



Consumer Federation of America

May 29, 2013

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW.
Washington, DC 20429
Via Email: comments@fdic.gov

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219
Via Email: regs.comments@occ.treas.gov
Docket ID OCC-2013-0005

Re: Guidance on Deposit Advance Products

Consumer Federation of America supports the Proposed Guidance on Deposit Advance Products (DAP) issued by both the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC).¹ The two substantially similar guidance documents apply to banks that make small-dollar, short-term loans – functionally similar to payday loans made by non-depository institutions. As both agencies note, these loans have high fees and must be repaid in advance of other bills by automatic withdrawal from the consumer’s bank account. In addition, the majority of consumers have multiple DAP loans each year, resulting in a cycle of debt that leads to financial instability, economic deterioration, and account overdrafts, often leaving consumers worse off than had they not taken DAP loans.

The guidance notes concerns that we and other consumer groups have previously expressed. DAP loans are frequently made without regard to consumers’ ability to repay them as scheduled while meeting typical recurring household expenses. Consumers often take out other DAP loans to make up for the shortfall when the typical single-payment balloon loan payment is due, resulting in “churning” or continual refinancing. The lack of sufficient underwriting often results in overdrafts and NSF fees, which further harm customers and may ultimately result in the closure of the consumer’s bank account.

The consumer protections in the proposed guidance are essential but the guidelines need to be strengthened. In particular, any DAP must meet the following requirements:

UNDERWRITING/CREDIT POLICIES

Banks must ensure borrowers can repay the loan according to the loan’s terms without refinancing or borrowing from others (churning) while meeting ordinary and necessary expenses. Sufficient underwriting should include a requirement that consumers have a sufficient

¹We also support the OCC’s withdrawal of its proposed guidance on Deposit-Related Consumer Credit Products published June 8, 2011.

satisfactory history with the bank, that DAPs should not be made to borrowers with delinquent/adverse accounts, and that borrowers have sufficient financial capacity to repay the DAP loan without borrowing. Financial capacity should be reviewed periodically to determine if smaller and more frequent installment repayments are more appropriate, credit limits should be increased only upon consumer request, and only with full underwriting, including a review of overdrafts and other evidence indicating that the consumer may be overextended.

COOLING-OFF PERIOD

A cooling-off period is essential to limit the number of DAP loans that a bank may make to a consumer. We support the requirement of at least one monthly statement cycle between repayment of a DAP loan and a new advance, and a limit of no more than one loan per monthly statement cycle - taken together this means no more than 6 loans per year.

FEES

The guidance states that DAP fees should be based on safe and sound banking principles and banks should not unduly rely on DAP fee income for revenue and earnings. The APRs on DAP are expensive with an average APR of 304% to 456% depending on fees and duration.² We support a cap of 36% APR or annualized interest rate on DAP loans, or such lesser amount as is permitted under each state's usury law, to be consistent with safe and sound banking principles. This comports with the FDIC's 2007 Affordable Small-Dollar Loan Guidelines and many states small loan rate caps. Banks should not preempt state laws in this area.

AUTOMATIC REPAYMENT

Banks, like any other lenders, have an interest in ensuring that legitimate, non-predatory loans they make are repaid. However, the requirement that DAP loans be paid first, before any other bills, by the automatic deduction from the consumer's next paycheck, is unfair and amounts to a prioritized, secured loan. The bank is repaid prior to the consumer's landlord, utility company, or auto lender. This leaves the consumer without any choice in allocating payments and is coercive. Lenders have a right to repayment but consumers may need to prioritize other bills first.

²Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* (April 24, 2013), p. 28, available at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

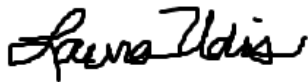
CONSUMER COMPLIANCE AND OVERSIGHT

We encourage the FDIC and OCC to monitor DAP programs through careful supervision, compliance, and enforcement. We are aware of only a few banks engaged in high-cost DAP loans and none that have entered the market in the last few years. This is due, in part, to the scrutiny of these programs by the prudential regulators and consumer advocacy groups. We urge the FDIC and OCC to continue to carefully review banks offering DAP loans. Failure to do so risks the banks' safety, soundness, and reputation and banks should not be making loans that are functionally equivalent to those made by non-depository payday lenders.

We greatly appreciate the opportunity to comment on the Proposed Guidance on Deposit Advance Products. We commend the FDIC and OCC for addressing DAP loans and taking these initial steps to control the debt traps these products pose for consumers.

Tom Feltner, Director of Financial Services, joins me in these comments. Please feel free to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Udis". The signature is fluid and cursive, with the first name "Laura" and last name "Udis" clearly distinguishable.

Laura Udis
Senior Financial Services Advocate