American Bankers Association
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October 12, 2017

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products

Dear Chairman Gruenberg,

The American Bankers Association (ABA)[1] urges you to support banks' efforts to meet the small dollar credit needs of their customers by rescinding the Federal Deposit Insurance Corporation's (FDIC) 2013 Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products.[2]

As you are aware, last Thursday, the Bureau of Consumer Financial Protection (Bureau) released a final rule governing payday, vehicle title, and certain high-cost installment loans (Final Rule).[3] That same day, the Office of the Comptroller of the Currency (OCC) rescinded its guidance[4] on Direct Deposit Advance (DDA) services – guidance that is similar to the FDIC guidance on DDA services.[5] Citing potential (but unrealized) credit, reputation, operational, and compliance issues, the OCC and FDIC guidance established prescriptive supervisory expectations for underwriting, credit risk monitoring, and limits on customer usage that drove all but one bank that offered the product to discontinue DDA services. As a result, consumers lost a valued short-term, small dollar credit option within the regulated banking system.

In rescinding its guidance, the OCC stated that it sought to avoid subjecting OCC-regulated banks to underwriting requirements and cooling-off periods that were "inconsistent" with the requirements in the Bureau's Final Rule.[6] Additionally, the OCC expressed its concern that "in the years since the agency issued the guidance, it has . . . become difficult for banks to serve

[1] The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend more than $9 trillion in loans.
[2] Final Guidance, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 Fed. Reg. 70,552 (Nov. 26, 2013).
[3] Final Rule and Official Interpretations, Payday, Vehicle Title, and Certain High-Cost Installment Loans, Docket No. CFPB-2016-0025 (released Oct. 5, 2017).
[4] Final Guidance, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 Fed. Reg. 70,624 (Nov. 26, 2013).
[5] Rescission of Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, Docket ID OCC-2017-0019 (released Oct. 5, 2017) (hereinafter, OCC Guidance Rescission).
[6] *Id.* at 2-3.

consumers' need for short-term, small-dollar credit,"[7] and that "consumers who would prefer to rely on banks and thrifts for these products may be forced to rely on less regulated lenders and be exposed to the risk of consumer harm and expense."[8] Consequently, the OCC guidance "may even hurt the very consumers it is intended to help, the most marginalized, unbanked and underbanked portions of our society."[9]

We believe that the OCC's concerns apply similarly to the FDIC guidance. The FDIC guidance imposes the same underwriting and cooling-off requirements that are present in the OCC guidance and, thus, would subject FDIC-regulated banks to regulatory requirements that are inconsistent with the Bureau's Final Rule.

A 2016 study by the Federal Reserve found that nearly half of Americans—46%—could not cover a $400 emergency expense without selling a possession or borrowing money.[10] When people in need cannot meet their credit needs through financial institutions, the need does not go away; instead, people are driven to "informal" sources, as the OCC concluded. This result benefits neither banks nor consumers.

Banks are eager to innovate and expand their offerings of small dollar credit products. As the OCC suggested, a responsible small dollar credit program can be guided by "prudent underwriting and risk management as well as fair and inclusive treatment of customers"[11] without resorting to additional, unnecessary, and consumer-unfriendly requirements. We urge you to facilitate the establishment of bank programs that offer fair, convenient, and sustainable small dollar loans to customers by rescinding the FDIC's 2013 guidance.

Sincerely,

Virginia O'Neill

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[7] News Release, Office of the Comptroller of the Currency, Acting Comptroller of the Currency Rescinds Deposit Advance Product Guidance 1 (Oct. 5, 2017) (hereinafter, OCC News Release).
[8] OCC Guidance Rescission at 3.
[9] OCC News Release at 1.
[10] BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2015, at 22 (May 2016), *available at* http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf.
[11] OCC Guidance Rescission at 3.