VIA Fax: (202-874-4950) and First Class Mail

February 3, 2010

The Honorable John C. Dugan
Comptroller
Office of the Comptroller of the Currency
250 E Street, NW
Washington, DC 20219-0001

Dear Comptroller Dugan:

We are contacting you to request the immediate implementation of the OCC's Tax Refund Anticipation Loans and Related Products guidance, including the requirement that national banks certify tax preparers originating refund anticipation loans as agents of national banks. We ask that no new national banks be allowed into the RAL market. We request that the OCC convene a leadership meeting of RAL lenders, regulators, and advocates to discuss an orderly exit of banks from this market following the 2010 tax season.

As we discussed in previous meetings, we believe that the OCC's Tax Refund Anticipation Loans and Related Products guidance for risk management, disclosures, marketing, training for both bank personnel and tax preparation staff, and capital standards have not been fully or consistently enforced. Santa Barbara Bank and Trust, working with Jackson Hewitt and Liberty Tax Service as agents of the bank, was not in compliance with the OCC RAL guidance, and yet the OCC failed to take action until the bank and its parent company, Pacific Capital Bancorp, were near bankruptcy. Likewise, based on recent conversations with JP Morgan Chase, we believe that Chase has not implemented many of the requirements of the guidance. In light of the failure of banks to implement the OCC RAL guidelines, and of the OCC to enforce them, we request that the OCC immediately evaluate and compel JP Morgan Chase and HSBC to comply with the RAL guidelines.

Advertising standards and certification of tax preparers by the IRS and OCC

In recent years, Jackson Hewitt and Liberty Tax Service, both acting as agents of national banks, have either settled misleading advertising suits or have been ordered to stop deceptive marketing practices. We believe that widespread misleading advertising for refund anticipation loans could have been avoided in part by the timely implementation of the OCC guidance, which requires any bank originating tax refund loans to review advertising and ensure minimum tax preparer certification. Our concerns with the deceptive marketing practices of Liberty Tax Services are outlined in our letter to the OCC dated July 9, 2009. Our concerns with Jackson Hewitt and its deceptive marketing practices are outlined in our letter April 15, 2009.

We also believe that the new IRS tax preparer standards are an important step forward, and our organizations commented in favor of these standards in August 2009. In particular, we requested that the IRS support or implement additional legislation, regulation, or administrative rules that we believe are necessary to assure a minimum level of competency in order to reduce the frequency of improperly prepared tax returns and to prevent the origination of refund anticipation loans based on fraudulent or otherwise incorrect tax refunds. The recently announced IRS standards achieved many of these goals and we believe it will work to ensure this minimum level of competency.

However, the existing OCC guidance on Tax Refund Anticipation Loans and Related Products has required a similar standard since 2007. In particular, it requires that banks issuing refund anticipation loans establish a training program for tax preparers and bank employees that includes an annual certification process and requires that banks maintain and make available for examiner review the training and testing materials, the dates of training sessions, and attendance records. Currently, this requirement has not been fully or consistently implemented by the OCC, despite repeated examples of widespread violations.

Implementation of existing OCC guidance

While the IRS's upcoming regulations to certify tax preparers will likely reduce the frequency of refund anticipation loans based on incorrectly calculated refunds, it cannot effectively address the risk management, disclosure, and asset stripping problems associated with RALs made to taxpayers with correctly calculated tax refunds. As such, we believe that the OCC must aggressively implement its existing guidance on Tax Refund Anticipation Loans and Related Products, particularly those provisions that we believe have not been fully or consistently implemented in the past, such as:

1. The establishment of an oversight program that includes the collection of customer surveys.

2. The establishment of a robust quality assurance process that includes a comprehensive mystery shopping program.

3. The requirement that refund anticipation loans be risk-weighted at 100 percent for risk-based capital purposes.

4. The establishment of effective internal controls and review standards for in-house and third party-developed advertising and solicitations.

Implementation and enforcement of the OCC guidance is especially critical for Chase. Chase has contracts with approximately 13,000 independent tax preparers. Each of of these preparers, currently unlicensed and very thinly regulated, act as an agent of a national bank in offering RALs. Thus, Chase must be responsible for the supervision and monitoring of all 13,000 of these preparers. Yet based on recent conversations, it appears that Chase has been ignorant of many of the requirements of the OCC guidance.

Conclusion

We request the immediate implementation of the guidance and the public notification of all national banks originating tax refund loans describing both the requirements of the guidance and its applicability. In addition, since the existing OCC guidance on Tax Refund Anticipation Loans and Related Products has not been fully or consistently implemented for nearly three years, we request that no new national banks be permitted to engage in tax refund lending.

As in the past, our collaboration's long-term goal is the elimination of the refund anticipation loan product. We view the certification of tax preparers arranging loans for national banks and the implementation of the OCC guidance as an intermediate step towards eliminating the worst effects of tax refund lending in the short-term. We look forward to the elimination of the RAL type product entirely and call upon the OCC to provide leadership to end it past the 2010 tax season. Going forward, we hope to see evidence that the OCC has indeed implemented and effected bank compliance with the RAL regulatory guidance.

We appreciate your attention to the issues of certification of tax preparers who arrange loans on behalf of national banks and the need to aggressively implement the OCC Tax Refund Anticipation Loans and Related Products guidance. We look forward to your response.

Sincerely,

Alan Fisher
California Reinvestment Coalition

ChiChi Wu
National Consumer Law Center
(on behalf of its low-income clients)

Peter Skillern
Community Reinvestment Coalition of North Carolina

Josh Zinner
Neighborhood Economic Development and Advocacy Project

Jean Ann Fox
Consumer Federation of America

Tom Feltner
Woodstock Institute

cc: Julie Williams
Barry Wides