OKLAHOMA BANKERS ASSOCIATION

We make bankers better!

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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Re: Docket ID OCC-2013-0005: Proposed Guidance on Deposit Advance Products
Federal Deposit Insurance Corporation 6714-01-P

Good Morning:

This comment on the Proposed Guidance on Deposit Advance Products set out in the above-reference dockets is being submitted on behalf of the Oklahoma Bankers Association.

The Oklahoma Bankers Association has represented our member banks for more than 116 years. We currently represent 243 banks chartered or doing business in the state and one of our functions of membership is to provide member banks with the necessary tools and regulatory environment needed to serve their communities.

There are significant reasons why the guidance should not be imposed without serious and substantive discussion and analysis of its likely effects both on institutions and on consumers.

<u>Safety and Soundness</u>

The basis claimed for the issuance of this guidance is to protect the safety and soundness of regulated banks. The guidance contains no fully developed analysis showing how a bank's safety and soundness would be negatively affected by the product in question. There is no evidence that deposit advances make up a significant portions of any bank's business. No empirical data is referenced to show that deposit advance programs place financial institutions at risk.

While issued in the name of safety and soundness, the guidance seems to be directed solely at consumer protection. This is a matter that seems much better left in the hands of the CFPB after appropriate study than to be dealt with in the form of bank regulatory guidance in a 30-day comment timeframe.

<u>Use of Guidelines for Policy Making</u>

The procedure being followed, the issuance of guidelines based on bank safety and soundness, is a thinly disguised attempt to impose additional consumer protections within the existing regulatory framework. We are deeply concerned with such precedent. It will undermine the stated goal of developing innovative, fair and transparent services in an efficient manner.

The use of guidelines to impose significant policy changes subverts the stability of the regulatory system. We believe "safety and soundness" concerns are being used as a vehicle or an excuse to impose these consumer protections on our member banks. These policies have not been developed in a transparent fashion with input from all stakeholders but rather are being imposed without discussion and with very limited comment. If this is to be regular procedure the regulated community has much about which to be concerned.

It is not clear why the agency has chosen to use the process of issuing guidelines to impose what seems to be a consumer protection rule on small-dollar loans. It would seem at a minimum changes of this scope should be done by the rulemaking process. In the rulemaking process there is reasonable time for comment and the legal requirements for creating a rule must be observed. Use of the guidelines in the manner being proposed seems to circumvent the appropriate process.

The function of interpretative guidance is to clarify or explain existing law. Such guidance is not supposed to add to the existing substantive law. These guidelines go beyond clarifying or explaining existing rules and impose obligations and create rights that did not exist before. These proposed guidelines do not merely interpret existing law.

<u>The Guidelines Will Stifle Product Development and Harm Consumers</u>

It has been well documented that millions of people from time to time need small short-term loans. Study after study shows the demand for this product.

Small loans are more costly than large loans. Lenders as well as public and private groups have struggled for years with how to make such loans.

The proposed guidelines lock banks making small loans into underwriting them on standard loan underwriting criteria, limiting the number of loans made per year and prohibiting sequential loans. This proposal specifically defines the nature of the product and leaves no room for innovation. While the proposed guidance states "[T] OCC encourages banks to respond to customer's small-dollar credit needs…" there is little room for institutions to be innovative in view of the requirements imposed by the guidance.

<u>The Guidelines Will Diminish Small-Dollar Credit to the Detriment of Consumers.</u>

We believe it is likely that banks who currently offer the deposit advance product will cease to do so. It is also likely that given the requirements of the guidelines there will be little incentive for banks to try to develop small dollar products in the future. The effect of the guidelines will be to reduce the sources of small-dollar lending and limit competition in the marketplace.

As currently written, the guidance does nothing to resolve the underlying problem of consumers who have difficult financial conditions, poor credit histories and no immediate resources. It simply takes away an existing option for them and leaves them to rely on other strategies such as credit cards, overdraft protection, and payday loans.

What's even more troubling is that if these other sources of incomes are denied them then the choice will be to go to unregulated lenders or worse. Limiting the players and the products involved in small-dollar lending will not advance consumer's interests. Consumers need more, not less, choice.

Conclusion

The guidance should be withdrawn and the Agencies should work with the banking industry, CFPB and other interested parties to find a way to address consumer protection concerns without trying to address them under the appearance of implementing these rules as a matter of safety and soundness guidance. We appreciate and support the goals of the Agencies in protecting consumers. However, the issues involved in small-dollar lending are complex and have many implications. Imposing the proposed guidance will have negative consequences on the consumers who need the product. The proposed guidance is not the answer. Further consideration is needed.

Sincerely,

Roger M. Beverage
President & CEO
Oklahoma Bankers Association