AMERICANS FOR FINANCIAL REFORM
ACCOUNTABILITY ★ FAIRNESS ★ SECURITY

Americans for Financial Reform
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May 30, 2013

Federal Deposit Insurance Corporation
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Legislative and Regulatory Activities Division
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Re: Proposed Guidance on Deposit Advance Products (FDIC-2013-0043-0001, OCC-2013-0005-0001)

We write to thank the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies) for the proposed guidance addressing bank payday lending, particularly the underwriting requirements and limits on repeat loans. These critical provisions address a central problem with payday lending: lenders' failure to verify the borrower's ability to repay the loan, and meet other expenses, without reborrowing, leading to a destructive cycle of repeat loans.

This proposed guidance is urgently needed. Many of the undersigned groups have expressed our concerns about bank payday lending to the Agencies, as well as to the Federal Reserve Board, on previous occasions.[i] We have emphasized banks' failure to verify the borrower's ability to repay the loan, and meet other expenses, without reborrowing. Recent research has left no doubt that this is the reality: The Consumer Financial Protection Bureau's analysis of thousands of bank payday loans found that banks put borrowers into an average of 14 loans annually and keep them indebted for a significant portion of the year.[ii]

Failure to verify the borrower's ability to repay the loan poses clear safety and soundness risk to banks. It is inconsistent with fundamental safe and sound lending practices; it exposes banks to legal risk, including, as the Agencies highlight, risk of violating provisions prohibiting unfair, deceptive, and abusive practices and the Equal Credit Opportunity Act; and it poses reputational risk, as evidenced by widespread opposition to bank payday lending.[iii]

Bank payday lending poses these risks in part because it causes severe harm to banks' customers. Research has long shown that payday loans cause serious financial harm to borrowers, including increased likelihood of bankruptcy, paying credit card debts and other bills late, delayed medical care, and loss of basic banking privileges because of repeated overdrafts.[iv] Payday lending has a particularly adverse impact on African Americans and Latinos, as a disproportionate share of payday borrowers come from communities of color.[v] In addition, a large number of bank payday borrowers are Social Security recipients, whose benefits banks take for loan repayment before borrowers can use those funds for healthcare, prescription medicines, or other critical expenses.[vi]

Preventing the cycle of debt and its resulting harms is essential. Thus, we strongly support the Agencies' proposed underwriting and related requirements in combination, including (1) requiring that banks verify the borrower's ability to repay the loan and meet expenses without reborrowing based on an analysis of the customer's inflows and outflows, and (2) limiting the number of payday loans banks can extend to each customer.

Other pernicious elements of bank payday lending are its cost and the bank's repaying itself first directly from the borrower's next deposit. Bank payday loans average 225% to 300% annual percentage rate (APR)[vii]—extraordinary by any measure. The Agencies' proposal underscores that fees must be based on safe and sound banking principles; clearly, these loans' current fees are not. We urge the Agencies to clarify that safe and sound banking principles require that interest and fees be reasonable and, consistent with the FDIC's affordable small loan guidelines, should not exceed 36% APR, subject to state law limitations. We also urge the Agencies to prohibit banks from requiring that a loan be automatically repaid from incoming deposits as a condition of making the loan, which denies borrowers control of their checking account and discourages sound underwriting.

Lastly, we urge the Agencies to conduct prompt and vigilant examination of banks' compliance with the finalized guidance and to take swift enforcement action to address any noncompliance.

Payday lending by banks makes checking accounts unsafe for many members of the communities we represent. It blatantly undermines state law in the states that have prohibited or imposed meaningful restrictions on payday loans in recent years, or that have never allowed payday loans to be part of their marketplace. It also flouts provisions of the Military Lending Act aimed at protecting service members from payday loans.

In the last two years, we are aware of no additional banks entering the payday lending market. This is due, in large part, to the OCC's not finalizing its 2011 proposed guidance and the FDIC's 2012 announcement of its investigation into the practice.[viii] The current proposed guidance is needed to ensure that no additional banks the Agencies supervise enter the high-cost payday lending market going forward, and to put a stop to the cycle of debt at the supervisee banks currently making these loans. We thank you for your responsiveness to this critical issue.

Sincerely,

National Signatories:

AARP
AFL-CIO
Americans for Financial Reform
Consumer Action

Consumers Union
Greenlining Institute
NAACP
National Community Reinvestment Coalition
Public Citizen
Sargent Shriver National Center on Poverty Law
The Leadership Conference on Civil and Human Rights
Woodstock Institute

State and Local Signatories:

Action for Children North Carolina
Action NC
Arizona Consumers Council
Arizona State Coalition
Arizonans for Responsible Lending
Arkansans Against Abusive Payday Lending
Calvert Investment Management, Inc.
Center for Economic Integrity (Tucson, AZ)
Champaign County Health Care Consumers (Illinois)
Communities Creating Opportunity
Connecticut Association for Human Services
Consumer Credit Counseling Service of Greater Greensboro, NC
Credit Counseling Agencies of NC Association, NC
Economic Fairness Oregon
Emmaus Way, NC
Financial Pathways of the Piedmont, NC
Financial Protection Law Center, NC
First Affirmative Financial Network
Florida Consumer Action Network
Green America
Jacksonville Area Legal Aid, Inc.
Jefferson City Congregations Uniting
Kentucky Equal Justice Center
Legal Services of Southern Piedmont, NC
Missouri Faith Voices
North Carolina Community Development Initiative
North Carolina Council of Churches
North Carolina Housing Coalition
North Carolina Justice Center
North Carolina Latino Coalition
North Carolina State AFL-CIO
OnTrack Financial Education & Counseling, NC
Pisgah Legal Services, NC
Sisters of St. Francis of Philadelphia
The Kentucky Coalition for Responsible Lending

Triangle Congregations Associations and Neighborhoods, NC
Trillium Asset Management, LLC
Virginia Poverty Law Center

cc: Board of Governors of the Federal Reserve System

[i] Letters from approximately 250 groups to FDIC, OCC, Federal Reserve Board and CFPB, March 13, 2013 (http://ourfinancialsecurity.org/blogs/wp-content/ourfinancialsecurity.org/uploads/2013/03/Bank-Payday-Sign-On-Letter-3-13-13-Final.pdf) and February 22, 2012 (http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Dear-Regulators.pdf).

[ii] The CFPB's analysis found that a median number of advances per borrower of 14, with extremely high numbers of advances for many borrowers. The 14 percent of borrowers who took out more than $9,000 in loans over 12 months took out a median of 38 advances. The CFPB further found that borrowers were indebted an average of 112 days during the year, with borrowers with $9,000 or more in loans spending an average of 254 days in debt. Earlier this year, the Center for Responsible Lending's analysis similarly found that that the median bank payday borrower took out 13.5 loans in 2011 and was in bank payday loan debt at least part of six months annually. Because a significant portion of borrowers had significantly more than the median number of loans—over a third of borrowers had more than 20 loans—the mean number of loans per borrower was 19. Center for Responsible Lending, *Triple Digit Danger: Bank Payday Lending Persists* (March 21, 2013), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf.

[iii] For further detail on how bank payday lending poses safety and soundness risk, *see* Center for Responsible Lending, *Prudential Regulators Should Apply Safety and Soundness Standards to Bank Payday Loan Products*, January 24, 2013, *available at* http://rspnsb.li/Yqd0uH. For documentation of recent opposition to bank payday lending by community leaders and state and local officials, *see* Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns*, CRL Issue Brief, March 7, 2013, *available at* http://rspnsb.li/10wra0y.

[iv] *See* the following studies for discussions of these negative consequences of payday lending: Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008), *available at* www.law.vanderbilt.edu/faculty/faculty-personal-sites/paige-skiba/publication/download.aspx?id=2221; Sumit Agarwal, Paige Skiba, and Jeremy Tobacman. *Payday Loans and Credit Cards: New Liquidity and Credit Scoring Puzzles?* Federal Reserve of Chicago, Vanderbilt University, and the University of Pennsylvania (January 13, 2009), *available at* http://bpp.wharton.upenn.edu/tobacman/papers/pdlcc.pdf; Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*, Harvard Business School (June 6, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1335873; Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, University of Chicago Business School (November 15, 2007), *available at* http://insight.kellogg.northwestern.edu/index.php/Kellogg/article/the_real_costs_of_credit_access; and Bart J. Wilson, David W. Findlay, James W. Meehan, Jr., Charissa P. Wellford, and Karl Schurter, "An Experimental Analysis of the Demand for Payday Loans" (April 1, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083796.

[v] For example, studies in California and Texas have both shown that African American and Latinos are far more likely to have been extended payday loans than the population as a whole. California Department of Corporations, "Payday Loan Study (Updated June 2008); Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008). This disproportionate share is even more significant because African Americans and Latinos are much less likely to have a checking account—a basic requirement for obtaining a payday loan.

[vi] CRL's recent study found that over one in four bank payday borrowers were Social Security recipients, confirming its previous study finding that nearly one in four were Social Security recipients. Center for Responsible Lending, *Triple Digit Danger: Bank Payday Lending Persists* (March 21, 2013), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf; Center for Responsible Lending, *Big Bank Payday Loans:* High-interest loans through checking
accounts keep customers in long-term debt (July 2011), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.

[vii] Center for Responsible Lending, *Triple Digit Danger: Bank Payday Lending Persists* (March 21, 2013), *available at* http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf.

[viii] Letter from FDIC to Americans for Financial Reform, May 29, 2012, *available at* http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Bank-DDA-FDIC-OC12-65R-1.pdf