

Money services businesses, money transmitters and non-bank payment processors are types of financial institutions that are often misunderstood with regard to their regulatory obligations under the law. In this document PayLease defines and describes these businesses and outlines their respective regulatory requirements.

Money Services Businesses (MSBs) & Money Transmitters

A money services business (MSB) is a non-bank financial institution as defined under Title 31 of the U.S. Code of Federal Regulations (31 C.F.R. Chapter X). The U.S. Code of Federal Regulations (31 C.F.R. Chapter X) is a set of specific rules that implements the Bank Secrecy Act (BSA) and defines a MSB as a person doing business in one or more of the following capacities:

- Dealer in foreign exchange
- Check casher
- Issuer or seller of traveler's checks or money orders
- Issuer, seller, redeemer of stored value
- Money transmitter

Chapter X broadly defines a money transmitter as “a person that provides money transmission services.” This means the acceptance of currency, funds, or other value from one person to another location or person by any means.

The rule acknowledges some gray area that surrounds this financial institution category by also saying that whether or not a person is a money transmitter is a matter of “fact and circumstance.” In other words, exactly what you do, how you do it and whom you do it for, matter. In further clarifying the definition, the rule establishes several exceptions, including one for payment processors.

The most common type of money transmitters are those that provide non-bank money transfer services to consumers, such as Western Union and MoneyGram. These companies contract with the senders of funds and offer their services through a network of third-party retail locations. This market is evolving quickly, and traditional money transfer companies are now offering their services online. A host of online-only money transfer businesses also have emerged and include companies such as PayPal and Xoom.

Money transmitters are subject to federal regulation, most prominently under the Bank Secrecy Act. Although the U.S. Government does not have a formal licensing regime for money transmitters, they are required to register with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. Licensing of money transmitters - and additional regulation - takes place on the state level.

Non-Bank Payment Processors

Non-bank payment processors - also called third-party payment processors - provide services to retail merchants and other business entities processing any combination of the following transactions: credit, debit, prepaid card, automated clearing house (ACH), and remote deposit capture (RDC).

The non-bank payment processor category has evolved rapidly over the last decade, with processors providing services to traditional retailers as well as many kinds of Internet-based businesses.

In general, non-bank payment processors provide credit/debit card processing services to merchants - recipients of funds, or payees - through their banks, which provide them with indirect access to the card networks, such as Visa, MasterCard and American Express. For ACH and RDC payments, they provide their services either through a bank or another processor that has access to the ACH network.

According to the Federal Financial Institutions Examination Council (FFIEC), third-party payment processors generally are not subject to BSA/AML regulatory requirements. While non-bank payment processors have an obligation to protect their systems from potential abuse and money laundering, the obligation exists primarily to the banks and ACH network providers, which have direct regulatory obligations.¹

The Payment Processor Exception and PayLease

The BSA regulation that defines money transmitters contains an exception for payment processors. The provision expressly excludes from the definition of “money transmitter” entities that only act as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller.

The regulation clarifies four necessary elements of the more generalized payment processor exemption, i.e., that: (1) the entity actually facilitates the purchase of goods or services, or payment of bills for goods or services; (2) the entity operates through a clearance and settlement system; (3) the entity operates pursuant to a formal agreement; and (4) the entity’s agreement is at a minimum with the seller or creditor that is receiving the funds.

¹ http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_063.htm. The FFIEC is a formal federal and state interagency body empowered to prescribe uniform principles and standards for the federal examination of financial institutions.

Federal law recognizes that while a payment processor may accept funds for transmission, the money transmission is ancillary to the primary service of coordinating payments. Further, based on the “fact and circumstance” provision, such services are generally considered to be lower risk.

PayLease accepts rent and HOA payments from renters and homeowners on behalf of property management companies. The company’s model is to contract exclusively with property management companies and provide a portal specifically for payment and aggregation of these bills. PayLease accepts funds for transfer solely on the basis of its contract with the creditor or seller and moves funds through the banking system. Accordingly, PayLease’s core business falls within the payment processor exclusion to the BSA definition of money transmitter.

Additional Resources

See footnoted materials and FinCEN Ruling 2003-8 - Definition of Money Transmitter (Merchant Payment Processor) and FinCEN Ruling FIN-2013-R002:

http://www.fincen.gov/news_room/rp/rulings/pdf/fincenruling2003-8.pdf

http://www.fincen.gov/news_room/rp/rulings/html/FIN-2013-R002.html