



Consumer Federation of America

October 24, 2013

The Honorable Frederick Upton
Chairman
Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2204 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Waxman:

In a letter sent to financial and consumer protection agencies, consumer, community and civil rights groups urged federal regulators to continue their efforts to protect consumers from illegal payments debited from consumer accounts. Banks and payment processors need to conduct greater scrutiny of transactions initiated by higher-risk merchants such as telemarketers, debt settlement companies and unlicensed online payday lenders to avoid facilitating illegal payments.

The letter expressed particular concern about transactions initiated by unlicensed online payday lenders claiming affiliation with Native American tribes and immunity from the enforcement of state consumer protection laws. Unlicensed and illegal online payday lending puts consumers at risk in the 14 states and the District of Columbia that effectively prohibit high-cost loans and in numerous other states that require licensure and compliance with other substantive standards.

Even when these unlicensed lenders claim immunity from the enforcement of state law by state regulators, they are still required under Supreme Court precedent to comply with both state and federal laws. Any loan made by a lender operating in violation of state consumer protection laws, regardless of immunity claims, is illegal.

Banks or processors that knowingly or recklessly process payments for illegal loans are themselves subject to enforcement actions. Payment processors and financial institutions have no claim of tribal sovereign immunity and play a role in these illegal transactions if they facilitate payments for illegal loans. As with any other higher-risk activity, payment processors and financial institutions have a duty to scrutinize the activities of all of their customers, including high-risk merchants such as online payday lenders, to ensure that the financial institution is not being used to process illegal payments.

We encourage the ongoing, heightened scrutiny of payment processing procedures and compliance safeguards in place at financial institutions and payment processors. In cases where a financial institution or payment processor has insufficient safeguards in place to avoid inadvertently processing illegal payments, or is exposed to excessive legal, compliance, reputational or other risks, we support vigorous

enforcement of all applicable state and federal laws and regulations. Such action is critical both to eliminate the negative impact illegal payments have on consumers' financial stability and to protect the integrity of the payment system.

Please do not hesitate to contact Tom Feltner of Consumer Federation of America, Lauren Saunders of the National Consumer Law Center or Ken Edwards of the Center for Responsible Lending for more information or to discuss this important matter further.

Respectfully submitted,

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Cc: Members of the Committee on Energy and Commerce