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and Community Prosperity*

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Office of the Comptroller of the Currency
250 E Street, SW Mail Stop 2-3
Washington, D.C. 20219

VIA email at regs.comments@occ.treas.gov

Re: Docket ID OCC-2011-0012

To Whom It May Concern:

I am contacting you on behalf of Woodstock Institute regarding the Office of the Comptroller of the Currency's "Guidance on Deposit-Related Consumer Credit Products." We believe that the proposed guidance for automated overdraft protection programs will help clarify the agency's expectations on the application of safe and sound banking practices in connection with overdraft protection programs. This guidance addresses many of the concerns that we believe went unaddressed in the 2005 Joint Guidance on Overdraft Protection Programs. While we understand that the purpose of this guidance is to ensure that national banks to not use these products to take advantage of their customer relationships while giving them flexibility to meet customer needs, we respectfully request that the guidance include an explicit definition of excessive usage. We are also concerned with the application of automated overdraft protection consumer protections to deposit advance loan products. We believe that this product is fundamentally different from automated overdraft, has associated payment and reputational risks that exceed the scope of the proposed guidance, and requires substantially different consumer protections, which we have laid out in the following comments.

About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. We conduct research on financial products and practices, promote effective state and federal policies, convene a coalition of community investment stakeholders working to improve access to credit, and help people use our work to understand the issues and develop and implement solutions.

The Proposed Guidance is an improvement, but additional changes are necessary

The 2005 Joint Guidance on Overdraft Protection Programs focused almost exclusively on disclosure requirements, without addressing significant flaws in oversight of eligibility standards or prudent limitations on product costs and usage. Specifically, the 2005 Joint Guidance on Overdraft Protection Programs failed to require financial institutions to institute an opt-in policy for overdraft loan program, monitor programs for excessive or chronic customer use and take corrective action, institute appropriate daily limits on customer costs, or prevent multiple overdraft loan fees as a result of manipulating transaction processing order.¹ Changes to Regulation E required that financial institutions implement mandatory opt-in requirements for overdraft loan programs, but did not specifically address the remaining, outstanding issues.²

For the institutions it regulates, the Federal Deposit Insurance Corporation (FDIC) issued its supervisory expectations that clarified its implementation of the 2005 guidance in November 2010.³ Specifically, it requires that financial institutions: promptly honor customers' requests to decline coverage of overdrafts; give consumers the opportunity to affirmatively choose the overdraft payment product that overall best meets their needs; monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit; institute appropriate daily limits on overdraft fees; and consider eliminating overdraft fees for transactions that overdraw an account by a small amount; and not process transactions in a manner designed to maximize the cost to consumers. Woodstock Institute commented in favor of the FDIC's Final Overdraft Payment Supervisory Guidance as a significant improvement in overdraft program oversight.⁴

While there is significant overlap between the recommendations provided by the FDIC's Final Overdraft Payment Supervisory Guidance and the OCC's Guidance on Deposit-Related Consumer Credit Products, we would like to propose a change to the example provided in Appendix A and express our opposition to the application of the proposed guidance to the example product described in Appendix B and propose three necessary changes.

Proposed Changes to Appendix A

At 76 FR 33412: after "The account has incurred the daily maximum number of overdraft transactions repeatedly during any month, whether or not a fee is imposed;" add the following language:

"The account has incurred more than one overdraft fee in a 30 day period or six overdraft fees in a rolling twelve month period;"

¹ "Joint Guidance on Overdraft Protection Programs. Final Guidance." *Federal Register* 76 (24 February 2005): 9127. Print.

² 12 C.F.R. Part 205.17(b)

³ "Final Overdraft Payment Supervisory Guidance." Financial Institutions Letter FIL-81-2010 (24 November 2010). Print.

⁴ Feltner, Thomas. "Comment Letter in Favor of the FDIC's Supervisory Expectations for the Implementation of the 2005 Joint Guidance on Overdraft Protection Programs." 2 July 2010. Web. 10 June 2011.

Discussion: Maximum daily overdraft limits vary by financial institution; adding the requirement that overdraft privileges be reevaluated in the event of more than one overdraft per month or more than six overdrafts in any twelve month period will set a currently undefined outside boundary for what we believe should be considered frequent usage.

The proposed guidance fails to put in place necessary controls to reduce payment and reputational risk of deposit advance products

We believe that deposit advance loans, such as the example product described in the proposed “Guidance on Deposit-Related Consumer Credit Products” under Appendix B, exceed the parameters of the proposed guidance. While we consider automated overdraft protection programs as described under Appendix A to be credit products with unique consumer protection requirements, the automated nature and the fact that these products are directly tied to an individual transaction (with tightly proscribed limitations) means that overdraft products can be appropriately addressed within the context of this guidance.

However, bank-based payday loans, referred to as deposit advances under Appendix B, are clearly credit products, and have more features in common with a high-cost, short-term payday loans made by nonbank financial institutions than they do with the overdraft protection program described in Appendix A. As such, the proposed guidance offers borrowers few, if any, of the consumer protections available to users of other, similar credit products.

Moreover, as currently structured by the OCC-regulated financial institutions that offer this type of product, we believe that it is a fundamentally inappropriate product for consumers and presents numerous payment and reputational risks that cannot be effectively addressed within the context of the proposed guidance without addressing the following issues:

Addressing concerns with payment risk –

- a. **Eliminate balloon payments** - the balloon payment feature of the deposit advance product described in Appendix B of the proposed guidance presents financial institutions with considerable payment risk. Balloon payments require borrowers to pay off the full principal amount in a relatively short period of time, leaving little income to meet daily expenses.

Proposed change – At 76 FR 33413 under the section entitled “repayment terms,” the proposed guidance should be amended to prohibit balloon payments and require that deposit advances be repaid in multiple, substantially equal payments. The proposed guidance should also indicate that payment must not be automatic or compulsory upon the posting of a direct deposit.

- b. **Broaden scope of underwriting** – underwriting criteria based solely on the amount and frequency of a direct deposit only considers a borrower’s payment-to-income ratio, not debt-to-income ratio – an important indicator of a borrower’s ability to repay. Finally, deposit advance interest rates dramatically exceed the rates currently charged for credit card cash advances, even for cards with the least favorable rates.

Proposed change – At 76 FR 33413 under the section entitled “repayment terms,” the proposed guidance should be amended to expand underwriting criteria to include debt-to-income ratios in addition to payment-to-income ratios.

- c. **Bring interest rates in line with comparable bank-based products** – since exorbitant interest rates increase payment-to-income ratios substantially, we believe payment risk can be reduced by limiting deposit advance interest rates to interest rates proposed by the FDIC as part of its final guidance for small dollar loans.⁵ The proposed guidance should also require the disclosure of the annual percentage rate.

Proposed changes – At 76 FR 33411 under the section entitled “Disclosures,” the proposed guidance should be amended to require the disclosure of finance charges and other charges such as an annual percentage rate. At 76 FR 33412 under the section entitled “Prudent limitation” the proposed guidance should be amended to limit the maximum permissible interest rate to a rate comparable to the institution’s credit card cash advance fees.

Reputational risk – payday loan products, many of which are characterized by triple digit interest rates and balloon payments, have attracted consumer protection concerns and regulatory scrutiny in nearly every state, including Illinois.⁶ Most of these concerns deal directly with payment risk associated with balloon payments and underwriting criteria based solely on paycheck deposit amounts. The deposit advance product described in the proposed guidance will certainly raise similar concerns. In states that have either instituted an outright ban on payday lending or have successfully sought to curtail the payment risk of these products, the introduction of similar products by national banks not subject to state consumer protection laws and regulations will severely damage the reputation of financial institutions that choose to use their national charter to undercut state consumer protections.

Proposed changes

- a. **Conduct an impact analysis** – To facilitate the implementation of the proposed guidance, we recommend that the OCC carry out a study of the potential impacts of the payment and reputational risks described above. This study would provide an industry scan of deposit advance loan products, comparable products offered by nonbank financial institutions, and the consumer protections associated with each. This regulatory needs assessment and performance context should independently clarify the terms “substantial advances” and “excessive usage” and identify effective communications strategies to communicate with customers about the costs and limitations of deposit advance programs.⁷

⁵ “Affordable Small Dollar Loan Guidelines” Financial Institutions Letter FIL-50-2007 (19 June 2007). Print.

⁶ 815 ILCS 122/2-5 restricts interest rates and provides strict limits on back-to-back refinancing of balloon payment loans.

⁷ “Guidance on Deposit-Related Consumer Credit Products. Proposed Guidance.” *Federal Register* 76 (8 June 2011): 33409. Print.

- b. Convene a roundtable discussion to discuss stakeholder concerns** – To facilitate public comment on the proposed impact analysis, the OCC should convene stakeholders to discuss the consumer protection concerns regarding high-cost, short-term deposit advance products offered by national banks. The discussion should include state regulators from states that have addressed consumer protection concerns with similar products, representatives from national banks offering these products, and consumer and community advocates.

If these payment and reputational risks are not addressed by the OCC, regulation of deposit advance loans should be delegated to state regulators experienced in payday loan oversight, in conjunction with the Consumer Financial Protection Bureau. High-cost, deposit advance loans are functionally identical to payday loans offered by nonbank financial institutions. By codifying product availability standards, disclosures, and other regulatory factors, the OCC would legitimize payday lending and expose national banks to unacceptable payment and reputational risk. If the OCC determines that it does not have the authority to place limitations on balloon payments, exorbitant interest rates, and excessive usage within the scope of this guidance, it is critical that the regulation of these products be delegated to state regulators with the authority and experience to protect consumers from the worst effects of short-term, high-cost payday lending, in conjunction with the Consumer Financial Protection Bureau.

Woodstock Institute commends the OCC for its work to improve the oversight of overdraft loan programs, specifically its work to identify financial institutions that are administering overdraft programs without proper attention to the risk that these programs can cause for both the institution and its customers. However, we are very concerned about the agency's consideration of deposit advance credit products under the same guidance and respectfully request that the above recommendations be included in the final guidance.

Sincerely,



Tom Feltner
Vice President
Woodstock Institute

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