Arkansans Against Abusive Payday Lending

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

Re: Guidance on Deposit Advance Products

Arkansans Against Abusive Payday Lending supports the Proposed Guidance on Deposit Advance Products (Bank Payday Loans) issued by the Federal Deposit Insurance Corporation (FDIC).

In the state of Arkansas we had 275 Payday Lenders operating from 1999 until July 2009 when our Supreme Court, Attorney General and Consumer Groups worked together to require our state usury limit of 17% to be enforced. We know the long term pitfalls of Payday Lending far outweigh any short term advantages these products offer.

Payday Lenders left our state in 2009, but they have been replaced by 147 branch offices of four banks who are now the only lenders making Payday Loans in Arkansas. These banks are Regions Bank (97 branches), US Bank (45 branches), Wells Fargo Bank (3 branches) and Bank of Arkansas (2 branches). We had been fearful that additional banks will begin to offer this product to the determent of Arkansas consumers and are happy to see you will be issuing guidance to the banks you supervise.

Your guidance document applies to banks that make small-dollar, short-term loans – functionally similar to payday loans made by non-depository institutions. As your agencies noted, these loans have high fees and must be repaid in advance of other bills by automatic withdrawal from the consumer's bank account. In addition, the majority of consumers who take out one of these loans end up taking out multiple Deposit Advance Products loans throughout the year, resulting in a cycle of debt that leads to financial instability, economic deterioration, account overdrafts, and often leave consumers worse off than had they not taken the loans.

Your guidance notes concerns that we and other consumer groups have previously expressed. Deposit Advance Products are frequently made without regard to consumers' ability to repay them as scheduled while meeting their other recurring household expenses. Consumers often take out additional Deposit Advance Product loans to make up for the shortfall when the typical single-payment balloon loan payment is due, resulting in "churning" or continual refinancing.

The lack of sufficient underwriting also often results in overdrafts and NSF fees, which further harm customers and may ultimately result in the closure of the consumer's bank account thus placing them into the ranks of the unbanked.

The consumer protections in your proposed guidance are essential but the guidelines need to be strengthened. In particular, any Deposit Advance Products must meet the following requirements:

- **Underwriting/Credit Policies** - Banks must ensure borrowers can repay the loan according to the loan's terms WITHOUT refinancing or borrowing from others (churning) while meeting ordinary and necessary expenses and other financial obligations they might have. Sufficient underwriting should include a requirement that consumers have a sufficient satisfactory history with the bank, that Deposit Advance Products should not be made to borrowers with delinquent/adverse accounts, and that borrowers have sufficient financial capacity to repay the Deposit Advance Products without additional borrowings.

  Financial capacity should be reviewed periodically to determine if smaller and more frequent installment repayments are more appropriate. Credit limits should be increased only upon consumer request, and only with full underwriting, including a review of overdrafts and other evidence indicating that the consumer may be overextended.

- **Cooling-Off Period** - A cooling-off period is essential to limit the number of Deposit Advance Products that a bank may make to a consumer. We support the requirement of at least one monthly statement cycle between repayment of Deposit Advance Products and a new advance. Also a limit of no more than one loan per monthly statement cycle - taken together this means no more than 6 loans per year.

- **Fees** - The guidance states that Deposit Advance Product fees should be based on safe and sound banking principles and banks should not unduly rely on Deposit Advance Product fee income for revenue and earnings. The calculated Annual Percentage Rates on Deposit Advance Products are expensive with an average APR of 304% to 456% depending on fees and duration according to the recent study conducted by the Consumer Financial Protection Bureau. We support a cap of 36% annualized interest rate (including all fees) on Deposit Advance Products, or such lesser amount as is permitted under each state's usury law (17% APR in Arkansas, for example), to be consistent with safe and sound banking principles. This comports with the FDIC's 2007 Affordable Small-Dollar Loan Guidelines and many states small loan rate caps. Banks should not preempt state laws in this area.

- **Automatic Repayment** - Banks, like any other lenders, have an interest in ensuring that legitimate, non-predatory loans they make are repaid. However, the requirement that Deposit Advance Product loans be paid first, before any other bills, by the automatic deduction from the consumer's next paycheck, is unfair and amounts to a prioritized, secured loan. The bank is repaid prior to the consumer's landlord, utility company, or auto lender. This leaves the consumer without any choice in allocating payments and is coercive. Lenders have a right to repayment and will be repaid on time if proper underwriting is done prior to granting the loan, but consumers need to have the ability to prioritize their bills – all of their bills and Deposit Advance Loans should not take first priority.

- **Consumer Compliance and Oversight** - We encourage the FDIC to monitor Deposit Advance Loan programs through careful supervision, compliance, and enforcement. We are aware of only a few banks engaged in high-cost Deposit Advance Loans and none that have entered the market in the last few years. This is due, in part, to the scrutiny of these programs by the prudential regulators and consumer advocacy groups. We urge the FDIC to continue to carefully review banks offering Deposit Advance Products. Failure to do so risks the banks' safety, soundness, and reputation and banks should not be making predatory loans that are functionally equivalent to those made by non-depository payday lenders **– especially in a state like Arkansas that restricts non-depository lenders to a maximum interest rate of 17% APR**.

We greatly appreciate the opportunity to comment on the Proposed Guidance on Deposit Advance Products. We commend the FDIC for addressing Deposit Advance Product loans and taking these initial steps to control the debt traps these products pose for consumers.

Sincerely,

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