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Federal Deposit Insurance Corporation
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Legislative and Regulatory Activities Division
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Docket ID OCC-2013-005

Re: Proposed Guidance on Deposit Advance Products

We are writing to thank the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) for the proposed Guidance addressing bank payday lending, which is a serious problem in Minnesota.

The Problem in Minnesota

Only a handful of banks in the country engage in direct payday lending, yet the two largest of these banks, US Bank and Wells Fargo, have an inordinately large market share of consumer deposits in Minnesota. Together, US Bank and Wells Fargo hold two-thirds of all deposits in the state. This means that a sizable number of Minnesota consumers are subject to being solicited by their bank for very costly, short-term loans that may leave them even worse off financially.

Many of the members of our unions and community organizations have used Wells Fargo's and US Bank's payday loan products, In a survey of more than 500 members of SEIU Local 26 who bank at Wells Fargo or US Bank, almost 100 people reported having gotten a payday advance loan from the bank.

The fees charged by US Bank and Wells Fargo are actually larger and their Annual Percentage Rates (APRs) are higher than other payday lenders in Minnesota that are covered by state law. For instance, on a $500 loan, ACE Cash Express and the UnLoan Company charge $29.50 which is the maximum allowed under Minnesota Statute § 47.59. Wells Fargo charges $37.50, and US Bank charges $50.

Fees and APR for a $500 loan

LENDER	FEE	APR (with a 10 day term)
US Bank	$50	365%
Wells Fargo	$37.50	274%
ACE Cash Express	$29.50	215%
The UnLoan Company	$29.50	215%

The largest payday lender in the country Advance America makes internet payday loans in Minnesota under Minnesota Statute § 47.60 and so has a maximum loan amount of $350 with a maximum fee of $26. For this same $350 loan, US Bank charges $35 and Wells Fargo charges $26.25.

Fees and APR for a $350 loan

LENDER	FEE	APR (with a 10 day term)
US Bank	$35	365%
Wells Fargo	$26.25	274%
Advance America	$26	271%

The proposed guidance states that the loan fees must be based on safe and sound banking principles. As shown above, the fees at US Bank and Wells Fargo are not. The interest rate and fees that banks charge should be reasonable and not in excess of 36% APR recommended in the FDIC's affordable small loan guidelines.

The OCC is correct that there is a need for responsible small-dollar credit products, and we agree that banks should offer products with reasonable terms and at a reasonable cost to meet these needs.

Similarities with Traditional Payday Lenders

The Guidance from the OCC and the FDIC accurately describes the similarities we see between the payday loans from US Bank and Wells Fargo and those from traditional payday lenders. In addition to the triple digit interest rates, Wells Fargo and US Bank engage in many of the same practices that are widely considered to be predatory in payday lending. For instance, Wells Fargo and US Bank make their loans without regard to the customer's ability to repay the loan. Wells Fargo and US Bank require the loans to be paid back in one lump sum within a short period of time, and allow repeat and continued use which can trap customers in a cycle of debt.

The guidance also describes one of the main contradictions of the bank payday loan product. On the one hand the banks market these loans as "intended for emergency financial assistance and as unsuitable for meeting a borrower's recurring or long-term obligations." On the other hand, the OCC points out that "the product's design results in consume behavior that is frequently inconsistent with this marketing and is detrimental to the customer."

US Bank and Wells Fargo both admit that their products are expensive and should only be used for the short-term. However, in practice US Bank allows customers to use their payday loan product continually for up to nine months, followed by 90 days for the customer to "cool off" before taking out more loans. Wells Fargo lets customers be indebted with payday loans for six consecutive months before cutting them off. After a one-month break, Wells Fargo customers may resume taking out payday loans.

Payday lending has a particularly adverse impact on African Americans and Latinos, since people of color make up a disproportionate number of payday loan users. In addition, a large number of bank payday loan borrowers are Social Security recipients, who are eligible for these loans if their benefit checks are direct deposited.

The Guidance also notes the methods that banks use to inform their customers of the availability of payday loans such as "on their account statement or a 'button' or hot link on their personal account web page, but it is not clear that the customers are made equally aware of less expensive alternatives." This is one of the main complaints of an SEIU member in Minneapolis who first learned of the loans a few years ago when an ad popped up on his computer. He estimates that since then he and his wife have taken out about two loans every month because even with strict budgeting they often don't have enough money to make it to payday.

He feels that since the loan products are aimed at people with credit issues, after all the years of using the product and paying the high fees, it should at least serve to improve his credit or lead to more traditional and lower cost credit at the bank.

The Guidance states that in evaluating whether a borrower will be able to repay the loan and still be able to pay their other expenses without having to take out another loan, the bank may decide that it is more appropriate to offer some borrowers an installment loan.

Another SEIU member from St. Paul has six kids. Last fall, he had to buy them school supplies. He clicked on ad that appeared on his online bank account to get an advance on his direct deposit. On his next payday, he had to pay back the full loan amount plus the fees, and this didn't leave him with enough money to pay his other bills. So he had to take out another loan. He did this twice a month for six months.

After that, Wells Fargo set it up so that rather than paying the whole loan back at one time, he paid the bank $100 from each paycheck. This raised the question, why can't Wells Fargo and US Bank set up the loans from the beginning with an option for borrowers can pay them back in installments?

Sincerely,

Centro de Trabajadores Unidos en Lucha (CTUL)
ISAIAH
Jewish Community Action
Minnesota AFL-CIO
Minnesotans for a Fair Economy
Neighborhoods Organizing for Change
SEIU Health Care Minnesota
Service Employees International Union Local 26
Service Employees International Union Local 284
Take Action Minnesota

cc: Board of Governors of the Federal Reserve System