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Technology Platform Providers and the Risk of Money Transmission

A recent trend that we are encountering frequently is software and internet-based platform providers (“providers”) venturing into the world of payments—sometimes unwittingly. A typical scenario looks something like this: A provider develops a platform that assists merchants (such as hair salons, utility providers, or medical offices) accept electronic payments from the merchant’s customers. Most commonly, the providers’ software or technology offerings assist these merchant businesses with virtually every aspect of their operations. So it seems only natural for the providers to offer a payment solution through the platform.

Although it can be lucrative for a provider to offer customers the ability to accept electronic payments, there are perilous regulatory consequences that must be considered.

First, the provider should consider whether the operational structure implicates money transmitting laws and regulations. A common misconception is that these laws and regulations only apply to person-to-person remittance transactions—for instance, when an individual sends money to a family member located overseas through a third party. However, this is simply not the case.

Money transmission is regulated at both the state and federal level. To the dismay of money transmitters and those who are trying to decipher whether they are subject to money transmission regulation, there is no universal definition of money transmission in the United States. On the federal level, “money transmitter” is currently defined as: “A person that provides money transmission services.” The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.” The term “person,” however, is not limited to a natural person. Instead, the term also includes corporations, and partnerships, among many other types of entities and legal personalities. Federal regulations provide several circumstances where a person’s acceptance and transmission of currency, funds, or other substitute value would not be deemed money transmission—thus, the determination of whether a person is deemed a money transmitter is a matter of facts and circumstances.

To make matters more complicated, nearly every state has its own regulatory regime for money transmission. Each state law has a different definition of money transmission, different exemptions, and varying requirements. One thing that is consistent across the all regulatory regimes is that the penalty for operating as an unlicensed money transmitter is severe—and can include both civil and criminal penalties on a state and federal basis.

It is imperative for providers to determine whether they are engaged in money transmission so they can understand their own risks and decide how best to operate. Often, providers’ operations can be restructured to mitigate the regulatory risks. Other times, exemptions to the regulatory burden can be utilized, such as through agency relationships with strategic partners such as banks or licensed money transmitters. Unfortunately, there is not a one-size-fits-all solution that works for every provider and the analysis is driven by the unique facts and circumstances of the transaction flow.

Apart from money transmission issues, if the provider offers its merchants the capability of accepting credit cards from their customers, the provider should also consider whether its operations implicate any of the card brand Rules. For instance, the provider may need to consider whether it is operating as an unregistered payment facilitator or marketplace. The card brand-specific issues are separate from, but parallel to, the money transmission considerations.

The regulatory implications of enabling payment solutions on technology platforms should not be taken lightly. The world of payments is constantly evolving in our tech-driven environment, and

that change can be overwhelming. But by taking a proactive approach, you can understand the laws and regulations that impact your business, identify potential regulatory implications, and work toward a solution that is right for your business.

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