Statement of the Federal Deposit Insurance Corporation

The purpose of this statement is to make public the FDIC's internal policies for situations in which the FDIC recommends that a financial institution terminate a customer's deposit account, and to reiterate outstanding public guidance to financial institutions about providing banking services and carrying out Bank Secrecy Act obligations.

Background

The FDIC has an obligation to ensure that the institutions it supervises are operating in a safe and sound manner. The FDIC has a responsibility to ensure that these institutions have processes and procedures in place to identify fraudulent or illegal activity, whether it occurs at the institution or through vendors or customers with whom the institution has relationships. The exercise of these fundamental FDIC responsibilities rests on laws and regulations, not on personal beliefs or political motivations. Regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have no place at the FDIC.

FDIC's Financial Institution Letter: *Statement on Providing Banking Services*

The FDIC encourages insured depository institutions to serve their communities, and it recognizes the importance of the services they provide. In providing banking services, financial institutions must carry out the customer identification, risk-based customer due diligence, and suspicious activity monitoring and reporting obligations required by the Bank Secrecy Act with respect to their customers. Individual customers within broader customer categories present varying degrees of risk. Accordingly, the FDIC encourages institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers without regard to the risks presented by an individual customer or the financial institution's ability to manage the risk.

Financial institutions that properly manage customer relationships and risks are neither prohibited nor discouraged from providing services to customers operating in compliance with applicable federal and state law. Financial institutions are responsible for determining whether providing services to any particular customer is consistent with the institution's business plan, risk profile, and management capabilities. The FDIC's role is to examine institutions' processes and procedures to ensure that they are sufficient and conform to all legal requirements. The FDIC has issued multiple pieces of public guidance describing risk management principles.[1]

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[1] FDIC guidance and other information on this topic includes:

Internal Policy on Account Terminations

If institutions are not properly managing risks associated with deposit accounts, the FDIC may take supervisory action, which may include recommending or requiring that the institution terminate a deposit account. Such recommendations or requirements are not, however, made through informal suggestions, nor will the FDIC criticize an institution's management of deposit accounts, or its mitigation of risk associated with deposit accounts, through informal suggestions. Rather, any examiner criticisms by either the FDIC Division of Risk Management Supervision ("RMS") or the Division of Depositor and Consumer Protection ("DCP") of an institution's management or mitigation of risk associated with deposit accounts must be made in writing in a supervisory Report of Examination ("ROE").

Recommendations or requirements for terminating deposit accounts must be approved in writing by the Regional Director before being provided to and discussed with institution management. Before such findings are included in the ROE or before supervisory actions[2] are pursued, they must be thoroughly vetted with regional office and legal staff. In each case, the recommendation of the Examiner-in-Charge must include the supervisory basis for recommending or requiring account termination, including any specific laws or regulations the examiner believes are being violated, if applicable.

- Financial Institution Letter, FIL-127-2008, *Guidance on Payment Processor Relationships,* issued November 2008 (revised July 2014).
- *Managing Risks in Third-Party Payment Processor Relationships,* FDIC Supervisory Insights, Summer 2011 (revised July 2014).
- Financial Institution Letter, FIL-3-2012, *Payment Processor Relationships, Revised Guidance,* issued January 2012 (revised July 2014).
- Financial Institution Letter, FIL-43-2013, *FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities,* issued September 2013 (revised July 2014).
- Financial Institution Letter, FIL-41-2014, *FDIC Clarifying Supervisory Approach to Institutions Establishing Account Relationships with Third-Party Payment Processors,* issued July 2014.
- Financial Institution Letter, FIL-5-2015, *Statement on Providing Banking Services,* issued January 2015.

Guidance of the Federal Financial Institutions Examination Council ("FFIEC"), of which the FDIC is a member, on this topic includes:

- The *FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual*.
- The *FFIEC Information Technology Handbook*, "Retail Payments Systems Booklet."

[2] Supervisory actions may take the form of board resolutions, memoranda of understanding, or cease and desist orders.

A recommendation to an institution to terminate a deposit account relationship cannot be based solely on reputation risk to the institution.

By the 15th day after each quarter end, Regional Directors are required to provide quarterly reports to both the FDIC Board of Directors and to the Directors of RMS and DCP regarding requests or requirements to institutions to terminate deposit accounts, along with the bases for any such actions.

No such recommendations have been reported by the Regional Directors to the FDIC's Board of Directors and to the Directors of RMS and DCP since this policy was adopted in January 2015.

Complaints and Concerns

Any insured depository institution, or an accountholder or business terminated or declined by any such institution, concerned that FDIC personnel are not following the policies laid out in this Statement, may contact any of the following:

The FDIC's Trust Through Transparency dedicated email address at Transparency@FDIC.gov; emails sent to this address are forwarded to the Chairman's office.

The FDIC's Office of Inspector General ("OIG"), which is charged with addressing allegations of waste, fraud, and abuse related to the programs and operations of the FDIC. Individuals or institutions may contact the FDIC OIG through its website at www.fdicoig.gov by using the "Hotline" button, by phone at 1-800-864-3342, or by email at ighotline@fdic.gov.

The FDIC's Office of the Ombudsman at the following dedicated toll-free number, 1-800-756-8854, or dedicated email address, bankingservicesOO@fdic.gov.

Separately, consumer complaints about insured depository institutions' conduct, or seeking information about consumer laws and regulations, should be submitted here: https://ask.fdic.gov/FDICCustomerAssistanceForm/.

May 22, 2019

David H. Thompson
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N.W.
Washington, DC 20036

Dear Mr. Thompson:

This letter is being provided to resolve the litigation, *Advance America, Cash Advance Centers, Inc. v. FDIC*, No. 14-cv-953 (D.D.C.). The FDIC acknowledges that certain employees acted in a manner inconsistent with FDIC policies with respect to payday lenders in what has been generically described as "Operation Choke Point," and that this conduct created misperceptions about the FDIC's policies.[1] Regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have no place at the FDIC. The exercise of FDIC responsibilities rests on laws and regulations and will not be based on personal beliefs or political motivations.

Beginning in September 2013, the FDIC has taken steps to clarify and reinforce its 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 state and federal law. One of the steps taken by the FDIC is the removal of the lists of examples of higher-risk merchant categories that were previously included in official FDIC guidance and an informational article.[2] These lists, which included payday lenders, led to the misperception that the examples of merchant categories were prohibited or discouraged. The FDIC issues the attached statement in response to concerns that some financial institutions may be unaware of the steps the FDIC has taken on this issue.

The FDIC also adopted an internal policy that governs the circumstances in which the FDIC may recommend that a financial institution terminate a customer's deposit account. The policy makes clear that the FDIC may not recommend that an institution terminate a deposit account based solely on reputation risk.

The attached statement serves to summarize the FDIC's policies. The FDIC will conduct additional training of its examination workforce on these policies by the end of 2019 to ensure that its examiners adhere to the highest standards of conduct and respect the rule of law. The training will incorporate case studies on matters generically referred to as "Operation Choke Point." The FDIC will meet with Plaintiffs to permit them to review the finalized training

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[1] *See* Letter from Jelena McWilliams, FDIC Chairman, to Blaine Luetkemeyer, U.S. House of Representatives (Nov. 15, 2018), attached.
[2] FIL-41-2014.

materials; the sole purpose of the meeting is for the FDIC to provide information about the training.

If anyone becomes aware of any FDIC personnel not following the policies laid out in the attached statement, they may contact the hotlines referenced in the statement. Those hotlines are available to address, among other things, concerns about financial institutions terminating or declining customers. If an individual or institution contacts any of the hotlines and files a complaint, and the FDIC investigates the complaint and concludes that FDIC personnel pressured the institution to terminate or decline service to a customer and that such pressure violated FDIC policy, the FDIC will notify the bank of that conclusion, and the bank may notify the customer.

The FDIC is publishing the attached statement on its website at https://www.fdic.gov/transparency/legal-misc/statement-and-letter-on-bank-customer-relationships.pdf to make transparent its policies. The policies reflected in the statement are fully applicable to payday lenders, just as they are applicable to all bank customers.

Very truly yours,

/s/

Floyd Robinson
Deputy General Counsel
Litigation & Resolutions Branch
Legal Division
Federal Deposit Insurance Corporation

In consideration of the above, within one week of the signing of this letter, Advance America, Cash Advance Centers, Inc., Check Into Cash, Inc., and Northstate Check Exchange agree to dismiss their pending lawsuit against the FDIC (*Advance America, Cash Advance Centers, Inc. v. FDIC*, No. 14-cv-953 (D.D.C.)), with prejudice. The Community Financial Services Association of America, Ltd. and PH Financial Services, LLC, previously dismissed plaintiffs in that same action, agree that they will not appeal the orders dismissing their claims.

/s/

David H. Thompson
Counsel for Advance America, Cash Advance Centers, Inc., Check Into Cash, Inc., and Northstate Check Exchange, Community Financial Services Association of America, Ltd. and PH Financial Services, LLC

FEDERAL DEPOSIT INSURANCE CORPORATION

JELENA McWILLIAMS
CHAIRMAN

November 15, 2018

Honorable Blaine Luetkemeyer
House of Representatives
Washington, D.C. 20515

Dear Congressman Luetkemeyer:

This is in further response to your October 15, 2018, letter expressing concerns about allegations of past misconduct at the FDIC.

I assumed my duties as Chairman of the Federal Deposit Insurance Corporation with utmost respect for the rule of law and for the obligation of the United States government to be accountable to its citizens. I have seen first-hand what happens when these values are not respected. Growing up in communist Yugoslavia under a system where ordinary citizens could not question the government, I witnessed the abuses that can arise when those in power are accountable only to themselves.

I am deeply invested in transparency and accountability at the FDIC. These principles are paramount to maintaining the public trust. As such, I am troubled that certain FDIC employees acted in a manner inconsistent with FDIC policies in what has been generically described as "Operation Choke Point."[1] To ensure that the FDIC's commitment to integrity remains unequivocally clear, I am asking an outside law firm to review the prior actions taken by the FDIC in this matter so that I can better ascertain the effectiveness of our response.

The FDIC has an obligation to ensure that the banks we supervise are operating in a safe and sound manner. We have a responsibility to ensure that these banks have processes and procedures in place to identify fraudulent or illegal activity, whether it occurs at the bank or at vendors or customers with whom the bank has relationships. The exercise of these fundamental FDIC responsibilities must be borne out of our laws and regulations. They must never be based on personal beliefs or political motivations. Regulatory threats, undue pressure, coercion, and intimidation designed to restrict access to financial services for lawful businesses have no place at this agency.

[1] The FDIC's role in Operation Choke Point and Supervisory Approach to Institutions that Conducted Business with Merchants Associated with High-Risk Activities, Office of the FDIC Inspector General, Rep. No. AUD-15-008 at iv (September 2015).

The FDIC's guidance is clear: insured institutions are encouraged "to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers."[2] Institutions "that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law."[3]

We have placed clear limitations on the ability of any FDIC personnel to recommend the termination of account relationships, including requirements that any such recommendations be made in writing, that Regional Directors review such recommendations, and that all such recommendations are reported to the FDIC Board of Directors and Division Directors.[4] The memorandum also makes clear that examiners should not use "informal," unwritten suggestions related to account terminations or criticism of a bank's "management or mitigation of risk associated with deposit accounts."[5] No recommendation should be made to terminate an account relationship based solely on reputational risk to the institution.[6] Independently, banks must also make responsible decisions about whether servicing any particular customer is consistent with their business plan, risk-appetite, and management capabilities – a decision most appropriately left with the bank's management and directors.

To reiterate these principles, I have directed additional training for our examination workforce to ensure that we adhere to the highest standards of conduct and respect the rule of law. The leaders of our examination workforce already have conducted targeted discussions with their staffs, and we will incorporate case studies on "Operation Choke Point" into our formal examiner training.

Consistent with my "Trust through Transparency" initiative, I also ask that anyone aware of any improper conduct by the FDIC to email me at Transparency@FDIC.gov. Any allegation of misconduct will be investigated fully and any employee engaged in the activity will be disciplined appropriately.

Under my leadership, the FDIC's oversight responsibilities will be exercised based on our laws and our regulations, not on personal or political beliefs.

Sincerely,

Jelena McWilliams

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[2] FDIC Financial Institution Letter, FIL-5-2015 (28 January 2015).

[3] Id.

[4] FDIC Memorandum to Regional Directors (28 January 2015).

[5] Id. See also Statement of the FDIC Board of Directors on the Development and Communication of Supervisory Recommendations (29 July 2016).

[6] FDIC Memorandum to Regional Directors (28 January 2015).