

- State money transmitter licensing laws
- Federal Bank Secrecy Act (BSA) and anti-money laundering (AML) laws
- Federal and state consumer protection laws
- State abandoned property laws
- Federal and state banking laws, including Federal Reserve Board, FDIC, OCC, laws and regulations as well as State banking laws
- Regulation E and the Electronic Funds Transfer Act
- Dodd-Frank and the Consumer Financial Protection Bureau
- Dodd-Frank and the “Durbin Amendment” regulating interchange, routing and exclusivity terms

- Federal and state remittance laws and regulations, including the Dodd-Frank Remittance regulations and BSA rules
- Federal and state credit laws (including Regulation Z, credit licensing, reporting and collections laws)
- Federal and state privacy and data protection laws
- Intellectual property licensing and patent laws

Any business planning to develop, launch or expand a payment-related program faces significant questions on how to proceed. In the current regulatory environment, payment businesses need to secure extraordinarily up-to-date yet practical advice. Fortunately, BCLP has the answer. The firm's Prepaid and Emerging Payment Team maintains updated 50 state surveys in major state law areas affecting payments (including state money transmitter licensing laws, abandoned property laws, and consumer protection laws). In addition, the team offers advice and assistance in the following:

- Product launches, including design, fees, terms and conditions, and product terminations, including dispute resolution, termination and wind-down procedures
- Processing and vendor agreements, co-branded marketing and promotion agreements
- State licensing requirements and exemptions
- State abandoned property laws and compliance procedures
- Federal Bank Secrecy Act and AML compliance policies, procedures and controls
- Third party distribution networks, including sales agency agreements, due diligence procedures, supervision and training

BCLP's Prepaid and Emerging Payments Team includes attorneys with substantial hands-on experience in all legal aspects of launching and managing a range of prepaid and other electronic payment products. Our attorneys work closely with state and federal regulators to address licensing and other regulatory issues and participate regularly in industry and trade group activities in these areas.

REPRESENTATIVE SERVICES

- Advice regarding structural issues and regulatory compliance for the U.S. or international launch of various bank and non-bank issued, co-branded gift cards, payroll cards, FSA/HSA cards, expense reimbursement cards, government benefit programs, international money transfer products, reward/incentive cards, rebate cards, teen cards and general purpose cards

- Advice regarding structure, contract preparation, privacy assessment and regulatory review for U.S. and international emerging payments technologies including “e-wallet,” mobile money, radio frequency identification devices, Internet and other initiatives
- Abandoned property advice and the establishment of “special purpose gift card companies” to issue gift cards while reducing exposure to state abandoned property laws
- Advice and contract preparation/negotiation for payment product strategic alliances and joint ventures, both national and international, involving banks, processors, program managers and, depending on the program, telecoms and technology companies
- Advice regarding the development and implementation of anti-money laundering compliance programs (including risk assessments, training and independent audits) for prepaid access issuers, program managers and their retail sales networks
- Advice regarding handling data breaches and complying with state breach notification laws, and related PCI compliance issues
- Drafting and negotiating all major contracts underlying such products, including prepaid card processing agreements, co-branded card sponsorship agreements, settlement and card sales distribution agreements
- Advice to card issuers and sellers on state money transmitter licensing requirements and, when appropriate, assistance to such issuers and sellers in obtaining the proper licenses
- Monitoring and reporting of changes to state laws governing servicing fees, expiration dates, abandoned property and money transmitter licensing on a 50-state basis

MEET THE TEAM



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Does Your Current Use of AI in Financial Services Align with the U.S. “AI Bill of Rights”?

As OpenAI’s release of ChatGPT in late 2022 and expected release of GPT-4 in 2023 continues to garner widespread attention, there is renewed focus on both opportunities and risks presented by the use of artificial intelligence (“AI”). With this focus comes the inevitable call for regulation. At the end of 2022, the U.S. White House weighed in through what it calls an “AI Bill of Rights” for the American public, a non-binding policy document. Banks and others in financial services should take note of the particular civil rights, privacy, and other priorities expressed in this vision for the future of AI governance.