

STATEMENT ON DEPOSIT ADVANCE PRODUCTS

The Board of Governors of the Federal Reserve System (Board) is issuing this statement to emphasize to state member banks the significant consumer risks associated with deposit advance products in light of the Consumer Financial Protection Bureau's (CFPB) April 24, 2013 white paper entitled "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings."¹

Background

A deposit advance product is a type of short-term, small-dollar credit product offered by depository institutions to consumers with a deposit account or reloadable prepaid card. The depository institution allows a customer to obtain an advance on expected future deposits. Such advances and any associated fees are generally required to be repaid when the next deposit occurs.

The CFPB white paper sets forth the CFPB's initial data findings regarding the costs and patterns of deposit advance product usage by consumers. In particular, the CFPB white paper raises concerns about the significant costs associated with sustained repeat usage of deposit advance products. On April 25, 2013, the CFPB issued a press release indicating that it sees significant consumer risks and that the CFPB expects to use its full authorities to provide protections to consumers once it completes further analysis of the short-term, high-cost loan market later this spring.

Potential Risks Associated with Deposit Advance Products

The Board encourages state member banks to respond to their customers' small-dollar credit needs with products that meet this demand in a responsible manner. However, state member banks should take into consideration the significant risks associated with deposit advance products, including potential consumer harm and the potential for elevated compliance risk when designing such products.

In designing and offering deposit advance products, state member banks must comply with all applicable federal laws and regulations, including but not limited to requirements under the Truth in Lending Act (TILA), the Electronic Fund Transfer Act (EFTA), the Truth in Savings Act (TISA), and the Equal Credit Opportunity Act (ECOA). In addition to these laws, institutions must act in accordance with Section 5 of the FTC Act, which prohibits unfair or deceptive acts and practices (UDAP), and Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which prohibits unfair, deceptive, or abusive acts or practices. Depository institutions must also comply with state laws and regulations.

The prohibition against UDAP applies broadly to every stage of the deposit advance product, including marketing, servicing, and collections. The Board expects institutions to analyze the legal risks of any deposit advance products before offering such products. The Board expects Federal Reserve examiners to thoroughly review any deposit advance products offered by supervised institutions for compliance with Section 5 of the FTC Act, as well as other applicable laws.

¹ http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

State member banks that rely upon outside vendors to offer deposit advance products remain responsible for compliance with applicable laws and regulations. Inadequate management or oversight of third-party vendors by depository institutions presents additional consumer and compliance risks. In addition, fee sharing or similar arrangements that create an incentive for third party vendors to increase product usage create particular risk in connection with deposit advance products given that they may lead vendors to encourage inappropriate sustained usage of such products by consumers. Accordingly, the Board expects institutions to develop procedures to closely monitor vendor practices and outcomes. State member banks should mitigate and manage such risks, consistent with applicable regulations and guidance, in connection with the design and marketing of any deposit advance products that they might offer.