



Payments Integrity and Excellence Through Compliance

## **National Payments Association Lends Support to Lawsuit against Operation Choke Point**

*Third Party Payment Processors Association (TPPPA) tenders amicus curiae to highlight damages caused to the payments system and to whole industry sectors by banking regulators.*

WASHINGTON, D.C., October 2, 2014—The [Third Party Payment Processors Association](#) (TPPPA), the not-for-profit industry association representing and promoting the interests of payment processors, their banks and merchants, today filed a brief, *amicus curiae*, in support of the Community Financial Services Association of America (CFSA) lawsuit against federal banking regulators to end Operation Choke Point and the abuse of regulatory power. The TPPPA has a strong and independent interest in this case proceeding to allow a full and fair hearing to shed light on regulators' treatment of banks that have relationships with processors and merchants in politically-disfavored industries.

The need to address the selective enforcement of regulators' own sensible guidance on banks managing third-party risks led the TPPPA to support the lawsuit's efforts to uphold a payments system supportive and inclusive of all lawful merchant groups.

"Let me be very clear: the TPPPA fully embraces the guidance provided by the regulators as prudent in their efforts to ensure the safety and soundness of the banking industry, under the objective of ferreting out fraud in the payments system," states Marsha Jones, TPPPA President. "However, the TPPPA and its members cannot support being used in efforts to choke out legitimate, albeit politically-unfavorable, businesses from the economy according to the flavor of the day. Today it's payday lenders and firearms-related businesses; tomorrow, it could be environmental and civil rights groups or family planning clinics. No one can predict who's next."

In 2011, the FDIC published a list of example merchant categories, which included both legal businesses and illicit activities, it deemed "high risk". The list included, without explanation or distinction, payday loans, credit card schemes, coin dealers, debt consolidation scams, dating services, Ponzi schemes, firearm sales, racist materials, pornography, drug paraphernalia, and fireworks.

"Lawful and legitimate businesses are systematically being shut down without any legal explanation or justification," explains Jones. "The consequences of the FDIC's grouping of Ponzi schemes and debt consolidation scams together with legal businesses has resulted in virtually whole merchant categories being denied entry and continued operation in our economy. That means businesses close and people are out of a job."

Although the FDIC removed this published list of high-risk categories in July 2014, the impact remains. Financial institutions, dubious of the retraction after this list was held up as the centerpiece of FDIC guidance for more than three years, are reluctant to maintain relationships with processors whose merchants are included on the newly-retired list, or out of concern that another, non-public list may still exist.



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“TPPPs typically support a broad range of merchant categories, most of which are small businesses. When a bank is forced to end its relationship with a TPPP that processes for legal but disfavored merchants, all of the TPPP’s merchants are left without the ability to process electronic payments, including payroll,” states Jones. “These actions impact real people.”

In support of its membership, and in an effort to restore order and consistency within the financial services industry, the TPPPA has stepped in to add clarity and consistency via best practices with its Compliance Management System (CMS). The CMS provides a holistic view of compliance, addressing gaps between banks and processors while incorporating regulatory guidance related to third party processing.

“The TPPPA acknowledges that there are bad players in the industry, both processors and merchants. Given the opportunity to work, the CMS and similar industry efforts will distinguish the responsible processors and merchants from fraudsters out to abuse consumers, banks and the payments industry,” concludes Jones. “This Court should require regulators to enforce their own guidance and permit financial institutions and TPPPs to implement risk-management systems, like the CMS, in good faith. Without the intervention of the Court to ensure due process and allow the plaintiffs to prove their case, it is doubtful that the harm done by the irresponsible actions of regulators will be rectified, and the unintended consequences of these misguided actions will continue.”

The full text of the TPPPA’s Brief of Amicus Curiae in support of the lawsuit against federal banking regulators to end Operation Choke Point and the abuse of regulatory power can be found [here](#).

### **About TPPPA**

The Third Party Payment Processors Association (TPPPA) is a national not-for-profit industry association representing and promoting the interests of the payment processors, their financial institutions and their merchants. TPPPA advocates on behalf of its members to the industry and government, educates its members on the latest rules and regulatory updates, and provides comprehensive tools to support operational excellence and integrity in payments. To learn more about the TPPPA, visit the website, [www.tpppa.org](http://www.tpppa.org).

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