January 11, 2012

Mr. John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

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

Dear Acting Comptroller Walsh:

We write to urge the OCC to withdraw its proposed guidance on payday loans offered by banks and high-cost overdraft programs, out of our growing concern that the guidance would cause significant harm by legitimizing and facilitating the spread of abusive practices. As many of our groups asked in August, we urge the OCC instead to (1) take immediate supervisory and/or enforcement action to stop Wells Fargo and US Bank from making unaffordable, high-cost payday loans, and (2) in the alternative, impose an immediate moratorium on the bank payday product while the OCC collects additional data to determine the appropriateness of this product.

Wells Fargo and US Bank's "advance" loans are structured just like loans from payday loan stores – carrying a high-cost combined with a short-term balloon repayment – which research has long shown trap borrowers in a cycle of expensive long-term debt, causing serious financial harm.

For customers with direct deposit of wages or public benefits, the banks will advance the pay in increments for a fee, ranging from $7.50 to $10 per $100 borrowed. The bank deposits the loan amount directly into the customer's account and then repays itself the loan amount, plus the fee, directly from the customer's next incoming direct deposit. If direct deposits are not sufficient to repay the loan within 35 days, the bank repays itself anyway, even if the repayment overdraws the consumer's account, triggering more fees.

Non-bank payday borrowers routinely find themselves unable to repay the loan in full and the fee *plus* meet their monthly expenses without taking out another payday loan. A recent analysis of actual checking account activity by the Center for Responsible Lending[1] finds the same is true in the bank payday lending context:

- Bank payday loans typically carry an annual percentage rate (APR) of 365 percent based on the typical loan term of ten days;[2]

- On average, bank payday borrowers are in debt for 175 days per year;[3]

[1] Center for Responsible Lending, "Big Bank Payday Loans," CRL Research Brief, July 2011, *available* at http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.
[2] This APR is based on a fee of $10 per $100 borrowed, which most banks making payday loans charge. One bank charges $7.50 per $100 borrowed.

- Many borrowers take out ten, 20, or even 30 or more bank payday loans in a year;[4]

- Many bank payday borrowers are Social Security recipients, and significant portions of their monthly checks are immediately taken by the bank for repayment of bank payday loans.[5]

These findings further demonstrate that, as in the storefront payday context, lender "protections" like "installment options" and "cooling off" periods between loans are ineffective at stopping the cycle of repeat loans.

The urgency of strong action by the OCC cannot be overstated, but the proposed guidance, far from strong action, would only make matters worse. There have been clear signals that some in the financial services industry would view this guidance as a green light to proceed with widespread bank payday lending. When the CEO of one payday loan company was asked recently about banks' appetite for involvement in payday loans, he responded that he viewed the OCC's guidance "very positively" and that

> "once . . . it was issued, we began [the] process of talking to additional financial institutions about the ability to get involved and assist them in a micro line of credit product whether it be laid over a card or DDA [direct deposit advance] account."[6]

Further, Fiserv, Inc., a provider of software systems to the financial industry that has developed a bank payday software product it calls "Relationship Advance," is reporting significant interest in the product:

> "We've spent the last year-and-a-half looking at what would it take to bring [the bank payday product] to a much broader base . . . And so we're getting a lot of interest here. The pipeline is extremely strong. We've had some very nice mid-tier signings over the last three, four months and we see this as an interesting driver of … high-quality recurring revenue…."[7]
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> "[W]e are seeing a lot of interest in our revenue enhancement solutions areas, specifically in our Relationship Advance product, just a ton of interest because of the revenue opportunity that creates".[8]

Fiserv's marketing of the Relationship Advance product has included the following:

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[3] "Big Bank Payday Loans" at 5. The analysis found that, on average, bank payday borrowers have 16 loans and, assuming these loans were not concurrent, stay in payday debt for 175 days per year. The average loan duration for all panelists was 10.7 days.
[4] *Id.*
[5] *Id.*
[6] Daniel Feehan, President, Chief Executive Officer and Director of Cash America – the company that distributed cards carrying MetaBank's iAdvance payday loan product before the OTS shut that product down – speaking on the company's second quarter 2010 investor call, July 20, 2011.
[7] Fiserv Investor Conference, Oct. 11, 2011.
[8] Fiserv Q3 2011 Earnings Call, Nov. 1, 2011

A promise that within two years, revenue from the product "will be greater than all ancillary fee revenue combined."[9]

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A promise that offering the payday loan product will result in little-to-no "overdraft revenue cannibalization,"[10] that is to say, it will add another high fee source without reducing overdraft fee revenue.

The above reactions are not surprising in light of the central weaknesses of the proposed guidance we highlighted in detail in August: It ultimately condones a high-cost, short-term, balloon repayment loan made without a meaningful assessment of the borrower's ability to repay the loan without the need to take out another loan shortly thereafter.[11]

With respect to high-cost overdraft programs, we are concerned that the proposed guidance will not effect positive change and instead will provide financial institutions a roadmap for justifying continued manipulation of transaction posting to increase overdraft fees. The OCC's proposal advises that transaction processing not be "solely designed or generally operated to maximize overdraft fee income."[12] Banks can easily claim compliance with this standard while continuing to post transactions in order from highest to lowest, maximizing overdraft fees. Indeed, Bank of America, in its August comment letter – where it advocates for more explicit standards addressing posting order – notes that "the Proposal does not appear likely to have the effect of changing any bank's posting order methods."[13]

There is no question that prompt action on these issues by the OCC is critical. But this proposed guidance is not what is needed, and it should be withdrawn. Instead, the OCC should proceed with immediate, meaningful supervisory and/or enforcement action to stop Wells Fargo and US Bank from making payday loans and, in the alternative, impose an immediate moratorium while it collects data from these banks to assess the appropriateness of the product. It should further send a clear signal to banks that posting transactions in order from highest to lowest is inappropriate. Finally, we encourage the OCC to coordinate with the Consumer Financial Protection Bureau in its work on these matters.

Sincerely,

Action for Children North Carolina
Action NC (Durham and Charlotte, NC)

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[9] Fiserv Relationship Advance program description available at http://www.relationshipadvance.com/; *see also* Fiserv unveils Relationship Advance: *Full-service solution provides a safer, more cost-effective alternative to courtesy overdraft programs,* Press Release (Nov. 18, 2009), *available at* http://investors.fiserv.com/releasedetail.cfm?ReleaseID=425106; Jeff Horwitz, *Loan Product Catching On Has a Couple of Catches*, American Banker, Oct. 5, 2010.

[10] http://www.relationshipadvance.com/, as visited August 2011.

[11] *See* Comments of the Center for Responsible Lending, Consumer Federation of America, and National Consumer Law Center (on behalf of its low income clients) (Aug. 8, 2011), and Comments of Americans for Financial Reform and other consumer and civil rights organizations (Aug. 8, 2011).

[12] OCC Proposed Guidance, 76 Fed. Reg. 33411.

[13] Comments of Bank of America to the OCC, Aug. 8, 2011.

Americans for Financial Reform
Arkansans Against Abusive Payday Lending
Center for Economic Integrity (Tucson, AZ)
Center for Responsible Lending
Coalition of Religious Communities
Coalition on Homelessness & Housing in Ohio (COHHIO)
Colorado Progressive Coalition
Connecticut Association for Human Services (CAHS)
Consumer Action
Consumer Credit Counseling Service of Forsyth County, Inc. (Winston-Salem, NC)
Consumer Credit Counseling Service, a Division of Family Service of the Piedmont, Inc. (Greensboro, NC)
Consumer Federation of America
Consumers Union
Credit Counseling Agencies of NC Association (Winston-Salem, NC)
Democratic Processes Inc. (Tucson, AZ)
Financial Protection Law Center (Wilmington, NC)
Florida Consumer Action Network
Kentucky Coalition for Responsible Lending
Kentucky Equal Justice Center
Legal Services of Southern Piedmont (Charlotte, NC)
Maryknoll Fathers and Brothers
Maryland CASH Campaign (Creating Assets, Savings and Hope)
Maryland Consumer Rights Coalition
Memphis Responsible Lending Collaborative
Miami Valley Fair Housing Center, Inc. (Dayton, OH)
Michael Archer, Regional Legal Assistance Officer, Marine Corps Installations East, Camp Lejeune, NC
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low income clients)
National People's Action
Neighborhood Economic Development Advocacy Project (NEDAP)
North Carolina Council of Churches
North Carolina Housing Coalition
North Carolina Justice Center
North Carolina State AFL-CIO
OnTrack Financial Education & Counseling (Asheville, NC)
Pisgah Legal Services (Asheville, NC)
Public Citizen
Reinvestment Partners (Durham, NC)
Richard Fisher Law Office (Cleveland, TN)
Rural Dynamics, Inc. (Great Falls, MT)
South Carolina Appleseed Legal Justice Center
Sisters of Charity of Saint Elizabeth
Sisters of St. Francis of Philadelphia
The Collaborative (Raleigh, NC)
The Support Center (Raleigh, NC)

Triangle Congregations Associations and Neighborhoods (Durham, NC)
Tri-State Coalition for Responsible Investment (Montclair, NJ)
U.S. PIRG
Virginia Citizens Consumer Council
Virginia Poverty Law Center
Virginians Against Payday Loans
Woodstock