



The Voice of the Retail Banking Industry

**July 24, 2013**

**TESTIMONY OF  
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**BEFORE THE UNITED STATES SENATE  
SPECIAL COMMITTEE ON AGING**

**“PAYDAY LOANS: SHORT-TERM SOLUTION  
OR LONG-TERM PROBLEM?”**

Chairman Nelson, Ranking Member Collins and members of the Committee, thank you for the opportunity to discuss the short-term liquidity needs of American consumers and bank deposit advance products. My name is Richard Hunt and I am President and CEO of the Consumer Bankers Association (“CBA”).<sup>1</sup>

Currently, an estimated 76% of all Americans live paycheck to paycheck.<sup>2</sup> The economy has remained stagnant leaving consumers with less cushion for emergencies, strained credit scores, and fewer credit options, making access to reasonably priced short-term liquidity products all that more important. Various entry-level credit products exist to meet a wide range of needs, including traditional credit cards, personal loans, and other forms of credit. Unfortunately, many consumers do not qualify for them. In response, some banks have chosen to offer a deposit advance product to meet their customers’ need and demand for short-term, small-dollar credit.<sup>3</sup>

Deposit advance products, offered today by only six banks, serve a critical short-term, small-dollar credit demand for consumers who do not qualify for traditional credit products. These products are not loans, they are lines of credit (“LOC”) repaid automatically from a recurring direct deposit. While individual products vary, the maximum amount advanced is limited to the lesser of a cap (typically \$500) or a percentage of the average recurring payment (e.g. 50 percent). Deposit advances providers usually charge a clear, easily understood fee based on a percentage of the loan.

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<sup>1</sup> The Consumer Bankers Association (“CBA”) is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry’s total assets.

<sup>2</sup> *Short On Savings, Americans Still Feeling Positive* - Bankrate.com - [http://www.bankrate.com/finance/consumer-index/americans-still-feeling-positive.aspx?ic\\_id=Top\\_Financial%20News%20Center\\_link\\_1](http://www.bankrate.com/finance/consumer-index/americans-still-feeling-positive.aspx?ic_id=Top_Financial%20News%20Center_link_1)

<sup>3</sup> Banks offer these products under different names and with different features. For simplicity’s sake, we will refer to them as Deposit Advance Products in this testimony.

## **Executive Summary**

- Deposit advance products are small-dollar lines of credit available only to bank customers with established checking account relationships in good standing. They are not payday loans. These products incorporate features such as maximum loan size and cooling off periods to protect consumers from reliance on the product.
- There is high consumer demand for viable short-term, small dollar credit. Deposit advance products are designed to safely, quickly and conveniently meet this demand. Consumers understand and like bank deposit advance products. These products have received positive customer feedback and carry few complaints.
- Deposit advance products do not have a disparate impact on seniors. Total customer usage corresponds roughly with the population of seniors in the United States.
- Deposit advance products have been offered by depository institutions for many years and are intensely regulated for consumer protection and safety and soundness concerns. The risks to consumers and supervised institutions recently cited by federal prudential regulators are overstated and regulatory coordination is strongly urged moving forward. Deposit advance products do not present safety and soundness risks to the institutions that offer them. These products have built in controls to limit use, are not actively marketed, and offer clear and conspicuous disclosures.

In testimony before a House Subcommittee, Senator Elizabeth Warren, then the Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau (“CFPB”), said, “consumers want to know the costs up-front and don’t want to be blindsided by hidden fees, interest rate changes, or payment shocks. Informed decision-making allows consumers to drive the financial marketplace so that providers offer products that meet consumer needs and preferences.”<sup>4</sup> As outlined in our testimony today, CBA believes the banks offering deposit

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<sup>4</sup> Testimony of Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau - Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs, Committee on Oversight and Government Reform United States House of Representatives, Tuesday, May 24, 2011 -

advance products have adhered to these words in the strictest sense by providing reasonably priced products with highly transparent terms, meeting the demand of U.S. consumers.

## **Discussion**

Deposit advance products are heavily regulated and carefully designed to ensure strong consumer safeguards at reasonable prices. Most notably, deposit advance products have safely served consumer demand for many years under intense regulatory scrutiny; one product having been in existence for nearly two decades. As such, these products have been scrutinized again and again for consumer protection and safety and soundness concerns by numerous state and federal banking regulators. Banks have responded by working with regulators to ensure products that are best suited for public offering.

Bank-offered deposit advance products serve an important function: they help keep consumers from being pushed out of the heavily regulated banking system and into more expensive and often less and inconsistently regulated alternatives such as traditional payday loans, pawn brokers, title loans and other sources of short-term, small-dollar lending. Additionally, without reasonable alternatives, consumers will pay higher prices for short-term liquidity or may face increased delinquency, late payment, nonsufficient fund, and returned check fees.

One of the advantages of bank-offered deposit advance products is they are typically cheaper than other alternatives. For example, for a \$100 loan repaid over a 30 day period, the average cost of a payday loan is \$15.26, some of course are much higher.<sup>5</sup> Even at the highest end, the cost of a bank deposit advance product for the same amount is only \$10, with some as low as \$7.50.

More providers in the marketplace and efficient and consistent regulation will ensure greater competition and innovation, which ultimately will increase protections and lower costs. Overly

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<http://www.consumerfinance.gov/speeches/testimony-of-elizabeth-warren-before-the-subcommittee-on-tarp-financial-services-and-bailouts-of-public-and-private-programs/>

<sup>5</sup> Community Financial Services Association of America - *Cost of Offering Payday Loans* (2009) - <http://cfsaa.com/our-resources/short-term-credit-alternatives/cost-of-offering-payday-loans.aspx>.

prescriptive restrictions on bank-offered deposit advance products will lead to less competition and an increase in prices<sup>6</sup> - something not in the best interests of consumers.

Consumer demand is clear: Bank customers consistently register high satisfaction rates for deposit advance products. At a field hearing held by the CFPB on January 19, 2012 in Birmingham, Alabama, Director Richard Cordray remarked, “I want to be clear about one thing: We recognize that there is a need and a demand in this country for emergency credit.”<sup>7</sup> This statement rings more true today than ever. Consumers demand access to short-term, small-dollar alternatives, often using the service as a cash flow management tool. They appreciate the product’s convenience when coupled with a deposit account and recognize the value in utilizing services offered by their bank of choice. Consumers speak very highly of the product, registering testimonials like “I’m very thankful for [deposit advance]... It has helped me through some rough times... I hope this survey doesn’t mean they are considering ending this program,” and “[deposit advance] has made my life a lot easier...there have been several times where I have found myself in a bind, but was able to make ends me[e]t because of [deposit advance].”

In 2009, Professor Todd Zywicki of George Mason University published a paper addressing the disadvantages consumers will experience should overly restrictive bans be put on payday lending.<sup>8</sup> In his report, Zywicki writes, “[consumers] use payday lending to deal with short-term exigencies and a lack of access to payday loans would likely cause them substantial cost and personal difficulty, such as bounced checks, disconnected utilities, or lack of funds for emergencies such as medical expenses or car repairs. As such, having banks compete in this space will serve to benefit the consumer by better serving their short-term liquidity needs.”

Crippling the ability of banks to offer deposit advance products will not solve the underlining problem that creates the need for them, and consumer demand will not diminish. CBA urges

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<sup>6</sup> According to study conducted the Center for Financial Services Innovation entitled *A Fundamental Need: Small-Dollar, Short-Term Credit* (2008), continued market competition and product innovation would be advantageous in expanding small-dollar, short-term lending and may ultimately help lower the cost of these products for both providers and consumers.

<sup>7</sup> CFPB - In The Matter of: *A Field Hearing on Payday Lending*, page 19, Lines 9 -12.

<sup>8</sup> *The Case Against New Restrictions on Payday Lending*, Todd Zywicki, George Mason University (2009).

lawmakers and regulators to give strong consideration to the possible unintended adverse impacts on consumers when contemplating actions that would affect or eliminate the ability of banks to offer deposit advance products. There is significant acknowledgement by banking regulators and advocacy groups of the market demand and a need for short-term, small dollar lending products.

### **Deposit Advance Products vs. Payday Loans – A Comparison**

It is important to note bank-offered deposit advance products are not payday loans. Deposit advance products are lines of credit, which are products available to qualified bank customers. While some refer to these as “payday loans” their product features are very different in a number of ways. Critics, some media, consumer groups and policy makers often incorrectly associate bank-offered deposit advance products with certain traditional payday lending options, with little or no distinction as to how bank-offered product features allow for greater consumer protection and better customer pricing.

CBA believes it is important to explain bank-offered deposit advance products in order for members of this committee to have an accurate understanding of how they work, their products features, how consumers use them to manage their cash flow and how these are different than traditional payday loan products.

### **Eligibility**

The most important distinction between deposit advance products and payday loans is the relationship that exists between the customer and the bank. A consumer in need of a short-term, small dollar loan cannot walk into a bank and immediately qualify for a deposit advance LOC. These are not stand-alone products as the customer must have a checking account with the bank.

More importantly, they could not walk into a branch and open a checking account and have access to a deposit advance product that same day or even in the first month. The handful of CBA member banks offering this product all require a period of time in which the customer has had a checking account in good standing before they are even eligible to add the deposit advance feature to their checking account. This allows banks to monitor the customer to determine they

have the cash flow to qualify for the LOC and have been able to maintain their account for some period of time (2 to 6 months or longer) without any negative actions.

The maintenance of this relationship is of the utmost importance to a bank. Without a positive banking experience, customers would look elsewhere to meet their financial needs and banks would not only lose the opportunity to service the customer's short-term liquidity needs, but also the chance to establish or maintain a long-term banking relationship.

### Product Feature Protections

Unlike many payday loans, bank deposit advance products have built-in controls designed to limit use of the product. These controls include limits on credit amounts, automatic repayment through a linked depository account and "cooling" periods, all designed to keep customers from relying too heavily on the product and to ensure the customer's ability to repay.

Also, it is important to note that banks are some of the most highly regulated business entities in the country. Unlike most payday lenders, banks are under the constant scrutiny of many different regulators, some of which have a permanent presence within the companies they supervise. Additionally, banks need to take into account all applicable federal and state laws as well as banking regulations when developing products and services. Banks do this whenever they are developing new products. To ensure compliance for all products and services, the banks that currently offer deposit advance products have regular exams and audits and have been working with their regulators over the years to develop deposit advance products and make consumer-friendly adjustments to their features.

There are additional important distinctions between deposit advance products and payday loans, all of which are designed to strengthen customer relationships through valuable services that consumers demand, including:

### *Account Security*

Bank-offered deposit advance products offer customers greater account security. With these products, customers do not have to provide sensitive bank information to third-party financial

service providers, opening the door to the possible compromise of sensitive financial information. Accordingly, all personal account information is kept in-house, providing a significant security advantage to non-depository services.

### *Clear Disclosure*

Banks strongly support and adhere to strict clear and conspicuous disclosures for all financial products and services that assist consumers in making informed decisions about managing their finances. All product terms are disclosed clearly and are fully transparent to customers prior to product use. At a minimum, all deposit advance providers are bound by applicable federal laws, and the customer is typically required to sign a separate, detailed terms and conditions document to activate a deposit advance line of credit. Additionally, bank providers clearly and repeatedly disclose to their customers that deposit advance products can be an expensive form of credit that is designed for short-term borrowing needs and not long-term use. Customers also are regularly reminded that other credit alternatives, if applicable, may be cheaper and better suited to meet their financial needs.

Banks offering deposit advance products continue to provide consumers with clear disclosures needed to calculate and understand their product of choice. In surveys conducted by banks, customers overwhelmingly indicated they fully understand the terms of use for the product including pricing, repayment schedules and duration. For example, one bank's survey of its pilot product asked customers on a scale from 1-10 how clear explanations were regarding how an advance is calculated and how and when it is to be repaid. The overall score for the program was 9.13 out of a possible 10, giving all term and pricing explanations a "very clear" ranking.

### *Loan Size Limitations*

All depository institutions currently offering deposit advance products have limits on the amount a consumer may borrow. Although it varies from bank to bank, advances generally are limited to the lesser of a specific amount or a percentage of the total amount of a customer's monthly direct deposits. These limits ensure the customer has money for other monthly expenses after the advance is paid. In contrast, payday loans are not based on or repaid through a pre-existing



deposit relationship and payday lenders do not consider whether a particular loan will completely deplete a consumer's monthly income.

### *Cooling Off Periods*

All bank-offered deposit advance products impose a mandatory cooling-off period to ensure customers do not depend on the product to meet their monthly financial needs. These periods are imposed to ensure deposit advance products are used for the intended purpose, namely, short-term liquidity. To manage the risk that the consumer will become reliant, a customer typically will be able to access a deposit advance product for a limited period of time at the end of which they are required to repay the outstanding balance or completely stop using the product. Other usage limits are tied to excessive overdrafts and sustained negative checking account balances.

### *Pricing*

Deposit advance products often are criticized for their costs when considering the size of the credit extended. However, in order for any product to be sustainable, it must be delivered in a cost-effective manner for both the provider and the customer. Previous small dollar lending programs, such as those suggested by the FDIC,<sup>9</sup> have not been widely adopted by the industry because the costs to administer the programs outweigh the revenues and, hence, are not sustainable.

Most importantly, the fees associated with deposit advances products are typically lower than those charged by traditional payday lenders.<sup>10</sup> Most deposit advance products are priced based on a percentage of the amount advanced and do not include additional costs to the consumer such as application fees, annual fees, over-limit fees, rollover or re-write fees and late payment fees.

## **Level Playing Field**

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<sup>9</sup> FDIC's Small-Dollar Loan Pilot Program - 2008

<sup>10</sup> Deposit advance products carry less consumer costs than traditional payday loans. According to the Consumer Financial protection Bureau ("CFPB"), the median fee for traditional payday lenders was \$15 per \$100. In fact some payday lenders charge close to \$20 per transaction. For bank-offered deposit advance products, a typical fee per \$100 is \$10 or less.

Bank-offered deposit advance products have recently become the focus of proposed supervisory guidance by federal regulators. The Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) have issued nearly identical proposals for supervisor guidelines, and the CFPB has issued a white paper that raises the prospect of future action. As for the actions of the OCC and FDIC (collectively the “Agencies”), the impact of their proposals, if adopted, would severely constrain banks' ability to offer deposit advance products and assist their customers.

While the proposals claim to be based on safety and soundness concerns, the Agencies fail to provide any clear evidence to support their claim. Banks have offered these products for many years, including one for nearly two decades. During this time the products have yielded positive reactions from regulators and demonstrated that close working relationships between banks and their supervisors can result in services meeting consumer's needs. CBA believes that using safety and soundness as the basis for market intervention without clear evidence of risk or careful consideration of the consequences to consumers is a bad precedent and contrary to the policy objective of the prudential regulators to support development of innovative, fair and transparent financial products and services by insured financial institutions.

Title X of the Dodd–Frank Act created the CFPB to specifically address issues of consumer protection surrounding financial products. To ensure equal protections across all financial products and services, the CFPB’s authority to promulgate consumer protection rules extends to all providers of financial services and products including depository and non-depository institutions (e.g. payday lenders) – authority that the prudential regulators do not have.

*Accordingly, only the CFPB can ensure that consistent rules are applied across the entire financial services industry.* Unilateral action by the OCC or FDIC is contrary to Congressional intent in creating the CFPB and directing that agency to regulate consumer financial services whether offered by banks or nonbanks. Absent across-the-board standards, consumers will be pushed into services that offer fewer protections and come at significantly greater costs. Indeed, even within the realm of federal prudential banking supervision, banks of different charters will apply inconsistent standards with regards to deposit advance products.

As evidenced by its recent study,<sup>11</sup> the CFPB is in the process of collecting and analyzing sizable data on payday loans and deposit advance products. The goal of this effort is to develop a clear understanding of how consumers use these products. The CFPB's initial findings do not draw any conclusions as to what, if any, consumer protection issues exist, and we believe the study should be completed before any inferences about deposit advance products are made. Further, the CFPB's findings thus far do not consider the benefits of these products, which have been discussed in various reports.<sup>12</sup> CBA believes more work is needed to fully understand the complexity of this market, and we urge Congress and the federal prudential regulators to allow the CFPB to continue its analysis of all relevant data and complete a cost-benefit study before implementing new rules or guidance that could be detrimental to consumers.

#### *Deposit Advance Products Pose No Safety and Soundness Concerns*

As previously mentioned, the OCC and FDIC have prefaced their proposed guidelines of deposit advance products on safety and soundness concerns. However, there is little evidence to support the premise that these products pose any safety and soundness risks to the banks that offer them. It is important to note some banks have offered deposit advance products for many years with little or no safety and soundness concerns, and we are unsure as to the basis for the Agencies' concerns over institutional safety and soundness. Close regulatory examination of these products has yielded relatively positive results and, importantly, demonstrated that close working relationships between banks and regulators can result in the development of prudent and fair products. Moreover, as discussed below, bank-offered deposit advance products involve materially less risk of harm to consumers than similar products offered by non-depository providers.

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<sup>11</sup> *Payday Loans and Deposit Advance Products, A White Paper of Initial Data Findings*. Consumer Financial Protection Bureau (April 24, 2013).

<sup>12</sup> See, *An Analysis of Consumer's Use of Payday Loans*, Gregory Elliehausen, Division of research and Statistics, Board of Governors of the Federal Reserve System (2009) – Survey results of consumer use of payday lending indicated that most customers used payday loans as a short-term source of financing. Also see, *Payday Lenders: Heroes or Villains?* Adair Morse, Graduate School of Business, University of Chicago (January 2007) - An assessment of the impact of payday lenders on disaster-struck communities concluded communities struck by natural disasters are more resilient and their community welfare improves as result of the availability of payday advances. Also see, *Payday Holiday: How Households Fare after Payday Credit Bans*. Donald P. Morgan and Michael R. Strain (2008) - An assessment of states with payday lending bans concluded that consumer financial problems saw significant increases when compared to states without similar restrictions.

### *Reputational Risk*

There is little evidence of consumer dissatisfaction with bank-offered deposit advance products. To the contrary, consumer satisfaction with these products is often very high with below normal complaint rates. For example, in one bank's recent survey of deposit advance customers, 90 percent of respondents rated their overall experience with the product as "good" or "excellent". In another survey by a different bank, the customer satisfaction rating ranked higher for the bank's deposit advance product than any other product offered by that bank.

In yet another recently conducted customer survey, one bank found more than 96 percent of customers said they were "satisfied" or "extremely satisfied" with their deposit advance. In addition to high overall customer satisfaction, 92 percent of customers of the bank agreed it was important to have the ability to advance from their next direct deposit with 94 percent of customers preferring the service to be offered by their bank.

Accordingly, complaint levels for deposit advance products are extremely low across the board. One bank offering the product registered just 41 complaints over the course of a year, representing just .018 percent of all active users of that bank's deposit advance product. This percentage equates to roughly one in every 5,500 users. Whether taken together or considered separately, the high customer satisfaction ratings and low levels of customer complaint for deposit advance products refute claims that these products pose significant reputational risk.

### *Credit Risk*

Deposit advance products have been around for many years, most notably through one of the most challenging economic cycles in recent history, and losses remain within an acceptable risk tolerance. Even if default rates were high, which they are not, there would be little to no credit risk as these products represent a very small percentage of any given bank's total lending portfolio.

### *Legal risk*

Banks need to take into account all applicable federal and state laws as well as banking regulations when developing products and services. Banks do this whenever they are developing new products. To ensure compliance for all products and services, banks have regular exams and audits. CBA believes that deposit advance products carry no greater legal risk than any other product or service. As discussed, deposit advance products rank high in customer satisfaction including high ratings for transparency and ease of use.

### Underwriting

The OCC, FDIC and others have expressed the view that banks currently offering deposit advance products do not typically analyze the customer's ability to repay the advance and assert banks base their decisions to grant deposit advance credit solely on the amount and frequency of customer deposits, not on the traditional underwriting that characterizes lines of credit. In their respective proposals, the OCC and FDIC suggest this lack of underwriting results in consumers repeatedly taking out advances they are unable to fully repay, creating a debt cycle the Agencies refer to as the "churning" of loans. The Agencies have proposed underwriting expectations for supervised banks designed to ensure deposit advance products are consistent with consumer eligibility and criteria for other bank loans. These criteria should ensure credit can be repaid according to the product terms, while allowing the borrower to meet typical and recurring necessary expenses.

Under the proposals, a bank would be required to monitor the consumer's use of a deposit advance products and repetitive use would be viewed as evidence of weak underwriting. To comply with the guidance, policies relating to the underwriting of deposit advance products must be written and approved by the bank's board of directors and must be consistent with a bank's general underwriting and risk appetite. Providers are also expected to document a sufficient customer relationship of no less than six months prior to providing a deposit advance to the consumer. The guidance would further prohibit consumers with delinquencies from eligibility. The bank must also analyze the customer's financial capacity with these products, including income levels and deposit inflows and outflows in addition to applying traditional underwriting criteria to determine eligibility.

CBA believes the approach taken by the proposed guidelines is flawed for several reasons. First, the proposals would require banks to use traditional underwriting and, in addition, overlay a cash flow analysis. Such analysis is not well suited to a deposit advance product and would increase the cost to offer it. Requiring a bank to complete a cash flow analysis on the customer's checking account, involves mapping all recurring inflows against all outflows of a single checking account to determine a borrower's financial capacity. This analysis assumes that non-recurring inflows are not legitimate forms of income and also assumes all outflows are non-discretionary. This type of analysis is not used for other credit underwriting in the ordinary course of business because a bank is not able to assess its predictive power, which is a key aspect of safe and sound underwriting practices.

Second, the proposed guidelines are flawed is they assume consumers use their checking accounts to build reserves or savings as opposed to using them as transactional accounts, an assumption that is contrary to the very purpose of the account. Accordingly, even a high income consumer with no debt and a very high credit score may not qualify under the proposed guidelines as checking accounts are not typically where consumers keep excess funds.

Third, the application of traditional underwriting would require banks to pull consumer credit reports to assess a customer's ability to repay. Under the proposals, banks would need to make credit report inquiries at least every six months to ensure a customer continues to have the ability to repay all advances made. This process of making multiple inquiries could have a detrimental effect on a one's credit score and, in turn, would cause, not prevent, harm to the customer by possibly limiting access to other forms of credit.

Accordingly, the proposals would impose more stringent underwriting standards on deposit advance products than on any other bank product today. If the guidelines are adopted as proposed, very few consumers would be eligible and it would be nearly impossible for banks to offer these products. Deposit advance products are hybrid products combining elements of depository payments and lending, thus requiring new and innovative models of evaluation. The proposals do not take into account the hybrid nature of the product and lean too far in the direction of classifying it as a traditional credit product.

CBA firmly believes the proposals will effectively result in killing the product and will steer consumers away from the banking system to non-depository alternatives such as traditional payday lenders, title loans, pawn shops and others that are more expensive and offer far fewer consumer protections. We believe these consumers will face other burdens such as over-drafting their account, delaying payments that could result in late fees and detrimental hits to their credit score, or foregoing needed non-discretionary expenses.

In a 2011 report,<sup>13</sup> the FDIC noted, “Participation in the banking system...protects households from theft and reduces their vulnerability to discriminatory or predatory lending practices. Despite these benefits, many people, particularly low-to-moderate income households, do not access mainstream financial products such as bank accounts and low-cost loans.” The FDIC continues to note, “These households may incur higher costs for transaction and credit products and services, be more vulnerable to loss or struggle to build credit histories and achieve financial security. In addition, households that use non-bank financial services providers do not receive the full range of consumer protections available through the banking system.” We agree.

### **Deposit Advance Myths**

There are claims that bank-offered deposits advance products carry the same consumer risks as traditional payday loans. In addition to the distinctions between the products we have previously noted, we offer the following observations in response to several of these specific accusations.

- *Seniors make up a disproportionate amount of deposit advance borrowers.*

Deposit advance products **do not** have a disparate impact on seniors. In fact, CBA has found that seniors make up a small percentage of customers using the product. Additionally, seniors that use the product, often use it less frequently than younger users.

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<sup>13</sup> FDIC, *National Survey of Unbanked and Underbanked Households* (September 2011) - [http://www.fdic.gov/householdsurvey/2012\\_unbankedreport.pdf](http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf)

CBA members show deposit advance use by seniors to average in the range of 15%. This number is no higher than for any other bank-offered service or product. Additionally, the ratio of seniors to total population should be considered. According to 2010 U.S. Census data<sup>14</sup>, the population of the U.S. for those eligible for social security benefits (62 and over) is 16.2%, exemplifying that deposit advance use by seniors correlates roughly with the population of all customers having access to the product.

It also is important to note that a report from the Center for Responsible Lending (“CRL”) claimed one-quarter of all “payday” borrowers are Social Security recipients; however, CRL’s report utilized a sample size of only 66 respondents of which 17 received Social Security. A sample size so small clearly is not indicative of all deposit advance users and holds no statistical significance.

- *Bank deposit advance products carry an annual percentage rate (APR) that averages 225 to 300 percent.*

Media and consumer groups often point to what would appear to be a high APR for deposit advance products. An APR is a single percentage number that represents the actual yearly cost of funds over the term of a loan. Since the duration of deposit advance products is only a fraction of a full year, applying an APR provides an inflated percentage that misrepresents the products true cost. It is akin to booking for a hotel room for one night and being given the costs of the room for the full year.

Bank-offered deposit advance products are structured as LOCs and utilize flat fees based on total amounts advanced to determine a finance charge. Under the provisions of Regulation Z, banks that use a flat fee based on a percentage of the amount borrowed for open-ended extensions are not required to disclose an APR. CBA believes this is a more appropriate finance charge calculation that more accurately informs the customer of the cost of an amount advanced.

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<sup>14</sup> 2010 U.S. Census - <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf> (page 2, Table 1).



- *The median bank deposit advance user took out 13.5 loans in 2011 and spent at least part of six months during the year in bank payday debt. Over a third of borrowers took out more than 20 loans, bringing the mean number of loans per borrower to 19.*

Again, deposit advance products are lines of credit and using "days with a balance" is incorrect. Nor is it the right approach to consider "number of loans" as some customers only take small installments (i.e. \$20) at a time, not the max. It is helpful to think of this in the context of how consumers use other LOCs such as credit cards. Customers often use their credit cards to take multiple small dollar advances/purchases and they pay in full or not (consumer choice). It is not uncommon to use many times per month, and in every month of the year. Many statistics simply look to see if a customer used the service (made at least one advance during a month), which is not the same as a customer taking a single "loan" for a one-time need.

Consumers do in fact use deposit advance products for small dollar advances as needed and there is significant value in an open-end LOC structure. Advances are immediately available in a customer's checking account (no time needed for a loan application, fees associated with loan, funding, deposit made and credited, etc.). As such, an advance may be taken proactively to avoid an overdraft fee. For example, two checks may post at the end of a given day – in absence of an advance, the customer would be assessed two overdraft fees instead of paying a much smaller fee for the cost of an advance to cover the checks.

- *Bank payday borrowers are two times more likely to incur overdraft fees than bank customers as a whole.*

To make the assumption that users of deposit advance products incur more overdraft fees due to their use of the service would imply absolute causality – that the use caused the overdraft. However, one would have to ask other questions to get the bigger picture. For example, how many overdrafts were avoided by using the deposit advance? How much did the customer save by avoiding late fees, over limit fees, etc.? Was the customer afforded the ability to purchase necessities? CBA believes the total customer experience should be taken into account before assuming unsupported conclusions of causality.

## **Conclusion**

Moving forward, Congress, regulators and financial institutions need to build the right foundation to provide short-term consumer credit. Any legislative or regulatory action that impairs the ability of depository institutions to provide deposit advance products ultimately will result in steering consumers to less consumer friendly alternatives to fund their short-term liquidity needs. CBA appreciates the opportunity to provide testimony on this important issue and we welcome the opportunity to work with the Committee and others to ensure consumers have access to the best possible financial products and services available. I welcome the opportunity to answer any questions you may have.