CNG FINANCIAL CORPORATION

May 29, 2013

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

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

To Whom It May Concern:

As President of CNG Financial Corporation, one of the largest non-depository providers of short-term loans in the country, I write to express my dismay at the proposed guidance on deposit advance products recently proposed by the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC). The consequence of the proposed guidance – even if unintended – will be to deprive consumers of access to short-term credit, a result that neither addresses the root of the financial challenges confronting consumers nor considers the reality that the most expensive credit is the credit a consumer cannot obtain.

Consumers thrive in a competitive marketplace that offers a wide array of short-term credit options, including both deposit advance products from banks and short-term loans from non-depository lenders like my company. Imposing a sustained-use restriction on an arbitrary class of short-term credit products will unnecessarily stifle competition and will artificially dictate winners and losers in the marketplace. Even more pernicious, limiting consumers' use of deposit advance products will drive consumers to banks' preferred short-term credit product – overdraft protection – which is more expensive and punitive to consumers, with numerous hidden fees and confusing terms, or to payday loans made by unlicensed, unregulated, and illegal internet lenders.

Moreover, the agencies' proposed guidance points to no empirical data showing that a sustained-use restriction will actually enhance the welfare of consumers. In fact, the weight of the evidence shows just the opposite. Studies show that a sustained-use restriction on an arbitrary class of short-term credit products generally has two deleterious effects: it deprives some consumers of access to short-term credit, and its forces other consumers to use credit products that are subject to less burdensome regulation. See "An Analysis of Consumers' Use of Payday Loans," Gregory Elliehausen, 2009. Such a result runs contrary to the precepts of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which encourages rules that increase consumers' access to credit and discourages rules that treat functionally equivalent credit products in an inconsistent manner.

The OCC and FDIC should adopt guidance that focuses on creating a level regulatory playing field for all short-term credit products and providers, with rules tethered to the function of the product rather than to the identity of the provider. If a sustained-use restriction is not imposed on all classes of short-term credit products and all providers of those products – including bank overdraft protection and unlicensed internet lenders – then the agencies cannot, consistent with Dodd-Frank, subject some products or some providers to such a restriction.

My experience in the short-term credit industry over the past two decades has taught me that short-term credit products are welfare-enhancing to consumers when consumers have access to a robust marketplace filled with a variety of providers subject to the same balanced regulation. Unfortunately, the agencies' proposed guidance diminishes the prospect of achieving this ideal marketplace, primarily to the detriment of very consumers the agencies are ostensibly seeking to protect.

Truly yours,

CNG FINANCIAL CORPORATION

By: ______________________________
A. David Davis, President