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Georgia Clarifies Merchant Acquirer Law As Firms Submit First Applications In A Decade

Several payments and fintech firms will seek a Merchant Acquirer Limited Purpose Bank (MALPB) charter in the US state, as card networks change their stance on non-bank members.

Georgia introduced the MALP charter provision more than a decade ago, in 2012, allowing payment processors to handle transactions on behalf of merchants without a bank partner if they join a payment network.

But only one bank was approved and as it was unable to gain membership in the Visa or Mastercard networks to process card payments, no other applicant has filed for a charter since.

However, Fiserv, the largest non-bank merchant acquirer in the US, has recently filed an application and indicated it may be able to join a payment network, which has made the industry stand up and take notice.

“There is at least one other large company that is seriously considering filing an application. And we have had a number of conversations with a variety of payments and fintech businesses that are considering it,” James Stevens, a partner at law firm Troutman Pepper, told Vixio.

“I suspect that we will see at least a couple of these applications filed and approved, then there may be a pause because of the receptivity of the card networks to new applications.”

Legislation currently making its way through the state's House of Representatives in Georgia sets out clear definitions of the activities and responsibilities of merchant acquirers with an MALP charter, including obtaining and maintaining membership in payment card networks, underwriting merchants to accept payment cards, and facilitating the clearing and settlement of transactions.

It also clarifies the state banking commission's authority to ensure the continued presence of merchant acquirers in the state and considers employees of affiliated organizations as employees of the merchant acquirer for compliance purposes.

“The amendment is a clean-up bill reflecting the fact that banking law has changed over the years and trying to bring the merchant acquirer limited purpose bank charter to the standards of regular banking,” Stevens said.

For instance, the original statute required that the majority of the directors of a charter bank reside in the state of Georgia. The new bill makes it consistent with the regular bank charter, which has a residency requirement, but it is broader than the state of Georgia. Once approved, the charter applies across the US.

MALPB charter presents an opportunity

Fiserv’s application, coupled with the clarification of state law, has alerted payments companies to the opportunity to obtain a MALPB charter and diversify their businesses.

The charter effectively creates a bank under state law that would not be regulated by the federal government, as it would not be permitted to hold customer deposits. It is the holding of deposits that must be insured by the Federal Deposit Insurance Corporation (FDIC) that brings banks under federal oversight.

The ability to gain a state banking charter without federal regulation is attractive to merchant acquirers that would not be comfortable being subject to regulation as a bank holding company, as that has implications for their financial requirements and operations, Stevens noted.

Visa and Mastercard have previously only allowed fully regulated banks to become members of their networks. But if the card networks have now become open to non-bank members, as the Fiserv application indicates, then non-bank acquirers will be eligible to receive the charter, which requires network membership to operate.

There are several drivers for payments and fintech firms to obtain a MALPB charter, not least of which is competition with Fiserv. There are now fewer banks providing merchant acquirer services, leaving fintech firms with fewer potential partners that are members of the card networks.

Financial institutions that have typically acted as sponsor banks to provide access to the card networks are increasingly shifting their activity to other areas.

Obtaining their own charter gives non-bank acquirers more control over the types of merchants and industries they work with. It also reduces the amount of revenue they are obligated to share as they no longer need to team up with a bank partner.

“Our ability to be able to have an institution for that sole purpose that will allow us, to be a sponsor for our own merchant acquiring in certain instances, will be valuable as we can control more of the outcome than we could before,” Frank Bisignano, Fiserv’s chairman, president and CEO, said on the company’s quarterly earnings call earlier this month.

The company is pursuing the charter for a “very specific purpose” and is not competing with its partner banks, Bisignano added.

Visa and Mastercard are also seeing the trend towards fewer banks operating in the space, which may be why they are becoming open to admitting companies like Fiserv to their networks.

They would likely to be hesitant to approve an application for a bank or non-bank looking for a MALPB charter without a robust client risk management system, Stevens said.

“When we say we think there’s going to be more of these that may be approved, initially you would see larger, more sophisticated participants being approved but then maybe the card networks waiting and seeing how that goes before they start allowing smaller, less sophisticated participants.”

If several firms receive MALP charters, it is unlikely to disrupt the existing merchant acquiring bank structures that have long been in place, Stevens added.

“We think it creates a nice alternative. We don’t see this as something that’s going to involve the widespread replacement of banks who perform this critical function in the merchant acquiring space — we think most people who are looking at this are looking at it as alternative rails just to have some diversification.”

Other states have adopted limited purpose bank charters; for example, there is one on the books in Wyoming. However, it was created to facilitate banks that are interested in providing custody to the cryptocurrency industry.

One of the banks that was approved has been unable to join an Automated Clearing House (ACH) network to provide fiat currency on-ramp and off-ramp services to enable customers to transfer dollars in to buy cryptocurrency and sell crypto to transfer dollars out. This, along with the downturn in interest in cryptocurrency, has resulted in that limited purpose bank charter languishing.

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