

May 30, 2013

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Office of the Comptroller of the Currency  
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Docket ID OCC-2013-005

**Re: Proposed Guidance on Deposit Advance Products**

The Southern Poverty Law Center supports the Proposed Guidance on Deposit Advance Products issued by both the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies).<sup>1</sup> The consumer protections in the proposed guidance are essential and urgently needed. Despite these advancements, the guidance must be further strengthened in order to best protect consumers.

Deposit advance products function similarly to payday loans made by non-depository institutions. We have spoken to consumers across Alabama extensively about these loans, documenting the devastation these loans have caused in their lives in our report entitled “Easy Money, Impossible Debt: How Predatory Lending Traps Alabama’s Poor.”<sup>2</sup> As we noted in the report, the payday loan industry encourages consumers to borrow more money than they can afford to pay back, thereby securing multiple interest payments as these consumers are forced to renew their loans each time they come due. This is intentional and designed to maximize profit. As the owner of one payday store told us, “To be honest, it’s an entrapment—it’s to trap you.” To that end, we support the guidance provided by the Agencies to ensure that these loans, unlike traditional payday loans, are not used to entrap consumers unable to pay these loans, and instead extended in a way that supports on-time repayment of the loans.

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

<sup>2</sup> A copy of this report is *available at* <http://www.splcenter.org/get-informed/publications/easy-money-impossible-debt-how-predatory-lending-traps-alabama-s-poor>.

Additionally, we support the Agencies' proposed underwriting and related requirements, including (1) requiring that banks verify the borrower's ability to repay the loan and meet expenses without reborrowing based on an analysis of the customer's inflows and outflows, and (2) requiring a cooling off period of at least one monthly statement cycle. These critical provisions will alleviate some of the great harm that these loans have caused for consumers by ensuring that consumers can avoid the debt trap and repay their loan while still meeting other basic expenses such as food, shelter, and medical bills.

While we applaud these reforms, we also encourage the Agencies to clarify that safe and sound banking principles require allowing consumers a reasonable amount of time to repay their loan. Our report highlights that one of the most predatory features of small dollar loans is an abbreviated loan period that prevents a meaningful opportunity for on-time repayment. We spoke with many members of working families who noted the struggle to repay these loans in such a short period of time and also keep up with expenses for basic necessities. They were often forced to decide between keeping the lights on and repaying their loans. In the case of one such borrower, he and his young family had to go without electricity for three weeks in order to repay their loan. Responsible lending requires allowing borrowers enough time to repay their debt while also meeting their other expenses. We support the cooling-off period and the requirement that banks must determine whether an installment plan is more appropriate in light of the borrower's ability to repay, but we urge stricter guidance that would allow all consumers a reasonable period of time to repay their loans. Consistent with the FDIC's affordable small loan guidelines, consumers should have at least 90 days to repay their loans.

Currently, the fees on bank payday loans amount, on average, to between 304% and 456% annual percentage rate (APR), depending on the fees and duration of the loan.<sup>3</sup> The Agencies' proposed guidance underscores that fees must be based on safe and sound banking principles; clearly, fees in excess of 300% do not meet these standards. We urge the Agencies to clarify that safe and sound banking principles require that interest and fees be reasonable and, consistent with the FDIC's affordable small loan guidelines, should not exceed 36% APR, subject to state law limitations. A rate cap has proven to be the only effective way to address the multitude of problems that can arise from these lending practices.

We also urge the Agencies to prohibit banks from requiring that the loans be automatically repaid from incoming deposits as a condition of making a loan, which denies borrowers control of their checking account and discourages sound underwriting. The requirement that these loans be paid first, before any other bills, by the 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. Lenders have a right to repayment, but consumers may need to prioritize other bills first.

Moreover, this practice allows banks to evade federal protections against garnishment of Social Security benefits. Although these benefits are intended to cover basic monthly expenses, we spoke to

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<sup>3</sup> Consumer 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](http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf).

many individuals who were expending significant amounts of their benefits on interest payments, as they were unable to gather enough money to pay off their loans and forced to reborrow. We urge the Agencies to stop automatic repayment for all consumers, but especially those receiving Social Security benefits.

We would also encourage the Agencies to require banks who offer deposit advance products to explain lower cost options and make available financial education or credit counseling to repeat borrowers. It is important that consumers understand that these are very high cost loans, and that they are aware of other credit options and how to qualify for them.

Lastly, we ask the Agencies to conduct prompt and vigilant examination of banks' compliance with the finalized guidance and to take swift enforcement action to address any noncompliance.

As the government and advocates increase their efforts to track unbanked and underbanked households and involve them in the banking system, we must also ensure that these banks are safe and affordable for these consumers. Many of the consumers utilizing payday loans with whom we spoke also were offered deposit advance loans by their bank. There must be protections to ensure that deposit advance products are extended responsibly, and do not drag the most vulnerable consumers into further debt.

We greatly appreciate the opportunity to comment on the Proposed Guidance on Deposit Advance Products. We commend the FDIC and OCC for beginning the process of protecting consumers from these debt traps, and urge the Agencies to provide additional guidance to fully protect consumers.

Sincerely,  
Southern Poverty Law Center

cc: Board of Governors of the Federal Reserve System