

Congress of the United States
Washington, DC 20510

February 26, 2014

Hon. Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

We write today to encourage the Department of Justice (the Department) to continue a vigorous review of potential payment fraud, anti-money-laundering violations, and other illegal conduct involving payments by banks and third-party payment processors. We believe this review is particularly important to preventing banks and third-party payment processors from facilitating illegal lending, such as predatory payday lending. Stopping that facilitation, along with preventing other payment system violations, is vital to protecting consumers across the country and especially in many of the states we represent, where state laws outlaw abusive lending practices.

The nation's payment system, which clears millions of transactions every day, is the backbone of the U.S. financial and economic infrastructure. Banks and third-party payment processors play a central role in the operation of the payment system, and all Americans depend on the vigilance of banks and payment processors to ensure they do not become unwitting victims of fraudulent schemes.

Because of the importance of this task, the law obligates banks and payment processors to be on the lookout for "red flags" that may indicate a payment is improper or illegal. Department enforcement plays a critical role in ensuring banks and payment processors meet these legal obligations. Unfortunately, recent cases demonstrate the seriousness of the consequences when those obligations are not met.¹ Accordingly, we urge the Department to enforce vigorously applicable laws pertaining to payment fraud, money-laundering, and other illegal payments, and we highlight below several issues of particular concern.

For example, know-your-customer obligations are critical to ensuring that banks do not process payments for unlawful purposes, such as consumer scams, money-laundering, or unlawful

¹ See Complaint for Injunctive Relief and Civil Monetary Penalties, *United States v. Four Oaks Fincorp, Inc.*, and *Four Oaks Bank & Trust Company*, (E.D. N.C. Jan. 8, 2014), available at <http://www.courthousenews.com/2014/01/09/USvFourOaks.pdf>.

payday lending.² Many of the states we represent have passed strong consumer protection laws that require small dollar lenders to be licensed and impose caps on rates those lenders can charge, as well as other protections. Accordingly, when banks and payment processors process payments for small dollar lenders, know-your-customer due diligence should include a review of whether the lenders hold all required state licenses and lend in conformity with state laws.

We are also concerned by lenders' growing use of "lead generators" to develop business. Lead generators do not make loans but instead collect and auction a consumer's application to the highest bidder.³ In some cases, this auction process can result in predatory payday lending that does not comply with state law. In other cases, consumer information is purchased by entities that fraudulently attempt to collect "debts" the consumer does not owe. Given this history, payments that are connected to lead generation should be closely scrutinized.

High rates of returned, contested, or otherwise failed debits or the regular use of remotely created checks may also be signs of payment fraud and related violations by the banks or processors that encounter them. In some scams, fraudsters deceive consumers into believing that they are taking out a one-time loan with a one-time payment but their accounts are then repeatedly debited, even after the consumer has sought to stop payment or even closed the account.

Finally, failure to incorporate or maintain a business presence in the U.S. can also be indicative of fraud and other payment system violations, including money-laundering. The use of shell entities or other business structures that seek to evade relevant federal and state law is particularly problematic as that can make it difficult for law enforcement and regulators to do their jobs.

Banking regulators have appropriately deemed processing payments for many payday lenders as a "high risk" activity for banks.⁴ The Department plays a critical role in ensuring system-wide compliance with anti-fraud, anti-money-laundering, and related laws, especially as it applies to the unique risks associated with our payments system and we urge the Department to continue its vigorous oversight.

² See Jessica Silver-Greenberg, *Major Banks Aid in Payday Loans Banned by States*, N.Y. TIMES, Feb. 23, 2013, available at http://www.nytimes.com/2013/02/24/business/major-banks-aid-in-payday-loans-banned-by-states.html?_r=0.

³ See Carter Dougherty, *Data from Payday Loan Applicants Sold in Online Auctions*, BLOOMBERG NEWS, Jun. 8, 2012, available at <http://www.bloomberg.com/news/2012-06-08/data-from-payday-loan-applicants-sold-in-online-auctions.html>.

⁴ FDIC Financial Institutions Letters, *Payment Processor Relationships, Revised Guidance*, Jan. 31, 2012, available at <http://www.fdic.gov/news/news/financial/2012/fil12003.html>.

Thank you for your time and continued attention to this issue.

Sincerely,

Jeffrey S. Mackley

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cc: Hon. Jacob Lew, Secretary of the Treasury
Hon. Richard Cordray, Director, Consumer Financial Protection Bureau
Hon. Tom Curry, Comptroller of the Currency
Hon. Martin Gruenberg, Chairman, Federal Deposit Insurance Corporation
Hon. Thomas M. Hoenig, Vice Chairman, Federal Deposit Insurance Corporation
Hon. Jeremiah O. Norton, Director, Federal Deposit Insurance Corporation
Hon. Janet Yellen, Chair, Board of Governors of the Federal Reserve System
Hon. Daniel K. Tarullo, Governor, Board of Governors of the Federal Reserve System
Hon. Sarah Bloom Raskin, Governor, Board of Governors of the Federal Reserve System
Hon. Jeremy C. Stein, Governor, Board of Governors of the Federal Reserve System
Hon. Jerome H. Powell, Governor, Board of Governors of the Federal Reserve System