BANK POLICY INSTITUTE

January 22, 2019

Via Electronic Mail

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

Re: Request for Information on Small-Dollar Lending (Docket No. FDIC-2018-25257; RIN 3064-ZA04)

Ladies and Gentlemen:

The Bank Policy Institute[1] appreciates the opportunity to comment on the request for information[2] issued by the Federal Deposit Insurance Corporation seeking input regarding small-dollar credit products offered by FDIC-supervised financial institutions. The FDIC's request is timely, as both the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau also have recently demonstrated an interest in reviewing their existing positions on such products.[3] Banks have long recognized the importance of providing consumers with small-dollar credit products, as such products fill an important need for those consumers that may need supplementary credit for a range of reasons. Notwithstanding the importance of these products to borrowers, recent changes to the regulatory and supervisory framework have constrained banks' ability to provide these products, to the detriment of the consumers who both seek and benefit from them. For this reason, meaningful review and action by the FDIC and other agencies regarding the best approach to regulating and supervising these products has the potential to significantly expand access to credit in this area.

As a first principle, we stress that any approach the FDIC may choose to take in this area should be appropriately aligned with its role as a prudential regulator and supervisor of banks. In particular, as the FDIC is aware, the Dodd-Frank Act vested the CFPB with exclusive responsibility for implementing and interpreting—and, in

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1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

2 Request for Information on Small-Dollar Lending, 83 Fed. Reg. 58,566 (Nov. 20, 2018).

3 *See* News Release, OCC, Acting Comptroller of the Currency Rescinds Deposit Advance Product Guidance (Oct. 5, 2017); *Core Lending Principles for Short-Term, Small-Dollar Installment Lending*, OCC Bulletin 2018-14 (May 23, 2018); Press Release, CFPB, Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date (Oct. 26, 2018).

the case of depository institutions above $10 billion in total assets, supervising and examining for—compliance with the Federal consumer financial laws.[4] Accordingly, any FDIC approach for small-dollar credit products should appropriately focus on traditional safety and soundness considerations, rather than providing for specific consumer financial protection standards—an authority expressly granted to the CFPB by statute, which the CFPB has exercised in this area through rules articulating such standards in the small-dollar lending space. Taking this approach will further banks' responsible and innovative small-dollar lending activities by avoiding duplicative or inconsistent standards that would have the unavoidable result of discouraging small-dollar lending, while also adhering to the statutory allocation of authority regarding such products and simultaneously ensuring the FDIC's focus on the financial condition and safety and soundness of the institutions it regulates.

To that end, this letter sets forth and discusses three key principles we believe should guide the FDIC in addressing the small-dollar lending activities of its supervised banks. First, any regulatory requirements or guidance should serve the broader goal of encouraging responsible, innovative lending by banks to their customers by streamlining, rather than adding to, existing supervisory expectations for such products and allowing for increased regulatory coordination. Second, any guidance for small-dollar credit practices primarily should focus on existing risk management or other internal safety and soundness standards for lending and banks' own internal systems and practices for meeting them, rather than creating a separate distinct and incremental set of supervisory expectations applicable only to small-dollar lending. Third, any additional regulatory requirements or expectations for small-dollar lending by banks should avoid imposing unnecessary burdens that would limit banks' ability to provide small-dollar credit products, and thus customers' ability to obtain such products.

I. Any approach by the FDIC to oversee banks' small-dollar lending practices should be guided by the principle of encouraging responsible, innovative lending by banks to meet the credit needs of consumers by streamlining supervisory expectations and increasing regulatory coordination.

We strongly support the FDIC's stated goal of "encourag[ing] FDIC-supervised institutions to offer responsible, prudently underwritten small-dollar credit products that are economically viable and address the credit needs of bank customers." Small-dollar lending provides a vital means of access to credit for bank customers that are subject to a shortfall in cash solvency or where the customer has limited access to or an inability to apply for traditional lending products.[5] Since customers applying for these loans tend to be unbanked or have limited banking history, banks offering these products have taken steps to incorporate innovative lending standards or technological means by which to provide these products.

In order to continue to encourage these activities and to enable more banks to provide small-dollar credit products, any proposed guidance by the FDIC should consider streamlining its existing supervisory expectations. A bank's small-dollar lending activities simply are one of many other forms of credit being offered to its customers, and accordingly should be supervised holistically with the bank's overall lending activities, rather than separately designated with different standards or controls. Indeed, from the perspective of increasing the availability of

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[4] 12 U.S.C. § 5515(a).

[5] *See* FDIC National Survey of Unbanked and Underbanked Households (2017) (noting that new underwriting technologies could help expand access to small-dollar credit for banked consumers).

responsible, prudent small-dollar loans, the most useful step the FDIC and other agencies can take is not to impose new, special burdens on small-dollar credit products, but rather to identify and address aspects of existing supervisory practices that unnecessarily discourage banks from providing such products today. To this end, and to remove such obstacles and better encourage the provision of these products, the FDIC should assess and identify ways that it can ensure that (i) there is consistency across examination teams regarding the review of small-dollar lending activities alongside a bank's other lending activities, (ii) any standards regarding third-party risk management are appropriate, and (iii) there is reasonable flexibility related to use of technology and alternative data in underwriting practices. Furthermore, to encourage the provision of such products by supervised institutions, the FDIC should focus on traditional safety and soundness considerations with respect to these products and engage in coordination with the CFPB and other federal and state banking regulators to ensure a consistent regulatory framework for banks that operate in this market.

II. Any FDIC guidance regarding banks' small-dollar credit activities should focus on whether the activity corresponds with the bank's existing risk management and credit practices, business plan or other internal safety and soundness measures, rather than imposing a distinct or incremental framework of supervisory expectations.

Small-dollar credit products, such as deposit advance products, lines of credit or other installment loans, generally present less significant safety and soundness concerns than traditional lending products. First, in absolute terms, small-dollar credit products represent a very small proportion of the overall lending activities of banks that offer such products. Second, just as they do with all loans, banks making these loans appropriately assess the nature of the customer's existing account and provide a loan for a commensurate amount, mitigating any associated credit risks. Third, given the level of prudential and CFPB regulatory oversight of bank activities, the credit and other risks posed by banks' offering of small-dollar credit products is generally less than that posed by similar offerings by non-bank competitors.

Small-dollar credit products are offered in the same manner through the same processes by which banks offer other credit products. As with other traditional lending products, both prior to offering and throughout the life cycle of the small-dollar credit product, banks subject such a product to rigorous assessment under their existing risk management frameworks. This includes overseeing and managing any credit, legal, reputational, operational and compliance risks that may arise during the product life cycle. Similarly, where banks choose to conduct these activities through a third-party relationship, the third party is subject to a bank's third-party risk management framework, including appropriate controls, due diligence, contractual provisions and ongoing monitoring. Further, as part of its internal risk management framework, a bank imposes and considers appropriate compliance controls consistent with its consumer protection obligations.

Correspondingly, the FDIC's approach in reviewing a bank's small-dollar credit offerings should be focused on assessing whether the bank adheres to its own risk management framework and other internal safety and soundness metrics with respect to the product, rather than imposing additional consumer protection obligations on the bank. The provision of small-dollar credit products is no different than that of other credit products, and thus the FDIC's approach should not include a distinct and incremental set of supervisory expectations whether implemented through additional rulemaking or prescriptive guidance. As the FDIC is aware, banks engaged in small-dollar lending already are subject to the CFPB's small-dollar rulemaking, as well as its supervisory and enforcement authorities over these activities.[6] Prescribing additional consumer protection requirements, or restricting the provision of these products based on alleged (and unfounded) "reputational risk" to a bank, would result in unnecessary and uneven regulatory and supervisory requirements for those banks engaged in small-dollar lending. Instead, the FDIC should focus any specific efforts here on banks' larger risk management processes as they apply to small-dollar credit. This framework also would appropriately defer to the authority granted to the CFPB over Federal consumer financial laws and would be consistent with the OCC's approach on short-term, small-dollar lending, providing the consistency necessary for banks engaged in these lending activities.[7]

III. The FDIC should be cognizant of regulatory requirements or expectations that would impose additional restrictive burdens upon banks leading to a reduction in the provision of such products to consumers, and thus result in customers' inability to obtain such products.

Small-dollar credit products offered by banks to customers are limited in their amount and purpose, and thus undergo an underwriting process commensurate with that risk profile. Unlike small-dollar credit products provided by non-bank lenders, which are subject to a less rigorous regulatory regime, bank-provided small-dollar credit products offer substantial benefits, including lower rates provided by a trusted depository institution. In many cases, banks offer small-dollar credit products to existing bank customers with whom they already have a relationship and an understanding of the customer's credit and banking profile. Further, banks may use technological means and alternative information to determine a customer's creditworthiness. As one example, banks use deposit behavior, such as customer transaction and account information, to assess whether a customer qualifies for a loan, including the dollar amount and associated fees. Ensuring that banks have the appropriate flexibility to use these types of alternative approaches is an important aspect of encouraging the provision of small-dollar credit products.

While the FDIC broadly should consider the terms and conditions of small-dollar credit products, such as the duration and amount, given the nature and purpose of this product—often short-term funding for personal use or cash shortfalls—the imposition by the FDIC of specific and additional underwriting controls (beyond those currently used) are unwarranted given the risk profile of small-dollar credit products and would have the clear effect of discouraging such loans in practice. In particular, and as noted above, banks already are subject to, and are implementing new compliance systems and practices for, the CFPB's small-dollar rulemaking. Imposing new, additional underwriting controls simply would further impair a bank's ability to provide these loans to meet consumer demand. Therefore, we would encourage the FDIC to work closely with the CFPB and other agencies to implement a consistent regulatory framework by which banks providing small-dollar credit products can operate. We believe that this approach would facilitate the common goal of both supervised institutions and the FDIC to increase access to credit for consumers in a responsible manner.

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6 Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472 (Nov. 17, 2017).

7 *Core Lending Principles for Short-Term, Small-Dollar Installment Lending*, *supra* note 3.

We appreciate the opportunity to comment on the proposal. If you have any questions, please contact the undersigned by phone at (202) 589-2429 or by email at *Naeha.Prakash@bpi.com.*

Respectfully submitted,

[redacted]

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