



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

May 30, 2013

By Electronic Mail

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

Mr. Thomas J. Curry, Comptroller of the Currency
Legislative and Regulatory Activities Division,
Office of the Comptroller of the Currency,
400 7th Street, SW., Suite 3E-218,
Mail Stop 9W-11,
Washington, DC 20219
regs.comments@occ.treas.gov.

re: Proposed supervisory guidance on financial institutions deposit advance products
FDIC - 6714-01-P
OCC - Docket ID OCC-2013-0005

Dear Mr. Feldman and Mr. Curry:

I am writing in response to the request for comments regarding the proposed supervisory guidance on deposit advance products issued by the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC"). Thank you for this opportunity. As the primary consumer advocate for the state of Arkansas, I appreciate that each of your agencies has recognized the importance of including consumer protection concepts in the regulation of the financial institutions subject to your regulatory authority. Assuring that the financial products offered by your regulated institutions not only comply with traditional notions of safety and soundness but also serve the best interests of the consumers and fully comply with

all applicable consumer protection laws will ultimately serve the best interest of our communities, our states, and the nation.

I agree with the concerns expressed by the FDIC and OCC regarding the potential harm to consumers represented by the deposit advance products currently offered by financial institutions. This same potential for harm was noted recently by the Federal Reserve. These concerns find ample support in the recently released findings of the CFPB. Clearly, the time has come to act and I applaud your agencies for this prompt action. We support your plans for a full, prompt and thorough review of all deposit advance products offered by the financial institutions, and in particular I applaud your decision that the focus of this review will be on the borrower's ability to repay the advance while maintaining the ability to meet recurring expenses.

Most states have enacted laws and adopted regulations to address short term lending, including products similar to the deposit advances which are the subject of your proposed guidance. Arkansas, along with a number of other states, has been very successful in protecting its citizens from the harm caused by these types of financial products.

Where usury is concerned, Arkansas is unique in the protection afforded its citizens. For well over 100 years, the people of Arkansas have prohibited usury by including an interest rate cap in their Constitution. Presently, that cap prohibits interest on debt greater than 17% per annum. I fear that some deposit advance products currently offered, or possibly contemplated by, some financial institutions may undermine the public policy represented by such state laws and regulations. I urge your agencies to consider such public policy considerations in your examination of the deposit advance products.

The similarities between deposit advance products and the variety of loan products which have been subject to scrutiny by the states are striking. All have high fees relative to the amount loaned. Most are short term, single payment loans. And most importantly, all are typically offered, and re-offered, with little or no consideration given to the borrower's ability to repay the loan in due course and without the necessity of re-borrowing. In fact, my offices' experience with the abusive lending practices with which we have had to contend convinces us that the lenders not only allow the lending products to engender the re-borrowing debt trap, they design the products and the underwriting to guarantee it.

There is nothing about the deposit advances which suggests that they will be any different. Deposit advances have high fees (\$7.50 to \$10.00 per \$100 loaned) and are repaid in a lump sum, typically in less than one month, often in just a few days. The effective annual percentage rate for these deposit advances ranges from 225% to 300%, or higher. And, as shown in the CFPB study, the need for the borrower to re-borrow in order to meet necessary expenses appears to be the rule, rather than the exception, with the products studied by the CFPB.

On April 24, 2013, the Consumer Financial Protection Bureau ("CFPB") issued a 'White Paper' on payday lending. The CFPB analyzed both traditional payday loans and deposit advance

lending products. The CFPB's conclusion confirms those of other studies, including one by the Department of Defense¹, that these types of financial products are not beneficial to consumers and very often lead borrowers into a debt trap. According to the CFPB's recent study, borrowers take out an average of eight deposit advances per year, 19 or more per year for highest use group. The result is that the average deposit advance user was in debt 7 months out of the year.

Additionally, the CFPB found a disturbingly high volume of fixed income borrowers utilizing payday loans. A recent report by the Center for Responsible Lending found similar numbers among deposit advance users.² Because deposit advances are repaid upon receipt of the next sizeable deposit, borrowers lose the ability to prioritize their debts and expenses. For instance, a senior citizen subsisting on her monthly Social Security payment alone would lose the ability to decide to repay a deposit advance or to direct those funds to rent, healthcare, prescription medicines, or food.

I applaud both agencies on their efforts to ensure that proper underwriting will be undertaken, particularly as to the borrower's ability to repay the loan. Financial institutions should ensure the borrower can repay the loan, and meet other expenses, without re-borrowing. Accordingly, I agree with the Agencies' requirements that financial institutions verify the borrower's ability to repay the loan and meet expenses without re-borrowing; limitations on the number of loans extended to a customer in a given year; as well as an effective "cooling off" period.

While agreeing with the Agencies' requirements concerning ability to repay, borrowing limitations, and "cooling off" period, I urge the committee to consider interest rate limitations, such as Arkansas', as the most effective way to control the "debt trap" too often caused by irresponsible small-dollar lending. The Department of Defense found as much after extensive study and Congress acted accordingly in passing the Military Lending Act, which caps loans to military personal at 36% APR or lower as set by applicable state law.

Lastly, a financial institution should not only monitor for the number of overdrafts in considering whether or not to offer a deposit advance to a customer, it should also monitor whether or not offering a deposit advance caused an overdraft. Financial institutions offering deposit advance products should not be able to repay such an advance by over drafting the borrower's checking account. Being able to "repay" a deposit advance by overdrawing a customer's bank account places an additional burden on an already financially strapped customer and discourages the financial institution from conducting proper underwriting in the first place.

Like the FDIC and OCC, as well as numerous consumer groups, I recognize the need for safe, affordable and sustainable small-dollar credit products. However, these products should be

¹ *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (August 9, 2006).

² The Center for Responsible Lending found that over one in four deposit advance borrowers were Social Security recipients. Center for Responsible Lending, *Triple Digit Danger: Bank Payday Lending Persists* (March 21, 2013).

offered to consumers only upon legitimate consideration of the customer's ability to repay the loan without needing to re-borrow soon after repaying the previous loan. One model for such a product is set out in the FDIC's 2007 Affordable Small-Dollar Loan Program. Financial institutions should be encouraged to offer small-dollar credit products, but only if those products are safe and affordable, as well as in full compliance with both state and federal laws.

I thank the FDIC and the OCC for their initial steps in proposing much needed guidance in this important area. I encourage all agencies involved to move swiftly to implement meaningful regulation to ensure that the consumer protection concerns raised by both the FDIC and OCC are addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin McDaniel". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Dustin McDaniel
Attorney General