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Sargent Shriver National Center on Poverty Law

Robert E. Feldman,
Office of the Executive Secretary, Federal
Deposit Insurance Corporation
550 17th Street, NW., Washington, DC 20429
Docket ID FDIC-6714-01-P

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
Docket ID OCC-2013-0005

May 22, 2013

Re: Proposed Guidance on Deposit Advance Products (Docket ID FDIC-6714-01-P and OCC-2013-0005)

Dear Secretary Feldman and Comptroller Curry:

I am writing from the Sargent Shriver National Center on Poverty Law (Shriver Center), a Chicago-based non-profit, which provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty, to comment on the proposed guidance on Deposit Advance Products (DAP) issued by both the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies).

We applaud your efforts to regulate deposit advance loans. As noted in the recent Consumer Financial Protection Bureau (CFPB) report, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*, DAPs are essentially the same products as payday loans only with another name, and we thank the Agencies for acknowledging this in their guidance.

It is well known that payday loans are destructive to consumers, and the CFPB White paper shows that DAPs are similarly destructive. According to the CFPB report, the average borrower of DAP loans took out 8 loans per year perpetuating a cycle of debt. It is clear from this report that banks are providing DAPs to consumers without regard to consumers' ability to repay. Rather, banks rely on fees for the revenue and earnings on DAP loans. Failure to verify borrowers' ability to repay loans leads to consumers becoming trapped in debt and poses a clear safety and soundness risk to the banks themselves.

We strongly agree with the Agencies regarding the new underwriting requirements and limits on repeat loans. Specifically, we believe it is important that banks verify a borrowers' ability to repay the loan before granting new or additional DAP loans. In addition we agree with the guidance regarding a cooling-off period before offering new DAPs. As proposed under the guidance, requiring banks to wait one monthly statement cycle between repayment of a DAP loan and a new advance, as well as limiting DAP loans to one per monthly statement cycle will help prevent an unending cycle of debt.

While we support the guidance, we believe that the Agencies should go even further in ensuring consumers are protected. DAP, just like payday loans, have APRs of greater than 300%. The guidance should make clear that DAP related fees must be based on safe and sound banking principles. Specifically, the Agencies should require that such fees be consistent with the FDIC's affordable small loan guidelines, should not exceed 36% APR and be subject to any state law limitations.

Finally, we urge the Agencies to prohibit banks from automatically repaying DAP loans from customer's incoming deposits. Such automatic repayment practices place DAP loans ahead of other important expenses such as housing, utilities, and food. While lenders have a right to repayment, consumers should have the ability to prioritize the payment of their personal financial obligations in the manner they deem appropriate.

In sum, we greatly appreciate the opportunity to comment on the Proposed Guidance and commend the Agencies for addressing DAP loans. We hope the Agencies will conduct prompt and vigilant examinations on banks offering DAP loans and consider our recommendations for providing further consumer protections on such loans.

Sincerely,

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