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## FDIC Withdraws Alleged 'Hit List' of High-Risk Merchants

by Rob Blackwell

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WASHINGTON — The Federal Deposit Insurance Corp. said Monday that it has withdrawn a list of merchant categories, including payday lenders, debt consolidation firms, pornography businesses and others, that it said warranted heightened attention by banks processing their transactions.

In a letter to financial institutions, the agency said the list, which was first published three years ago, had been misinterpreted, resulting in banks' severing ties with legitimate businesses.

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"The lists of examples of merchant categories have led to misunderstandings regarding the FDIC's supervisory approach to institutions' relationships with [third-party payment processors], resulting in the misperception that the listed examples of merchant categories were prohibited or discouraged," the FDIC wrote. "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."

The move is another dramatic turn in the battle over efforts by state and federal authorities to cut off certain business' access to the payment system.

The Justice Department has sent subpoenas to more than 50 banks and payment processing firms as part of "Operation Choke Point," its program to aimed at preventing fraudulent merchants from using the payment system. The FDIC has separately encouraged banks to scrutinize account relationships with third-party payment processors.

In a bulletin issued in 2011, the FDIC described potential risks banks could face by facilitating payment transactions with certain merchants, including a list of categories that included payday lenders and others. The list was later used by the Justice Department in subpoenas to banks.

Industry critics and Republican lawmakers have accused the FDIC of creating a "hit list" of targeted firms, saying it has harmed legitimate businesses. At a hearing two weeks ago, Rep. Patrick McHenry, R-N.C., grilled an FDIC official over the list.

"You've put out this list and it says, 'Don't do business,'" McHenry said. "That's what the banks have heard."

Richard Osterman, the agency's acting general, acknowledged that the list had been "misinterpreted" by financial institutions.

The move on Monday appears to be the FDIC's attempt to take itself off of the front lines of the battle over Operation Choke Point. The letter said that banks must still assess their risk from third-party payment processors, but the list of merchant categories has been removed.



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