



Americans for Financial Reform
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August 8, 2011

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

By email: regs.comments@occ.treas.gov

By fax: (202) 874-2574

Re: OCC Guidance on Deposit-Related Consumer Credit Products
Docket ID OCC-2011-0012

Dear Acting Comptroller Walsh:

We write to comment on the OCC's proposed guidance on payday loans offered by banks and high-cost overdraft programs. While we agree with the OCC's guiding principles, we are concerned that the agency's application of the principles would fail to address its own concerns. As a result, the guidance may legitimize and facilitate the spread of payday lending by national banks, and banks would continue abusive overdraft practices—harming bank customers, undermining state payday loan laws, and weakening the long-term safety and soundness of financial institutions.

Payday lending by banks is a growing problem, with at least two large national banks, Wells Fargo and US Bank, making payday loans that carry triple- or quadruple-digit APRs, repaid upon the next deposit only days later. Overdraft loans cost consumers billions of dollars annually, with large national banks charging a fee averaging \$35 per transaction regardless of the size of the overdraft.

Overdraft and payday loans are both typically made based on the ability to seize collateral without meaningful consideration of the customer's ability to repay. Both types of loans also carry balloon repayments automatically deducted from the customer's next incoming deposit, even if those funds are exempt benefits or income. *As a result, these loans trap struggling consumers in a cycle of repeat borrowing that leaves them only worse off.* Ultimately, these products erode the assets of bank customers and, rather than promoting savings, make checking accounts unsafe for many customers. They lead to uncollected debt, bank account closures, and

greater numbers of unbanked Americans. All of these outcomes, as well as the reputation risk these products carry, are inconsistent with the safety and soundness of financial institutions.

We urge the OCC to dramatically strengthen its guidance, as follows:

1. Stop Payday Lending by Banks:

- ***Take immediate supervisory and/or enforcement action to stop Wells Fargo and US Bank from making unaffordable, high-cost payday loans.***

- ***In the alternative, impose an immediate moratorium on the bank payday product*** while collecting data to evaluate the appropriateness of the product, including the amount and source of borrowers' income, frequency of use and rollovers, impact on people of color, and impact on overdrafts and NSF fees and account closures.

- ***Permit only loans with that do not carry the abusive features characteristic of payday loans.*** Loans should be required to be repaid in affordable installments, rather than in lump sums; be reasonably priced, where cost of credit is expressed as an interest rate and any fees are reasonable; be underwritten based on an ability to repay, without needing to take out another loan shortly thereafter; and not be repaid through automatic setoff.

2. Ensure High-Cost Overdraft Loans Are Not Used as a Routine Credit Product:

- ***Banks should not post transactions in order from highest to lowest and should minimize fees through posting order when feasible.*** The OCC's guidance strongly suggests that posting from high to low is inappropriate, but the OCC should be as clear as the FDIC was in the FAQs accompanying its recent guidance.

- ***Banks should not charge overdraft fees on debit card transactions***, which can easily be denied at no cost. The largest debit card issuer, Bank of America, stopped the practice last year; other national banks should follow suit. Ending overdraft fees on debit cards would go a long way toward ending "excessive use," which the FDIC's recent guidance identified as more than six overdraft fees per year.

- ***Overdraft fees should be reasonable and proportional to the amount of the underlying transaction***, consistent with the FDIC’s overdraft guidance and rules governing penalty fees on credit cards.
 - ***Overdraft fees should be limited to six per year***, consistent with the FDIC’s recent guidance, which identified more than six overdraft fees per year as excessive. High-cost overdraft programs are not a legitimate source of routine credit. For any brief period for which payday lending by banks might continue, this limit should apply to overdraft and payday loans combined.
 - ***While affirmative consent is a necessary requirement for any credit product, it does not replace the need for substantive reform***. Banks should be required to obtain a customer’s “opt-in” before extending overdraft credit for any type of transaction, including checks, instead of automatically enrolling consumers in the most expensive and abusive type of coverage. This requirement should apply to both new and existing customers. But it does not replace the need for substantive reform.
3. ***Prohibit steering***. Banks should not steer customers into higher cost credit than that for which they qualify. Every customer who desires credit should be informed about all credit and overdraft options and only be extended the lowest cost option for which he/she qualifies.
4. ***Encourage responsible products***. For customers who do not qualify for traditional, low-cost overdraft coverage, banks should be encouraged to develop smaller credit lines consistent with the FDIC Small Loan Guidelines rather than make predatory loans to those least able to shoulder them. If consumers do not qualify for credit on responsible terms, banks should not extend them unaffordable debt.

Sincerely,

Americans for Financial Reform

Arkansans Against Abusive Predatory Lending

Bell Policy Center

California Reinvestment Coalition

Center for Digital Democracy

Center for Responsible Lending

Coalition on Homelessness & Housing in Ohio (COHHIO)

Coloradans for Payday Lending Reform

Communities Creating Opportunity

Community Housing Works, San Diego

Community Legal Services

Connecticut Association for Human Services

Consumer Action

Consumer Federation of America

Consumers for Auto Reliability and Safety

Consumers Union

Empire Justice Center

Florida Legal Services

Greater Rochester Community Reinvestment Coalition

Kentucky Equal Justice

Legal Services of Southern Piedmont

Mid Minnesota Legal Assistance

National Association of Consumer Advocates

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low income clients)

National Economic Development Advocacy Project (NEDAP)

National Fair Housing Alliance

National Latino Farmers & Ranchers Trade Association

National People's Action

New Jersey Citizen Action

PICO National Network

Public Justice Center

Sargent Shriver National Center on Poverty Law

SC Appleseed

The Leadership Conference on Civil and Human Rights

U.S. PIRG

[cc: Consumer Financial Protection Bureau

<http://www.consumerfinance.gov/contact-us/>]

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AARP
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company

- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers

- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

Partial list of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR

- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY

- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET

