

Introduction: A Deep Dive into Payments

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The world of payments has grown exponentially in recent years. The Consumer Financial Protection Bureau (CFPB) has continued its activity around Unfair or Deceptive Acts or Practices (UDAP), fees, and what the CFPB calls dark patterns, including in-app purchases.

Businesses navigating the impact of licensing in the payment space and whether or not a business is within the flow of funds such that it requires a money transmission license, may have concerns. How are bank partnership relationships structured, and what issues affect them in this space?

Over the coming months, McGlinchey attorneys from various practice groups will dive into the world of payments and explore these nuanced topics from every angle. From articles, podcasts, and webinars on hot topics to a client-only CLE, the content will be geared towards busy schedules and drilled down right to the good stuff – **what should the financial services industry be thinking about with regards to regulatory risks, error resolution, unfair trade practices, fees, customer experience and protection around payments?**

In this introductory video, Members of our [Financial Institutions Compliance Team](#), **Aaron Kouhoup** (Cleveland) and **David Tallman** (Dallas/Houston), will discuss this fascinating and vibrant subject matter while giving you a breakdown of the content you can expect in the coming weeks.

Aaron Kouhoup: I'd like to welcome you to our next installment of the Deep Dive series. This time we are talking about all things payments. We've done some prior Deep Dives on things like the Fair Credit Reporting Act (FCRA). We've done a Deep Dive on the Bank Secrecy Act (BSA), on privacy and information usage. And this time, we're excited to talk about how money moves around. Something that gets all of us excited because we all like to get paid. I'm Aaron Kouhoup, and I'm a member in McGlinchey's consumer finance team here in the Cleveland office. And my practice focuses on all things federal regulatory – payments, deposits, lending, and bank partner programs. I'm joined today by my colleague, David Tallman.

David Tallman: I'm a member of McGlinchey's Houston office. I also have a regulatory compliance practice that includes payments and FinTech issues.

Aaron Kouhoup: So, David, it's an exciting time in payments for a few reasons. There's a lot going on that we're going to be talking about, and we've got some changes and updates on dispute processes, error resolution, how a consumer can protect themselves, and a little bit about unauthorized transactions. And I think that's going to

be a fun issue to talk about.

David Tallman: Yes, it's an interesting issue because it's very technical. It gets us lawyers excited about talking about all the rules, but it also has a very real impact on customer experience and on your legal and regulatory risks. Just this morning, I was browsing Reddit and saw a story about a guy who took an Uber in Costa Rica that was hooked up to his debit card, and it billed him 22,000 dollars instead of 22,000 colones. And so who's responsible for that? How much is he on the hook for? What does he have to do in order to dispute this? There's a whole body of law there that we'll talk about that goes into how you resolve these sort of situations.

Aaron Kouhoup: Absolutely, there's also a lot of stuff out there right now. The Consumer Financial Protection Bureau (CFPB) has not stopped with their activity around unfair trade practices and what things are fair and unfair and some of the actions they've taken, in particular against in-app purchases even. Right? I think any of us parents out there probably can share a horror story about their child racking up a bunch of purchases in an in-app game and a lot of these issues we're going to talk about. We'll discuss the interplay of that and how that works as well.

David Tallman: Yes, Unfair or Deceptive Acts or Practices (UDAP), fees, what the CFPB calls dark patterns. How are fees and the consumer user experience disclosed? Is it clear what they're signing up for, what they're agreeing to? Those are all issues that are very front of mind with the CFPB. And when things go wrong in the payment space, they can go really wrong. Just a few days ago, the CFPB put out an enforcement action for a payment company that didn't have good controls around test data and its internal environment and ended up processing 2.3 billion dollars in accidental mortgage payments. So, beware!

Aaron Kouhoup: And, something that I hadn't thought about much until really coming over to McGlinchey a couple of years ago, is the impact of licensing in the payment space and whether or not you are within the flow of funds such that you require a license, a money transmission license or other sort of money transmission concerns.

David Tallman: Yes, definitely heavily regulated, and licensing requirements nearly nationwide. I think it's something like 47 states at this point. And then navigating that can be very tricky. And there are various ways you can do that, including getting the licenses, in some cases working with a bank partner. So we'll talk about that as well and talk about how bank partnership relationships are structured and what the special issues are that affect them in this space.

Aaron Kouhoup: Some industries still might have some challenges in accessing the payment system. And we're going to talk a little bit about that and just the interplay between federal and state law and how that is impacting those industries and what we might be able to do about that, if anything, right? Some of those very hard questions because there's just unsettled law and conflict between federal and state, but also a very interesting and front-of-mind topic.

We're, as always, excited to do these; these are always a lot of fun. We really enjoy putting these on. We do have one, I think, exciting addition to this Deep Dive. We are going to do a final session that you will be eligible to sign up for and get Continuing Legal Education (CLE) credits. And so more on that to come as far as how that'll

work and the registration process. But I think that's going to be a good addition to this series, and we're kind of excited to be able to offer that up.

Thanks, David, for being here. You're going to see both David and me on a couple of the other presentations, and we have a lot of colleagues that are going to join us to talk about these issues. So, we look forward to doing it, and more to come.

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