CFSA SM
COMMUNITY FINANCIAL SERVICES ASSOCIATION OF AMERICA
A COMMUNITY OF RESPONSIBLE LENDERS

515 KING ST., SUITE 300
ALEXANDRIA, VA 22314-3137
PHONE: 888.572.9329
FAX: 703.684.1219
E-MAIL: INFO@CFSAA.COM
ONLINE: WWW.CFSAA.COM

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

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

May 30, 2013

Re: *Docket ID FDIC-2013-0043: Proposed Guidance on Deposit Advance Products*
Docket ID OCC-2013-0005: Proposed Guidance on Deposit Advance Products

Dear Chairman Gruenberg and Comptroller Curry,

I am writing on behalf of the Community Financial Services Association of America ("CFSA") regarding the Federal Deposit Insurance Corporation's ("FDIC") and the Office of the Comptroller of the Currency ("OCC") proposed guidance on deposit advance products ("Proposed Guidance" or "Guidance"). It is CFSA's belief that the restrictive measures proposed in the Guidance would have a harmful impact on consumers by limiting their access to responsible credit options.

CFSA is the national trade association dedicated to advancing financial empowerment for consumers through short-term, small dollar loans. Now in its 14th year, CFSA was originally established to promote laws and regulations that protect consumers, while preserving their access to credit options, and to support and encourage responsible payday advance industry practices.

Despite the negative, and unfounded, suggestions about the payday advance industry in the Proposed Guidance, the need for short-term, small-dollar credit in our country is clear. While millions of Americans continue to struggle to make ends meet, there is a driving need and demand for short-term credit options offered by both bank and non-bank institutions. These short-term credit options help consumers manage financial shortfalls and avoid late payment fees. Taking a short-term option can also help customers avert damage to their credit scores or prevent a loss of such critical services like utilities and healthcare. Consumers value these options, using them as many times as they need to – and only as many times as they need to – in order to bridge a gap in their finances.

When faced with such financial challenges, consumers are able to examine their options and select the product or service that helps them overcome their challenges successfully and responsibly. A variety of competitive credit choices are available to consumers, including deposit advance products from banks, credit cards, overdraft programs, and other short-term options. Consumers are also able to weigh their decisions against the costs and consequences associated with late or missing bill payments, including bounced checks, late payments to credit card companies, and utility reconnection fees.

Many consumers use these comparable short-term, small-dollar products and services interchangeably. Thus, in evaluating these types of individual short-term credit options, they should not be regulated inconsistently or in a vacuum. Rather, any regulatory framework should consider how consumers use the credit options, include uniform disclosures, and apply any regulations in the same way to all comparable products, whether they are being offered by bank or non-bank institutions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") called for the consistent regulation of like products, regardless of the provider. This mandate serves as an important reminder to federal agencies seeking to propose new rules. While Dodd-Frank calls for regulation of like products to be consistent and similar for consumers, the restrictions in the Proposed Guidance would have the opposite effect of creating regulatory inconsistency among similar credit products and services.

For example, the Proposed Guidance requires a month-long cooling off period between the repayment of one deposit advance and the issuance of another, while other substitute products like overdraft require no such limit at all. This uneven application of rules results in preferential treatment towards one product at the expense of another, and is not in the spirit of a balanced regulatory approach. Such a restriction would serve to limit consumers' options without meeting their demand for a solution. Constraining consumers' access to certain forms of short-term credit, such as deposit advance products in this case, stifles competition and does not address the continued need for credit. Implementing the arbitrary rules proposed in the Guidance does not help to create a competitive marketplace.

In fact, despite the Proposed Guidance's language to the contrary, research has shown that deposit advance and related products do not have a demonstrable adverse effect on the welfare of consumers. The leading scholars on the use of similar products have determined that "the long-run effect of payday borrowing on credit scores and other measures of financial well-being is close to zero."[1] Against this backdrop, it is difficult to make any principled argument on a consumer-protection basis for the Proposed Guidance.

Additionally, there is no factual or evidentiary support for the idea, as asserted in the Proposed Guidance, that borrowers may be "caught in a cycle" of debt because of the high-cost nature of the product. Rather, research demonstrates that borrowers are not "caught" in high-cost debt with any greater propensity or duration than in lower-cost (or interest-free) debt.[2]

Unfortunately, there appears to be an implied element of deception in the Proposed Guidance: that consumers are being deceived by lenders or by their own cognitive biases into incurring short-term debt that is longer-term in nature. Such an implication is simply not supported by empirical research. Rather,

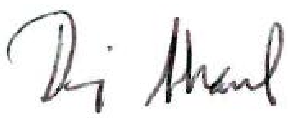
[1] Bhutta, Neil, Skiba, Paige Marta and Tobacman, Jeremy Bruce, "Payday Loan Choices and Consequences" (October 11, 2012). Vanderbilt Law and Economics Research Paper No. 12-30, available at http://ssrn.com/-abstract=2160947 (last visited May 28, 2013).

[2] Fusaro, Marc Anthony and Cirillo, Patricia J., "Do Payday Loans Trap Consumers in a Cycle of Debt?" (November 16, 2011), available at http://ssrn.com/abstract=1960776 (last visited May 28, 2013).

borrowers of these loan products generally repay after a number of renewals that comports extremely well with their expectations formed in advance of their first loan transaction.[3]

The federal government should develop fair and consistent regulation across the entire short-term financial services market, taking into account all of the products and services on which consumers depend. We encourage the OCC and FDIC to rethink this Proposed Guidance and to consider the perspective of the consumer within the short-term credit market.

Sincerely,



Dennis Shaul
CEO, Community Financial Services Association of America, Ltd.

[3]Mann, Ronald J., "Assessing the Optimism of Payday Loan Borrowers" (March 12, 2013). Columbia Law and Economics Working Paper No. 443, available at http://ssrn.com/abstract=2232954 (last visited May 28, 2013).