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Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
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Proposed Guidance on Deposit Advance Products

CANICCOR serves as a consultant to institutional investors with social concerns and/or social criteria for their investments. Over the past two decades, CANICCOR has repeatedly prepared reports on the social responsibility of the lending of all the major banking corporations in which the investors have held equity investments, and CANICCOR has served as their consultant in meetings with the corporations in which the corporations' lending policies and procedures were discussed.

In particular in 2005, our discussions with Wells Fargo (WFC) extended to the financing of payday lenders and then directly on WFC's deposit advances during the last couple of years. While I am familiar with their products and policies, no direct information on the effectiveness of their policies was provided by WFC. Thus my knowledge of the effect of such lending on borrowers has been from smaller studies of such lenders, so I am pleased to see the current release of the CFPB White Paper on their very extensive investigation of payday advances and deposit advances.

> The CFPB white paper provides some interesting contrasts between eligible users of deposit advances and eligible non-users[*]. The deposit advance users and non-users at the 25th percentile level had about the same monthly money deposits of about $1,800, but as the non-user deposits grow to around $5,700 at the 75th percentile, the deposit advance user level rises to only about 80% of that amount, thus suggesting lower average incomes. The average monthly debit **amounts** are comparable. However the **number** of monthly debits of deposit advance users is nearly twice as high as non-users, meaning the average of each user debit is about half as small as the non-user debit. The average daily account balance of the deposit advance user is less than 25% of that of the non-user. Thus this data shows that the non-users of deposit advances are much more likely to be saving money while the users of deposit advances are not nearly so secure financially.

[*] Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings, Figures 7 through 10 on pp 29 - 32, Consumer Financial Protection Bureau, 24 April 2013

The causes of this difference must be understood since they are the source for the deposit advance usage. They are probably a mixture of severe needs, such as major medical problems or a death in the family size on the one hand and chronic misuse of funds on the other hand. The latter makes up a significant portion at least of payday borrowers.[1] The question then becomes, how can a bank handle this mixture of deposit advance customers?

I am pleased to see that the OCC is proposing new guidance on deposit advance products and that it is still encourages banks under its supervision to respond to customer's small-dollar credit needs while being aware of the credit risks of some types of these loans**. I support much of the current proposal on the more careful oversight of the creditworthiness of these borrowers, but I urge the OCC to take a more active role in directing banks to develop more adequate small-dollar products.**

In particular as will be seen from my comments below, an adequate solution to the problems may be to convert the deposit advance programs into a short-term loan program or a payday loan program with the minimum loan period of one month, even if there are two pay periods in that interval. This approach will be discussed in my conclusion to these comments.

Before I make comments in detail on the Supervisory Expectations of this Guidance, I note both under *Credit Quality* and *Underwriting and Credit Administration Policies and Practices* the OCC's concern to prevent "churning" of these deposit advance loans. This churning undoubtedly helps create the problem of high fees charged for overdrafts/Non-Sufficient Funds (NSF), and I appreciate the OCC's concern about Over-Reliance on Fee Income by banks in the proposed guidance.

One of the disturbing reports in the recent CFPB white paper is that 65.6% of deposit advance users incurred overdraft/NSF fees while only 14.4% of eligible non-users incurred such fees[2]. This stark comparison suggests a strong link between deposit advances and overdraft/NSF fees. More analysis should be done to determine the causes of these fees.

> One cause could be an unexpected small direct deposit before their employer's pay deposit that would trigger the repayment of the deposit advance and draw down the account balance unexpectedly before the normal payday, thereby resulting in overdrafts when various normal payment checks, such as utility payments, are processed by the bank. I note that the OCC proposal states that ". . . some banks permit to extend through to a second direct deposit if the first direct deposit falls below a specific dollar threshold."[3] This approach should be required of all banks to reduce credit and reputational risks.
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> Another possibility is just the normal delay in other payment checks beyond the normal payday which the account holder did not monitor. In this case the fact that the large payment to the bank is given priority to the smaller payments to others can create several overdrafts on the same day. Again the OCC proposal states "In some cases, a bank will apply a time limit on how soon it will take the fee and the advance from the direct deposit, but the time limit is minimal, usually one or two days."[2] Thus a two day delay required of all banks might reduce these fees substantially. Also there should be a low cap on the number of OD/NSF fees that can be taken in any given day.

[1] "Payday Lending in America: Who Borrower Where They Borrow and Why" p. 14, The pew Charitable Trusts, June 2012

[2] *CFPB loc. sit.*, p.41.

[3] FDIC Proposed Guidance on Deposit Advance Products, p. 25269, Background, Repayment, Federal Register, 30 April 2013..

The solution to these problems may be to make these loans payday loans rather than deposit advances, so that the term is at least to the next regular payday. In fact according to the CFPB working paper, customers who take only $750 to $1,500 of advances per year and are therefore less frequent borrowers usually have 2 consecutive months with deposit advances in a year and average 29 days between advances.[4] This data suggests that perhaps a one-month payday loan be set up with a one rollover of a month permitted. That is in a given month, a payday loan taken out during the month be made payable on the last payday of the month, if there is more than one payday per month and permit one rollover of a month

Finally, I approve the proposals point under *Financial Capacity* under *Underwriting and Credit Administrative Policies and Practices* that "After conducting the above described analysis (for customers inflows and outflows) determine whether an installment repayment is more appropriate"[5].

The following section of my comments focuses on specific details of the proposed guidance.

Underwriting and Credit Administration Policies and Practices

Financial Capacity:

The Guidance says "'Underwriting assessments should consider the customer's ability to pay a loan without needing to borrow repeatedly . . ." However, the short term of these deposit advances, many of less than two weeks, makes repeated borrowing necessary in order for the borrower to save up money to cover a unexpected need for cash, such as medical expenses. However, bank monitoring of excessive use of repeated borrowing would also help separate those who chronically overspend from those customers that are truly in need for emergency financing.

I am also concerned that full underwriting of these loans of less than $500 may impose sufficient costs on the banks to cause them to cease providing such small loans. I am particularly concerned for those low-income customers with incomes of less than $20,000 per year that are required to have bank accounts to receive public assistance benefits or retirement income. The CFPB white paper[6] shows that borrowers of **payday loans** on public assistance/benefits account for 38% of the borrowers within this income range and retirees account for 23%. Presumably the distribution with **deposit advance** loans is even greater, since these income items are usually deposited automatically into the bank customers' accounts. **This concern is related to the broader Community Reinvestment Act which states that "the convenience and needs of communities include the need for credit services as well as deposit services".** While public assistance SSI and SSDI[7] would indicate that these deposits are the total income of these customers, banks may find it necessary upon analysis of the underwriting process to require the customers to report total income for deposit advances or payday loans. However, a reasonable balance must be made between underwriting costs and credit losses for customers using these small loans of a few hundred dollars.

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[4] *CFPB loc. sit.*, Figures 15 and 16 on pages 39 - 40

[5] FDIC, *loc. cit*., p. 25272

[6] *CFPB loc. sit.*, Figure 4, p 20

[7] Customers on SSDI have so little income that it would be necessary to reduce their limit or exclude them from the lending plan.

This Financial Capacity Guidance further says an assessment should be made by "An analysis of the customer's account for recurring deposits (inflows) and … (outflows) over the at least six consecutive months." to "determine whether an installment payment is more appropriate." I strongly support the conversion of repeated advances into installment payments. **This assessment by the bank could also provide a time for the bank to require the customer to seek credit counseling from a local non-profit if the customer appears to have become merely chronic in the use of deposit advances or payday loans.**

Cooling-Off Period:

The proposed guidance states "Each deposit advance loan should be repaid in full before the extension of a subsequent deposit advance, and banks should not offer more than one loan per monthly statement cycle. The guidance goes on to state that "A cooling off period of a least one monthly statement cycle after the repayment of a deposit advance should be completed before anther advance may be extended".

I would maintain that if a customer, who is paid biweekly, has a medical emergency and uses a deposit advance to cover it that borrower, in many cases will not be able to save enough to cover that amount in less than two weeks and would need to have another advance in the following pay period. I believe that if this guidance were carried out it could essentially shut down the provision of deposit advance loans by banks to customers with pay periods of twice or more a month.

Even for customers with monthly pay periods, the cooling-off period of the next month could be a serious problem, especially if the incident requiring the cash falls near the end of the pay period and the monthly statement cycle. Another problem is the correlation or lack thereof of the pay cycle and the monthly statement cycle.

While I support some limitation on the number of rollovers of loans, perhaps a two month maximum with a cooling-off period of a month thereafter is more reasonable. Thus I believe the timelines in the Cooling-Off Period portion of the guidance, as formulated, are not workable for deposit advance loans.

Third-Party Relationships

The proposed guidance states "Management should allocate sufficient qualified staff to monitor for foreign third-party relationships, excessive usages by borrowers, and excessive risk taking by the bank." This monitoring should also include payday loan companies' direct debits of the bank customers' deposit accounts. In the recent case of deposit accounts held by J.P. Morgan Chase (JPM), the payday loan companies' repeated attempts to debit the JPM customers' deposit accounts caused excessive overdraft/NSF fees. Among other actions, JPM is now only charging one fee for such a biller in a 30-day period and enhancing its policy to always follow a customer's instructions to stop a payment[8].

Summary

I am pleased to see that the OCC is proposing new guidance on deposit advance products and that it still encourages banks under its supervision to respond to customer's small-dollar credit

[8] "Chase Changes Policies Regarding Payday Lenders and Others Who Repeatedly Seek Payments from Customers", press release, J.P. Morgan Chase, 20 March 2013.

needs while being aware of the credit risks of some types of these loans. I support much of the current proposal on the more careful oversight of the creditworthiness of these borrowers, but I urge the OCC to take a more active role in directing banks to develop a loan product that is more protective of the consumer.

I too would like to see both the reduction of the "churning" of these deposit advance loans and the reduction of the concomitant large fees levied on these deposit advance borrowers in terms of overdrafts/NSF fees. I believe that the guidance under *Financial Capacity* providing for a six-month review of the customers record is generally good and could provide a time for the bank to recommend to the customer with repeated deposit advances either an installment payment loan and/or that the customer seek credit counseling.

I am also concerned that the proposed underwriting of these loans may become too expensive for banks to continue making these loans. **But I believe the banks which receive deposits for customers, especially low-income customers, have a duty under CRA to provide credit services too.** Thus a reasonable balance must be made between underwriting costs and credit losses for customers using these small loans of a few hundred dollars.

The suggested guidance in the section *Cooling-off Period* is too extreme in permitting only one deposit advance per monthly cycle subject to a cooling-off period of a month after the repayment of that loan before another deposit advance loan can be made. This is extreme since often a deposit advance is taken near the end of the monthly cycle. I think it would so significantly reduce the use of deposit advances that the banks would no longer offer them and thereby force the banks' deposit customers to use payday lenders instead. In that case, the banks will need to determine how they will handle their third party relations with these payday lenders used by their depositors as discussed above in the case of JPM.

In place of the deposit advance loans, I would propose that the banks offer one-month payday loans, to avoid any unexpected deposit prior to the payday, and permit a one month rollover after which a one month cooling off period could be required. That is in a given month, a payday loan taken out during the month be made payable on the last payday of the month, if there is more than one payday per month, and one rollover of a month should be permitted. A short-term loan of the same type could also be offered, but having a flexible payment date would undoubtedly raise the cost to the bank and perhaps make it unprofitable for such small loans. Term loans might also be confusing to customers that have used deposit advance or payday loans.

I hope my suggestions will be helpful, and I thank you for this opportunity to comment on this proposed guidance on payday advances.

Yours truly,

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