# Merchant Cash Advance

*Pivotal Payments Oversight Policy*

## Background

A merchant cash advance is a structured financial transaction that provides a lump-sum payment to a business in exchange for a pre-determined portion of future receivables which are processed through their debit and credit card merchant account. The agreement is structured as a purchase of future receivables at a discounted rate, as opposed to the format of a traditional bank loan.

## Program

Pivotal Payments utilizes split funding via the TSYS reserve system to process these types of transactions. All deals are completed using 3rd party lenders, who provide the actual upfront capital to the merchant. Currently, this program is only for our US portfolio. Some of Pivotal's sales-only ISOs also utilize this program to fund merchants both at the time of signing the processing agreement, and during sales servicing.

## Risk Exposure

- Pivotal Payments implements all split funding agreements and tracks when merchants have repeated cash advances. In addition, any merchant with delayed delivery that is receiving a cash advance is scrutinized and appropriate risk mitigating measures are implemented.
- All lenders, including those utilized by sales-only ISOs undergo due diligence, completed by Pivotal Payments. Due diligence steps are mentioned below.
- All underwriting of the merchants who would qualify for a cash advance is performed by the 3rd party lender. They bear all financial risk should the merchant default. They also perform all collection efforts. These responsibilities are detailed in our agreement with the lender.
- As per our agreement with the lender. Pivotal Payments has the right to divulge and share information with the lender when/if required.
- In the event that the Risk department holds merchant's funds, the lender will have the right to question the reasons but would not have any claim. Pivotal Payments will have the ultimate control over the diverted funds and that is until all Risk concerns are fully met.

## Due Diligence

Pivotal Payments performs due diligence on all 3rd party lenders before a split funding agreement is implemented. This includes, but is not limited to:

- Review of the tri-party agreement between the lender, the merchant, and Pivotal.
    - Lenders might base their lending decision(s) based on merchant's credit reporting information. Lenders must adhere to the Fair Credit Reporting Act if a merchant did not meet the minimum personal credit requirements. In the event a lender opts to refuse/decline a merchant, proper procedure must be adopted including but not limited to an FCRA complaint declination letter if/when applicable to be generated.
- Review complaints and reputational reviews in the public domain.
    - Lender as well their business entities are screened through various public databases including but not limited to: **Better Business Bureau** (BBB) and **rip off** reports. Pivotal Payments will identify lender's rank and history based on their BBB rate (*system based on school-style A+ - F*) and the ratio of number of complaints to number of customers. The review will shed light on the number of complaints filed against the lender in the past 12 calendar months as well as their arbitration and dispute resolution procedures.
    - Comprehensive business credit reports will be generated on both legal and dba entity.
- Review of complaints on the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) to ensure lender is not involved in any previous anticompetitive, deceptive or unfair practices.
- Review lenders' agreement to ensure their lending practices impose fair and friendly loan terms on merchants.
- Review of marketing material, including any promises of "pre-approval" if applicable.
    - Lenders must ensure their marketing materials are excluded from any form of deceptive marketing practices or promises provided with unrealistic guarantees. Verbiage including but not limited to: "Best rate in the world", "We approve all merchants", "No personal credit verification" "Low rate", etc., must **not** be present in the marketing material.
- Review of lending practices including any verticals the lender may be targeting.
- Ensure lender's DDA is active and US based.
    - DDA must be under their legal entity, business or lender's name.
- Review of any outstanding litigation against the principals and/or the legal entity.
- Recent and updated background check on <u>principals</u> with > 25% equity of ownership [<u>including</u>: <u>CEO</u>, <u>COO</u> & <u>CFO</u> of the entity].
- KYC checks are performed by reviewing personal credit from a credit bureau, or through a LexisNexus search
    - Lender must fully divulge all principals with 25% and more equity of ownership and indicate any ultimate beneficial owner (s) (if applicable).
- OFAC[i]/OSFI[ii], MATCH[iii] and PEP[iv] checks are also performed to adhere to AML and Card Brand regulations.
- Review of lenders collection policies, procedures and practices.

- Review of lender's 3rd party prepared financial statements (2 years' worth).

## Ongoing Oversight

On an annual basis and under certain circumstances assessed by Pivotal Payments we will review any complaints in the public domain against the lender, as well as all marketing material utilized by the lender, scrutinizing for any deceptive marketing or lending practices.

Lenders might sporadically undergo - *if deemed necessary*- a due diligence screening to assess and ensure lenders are adhering to all set forth regulations.

The due diligence procedure includes but is not limited to a review of all of the Due Diligence items referenced above.

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[i] OFAC: Office of Foreign Assets Control
[ii] OSFI: Office of the Superintendent of Financial Institutions Canada
[iii] MATCH: Member Alert To Control High-risk – TMF: Terminated Merchant File
[iv] PEP: Politically Exposed Person