November 30, 2012

Scott J Wilson, Examiner in Charge
Office of the Comptroller of the Currency-National Bank Examiners
343 Sansome St., 11th Floor, Suite 1150
San Francisco, CA 94163

RE: Wells Fargo CRA Examination, Comments on Direct Deposit Advance Product

Dear Mr. Wilson:

The Consumer Federation of America (CFA) and the undersigned groups appreciate the opportunity to comment on the Community Reinvestment Act performance of Wells Fargo Bank, National Association (Wells Fargo). We recognize that Wells Fargo is one of the five largest bank holding companies by assets and offers a wide range of products and services. This comment letter addresses specific concerns with the bank's Direct Deposit Advance program and does not consider other products or services that are offered in Wells Fargo's 33 state footprint. We are concerned that the Direct Deposit Advance product is harmful to consumers, could negatively impact the ability of those consumers to safely access fairly priced credit and build savings, and should result in a downgrade of Wells Fargo's CRA grade on its forthcoming Performance Evaluation.

High-cost, short-term, balloon payment credit is abusive and does not meet the credit needs of consumers

We are concerned that the Wells Fargo Direct Deposit Advance product is a form of high-cost, short-term credit that fails to meet consumer needs in a manner consistent with safe and sound lending practices. The Consumer Federation of America considers four factors when evaluating whether short-term loan products are abusive: triple digit interest rates that compensate lenders for high losses due to weak underwriting criteria; collateral-based lending that fails to consider a borrowers' ability to repay a loan; balloon payments that often require multiple renewals or refinancing to pay even small balances in full; and the failure of a lender to put in place controls to ensure that short-term loan products are not relied upon excessively throughout the year.

In an October 2000 advisory letter, the Office of the Comptroller of the Currency identified many of these same risks associated with potentially abusive lending, including payday loans and auto title loans, and suggested that originating loans with these and other characteristics could subject a financial institution to both credit and reputational risk.[1]

Direct Deposit Advance loans are high-cost and structured to encourage repeat use

Interest rates associated with the Direct Deposit Advance program are extremely high. Direct Deposit Advance customers are charged interest rates of between 78 percent, if the advance is extended the maximum permissible term of 35 days, to as much as 391 percent, if the advance is outstanding for a one week pay period (Table 1).[2]

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[1] OCC Advisory Letter 2000-10, "Payday Lending" (November 27, 2000). Available at http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-10.pdf

[2] Consumer Federation of America calculation based on interest charges disclosed at https://www.wellsfargo.com/help/faqs/dda_faqs

Table 1. Interest rate based advance charges for a $500 advance by number of days outstanding

Principal	Advance Charges	Days Outstanding	Interest Rate
$500	$37.50	7	391%
$500	$37.50	15	183%
$500	$37.50	14	196%
$500	$37.50	30	91%
$500	$37.50	35	78%

These interest rates dramatically exceed the cost of other credit options at Wells Fargo, including cash advances on credit cards. Direct Deposit Advance loans also rely on electronic access to an accountholder's bank account and payments are withdrawn from the account before other payments, such as housing payments or utilities, are made at the borrower's discretion. Direct access to a borrower's bank account dramatically reduces the payment risk associated with the product, and calls into question the appropriateness of the high interest rates associated with the product.

Balloon payment loans result in multiple renewals or refinances

Previous research has demonstrated that high-cost, balloon payment credit often results in multiple renewals or refinancing, extending the term in which a borrower is subject to high finance charges well beyond a single pay period.[3] The Center for Responsible Lending found that borrowers that used bank-based payday loans, such as the Direct Deposit Advance product, accessed the product an average of 175 days per year.[4] Since Direct Deposit Advance finance charges are not calculated as interest on a declining balance and are not reimbursed in cases of prepayment, finance charges can escalate rapidly in cases where borrowers renew or refinance loans each pay cycle. For example, if a $500 advance is outstanding for 12 consecutive pay periods, a borrower would accrue $450 in cumulative finance charges (Table 2).

[3] King, Uriah, and Leslie Parrish. *Springing the Debt Trap: Rate Caps Are Only Proven Payday Lending Reform*. Center for Responsible Lending, December 2007. http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf.

[4] Borne, Rebecca, Joshua Frank, Peter Smith, and Ellen Schloemer. *Big Bank Payday Loans: High-interest Loans Through Checking Accounts Keep Customers in Long-term Debt*. Center for Responsible Lending, July 2011. http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf.

Table 2. Cumulative finance charge for outstanding balance of $500 renewed for 12 consecutive pay periods[5]

		Finance Charges				Finance Charges	
Pay Cycle	Outstanding Principal	Per Cycle	Cumulative	Pay Cycle	Outstanding Principal	Per Cycle	Cumulative
1	$ 500.00	$ 37.50	$ 37.50	7	$ 500.00	$ 37.50	$ 262.50
2	500.00	37.50	75.00	8	500.00	37.50	300.00
3	500.00	37.50	112.50	9	500.00	37.50	337.50
4	500.00	37.50	150.00	10	500.00	37.50	375.00
5	500.00	37.50	187.50	11	500.00	37.50	412.50
6	500.00	37.50	225.00	12	500.00	37.50	450.00

Direct Deposit Advance loans are based on access to a borrower's checking account as collateral, and do not consider a borrower's ability to repay the loan

Direct Deposit Advance customers are eligible for loans of up to one half the amount of their reoccurring direct deposit, rounded up to the nearest $20 increment. For example a borrower with a net monthly income of $2,000 paid weekly would qualify for a line of credit up to $260. That same borrower would qualify for an advance of up to $500 if paid twice monthly or up to $1,000 if paid monthly.[6] However, the total line of credit available throughout the month is the same, with the ability to access a line of credit two to four times larger depending on paycheck frequency. This is a strong indicator that the underwriting criteria in place are based largely on the financial institution's ability to collect the loan from the proceeds of a direct deposit, rather than a borrower's ability to repay the loan without hardship or additional borrowing.

The criteria used to determine the loan principal is insufficient to ensure that a borrower is able to repay the loan as agreed without dedicating a substantial percentage of their paycheck to debt service or taking out an additional loan.

Table 4. Direct Deposit Advance principal based on $2000 per month in qualified direct deposits

Paycheck Frequency	Average Qualified Deposit	Eligible Advance
Weekly	$500	$260
Twice monthly	1,000	500
Monthly	2,000	1,000

[5] "Direct Deposit Advance Service Questions." *Wells Fargo*, n.d. https://www.wellsfargo.com/help/faqs/dda_faqs.
[6] Ibid.

The Direct Deposit Advance product permits borrowers to enter into a long-term cycle of debt

The failure to determine a borrower's ability to repay, the balloon payment structure of the loan, and the high-cost of the Direct Deposit Advance product contributes to a cycle of debt where borrowers are encouraged to use advance proceeds as income replacement and may be forced to devote up to half of their following paycheck to repay the outstanding balance.

Wells Fargo has instituted limits to ensure that this debt cycle occurs throughout the entire year. These limits are insufficient, however. The total period of indebtedness permitted by the Direct Deposit Advance program allows borrowers to be in debt for the majority of the calendar year. Borrowers are permitted to access the Direct Deposit Advance line of credit for six consecutive months before either entering into repayment for up to four pay periods or paying their outstanding balance in full and entering into a one statement period cooling off period. The table below illustrates the maximum number of statement periods (approximately one calendar month) that a borrower can have an outstanding Direct Deposit Advance loan. In most scenarios, a borrower can access credit, and have an outstanding loan balance for 11 months out of the year (Table 3).[7]

Table 3. Maximum annual period of indebtedness based on outstanding loan balance, pay period frequency and consumer choice to access repayment plan

Paycheck frequency	After six consecutive months of indebtedness	
	Subject to repayment plan	Subject to cooling off period
Weekly	11 statement periods	11 statement periods
Twice Monthly	10 statement periods	11 statement periods
Monthly	8 statement periods	11 statement periods

Disclosure of rates and disclaimers about the financial repercussions of repeat use are also insufficient to prevent a long-term cycle of debt. Wells Fargo provides the following disclaimer to borrowers accessing loans through the Direct Deposit Advance program:

> "We do not recommend regular, repeated use of the Direct Deposit Advance service – if you find yourself in that situation, we encourage you to seek credit counseling (many agencies can be found in your local telephone book) and explore other credit options." [8]

We believe that disclaimers are likely to have little effect when borrowers are permitted to have outstanding Direct Deposit Advance loans up to 11 statement periods per year.

Direct Deposit Advance is similar to high-cost, short-term credit products that the OCC has prohibited or opposed in previous circumstances

The OCC has taken enforcement action to prohibit national banks from originating high-cost, short-term credit products in many cases and has publicly opposed legislation that would permit financial institutions from offering high-cost, short-term credit products through a national charter.

[7] Id.
[8] Id.

In 2001, the OCC and Eagles National Bank entered into a Consent Order to cease originating, renewing, or refinancing loans in conjunction with the non-depository payday lender Cash 'til Payday.[9]

In 2002, the OCC and Goleta National Bank entered into a Consent Order stemming from charges that the bank's relationship with ACE, a non-depository payday lender, resulted in violations of the Equal Credit Opportunity Act, and constituted unsafe and unsound banking practices.[10]

In 2003, the OCC and Peoples National Bank, Paris, Texas entered into a Consent Order stemming from charges that the bank's relationship with Cash America, a non-depository payday lender, resulted in violations of the Truth-in-Lending Act, the Equal Credit Opportunity Act, and constituted unsafe and unsound banking practices.[11]

In 2003, the OCC and First National Bank in Brookings, South Dakota entered into a Consent Order stemming from charges that the bank's relationship with Cash America, a non-depository payday lender resulted in violations of the Truth in Lending Act. The OCC charged that First National Bank in Brookings failed to identify the source of repayment and to assess the borrower's ability to repay the loan, in connection with short-term consumer loans originated in the name of or on behalf of the bank.[12]

In July 2012, OCC staff provided testimony to the House Committee on Financial Services opposing the passage of H.R. 6139 , a bill that would provide special status and federal benefits to companies and third-party vendors of payday loans, refund anticipation loans, automobile title loans, and other products.[13] The OCC stated that, based on their supervisory experience, these products were based on a business model that relied on high fees, repetitive use, high defaults, and inadequate legal compliance.

Previous enforcement actions and supervisory experience that high-cost, short-term lending relies on high fees and repetitive use strongly suggest that the Direct Deposit Advance product does not meet standards for safe and sustainable lending established by the OCC in previous circumstances.

Direct Deposit Advance is not subject to the consumer protections afforded to Service members under the Military Lending Act (MLA)

We are also concerned that Direct Deposit Advance loans are structured as open-end credit transactions and, as a result, evade interest rate restrictions and safeguards for key assets for loans made to active duty service members and their dependents.

As implemented by Department of Defense (DOD) rules, the Talent-Nelson Military Lending Act of 2006 prohibits lenders from making payday, auto title and refund anticipations loans in excess of 36 percent APR to active duty service members and their covered dependents. Direct Deposit Advance loans meet most of the criteria for covered loans under the Military Lending Act rules, including a term of less than

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9 Consent Order, Eagle National Bank, Upper Darby, Pennsylvania (No. 2010-10), available at http://www.occ.gov/static/news-issuances/news-releases/2002/nr-occ-2002-1-fact-sheet.pdf

10 Consent Order, Goleta National Bank, Goleta, California (No. 2002-93), available at http://www.occ.gov/static/news-issuances/news-releases/2002/nr-occ-2002-85-consent-order-93.pdf

11 Consent Order, People National Bank, Paris, Texas (No. 2003-2), available at http://www.occ.gov/static/enforcement-actions/ea2003-2.pdf

12 Consent Order, First National Bank in Brookings Brookings, South Dakota (No. 2003-1), available at http://www.occ.gov/static/enforcement-actions/ea2003-1.pdf

13 *Examining Consumer Credit Access Concerns, New Products and Federal Regulations* (1012th Cong. (2012) (Testimony of Grovetta Gardineer) available at http://financialservices.house.gov/UploadedFiles/HHRG-112-BA15-WState-GGardineer-20120724.pdf

91 days, a principal amount less than $2,000 and deferred repayment of the loan contemporaneous with the receipt of a paycheck.[14]

An exemption was made by DOD for open-ended credit, however, resulting in Direct Deposit Advance loans being exempt from the consumer protections for payday loans provided by the MLA. A Consumer Federation of America study of the impact of the MLA found that Direct Deposit Advance loans are currently available in states where Wells Fargo has branches on military bases and that the product is not subject to oversight and enforcement action by the Department of Defense (DoD).[15] The similarities between the Direct Deposit Advance product, which is permitted under existing DoD rules, and covered products such as some payday loans, which subject to interest rate caps under DoD rules, warrants further consideration by the OCC. We also believe that the OCC should downgrade Wells Fargo's Community Reinvestment Act (CRA) score for failing to meet the credit needs of service members by making a credit product available to service members that is functionally similar to a product effectively banned by the MLA interest rate cap.

Recommendations to improve Direct Deposit Advance products

Based on the these findings, we recommend that Wells Fargo receive a downgraded score on its forthcoming CRA performance evaluation, the Services Test, in each metropolitan and state assessment area where the product is offered. In addition, we believe that the bank should receive a downgraded score for its overall evaluation. We also recommend that the OCC require Wells Fargo to discontinue to product or restructure it according to the Federal Deposit Insurance Corporation's "Affordable Small-Dollar Loan Guidelines."[16] The guidelines lay out a number of recommendations for structuring short-term small dollar loans made by depository institutions. They also state that institutions that adopt these guidelines for small dollar loan products will receive positive consideration under the Community Reinvestment Act and will not be penalized by FDIC examiners.

Based on the FDIC guidelines, we strongly encourage that both the bank and the OCC to take the following steps to improve future transaction account-based credit products to ensure that those products are designed to meet the financial services needs of their accountholders.

1. **Establish a reasonable rate:** The FDIC recommends an interest rate of 36 percent or less for small-dollar loans made by depository institutions, far less than the 76 to 391 percent interest rates charged to Direct Deposit Advance borrowers.

2. **Affordable payments:** Loans should be modified to be longer-term and fully amortizing to encourage principal reduction. Very short-term loans with balloon payments make repayment difficult without financial hardship or additional borrowing.

3. **Sound underwriting:** Loans should be based on a borrower's ability to repay the loan as agreed, rather than electronic access to a borrower's paycheck through direct deposit.

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[14] 32 C.F.R. § 232.3(b)(1)(i)

[15] Fox, Jean Ann. *The Military Lending Act Five Years Later: Impact On Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign Against Predatory Lending*. Washington, D.C.: Consumer Federation of America, May 2012. http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf.

[16] Affordable Small-Dollar Loan Products Final Guidelines, FIL-50-2007 (June 19, 2007). http://www.fdic.gov/news/news/financial/2007/fil07050.html.

Conclusion

We appreciate the opportunity to comment on the Direct Deposit Advance product and its ability to meet the credit needs of those communities served by Wells Fargo. Based on our stated concerns with the Direct Deposit Advance product, we believe that product meets the criteria for abusive lending defined by both consumer lending reform advocates as well as the OCC. Likewise, the product does not meet the criteria defined by the FDIC for positive consideration under the Community Reinvestment Act. We respectfully request that the OCC downgrade both the bank's Services Test score and the overall score and direct the bank to eliminate or restructure the product to meet the Federal Deposit Insurance Corporation's "Affordable Small-Dollar Loan Guidelines."

Respectfully submitted,

Americans for Financial Reform
Center for Economic Integrity
Coalition of Religious Communities
Consumer Action
Consumer Federation of America
Consumers Union
Economic Fairness Oregon
National Consumer Law Center, on behalf of its low income clients
National People's Action
U.S. PIRG

cc: **Wells Fargo, NA**
Consumer Financial Protection Bureau