



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

**Financial Institution Letter**  
**FIL-41-2014**  
**July 28, 2014**

## **FDIC Clarifying Supervisory Approach to Institutions Establishing Account Relationships with Third-Party Payment Processors**

**Summary:** The FDIC is clarifying its supervisory approach to institutions establishing account relationships with third-party payment processors (TPPPs). As part of its regular safety and soundness examination activities, the FDIC reviews and assesses the extent to which institutions having account relationships with TPPPs follow the outstanding guidance. FDIC guidance and an informational article contained lists of examples of merchant categories that had been associated by the payments industry with higher-risk activity when the guidance and article were released. The lists of examples of merchant categories have led to misunderstandings regarding the FDIC's supervisory approach to TPPPs, creating the misperception that the listed examples of merchant categories were prohibited or discouraged. In fact, it is FDIC's policy that insured institutions that properly manage customer relationships are neither prohibited nor discouraged from providing services to any customer operating in compliance with applicable law. Accordingly, the FDIC is clarifying its guidance to reinforce this approach, and as part of this clarification, the FDIC is removing the lists of examples of merchant categories from its official guidance and informational article.

**Statement of Applicability to Institutions Under \$1 Billion in Total Assets:** This Financial Institution Letter applies to all FDIC-supervised institutions, including community banks, although its application is commensurate with size and risk.

### **Distribution:**

FDIC-Supervised Banks (Commercial and Savings)

### **Suggested Routing:**

Board of Directors, Chief Executive Officer, Senior Executive Officers, Chief Loan Officer, Chief Information Technology Officer, Bank Secrecy Act Officer

### **Related Topics:**

- FIL-127-2008, "Guidance on Payment Processor Relationships," <http://www.fdic.gov/news/news/financial/2008/fil08127.html>
- FIL-3-2012, "Payment Processor Relationships, Revised Guidance," <http://www.fdic.gov/news/news/financial/2012/fil12003.html>
- FIL-43-2013, "FDIC Supervisory Approach to Payment Processing Relationships with Merchant Customers That Engage in Higher-Risk Activities," <http://www.fdic.gov/news/news/financial/2013/fil13043.html>
- "Managing Risks in Third-Party Payment Processor Relationships," *FDIC Supervisory Insights*, Summer 2011, <http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum11/managing.html>
- *The FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual*, [http://www.ffiec.gov/bsa\\_aml\\_infobase/pages\\_manual/OLM\\_063.htm](http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_063.htm)

### **Attachment:**

[FDIC Clarifying Official Guidance and Other Information Related to Third-Party Payment Processors](#)

### **Contact:**

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### **Note:**

FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at [www.fdic.gov/news/news/financial/2014/index.html](http://www.fdic.gov/news/news/financial/2014/index.html).

To receive FILs electronically, please visit <http://www.fdic.gov/about/subscriptions/fil.html>.

Paper copies may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200).

### **Highlights:**

- The focus of the FDIC's supervisory approach to institutions establishing account relationships with TPPPs is to ensure institutions have adequate procedures for conducting due diligence, underwriting, and ongoing monitoring of these relationships. When an institution is following the outstanding guidance, it will not be criticized for establishing and maintaining relationships with TPPPs.
- The FDIC encourages insured depository institutions to serve their communities and recognizes the importance of services they provide. It is the FDIC's policy that insured institutions that properly manage customer relationships are neither prohibited nor discouraged from providing services to any customer operating in compliance with applicable law.
- The FDIC is reissuing guidance (FIL-127-2008, Guidance on Payment Processor Relationships; FIL-3-2012, Payment Processor Relationships, Revised Guidance; and FIL-43-2013, FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities) and an informational article, "Managing Risks in Third-Party Payment Processor Relationships," Summer 2011, *Supervisory Insights*, to remove lists of examples of merchant categories.

## **FDIC Clarifying Supervisory Approach to Institutions Establishing Account Relationships with Third-Party Payment Processors**

The FDIC is clarifying its supervisory approach to institutions establishing account relationships with third-party payment processors (TPPPs). FDIC guidance indicates that insured institutions that engage in customer relationships with TPPPs should assess their risk tolerance for this type of activity and develop an appropriate risk management framework, which includes policies and procedures that address due diligence, underwriting, and ongoing monitoring.

FDIC guidance<sup>1</sup> and an informational article that appeared in the Summer 2011 issue of the FDIC's *Supervisory Insights*<sup>2</sup> describe potential risks associated with relationships with TPPPs facilitating payment transactions for merchant clients. The original documents contained lists of examples of telemarketing or Internet merchant categories that had been associated by the payments industry with higher-risk activity. These examples of merchant categories included activities that could be subject to complex or varying legal and regulatory environments, such as those that may be legal only in certain states; those that may be prohibited for certain consumers, such as minors; those that may be subject to varying state and federal licensing and reporting regimes; and those that may result in higher levels of complaints, returns, or chargebacks.

The lists of examples of merchant categories in the FDIC's guidance and the article were intended to be illustrative of trends identified by the payments industry at the time the guidance and article were released. Further, the lists of examples of merchant categories were considered to be incidental to the primary purpose of the guidance, which was to describe the risks associated with financial institutions' relationships with TPPPs, and to provide guidance to insured institutions on appropriate risk management for relationships with TPPPs. Nevertheless, the lists of examples of merchant categories have led to misunderstandings regarding the FDIC's supervisory approach to institutions' relationships with TPPPs, resulting in the misperception that the listed examples of merchant categories were prohibited or discouraged. The FDIC encourages insured depository institutions to serve their communities and recognizes the importance of services they provide. In fact, it is the FDIC's policy that insured institutions that properly manage customer relationships are neither prohibited nor discouraged from providing services to customers operating in compliance with applicable federal and state law. Accordingly, as part of clarifying our guidance, the FDIC is removing the lists of examples of merchant categories from outstanding guidance and the article.

As part of its regular safety and soundness examination activities, the FDIC reviews and assesses the extent to which an institution having account relationships with TPPPs follows the outstanding guidance. Where an institution is following the outstanding guidance, the institution will not be criticized for establishing and maintaining account relationships with TPPPs.

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<sup>1</sup> FIL-127-2008, "Guidance on Payment Processor Relationships," <http://www.fdic.gov/news/news/financial/2008/fil08127.html>; FIL-3-2012, "Payment Processor Relationships, Revised Guidance," <http://www.fdic.gov/news/news/financial/2012/fil12003.html>; and FIL-43-2013, "FDIC Supervisory Approach to Payment Processing Relationships with Merchant Customers That Engage in Higher-Risk Activities," <http://www.fdic.gov/news/news/financial/2013/fil13043.html>.

<sup>2</sup> "Managing Risks in Third-Party Payment Processor Relationships," *FDIC Supervisory Insights*, Summer 2011. *Supervisory Insights* contains timely and informative articles about risk management issues for bankers, but it is not official FDIC guidance. *Supervisory Insights* specifically states, "The views expressed in *Supervisory Insights* are those of the authors and do not necessarily reflect official positions of the Federal Deposit Insurance Corporation. In particular, articles should not be construed as definitive regulatory or supervisory guidance."

Any concerns with the FDIC's application of this policy should be shared with the appropriate Regional Director, the Director of the Division of Risk Management Supervision at [DirectorRMS@FDIC.gov](mailto:DirectorRMS@FDIC.gov), or the FDIC's Office of the Ombudsman at [Ombudsman@FDIC.gov](mailto:Ombudsman@FDIC.gov).

The revised 2008, 2012, and 2013 guidance and 2011 informational article can be found at these links:

FIL 127-2008, "Guidance on Payment Processor Relationships,"  
<http://www.fdic.gov/news/news/financial/2008/fil08127.html>.

FIL-3-2012, "Payment Processor Relationships, Revised Guidance,"  
<http://www.fdic.gov/news/news/financial/2012/fil12003.html>

FIL-43-2013, "FDIC Supervisory Approach to Payment Processing Relationships with Merchant Customers That Engage in Higher-Risk Activities,"  
<http://www.fdic.gov/news/news/financial/2013/fil13043.html>

*FDIC Supervisory Insights*, Summer 2011, "Managing Risks in Third-Party Payment Processor Relationships,"  
<http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum11/managing.html>