



Submitted via email

May 30, 2012

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

Robert E. Feldman, Executive Secretary
FDIC, ATTN: Comments
550 17th Street NW
Washington, D.C. 20429

Re: Proposed Guidance on Deposit Advance Products
Docket ID OCC-2013-0005
Federal Deposit Insurance Corporation 6714-01-P

Ladies and Gentlemen:

The Florida Bankers Association (FBA) welcomes the opportunity to respond to the Office of the Comptroller of the Currency's (OCC) and the Federal Deposit Insurance Corporation's (FDIC) Proposed Guidance on Deposit Advance Products (Guidance). The FBA represents and is the voice of banks of all sizes and charters throughout Florida. The FBA believes that the Guidance should be withdrawn as it: is unclear as to its impact on the safety and soundness of the bank, exceeds regulatory requirements, conflicts with current state law, limits customer choice, and should be administered as a regulation and not simply as guidance.

A. Safety and Soundness.

The basis given for the issuance of the Guidance is to protect the safety and soundness of the regulated banks. However, the Guidance does not contain a fully developed analysis showing how a bank's safety and soundness would be negatively affected by the product in question. There is no evidence that deposit advances make up a significant portions of bank's business. No empirical data is referenced to show that deposit advance programs place financial institutions at risk.

While issued in the name of safety and soundness, the Guidance seems to be directed solely at consumer protection.

B. Conflict with State Regulation.

Our state has long and comprehensively regulated lending. The Guidance prohibits activities that are legal under state law. We do not believe it appropriate for the agencies to propose guidance with only thirty days' notice, without hearing, with little

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evidentiary support, and with no meaningful benefit analysis a to overturn longstanding state law and policy.

C. Limitation of Consumer Choice.

The Guidance contains specific requirements which the agencies expect banks to follow. These requirements may well lead banks not to offer the product. This will result in less consumer choice. It will deprive the consumer of a much needed product from a highly regulated source. The consumer needs more, not fewer choices.

D. Procedural Issues.

It is not clear why the agencies have chosen to use the process of issuing guidance to impose a seemingly broad policy. It would seem at a minimum changes of this scope should be done by the rulemaking process. In the rulemaking process there is reasonable time for comment and the legal requirements for creating a rule must be observed. Use of the guidance process seems to circumvent the appropriate process.

The issues and concerns reflected in the Guidance have been with us for a long time. There is nothing that calls for the rush to a policy judgment at this moment that calls for bypassing the appropriate processes for dealing with the issues of concern to the agencies.

Indeed, it can be questioned whether the guideline procedure is legally appropriate for what the guidelines are attempting to do. The function of interpretative guidance is to clarify or explain existing law. They are not supposed to add to the existing substantive law. These guidelines appear to impose obligations and create rights, not merely interpret existing law.

For these reasons, we respectfully urge the OCC and FDIC to withdraw the Guidance.

We appreciate the opportunity to comment on the Guidance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony F. DiMarco". The signature is fluid and cursive, with a large initial "A" and "D".

Anthony F. DiMarco
Executive Vice President State Government Affairs

AD/ckt