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Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW.
Washington, DC 20429
Via Email: comments@fdic.gov

Legislative & Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Via Email: regs.comments@occ.treas.gov

Re: Guidance on Deposit Advance Products, Docket ID FDIC-2013-0043

These comments are being filed by Kentucky Equal Justice Center concerning your deposit advance products proposed guidance. We are a statewide, non-profit legal advocacy program that represents the interests of low-income Kentuckians through litigation, legislative advocacy and administrative advocacy. We advocate for low-income Kentuckians on a variety of issues, including consumer protection, health, employment, immigration and housing. We work in partnership with legal services program around the state, and coordinate statewide task forces on a variety of topics, including consumer and housing law.

We frequently hear of problems from legal services clients who have become involved in repeated payday loans. Some clients can be assisted in defending against these practices, which in some cases are in violation of Kentucky law. Unfortunately, clients with numerous payday loans sometimes end up filing bankruptcy.

KEJC is also a steering committee member of the Kentucky Coalition for Responsible Lending, a group that advocates for legislative reform to limit interest on payday loans to 36% APR and to establish other reasonable loan terms. Current Kentucky law allows payday lenders to charge 400% APR interest and to require payment in most cases within 14 days. The typical payday loan borrower in Kentucky takes out 10 loans per year and ends up in a cycle of debt from which it is difficult to recover.

Some of the major banks that are engaging in deposit advance products are operating in Kentucky. We are very concerned about this practice for the reasons that you have identified and addressed in your proposed guidance. KEJC supports the Proposed Guidance on Deposit Advance Products (DAP) issued by both the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC).¹

¹We also support the OCC's withdrawal of its proposed guidance on Deposit-Related Consumer Credit Products published June 8, 2011.

The two substantially similar guidance documents apply to banks that make small-dollar, short-term loans – functionally similar to payday loans made by non-depository institutions. As both agencies note, these loans have high fees and must be repaid in advance of other bills by automatic withdrawal from the consumer’s bank account. These payments are made from the first available deposit. In addition, the majority of consumers have multiple DAP loans each year, resulting in a cycle of debt that leads to financial instability, economic deterioration, and account overdrafts, often leaving consumers worse off than had they not taken DAP loans.

The guidance notes concerns that we and other consumer groups have previously expressed. DAP loans are frequently made without regard to consumers’ ability to repay them as scheduled and still cover typical recurring household expenses. Consumers often take out other DAP loans to make up for the shortfall when the typical single-payment balloon loan payment is due, resulting in “churning” or continual refinancing. The lack of sufficient underwriting often results in overdrafts and NSF fees, which further harm customers and may ultimately result in the closure of the consumer’s bank account.

The consumer protections in the proposed guidance are essential but the guidelines need to be strengthened. In particular, any DAP must meet the following requirements:

Underwriting/Credit Policies

Banks must ensure borrowers can repay the loan according to the loan’s terms without refinancing or borrowing from others (churning) while meeting ordinary and necessary expenses. Sufficient underwriting should include a requirement that consumers have a satisfactory history with the bank, that DAPs should not be made to borrowers with delinquent/adverse accounts, and that borrowers have sufficient financial capacity to repay the DAP loan without repeat borrowing. Financial capacity should be reviewed periodically to determine if smaller and more frequent installment repayments are more appropriate. In addition, credit limits should be increased only upon consumer request, and only with full underwriting, including a review of overdrafts and other evidence indicating that the consumer may be overextended.

Cooling-Off Period

A cooling-off period is essential to limit the number of DAP loans that a bank may make to a consumer. We support the requirement of at least one monthly statement cycle between repayment of a DAP loan and a new advance, and a limit of no more than one loan per monthly statement cycle - taken together this means no more than 6 loans per year.

Fees

The guidance states that DAP fees should be based on safe and sound banking principles and banks should not unduly rely on DAP fee income for revenue and earnings. The APRs on DAP are expensive with an average APR of 304% to 456% depending on fees and duration.² We support an interest rate cap of 36% APR on DAP loans. Such an

²Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* (April 24, 2013), p. 28, available at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

interest rate cap would be consistent with safe and sound banking principles. This limit would also comport with the FDIC's 2007 Affordable Small-Dollar Loan Guidelines and with the usury limit for other small dollar loans in Kentucky and in many other states. Banks should not preempt state laws in this area.

Automatic Repayment

Banks, like any other lenders, have an interest in ensuring that legitimate, non-predatory loans they make are repaid. However, the requirement that DAP loans be paid first, before any other bills, by automatic deduction from the consumer's next paycheck, is unfair and amounts to a prioritized, secured loan. The bank is repaid prior to the consumer's landlord, utility company, or auto lender. This leaves the consumer without any choice in allocating payments and is coercive. Lenders have a right to repayment but consumers may need to prioritize other bills first.

Consumer Compliance and Oversight

We encourage the FDIC and OCC to monitor DAP programs through careful supervision, compliance, and enforcement. We are aware of only a few banks engaged in high-cost DAP loans and none that have entered the market in the last few years. This is due, in part, to the scrutiny of these programs by the prudential regulators and consumer advocacy groups. We urge the FDIC and OCC to continue to carefully review banks offering DAP loans. Failure to do so puts the banks' safety, soundness, and reputation at risk. Banks should not be making loans that are functionally equivalent to those made by non-depository payday lenders.

We greatly appreciate the opportunity to comment on the Proposed Guidance on Deposit Advance Products. We commend the FDIC and OCC for addressing DAP loans and taking these initial steps to control the debt traps these products pose for consumers.

Sincerely,

Anne Marie Regan
Attorney at Law