SYRACUSE UNIVERSITY

COLLEGE OF LAW
Office of Clinical Legal Education

May 29, 2013

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

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Div.
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, D.C. 20219
regs.comments@occ.treas.gov

RE: Docket No. FDIC-2013-0043, Docket ID OCC-2013-005
Proposed Guidance on Deposit Advance Products

Dear Comptroller Curry and Chairman Gruenberg:

As student attorneys with the Syracuse University Securities Arbitration and Consumer Clinic, we strive to assist small investors and other consumers with problems in the financial and consumer markets. Recently, the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") have proposed guidance addressing Advance Deposit Products. In our opinion, the proposed guidance is a step forward in addressing the various problems associated with deposit advance products, in particular, the relaxed underwriting requirements and the failure to monitor the borrower's ability to repay such loans.

Deposit advance products are structured as short-term, small-dollar credit products offered by financial institutions designed to meet short-term credit needs. Deposit advance products provide credit to relatively low-income individuals who may be ineligible for other forms of credit, allowing them to adjust for unexpected expenses and smooth out their spending and consumption. We encourage financial institutions to respond to this market need; however, they must meet this demand in a responsible manner. The proposed guidance offered by FDIC and OCC is a necessary step in assuring that financial institutions offer these products in a safe and responsible manner.

In April, the Consumer Financial Protection Bureau ("CFBP") issued a study on deposit advance products which found that a sizeable share of deposit advance users conduct transactions on a long-term basis, suggesting that they are unable to fully repay the loan and pay other expenses without taking out a new loan shortly after. Two-thirds of deposit advance borrowers in the study had seven or more loans in a year, which were mostly taken within 14 days of a previous loan being paid back. The study highlights that many deposit advance users do not have sufficient income to retire the debt taken on within a short-period of time, leading to consumers getting caught up in spiraling debt. Our experience with payday loans in the Clinic is similar to the CFBP study. Many clients have been stuck in a seemingly never-ending cycle of short-term loan payments.

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While not on the same scale as the subprime mortgage crisis in 2008, many of the principles are applicable to deposit advance products. A lesson learned from the mortgage crisis is that consumers that are placed into debt greater than they can afford ultimately leads to issues down the line that affect consumers, lenders, and the credit market as a whole. The proposed guidance by FDIC and OCC is a necessary step to insuring that consumers are not placed into spiraling debt resulting from deposit advance products.

There is a real concern, based on that previous experience, that deposit advance product providers have ample opportunities for predatory lending. Unscrupulous lenders can extend to consumers credit that they cannot afford, especially when fees and service charges are factored in. This is particularly concerning when banks are offering these products. With direct access to their customer's accounts, a bank can deduct payments for deposit advances as soon as paychecks are deposited, before the customer has the opportunity to pay rent, purchase food, or meet their other essential expenses. At their worst, these providers create a dependency on their loans as consumers require a new loan each payday to meet their obligations. This starts a cycle that eventually pulls the unwary customer further and further into debt as the interest and fees increase each month. A consumer should not be put in a situation where, after a majority of his or her paycheck has been taken by the bank to repay a loan, the consumer is forced to turn to that bank for yet another short-term loan just to put food on the table.

It is important that regulators like FDIC and OCC take steps to ensure deposit advance loans are not predatory. These products are non-predatory when a) they are only extended to persons who are sufficiently credit worthy, and b) protections are put in place to prevent sustained use of payday loans that credit a cycle of dependency on the credit. FIDC's and OCC's draft guidance wisely addresses both of these concerns. With this proposed guidance, FDIC and OCC have taken steps to ensure banks should only extend deposit advance loans to those who have the ability to pay it back. The suggested eligibility criteria for deposit advance products specifically include a review of the customer's credit history with the bank as well as the financial capacity of the customer. In addition, the proposed cooling off period and the ongoing customer eligibility review will curb sustained, predatory use of deposit advances. These are positive steps, and we applaud FDIC's and OCC's efforts to curb the abuse of these products.

While we feel that FDIC's and OCC's proposed guidance is a strong, positive first step, we continue to have some concerns about what is not covered by the guidance. The largest concern we have is that the guidance contains no proposed interest rate cap or other restrictions on the interest banks may charge customers using these products. As banks regulated by FDIC and OCC may be exempted from state usury statutes, we urge OCC to amend the guidance to include a range or other limits on the amount of interest that should be charged for these products. Relatedly, deposit advance products should also have a transparent fee structure that does not overcharge consumers, most of whom are in financial distress and have little leverage to negotiate with the bank offering them a deposit advance.

In conclusion, we thank FDIC and OCC for their willingness to regulate these abuse-prone financial products and appreciate the opportunity to comment on the proposed guidance. We urge FDIC and OCC to adopt this guidance, although we strongly urge FIDC and OCC to first amend it to include greater protections against predatory interest rates and fees.

Sincerely,

Ronny Chan

Edward J. Thater

Student Attorneys
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Approved: