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May 30, 2013

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Re: Docket Number FDIC-2013-0043, Proposed Guidance on Deposit Advance Products

To Whom it May Concern:

I am writing on behalf of Chicago Community Loan Fund in response to the Federal Deposit Insurance Corporation's (FDIC) and the Office of the Comptroller of Currency's (OCC) request for comment on Proposed Guidance on Deposit Advance Products published in the *Federal Register* on April 30, 2013, at 78 FR 25268 – 25273. We commend the FDIC and the OCC for releasing strong proposed rules that highlight the significant risks associated with deposit advance products and implement changes that will prevent banks from making payday loans that trap consumers in a cycle of debt. The proposed rules include strong underwriting standards that direct banks to determine a borrower's true ability to repay, a limit of one loan per month with a mandatory one-month cooling-off period between each loan, and a requirement that banks monitor their reliance on fees and charges. We recommend that the FDIC and OCC further strengthen the proposed rules by creating a cap on the total fees and charges, requiring up-front disclosure of the total APR, and eliminating mandatory automatic repayment.

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### **Institute a Cap on Total Fees and Charges**

In addition to the strong underwriting criteria delineated in both the OCC and FDIC proposed rules and the clear directive to monitor undue reliance on deposit advance fees and charges, regulators should go one step further by creating a hard cap on the total number of fees and charges that can be assessed on deposit advance products. An APR cap of 36 percent on all fees and charges would be consistent with the FDIC's guidelines for affordable, small dollar loans and would further ensure that safety and soundness risks are minimized.<sup>1</sup> Research indicates that a 36 percent cap on APR would make loans much more affordable for consumers and increase the likelihood that they will pay back the loan on time. It would also create an incentive for lenders to use smart underwriting criteria, offer a variety of longer-term loan products, and practice good lending.<sup>2</sup> With a reasonable interest rate cap, borrowers would meet their emergency credit needs through mainstream depository institutions and avoid other high-cost, predatory products. Additionally, banks should abide by all state laws that set usury caps lower than 36 percent or prohibit payday lending.

### **Require Upfront APR Disclosure**

While deposit advance products are currently marketed as checking account features, we strongly encourage the FDIC and OCC to require that banks accurately characterize these loans as credit products. Customers should be able to compare this product to other credit options. Regulators should specify that the APR must be clearly disclosed up-front in compliance with the Truth in Lending Act, so as to provide borrowers with a complete understanding of the terms of the loan. The APR should be calculated as it would for a closed-end credit product, even if the advance product is classified as open-end credit, since the full balance will be repaid from the borrower's next direct deposit. The frequency of the borrower's direct deposit schedule should be used to calculate the loan term. For example, if a borrower receives a regular paycheck biweekly, the loan term for the APR calculation should be 14 days.

### **Prevent Mandatory Automatic Repayment**

One area of concern that remains completely unaffected by the proposed rules is banks' mandatory automatic repayment requirement. Traditionally, a deposit advance product is paid back as soon as funds are deposited into the borrower's bank account. The bank automatically repays itself from the newly deposited funds up to the full available amount before the customer has a chance to use these funds for any other purpose. If the deposit is not sufficient,

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<sup>1</sup> See FDIC Financial Institutions Letter FIL-50-2007, "Affordable Small-Dollar Loan Guidelines," (June 19, 2007).

<sup>2</sup> Saunders, L. *Why 36%? The History, Use, and Purpose of a 36% Rate Cap*. The National Consumer Law Center. April, 2013.



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the bank takes the remaining balance from the next incoming deposit. If the loan has not been paid back in full within 35 days, the bank initiates a forced repayment from the borrower's account even if this results in an overdraft.<sup>3</sup>

This type of unfettered access prevents borrowers from maintaining control over their accounts and spending choices and discourages sound underwriting practices. In the same way that consumers can actively choose to pay bills, or pay off other loans, consumers should be able to make that decision for deposit advance loans. Financial institutions offering deposit advances should be required to perform the same sort of underwriting as any other lender that does not have full control over whether the loan will be paid back. We strongly urge the FDIC and OCC to prohibit banks from requiring automatic repayment through direct access to the borrower's account.

**Conclusion**

Chicago Community Loan Fund commends the FDIC and OCC for proposing strong new rules to rein in depository institutions offering deposit advance products. These products, offered by mainstream banks, have been disguised as legitimate aids to consumers in need of funds despite the fact that they have the same predatory features as payday loans and have been shown to trap consumers in long-term cycles of debt. Furthermore, banks have offered these payday products in blatant disregard for state laws that ban payday products or have rate caps of 36 percent or less.

We urge the agencies to strengthen the proposed rules by mandating an APR cap of 36 percent on all charges and fees; requiring standard up front disclosure of the APR; and prohibiting banks from requiring automatic repayment.

We support the development of properly underwritten, affordable, small-dollar loans and stand ready and willing to work with banks and regulators to make improvements in the marketing and oversight of these loans. We thank you for the opportunity to comment.

Sincerely,



Calvin L. Holmes  
President

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<sup>3</sup> Consumer Financial Protection Bureau. *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*. April 24, 2013.

