NEW YORKERS FOR RESPONSIBLE LENDING

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Federal Deposit Insurance Corporation
Robert E. Feldman, Executive Secretary
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Washington, DC 20429
comments@fdic.gov

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
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Re: Docket No. FDIC-2013-0043, Docket ID OCC-2013-005
Proposed Guidance on Deposit Advance Products

Dear Comptroller Curry and Chairman Gruenberg:

The 40 undersigned members of the New Yorkers for Responsible Lending coalition (NYRL) write in strong support of the Proposed Guidance on Deposit Advance Products issued by the FDIC and the OCC. Deposit advance lending by banks is a form of abusive payday lending that should be flatly banned by regulators. We commend the FDIC and the OCC for releasing strong proposed guidance that will help curb bank payday lending, and urge the Agencies to further strengthen the guidance as outlined below.

NYRL is a 160-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent community development financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, housing counselors, and community reinvestment, fair lending, labor and consumer advocacy groups. Coalition members have detailed knowledge of the array of abusive financial services and lending practices that target low and moderate income New Yorkers and strip wealth from communities.

The deposit advance products offered by some national banks, including Wells Fargo, have many of the same dangerous and predatory features of non-bank payday loans. Deposit advance loans have triple-digit APRs as high as 300%, and a very short-term balloon payment tied to the receipt of a wage or benefit check (which can be collected through automatic access to the borrower's account). Like non-bank payday lenders, banks that make direct deposit advance loans do not underwrite them based on borrower's ability to repay, trapping lower income borrowers in a cycle of indebtedness when they inevitably must borrow more to pay back the loan and still pay for essentials such as food and housing.

In addition to being inherently abusive, deposit advance products threaten to undermine critical consumer protections in states, like New York, that currently ban payday lending. Under the state's 25% usury cap, New York has long banned the making of payday loans and other usurious short-term loans. Last year, Wells Fargo became the first national bank to attempt to introduce a deposit advance product in our state. New Yorkers were outraged that Wells Fargo would use its national bank charter to circumvent the state's usury protections, fearing that it would open the floodgates to payday lending in the state. Wells Fargo eventually agreed to postpone the introduction of the product in New York.

For years, the payday lending industry has been clamoring to break into New York's lucrative market. If national banks are allowed to make usurious deposit advance loans in New York, the state will be hard-pressed to prevent others from making the same type of usurious loans.

The proposed FDIC-OCC guidance will help prevent banks from making deposit advance loans, which will in turn prevent national banks from undermining strong state consumer protection laws against usurious loans.

Our groups **strongly support** the following provisions of the proposed guidance:

<u>Requiring that banks that make deposit advance loans verify borrowers' ability to repay</u>

Bank payday loans (and payday loans in general) are particularly predatory because they are made with no regard for a borrower's ability to repay. This creates an inevitable cycle of debt when lower income borrowers are forced to repeatedly borrow to repay the prior loan. The proposed guidance would directly address this problem by requiring that banks assess a borrower's ability to pay before they can take out a deposit advance loan. Banks would need to create underwriting requirements for the loans that would ensure that the borrower can repay the loan while also covering their other monthly expenses, without the need to borrow repeatedly. The underwriting requirements would include an analysis of the borrower's account for recurring deposits and withdrawals over at least six consecutive months.

<u>Limiting "churning" of loans by requiring a cooling-off period</u>

The payday lending model is dependent on borrowers repeatedly taking out a new loan because they are unable to pay off the prior loan while also covering monthly living expenses. The proposed guidance would strike at the heart of this predatory model by requiring that a deposit advance loan be paid in full before the extension of a subsequent loan, and by requiring a cooling-off period of at least one month after the repayment of a deposit advance loan before another deposit advance can be extended. In combination with the underwriting requirements, these limits on churning would make it difficult for banks to engage in payday lending.

In addition to the strong provisions referenced above, we urge the FDIC and OCC to include the following provisions in the final guidance:

The guidance should prohibit banks from requiring that loans be automatically repaid from incoming deposits

The proposed guidance fails to address another highly abusive feature of direct deposit advance lending: the banks' ability to require that the loan be repaid immediately when direct deposit funds are deposited into the borrowers' bank accounts. Banks automatically repay themselves from the newly deposited funds (up to the full available amount), before the customer has a chance to use these funds for any other purpose. If the deposit is not sufficient, the bank takes the remaining balance from the next incoming deposit. This type of unfettered access to a borrower's account prevents lower income borrowers from using direct deposit funds to pay for critical living expenses. Moreover, access to the borrower's bank account can trigger a cascade of shortfalls that banks use to gouge their customers with overdraft and insufficient funds fees. Banks offering deposit advances should not be permitted to take advantage of their full control of borrowers' bank accounts to collect on unaffordable loans. We strongly urge the FDIC and OCC to prohibit banks from requiring automatic repayment through direct access to the borrowers' accounts.

The guidance should limit the total fees and interest that banks can charge for deposit advance loans

We agree with advocates from around the country that the FDIC and OCC should go further and explicitly limit the total fees and interest that can be charged on deposit advance products. The agencies should clarify that safe and sound banking principles require fees and interest to be reasonable, and that consistent with the FDIC's guidelines for affordable small-dollar loans, the APR on deposit advance loans should not exceed 36%. This limit should not, however, preempt stronger state usury protections, such as New York's 25% criminal usury cap.

Conclusion

Banks should not be in the business of making payday loans. Deposit advance loans trap lower income borrowers in a cycle of debt, strip equity from communities, and undermine state law in states like New York that have strong consumer protection laws against payday lending.

We commend the FDIC and OCC for offering strong proposed guidance that will help curb abusive deposit advance loans, and urge the two Agencies to further strengthen the guidance to ensure that banks no longer engage in payday lending.

Sincerely,

Albany County Rural Housing Alliance, Inc.
ANHD Inc.
Bedford-Stuyvesant Community Legal Services
Bridge Street Development Corporation
Brooklyn Cooperative Federal Credit Union
Buffalo Urban League

BWICA Educational Fund, Inc.
CAMBA Legal Services
Central New York Citizens in Action, Inc.
Chhaya CDC
Cypress Hills Local Development Corporation
District Council 37 (AFSCME) Municipal Employees Legal Services
Empire Justice Center
Fair Housing Council of Central New York
Fifth Avenue Committee
The Financial Clinic
Genesee Co-op FCU
Grow Brooklyn
JASA/Legal Services for the Elderly in Queens
Legal Services - NYC
Long Island Housing Services, Inc.
Lower East Side People's Federal Credit Union
MFY Legal Services, Inc.
National Federation of Community Development Credit Unions
NEDAP
Neighborhood Housing Services of New York City
Neighborhood Preservation Coalition of NYS, Inc.
Neighbors Helping Neighbors
New York Legal Assistance Group
New York Public Interest Research Group (NYPIRG)
New York State-Wide Senior Action Council, Inc.
Pratt Area Community Council
Queens Legal Services
South Brooklyn Legal Services
Syracuse United Neighbors
Syracuse University Securities Arbitration and Consumer Law Clinic
Teamsters Local 237
University Neighborhood Housing Program
Westchester Residential Opportunities
Western New York Law Center

cc: Federal Reserve Board