Payment processors may be covered under state money transmitter laws (also known as money services business laws). In addition, some state lending or debt collection laws may be broad enough to cover payment processors. Payment processors that interact direct with consumers may be covered by some aspects of the EFTA.

Bank regulator guidances and enforcement activities do not directly apply to third-party payment processors. Oversight largely flows indirectly through supervision of financial institutions, but that oversight can impact the obligations of payment processors. Standards set by bank regulators can also impact direct claims against payment processors.

Payment processors may be directly bound by the rules of the payment systems under which they operate, such as NACHA and Visa and MasterCard rules. These rules may not be directly enforceable by consumers, but they may provide evidence of unfair or deceptive acts or practices.

Payment processors may be the target of legal claims when they facilitate illegal activity, whether through use of remotely created checks and payment orders, ACH transactions, credit or debit card payments, or another payment mechanism.

For that reason, legitimate payment processors may limit the types of transactions that they will process for their clients. For example, some payment processors and card networks have rules prohibiting or strictly limiting the processing of payments for certain high-risk industries, including payday lending, telemarketing, credit repair, and debt collecting.

The FTC and the CFPB have authority over payment processors and have taken enforcement actions against them. The FTC has sued payment processors for unfair and deceptive practices when the processor used RCCs or RCPOs or the ACH system to debit consumer accounts unlawfully on behalf of merchant clients or ignoring high return rates and other warning signs that the payments were unauthorized. The CFPB has also brought a number of enforcement actions against payment processors, including for failing to conduct appropriate due diligence on the identity of the merchant or the nature of the business and for failing to monitor the account. The CFPB’s actions against payment processors have generally been taken under its authority over unfair, deceptive, or abusive acts and practices (UDAAP) and over entities that provide substantial assistance to others’ UDAAP violations.

The Justice Department has also brought criminal and other enforcement actions against payment processors that enable fraudulent activity.

Some state laws make it an unfair and deceptive practice to process or originate payments for lenders that violate state law (for example, online payday lenders). State payday loan laws or regulations may also prohibit efforts to collect payments on illegal loans, a ban that could apply to payment processors.

The role of payment processors is also discussed in the context of the particular payment system used, such as systems involving remotely created checks, ACH payments or card payments.

Footnotes

60 [59] See § 6.6.4 [1], infra.

61 [60] See Ch. 5 [2], infra.

62 [61] See § 1.4.3.2 [3], supra.

63 [62] See §§ 5.3.1.3.2 [4], 5.3.1.3 [5], infra.

64 [63] See § 5.3.1.3.4 [6], infra.
65 [64] See, e.g., § 5.17.5 [7], infra.

66 [65] See §§ 3.13 [8], 3.13.3 [9], infra.

67 [66] See §§ 5.1.6 [10], 5.3.1.3.2 [4], 5.3.1.3 [5], infra.

68 [67] See §§ 5.3.1.3.4 [6], infra.

69 [68] See also § 5.3.1.3.4 [6], infra (describing card network and payment processor rules on payments they will process through card networks).


72 [71] See Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Sues Payment Processor for Enabling Unauthorized Withdrawals and Other Illegal Acts by Clients [18] (June 6, 2016) (providing summary and link to Order Granting Motion to Dismiss, Consumer Fin. Prot. Bureau v. Intercept Corp., No.3:16-cv-144 (D.N.D. Mar. 17, 2017); note that the complaint in this case was dismissed without prejudice on grounds that the CFPB did not adequately plead facts to support UDAP allegations) (available online as companion material to this treatise); Press Release, Consumer Fin. Prot. Bureau, CFPB Sues Participants in Robo-Call Phantom Debt Collection Operation [19]
1.4.3.3 The Direct Regulation and Obligations of Payment Processors


75 [74] See, e.g., Me. Stat. tit. 9-A, § 5118(4) (unlawful to initiate or process payment when bank or payment processor “receives notice from a regulatory, law enforcement or similar governmental authority, knows from its normal monitoring and compliance systems or consciously avoids knowing,” that lender is violating state law); Vt. Stat. Ann. tit. 9, § 2481w(c) (unfair and deceptive practice for payment processor to process payment in connection with a loan unless lender is in compliance with state law or is exempt from it).


77 [76] See § 3.13.3 [9], infra.

78 [77] See §§ 5.3.1.3.2–5.3.1.3 [4], infra.

79 [78] See § 5.3.1.3.4 [6], infra.

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