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**Comments of the Cities for Financial Empowerment Coalition on
Proposed Guidance on Deposit Advance Products**

Submitted to:

Member Cities

**Federal Deposit Insurance Corporation (FDIC-2013-0043-0001)
Office of the Comptroller of the Currency (OCC-2013-0005)**

Chicago

May 30, 2013

County of Hawai'i

Los Angeles

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The Cities for Financial Empowerment (CFE) Coalition applauds the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) for responding to concerns raised by CFE members and numerous other groups about deposit advance products by proposing fair, common sense supervisory standards to reign in high-cost, predatory payday loan type products offered by regulated financial institutions.

CFE urges the FDIC and the OCC to finalize the proposed guidance on deposit advance products and to vigorously enforce these supervisory standards to ensure the financial institutions you supervise are not permitted to engage in forms of short-term small-dollar lending that inherently trap borrowers in cycles of high-cost debt.

The CFE Coalition is a network of cities, large and small, across the nation representing over 19 million people, committed to aggressively and creatively leveraging local opportunities, resources, and powers to improve the financial health of our residents. Expanding the vision of how municipal government can serve its citizens and create pathways for financial stability, CFE members design and implement large-scale programs to expand access to mainstream banking, wealth-building opportunities, and high-quality financial education and counseling. For example, CFE members spearhead an array of innovative programs to connect residents who are disenfranchised from the mainstream banking system to affordable financial services through both specialized account-based bank access programs and "Bank On" campaigns. Members of the CFE Coalition are also engaged in programmatic, policy and regulatory approaches to curbing the damage to our residents' financial security inflicted by payday lenders and other predatory lenders.

Informed by this broad experience on the ground in cities around the country, CFE sent a letter to the federal bank regulators, including the FDIC and OCC, in March 2013 to articulate our concerns with deposit advance products and call for swift regulatory action. The concerns raised in that letter have been further validated by subsequent research recently released by the Consumer Financial Protection Bureau (CFPB) that makes clear the need to address these inherently risky, unsustainable lending practices that harm consumers.

The CFPB's research confirmed that, for many, deposit advance loans are debt traps that are used for months rather than lifelines used only for short-term emergencies. The CFPB found that more than half of all deposit advance users end up borrowing more than

\$3,000 and tend to be indebted more than 40 percent of the year.¹ Given that a typical 12-day deposit advance loan carries an APR of over 300 percent², these loans are often a serious drain on households' limited resources that can affect their financial stability. The CFPB's study also illustrated the impact of deposit advances on consumers' experience with mainstream banking, finding that nearly two-thirds of consumers who use deposit advance products also incurred an overdraft or non-sufficient funds (NSF) fee, and, among deposit advance users who had overdraft or NSF activity, the median user had five fees related to overdraft or NSF.³

The proposed guidance makes significant strides in preventing deposit advance products from being offered in ways that pose serious threats not only to consumers' economic security and to the safety and soundness of financial institutions, but also to local efforts to financially empower our residents. The guidance addresses several key issues particularly important to creating a fairer, more transparent consumer banking marketplace.

- Requiring robust financial capacity underwriting standards for deposit advance. Properly underwriting consumer credit is essential to ensuring loans are extended responsibly, in a manner that is both suitable for the borrower and sound for the financial institution. The proposed guidance sets strong and appropriate underwriting standards by requiring that banks include analyses of customers' financial capacity to assure that deposit advances are not extended in a manner that cannot be affordably repaid. It is essential that the final guidance maintains the robust underwriting criteria proposed that requires banks to appropriately analyze customers' outflows, as well as deposits, to ensure borrowers can continue to meet their typical expenses such as food, housing, transportation and healthcare, as well as other outstanding debt obligations, without needing to borrow repeatedly. The final guidance must also include the proposed requirements that banks conduct a full underwriting reassessment before increasing deposit advance credit limits.
- Preventing deposit advance loans from spiraling into cycles of debt. The proposed guidance takes significant steps to prevent deposit advance loans trapping borrowers in ongoing cycles of debt by limiting loans to not more than one per monthly statement cycle and requiring a cooling off period of at least one month between loans. It is essential that these products, marketed as short-term loans, are not permitted to be repeatedly churned to become high-cost debt traps spanning multiple months.
- Ensuring applicability of state and local laws to deposit advances. The proposed guidance importantly notes that state laws, including usury laws and laws on unfair or deceptive acts or practices, may be applicable to deposit advance products. Many CFE members have been working to counteract or prevent the corrosive effects of payday lending in our communities by enacting strong local protections and advocating in our state legislatures to enact or maintain consumer protections to prevent or curb usurious, predatory payday lending. The final guidance should ensure that these hard-fought state and local consumer protections are appropriately applied to deposit advance products being offered by the financial institutions you supervise.

¹ Consumer Financial Protection Bureau. "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings," April 2013. Available online at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

² Ibid., CFPB White Paper

³ Ibid., CFPB White Paper

We commend the FDIC and the OCC for your responsiveness to CFE's concerns by proposing strong supervisory standards and encourage you to promptly finalize the proposed guidance to reign in predatory, financially destructive deposit advance practices before they proliferate. Further, we urge you to rigorously enforce the standards as set forth, with particular attention paid to the manner in which deposit advances are marketed and sold to make sure consumers are not inappropriately steered into this higher-cost product when they would otherwise qualify for more affordable suitable credit options.

We look forward to continuing to provide our on-the-ground perspective to inform your efforts to ensure the banking system operates in a safe, sound, and fair manner that empowers consumers in localities around the country.

Respectfully,



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