



CALIFORNIA REINVESTMENT COALITION

May 30, 2013

Thomas Curry, Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, D.C. 20219
regs.comments@occ.treas.gov
OCC Docket ID OCC-2013-0005

Martin Gruenberg, Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW.,
Washington, DC 20429
Comments@fdic.gov

RE: Proposed Guidance on Deposit Advance Products

Dear Comptroller Curry and Chairman Gruenberg:

The California Reinvestment Coalition (CRC) and the undersigned members and allies are pleased to submit these comments about the guidance on deposit advance products proposed by the Office of the Comptroller of the Currency and the FDIC. CRC is a coalition of more than three hundred nonprofit organizations working for equitable and fair access to financial products. Your guidance on these products is long anticipated and an issue of long time concern for our members and all Californians.

The deposit advances sold by Wells Fargo and US Bank, so far the only two bank providers in California, wreak havoc on people already on difficult financial footing. Their products work exactly like ill-reputed payday loans while being exempt from any existing payday regulations. We believe that the guidance provided by the OCC and the FDIC provides the minimum considerations that banks must apply when providing these products.

As currently structured, few customers can afford the full payment by next deposit requirement without coming into a windfall of cash or enjoying a rare reprieve in basic expenses. The full- and-fast payment requirements of these products sets up customers for cycles of repeat borrowing that drive them into debilitating debt. One Wells Fargo customer, Annette Smith, a 69 year old Social Security recipient, got stuck in a cycle of deposit advances of \$500 from Wells Fargo every month for five years, costing her \$3,000 in fees which she paid using her \$1,200 monthly Social Security benefits.

We applaud the OCC and the FDIC for this first strong step, and urge you to adopt the proposed guidance and begin enforcement immediately.

Banks should restrict eligibility for these products.

Wells Fargo and US Bank customers become eligible for advances after meeting only the barest of eligibility requirements. All they must have is an account for six months and a source of income that is directly deposited at least monthly. These standards fall absurdly below the eligibility standard that the banks require for every other form of credit. There is no consideration for ability to repay, such as by looking to cash flow or average monthly balances. Monthly balances are currently required to receive as little as a fee waiver. Minimum eligibility should require an average monthly surplus at the end of each of the preceding six months of an amount sufficient to either cover the cost of paying the advance all at once or over time.

These products should be underwritten.

Neither Wells Fargo nor US Bank currently assess the customer's ability to pay, in full, the amount advanced and fee without endangering other financial obligations. Instead, they impose a so-called "credit limit" suggestive of an assessment of risk that the customer can repay. It is no such thing.

Rather, the policies ensure that the bank will receive enough of a deposit to cover immediate withdrawal of principal and fee by the bank, regardless of the customer's other financial obligations. US Bank's "credit limit" is half of the customer's monthly direct deposits, up to \$500, such that a person receiving \$1200 a month could be advanced \$500. Wells Fargo's "credit limit" is half of the average monthly direct deposit, also up to \$500, such that a person who receives two direct deposits a month totaling \$1,200, could be advanced \$300 while a person who receives one monthly direct deposit of \$1,200 could be advanced \$500.

Neither bank looks at all at the customer's other financial obligations because they are first in line to be paid by virtue of their reach directly into the customer's account. This "first in line" approach is not underwriting. It ensures repeat borrowing, causing the customer to take another advance, for the very reason that the customer cannot in fact afford to both pay the advance and her other financial obligations.

Banks should look at the customer's ability to repay while simultaneously meeting existing and predictable recurring and necessary expenses such as food, housing, transportation and healthcare, as well as other outstanding debt obligations. If a customer will not be able to meet all of their basic needs without needing to borrow repeatedly, the loan terms, including advance limits and repayment periods, should be adjusted accordingly.

Payment terms should reflect prudent underwriting.

Wells Fargo and US Bank's deferred deposit advances currently work exactly like payday loans: customers must repay the amount advanced, plus a fee, upon their next deposit whether in 24 hours or a month. Neither bank allows the first-time borrower to pay in installments. US Bank provides no installment option at all and will deduct the full amount owed, or as close to it as possible, even if that means the customer has no funds left for other needs. Wells Fargo requires customers to have taken advances in three consecutive statement periods or have an outstanding balance of more than \$200 before being allowed to pay in installments.

These terms favor the bank's interest in fee revenue at the expense of the customer's ability to repay successfully without borrowing again and going further into debt. The banks merely exploit their direct reach into the account before other creditors, leaving the customers with no choice but defaulting on other obligations or taking out another advance.

Instead, repayment terms should align with existing standards for loans and lines of credit. Customers should expect to pay regular amounts to cover a portion of principal, fees or interest charge over a predictable period of time, such as every other week or every month. This would allow the customer to budget and pay all debt obligations safely, including the bank's advance.

Banks should not encourage or exploit back to back advances.

Both US Bank and Wells Fargo emphasize that advances are for short-term use only, that they are not designed for long-term use. They both impose "cooling off" periods after advances in consecutive statement periods: Wells after six and US Bank after nine. These policies do not work. The banks simply make multiple advances in one statement period, such that the last advance is paid back the second statement period, and the subsequent consecutive advance falls in the third statement period. Voila: consecutive monthly advances with a skipped statement period in between.

Instead, the banks should not make advances until at least one statement cycle after the customer has paid the last advance. This is the only way to prevent the cycle of borrow, payment, fee, borrow, payment fee month after month.

Banks should characterize advances as credit products and stop marketing them as bank account features.

Both Wells Fargo and US Bank market advances as account features. The online prompts for requesting an advance are on webpages designed for account management and next to frequently used basic features such as checking balances. By comparison, both banks market credit card and other credit options using tabs and prompts that clearly marked and take the customer to an obviously different section of the online banking site.

Customers should be able to compare advances against other credit options side by side on the bank website. Standard disclosure rules should apply such as stating the Annual Percentage Rate. In California, storefront payday lenders are required to state APRs. Banks should be required to do no less.

Banks should not be relying on fees from these products.

The OCC and the FDIC should examine the fee revenue generated by advances. High revenue reflective of repeat borrowing should indicate poor underwriting, inappropriate payment terms, inadequate disclosures of costs, lax eligibility standards, or all of the above. Significant fee revenue from areas with high concentrations of low income households or of people who are African-American, Latino, Asian or another racial or ethnic minority should trigger an investigation for violations of the Fair Lending and Equal Credit Opportunity Acts.

Conclusion

CRC has already heard banks threaten to stop offer any form of small dollar credit if these guidelines are adopted, thereby pushing customers to more expensive storefront lenders. These are the same disingenuous scare tactics that storefront payday lenders use, threatening to close up shop and leave customers vulnerable to more expensive lenders.

We believe that deposit advances, as currently structured, are nothing like the small dollar loans that customers actually need. We support the OCC and the FDIC recommendation that banks should offer reasonably priced small-dollar loans at reasonable terms to their customers, which if structured properly, can provide a safe and affordable means for borrowers to transition away from reliance on high-cost debt products that do not appropriately serve their needs.

However, we stand prepared to work with banks to develop responsible, affordable small dollar loans that will actually help customers absorb the cost of emergencies without endangering their ability to survive financially. CRC members would be glad to discuss these issues in greater depth. Thanks for the opportunity to comment.

Sincerely,



Andrea Luquetta
Policy Advocate, California Reinvestment Coalition

Also signed by:

Advocates for Neighbors, Inc.

Affordable Housing Services

Amador-Toulomne Community Action Agency
Asian Law Alliance
Asian Pacific Policy & Planning Council (A3PCON)
California Rural Housing
California Association for Micro Enterprise Opportunity (CAMEO)
Causa Justa :: Just Cause
City Heights Community Development Corporation
Civic Center Barrio Housing Corporation
Clearinghouse CDFI
Community Action Agency of Butte County, Inc.
Community Action Partnership (Washington, DC)
Community Housing Developers, Inc.
Community Housing Development Corporation
Community Housing Improvement Program, Inc. (CHIP)
Community Housing Opportunities Corporation (CHOC)
Community Housing Works
Community Legal Services in East Palo Alto
Consumer Action
East Bay Housing Organizations
East Los Angeles Community Corporation (ELACC)
East Palo Alto Council of Tenants (EPACT) Education Fund
Fair Housing Council of the San Fernando Valley
Fair Housing of Marin
Faith in Community (FIC)
Financial Resource Center / Coalition for Quality Credit counseling (CQCC)
Foundation for Quality Housing Opportunities, Inc.
Fresno Economic Opportunities Commission
Housing California
Housing Equality Law Project | a program of Human Equality Law Project (HELP)
Housing and Economic Rights Advocates (HERA)
Housing Rights Center
CRC Comment re: OCC and FDIC Proposed Guidance on Deposit Advance Products

Insight Center for Community Economic Development
Jefferson Economic Development Institute (JEDI)
Korean Churches for Community Development (KCCD)
LA Voice, an affiliate of PICO National Network
Law Foundation of Silicon Valley
Legal Aid Foundation of Los Angeles (LAFLA)
Lyn Roc Tenant Association
Mission Economic Development Agency (MEDA)
Mutual Housing California
Neighborhood Housing Services Silicon Valley
Novadebt, A Garden State Consumer Credit Counseling Organization (Freehold, New Jersey)
Oakland Business Development Corporation
Oakland Community Organizations
People Acting in Community Together (PACT)
People Helping People Ministry and Outreach
Peoples' Self-Help Housing Corporation
People Organizing to Demand Environmental and Economic Rights (PODER)
Public Counsel
Project Sentinel
Renaissance Entrepreneur Center
Regional Human Rights/Fair Housing Commission
Rural Community Assistance Corporation (RCAC)
San Diego Housing Federation
Sonoma County Housing Advocacy Group
Sunnyvale Community Services
Thai Community Development Center
The Multicultural Real Estate Alliance for Urban Change
Valley Economic Development Center (VEDC)
Yolo Mutual Housing Association