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MICHAEL J. ZALEWSKI
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Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

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

May 16, 2013

Re: Docket ID OCC-2013-0005: Proposed Guidance on Deposit Advance Products
Federal Deposit Insurance Corporation 6714-01-P

To Whom It May Concern:

I write to express my views regarding the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation's (FDIC) recently proposed guidance on bank deposit advance products and to encourage the agencies to carefully consider American consumers' need for a range of reliable short-term credit options. In particular, the agencies must closely examine any potential consequences of such regulations on consumers' ability to access credit when they need it. Consumers want and benefit from having more alternatives, not fewer, and this need is better served in a competitive marketplace.

- Based on my experience, I am concerned that such expansive regulation does not adequately address consumers' need for short-term credit or reflect their experience, nor does it get to the root of the financial challenges confronting many consumers. Providing effective financial safeguards for Americans while preserving access to credit should be the overarching goal of any new regulation.

- The need for short-term small dollar lending is clear. Millions of Americans continue to struggle to make ends meet, driving a need and demand for short-term credit.
 - A recent report from the National Bureau of Economic Research (NBER) found that one in four Americans have used various forms of short-term credit – payday loans, auto title loans, and similar services – over the last five years.
 - These short-term credit options help consumers manage shortfalls and avoid late payment fees, damage to credit scores or a loss of critical services such as utilities and healthcare.
 - Consumers clearly need and value these options, using them as many times as they need to – and only as many times as they need to – in order to bridge a gap in their finances.

- When confronted with financial challenges, consumers examine their options, choosing the financial service that will help them overcome their challenges successfully and responsibly.
 - A variety of competitive credit choices are available to them, including credit cards and short-term options such as overdraft programs and advances from banks, credit unions and retail lenders. Consumers also weigh their decisions against the costs and consequences associated with missing bill payments or submitting them late, including bounced checks, late payments to credit card companies and utility reconnections.
 - Of these short-term options, overdraft programs are far and away the most frequently used.
 - According to economic research firm Moebs Services, an estimated 38 million consumers – or 26 percent of those with checking accounts – are frequent overdraft users. This is roughly twice as many as those borrowing advances from banks or retail lenders.

- Consumers use these comparable products and services interchangeably.
 - Many purposefully and routinely employ their bank’s overdraft protection program to cover expenses, using the program as a short-term credit product – exactly like a bank deposit advance.
 - Former OCC and FDIC leadership, as well as Consumer Financial Protection Bureau Director Richard Cordray, have acknowledged overdraft protection is utilized by consumers as a form of credit.
 - Academic research, including from the Federal Reserve Bank of New York, has similarly concluded that overdraft and advance products are credit substitutes.
 - Dartmouth Professor Jonathan Zinman, formerly a visiting scholar with the Federal Reserve Bank of Philadelphia, noted, “The closest substitute for a payday loan is arguably overdraft protection on a bank account.”

- Individual short-term credit options – from cash advances to overdraft protection – should not be examined or regulated in a vacuum or inconsistently. Any regulatory framework must:
 - consider how consumers actually use the credit options available
 - include uniform disclosure requirements to ensure consumers are equipped with all of the information they need to compare similar services
 - apply any regulations – including limits on the number and frequency of use – equally to all comparable products, including overdraft protection services offered by banks and credit unions.

- Regulations that randomly limit consumers' credit options risk a dangerous domino effect.
 - Consumers receive the greatest benefit from a competitive financial services marketplace, with a wide array of options, including overdraft protection and cash advances from banks and non-bank retail lenders.
 - Restricting consumers' access to certain forms of short-term credit such as advance products stifles competition and does nothing to address their continued need for credit.
 - Arbitrary rules such as those proposed dictate winners and losers, rather than enabling a competitive marketplace. They will likely drive consumers to banks' preferred short-term lending product – overdraft protection – which is more expensive and punitive, with numerous hidden fees and confusing terms, or to pawn shops and riskier, unregulated options such as unlicensed lenders.

- Requiring highly restrictive cooling off periods from advance products
 - The most expensive credit is the credit consumers do not have.

- In addition to creating regulatory inconsistency governing similar products and services, the proposed guidelines violate one of the important mandates of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which calls for the consistent regulation of like products.

In answering the call to public service, we make a commitment to protect our constituents and all Americans, and to look out for their best interests through fair and balanced policymaking and enforcement. I encourage the OCC and FDIC to carefully consider consumers' short-term credit experience and perspective, with an eye toward rulemaking that consistently and fairly regulates the services consumers depend upon – from cash advances to overdraft protection – while preserving the important role of short-term credit in the American economy and empowering consumers to make sensible financial decisions.

Sincerely,



Michael J. Zalewski
State Representative – 23rd District