



NEW YORKERS FOR RESPONSIBLE LENDING

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August 8, 2011

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

By email: regs.comments@occ.treas.gov

Re: OCC Guidance on Deposit-Related Consumer Credit Products
Docket ID OCC-2011-0012

Dear Acting Comptroller Walsh:

The 24 undersigned members of the New Yorkers for Responsible Lending coalition write to express strong concern with the OCC's proposed guidance on deposit-related consumer credit products, including deposit advance programs and overdraft protection programs. We request that the OCC consider this comment letter to constitute 24 separate letters for the purposes of counting the total comments received on this proposal.

New Yorkers for Responsible Lending (NYRL) is a 154-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent community financial institutions, community-based organizations, affordable housing groups, advocates for seniors, legal services organizations, and community reinvestment, fair lending, and consumer advocacy groups.

The OCC's proposed guidance fails to meaningfully address the fundamental abuses inherent in deposit-related consumer credit products, particularly with regard to deposit advance programs, which are nothing short of payday loans offered by banks. We are also concerned about the timing of the proposed guidance. The Consumer Financial Protection Bureau now has rule-making authority over deposit-related credit products, and the proposed guidance, offered just weeks before the CFPB's official start date, could directly undermine the CFPB's ability to effectively police abuses in this market.

The direct deposit advance products offered by a growing number of national banks have many of the dangerous and troubling features of traditional payday loans. These features include triple-digit APRs and a very short term balloon payment tied to the receipt of a wage or benefit check. Like non-bank payday lenders, banks that make direct deposit advance loans do not

underwrite them based on borrower's ability to repay, trapping lower income borrowers in a cycle of indebtedness when they inevitably must borrow more to pay back the loan and still pay for essentials such as food and housing.

In addition to being inherently abusive, direct deposit advance products threaten to erode critical consumer protections in states, like New York, that currently ban payday lending. Under the state's 25% usury cap, New York has long banned the making of payday loans and other usurious short-term loans. Earlier this year, Wells Fargo became the first national bank to attempt to introduce a direct deposit advance product in our state. New Yorkers were outraged that Wells Fargo would use its national bank charter to circumvent the state's usury protections, and Wells Fargo eventually agreed to postpone the introduction of the product in New York.

For years, the payday lending industry has been clamoring to break into New York's lucrative market. If the OCC permits national banks to make direct deposit advance/payday loans in New York, the state will be hard-pressed to prevent others from making the same type of usurious loans, thereby opening the floodgates to predatory lending.

Overdraft protection loans similarly gouge lower income people, with the larger national banks averaging \$35 per overdraft. Overdraft protection has blurred the line between mainstream and fringe banking, and can be a financial landmine for people living on limited means. Despite the recent rule changes, national banks have continued to reap huge profits from overdraft protection through aggressive and deceptive marketing, and other unscrupulous practices such as the re-ordering of payments to maximize overdraft fees incurred. (See 2011 CFA Survey of Big Bank Overdraft Loan Fees and Terms, <http://www.consumerfed.org/pdfs/OD-14BankSurvey-ChartAugust2011.pdf>.)

The OCC's proposed guidance cites important principles regarding responsible banking practices, such as ensuring the borrower's ability to pay. It is unclear, however, how and when the principles would be enforced. Even more troubling, the guidance would still allow national banks to engage in practices that harm lower income borrowers. The guidance states, for example, that deposit "advances should be permitted to be repaid in more than one installment over an extended period of more than one month"—which does not address the fundamental problems caused by short term, high-cost loans.

We join with our national colleagues to call on the OCC to use its supervisory and enforcement authority to meaningfully address predatory practices by national banks. Ineffectual guidance may only legitimize these abusive practices. Instead, the OCC should:

- Prohibit usurious, short-term direct deposit advance loans, which trap lower income borrowers in unaffordable debt.
- Prohibit abusive overdraft practices, including by: (1) flatly banning the posting of transactions from highest to lowest; (2) capping individual transaction fees as well as total fees; and (3) banning deceptive or high-pressure opt-in solicitations.
- Require national banks to offer customers the lowest cost credit for which they qualify.

- Encourage responsible and affordable credit products, for example, as set forth in the FDIC's Affordable Small-Dollar Loan Guidelines.

The OCC must ensure that national banks meet the credit needs of all communities, and that they stop exploiting people who live check to check.

Sincerely,

ANHD, Inc.
Brooklyn Cooperative Federal Credit Union
CAMBA Legal Services, Inc.
Chhaya Community Development Corporation
District Council 37 Municipal Employees Legal Services
Empire Justice Center
Fair Housing Council of Central New York
Genesee Co-op FCU
Greater Rochester Community Reinvestment Coalition
Grow Brooklyn
Long Island Housing Services, Inc.
Lower East Side People's Federal Credit Union
MFY Legal Services
NEDAP
Neighbors Helping Neighbors
New York Legal Assistance Group
New York Public Interest Research Group (NYPIRG)
PathStone
Pratt Area Community Council
South Brooklyn Legal Services
Syracuse United Neighbors
Syracuse University Securities Arbitration and Consumer Law Clinic
Urban Justice Center
Westchester Residential Opportunities, Inc.

cc: Consumer Financial Protection Bureau