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Sent: Wednesday, May 29, 2013 12:58 PM
To: Comments
Subject: Proposed Guidance on Deposit Advance Products (FR Doc 2013-10101)

May 29, 2013

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
comments@fdic.gov

Re: "Proposed Guidance on Advance Deposit Products" (FR Doc. 2013-10101)

Thank you for the opportunity to comment of the FDIC Proposed Guidance on Deposit Advance Products.

As a military legal assistance attorney and retired Marine Corps Judge Advocate, I have become very familiar with the payday lending industry, particularly in North Carolina, and particularly as it relates to military service members. I am acutely aware of the harmful effects of payday loans on service members and their families, and the industry's relentless efforts to evade law and regulation or to change it to their advantage. I am also aware of the industry's marketing and targeting of service members. While I do not write at this time as an authorized spokesperson for the armed forces, my opinion is informed by my experience as a Marine, a judge advocate, four assignments as active duty legal assistance attorney, and service as civilian legal assistance attorney for Camp Lejeune and Marine Corps Installations East.

The recent CFPB study, the 2004 comments of FDIC's Director Thomas Curry, numerous academic studies, and common sense, show that, though payday lending is touted as a cure to a one time emergency need for cash, it results instead in the vast majority of cases in a cycle of increased debt and borrowing. The debtor is unable to pay off the first loan and thereby obtains an additional loan to pay off the first, and then can't immediately pay off the second loan, and obtains a third, and so on, each time incurring additional interest. Multiple repeat loans are the rule rather than the exception.

In the past, the Commandant of the Marine Corps, the Commanding General, Marine Corps Installations East, and the Navy and Marine Corps Relief Society have spoken out forcefully concerning the adverse effects of payday lending.

The State of North Carolina, its Attorney General, its Banking Commission, and ultimately its legislature, have worked very hard to rid this state of the scourge of payday lending and to defeat the subterfuges, legal strategies and evasions used by payday lenders to continue their practice. Authorizing payday lending by banks undermines these efforts, to the detriment of North Carolinians and the military community.

When statutory authorization to make payday loans in North Carolina expired and was not reauthorized, one would have thought that payday lending would have immediately ended in this state. Such was not the case, however. One of the many ruses to continue the practice was to establish tenuous affiliations with national banks in order to evade state regulation under the National Bank Act. After far too much time and expense,

these schemes were defeated. However, now actual national banks will be offering payday loans and will in fact avoid state regulation, bringing back the payday loans that this state has worked so hard to eliminate.

Nor are there any protections for military service members and their dependents against bank payday loans. The Military Lending Act, through its implementing regulation, only covers closed ended credit. Payday loans offered by banks may be couched as, or may actually be, open ended credit, thus evading the MLA.

I welcome the FDIC's efforts to at least limit payday lending by banks through rules that force lenders to make loans only to persons likely to make timely repayment, to provide payday loans only to borrowers who have been bank customers for at least six months, and to provide a 30 day cooling off period prior to making an additional loan. I also understand that lenders making these loans will be required to comply with Truth in Lending Act disclosures. If history is any guide, the industry will evade these regulations in the absence of rigorous enforcement.

In addition, I suggest the following:

- Set a cap on the maximum amount of the loan;

- Set a minimum payback period of at least 90 days, thereby decreasing the likelihood of default;

- Set a maximum annual percentage rate of interest of 36% or the maximum interest authorized by the state in which the lender sits (whichever is less), thereby providing lenders with incentive to make such loans without the imposition of unreasonably high interest or the undermining of state law; and

- Eliminate the bank's ability to automatically repay itself from the depositor's account. Such automatic repayment deprives the borrower of due process to contest any amount owed, and also will inevitably result additional fees for nonsufficient funds checks, which will result in still more NSF checks and fees, in a devastating cascade of expenses.

Thank you once again for the opportunity to comment on this important issue.

Respectfully

Michael S. Archer