

The Honorable Ben S. Bernanke
Chairman
Board of Governors, Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20220

The Honorable Martin Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20006

The Honorable Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

March 13, 2013

Dear Chairman Bernanke, Director Cordray, Director Gruenberg, and Comptroller Curry:

One year ago, we wrote to urge the federal regulators of our nation's banks to take immediate action to stop banks from making unaffordable, high-cost payday loans. We were encouraged by the FDIC's May letter indicating that it was deeply concerned and was investigating the practice,¹ and we have also been encouraged that the OCC has not finalized the guidance it proposed in 2011 that would have essentially legitimized the practice.² But we are also concerned that a year has passed without decisive regulatory action, so we write to renew our call.

Direct deposit "advance" loans offered by a handful of banks, including Wells Fargo, US Bank, Fifth Third, Regions, Bank of Oklahoma and its related banking divisions,³ and Guaranty Bank, are structured and function just like loans from payday loan stores – carrying a high-cost combined with a short-term balloon repayment. Research has long shown that payday loans trap borrowers in a cycle of expensive long-term debt, causing serious financial harm to borrowers, including increased likelihood of bankruptcy, paying credit card debts and other bills late, delayed medical care, and loss of basic banking privileges because of repeated overdrafts. Payday lending has a particularly adverse impact on African Americans and Latinos, as a disproportionate share of payday borrowers come from communities of color.⁴ High cost, short-term balloon repayments, and the consequent series of repeat loans, have long been identified by regulators as features of predatory lending.⁵

Further, payday lending by banks undermines state law in the states that have prohibited or imposed meaningful restrictions on payday loans in recent years, or that have never allowed payday loans to be part of their marketplace. It also undermines provisions of the Military Lending Act aimed at protecting service members from payday loans.

For customers with direct deposit of wages or public benefits, the banks will advance the pay in increments for a fee, ranging from \$7.50 to \$10 per \$100 borrowed. The bank deposits the loan amount directly into the customer's account and then repays itself the loan amount, plus the fee, directly from the customer's next incoming direct deposit. If direct deposits are not sufficient to

repay the loan within 35 days, the bank repays itself anyway, even if the repayment overdraws the consumer's account, triggering more costs through overdraft fees.

Non-bank payday borrowers routinely find themselves unable to repay the loan in full plus meet their expenses for the next month without taking out another payday loan. An analysis of actual checking account activity by the Center for Responsible Lending⁶ finds the same is true with bank payday loans:

- Bank payday loans typically carry an annual percentage rate (APR) of 365 percent based on the typical loan term of ten days;⁷
- On average, bank payday borrowers are in debt for 175 days per year;⁸
- Many borrowers take out ten, 20, or even 30 or more bank payday loans in a year;⁹
- Many bank payday borrowers are Social Security recipients, and the banks take significant portions of their monthly checks immediately for repayment of bank payday loans.¹⁰ The threat these loans pose to Social Security recipients became even more pronounced March 1, when electronic distribution of government benefits became mandatory.

These findings further demonstrate that, as in the storefront payday context, lender "protections" like "installment options" and "cooling off periods" simply do not stop the cycle of repeat loans.

There are clear signals that bank payday lending will grow rapidly without prompt regulatory action. Fiserv, Inc., a provider of software systems to the financial industry, has developed a bank payday software product it calls "Relationship Advance." Fiserv has reported significant interest in the product: "The pipeline is extremely strong. We've had some very nice mid-tier signings over the last three, four months and we see this as an interesting driver of ... high-quality recurring revenue"¹¹

Fiserv's marketing of the Relationship Advance product has included promises that, within two years, revenue from the product "will be greater than all ancillary fee revenue combined"¹² and that the product will result in little-to-no "overdraft revenue cannibalization;"¹³ that is to say, it will add another high fee source without reducing overdraft fee revenue.

Ultimately, payday loans erode the assets of bank customers and, rather than promote savings, make checking accounts unsafe for many customers. They lead to uncollected debt, bank account closures, and greater numbers of unbanked Americans. All of these outcomes are inconsistent with both consumer protection and the safety and soundness of financial institutions.

Payday loans by banks also cause safety and soundness concerns for other reasons, including that they violate the basic safety and soundness principle of lending based on the borrower's ability to repay a loan without relying on collateral (in this case, the borrower's incoming deposits); they pose severe reputational risk, as evidenced by sweeping negative reaction to these products captured in the attachment to this letter;¹⁴ and they risk violation of consumer protection laws,

which itself poses safety and soundness risk.¹⁵ It is therefore incumbent on the prudential regulators, in addition to CFPB, to take swift action to address this product.

Over the last year, the need for federal regulatory action has only become clearer. Despite banks' claims that these loans offer short-term, emergency solutions for their customers, banks have offered no data that would dispute that these loans are trapping their customers in long-term, high-cost debt. And despite efforts of many of the undersigned groups to engage directly with banks making payday loans; heightened negative media attention; and public expressions of concern from state legislators, state regulators, and members of Congress, banks continue to make payday loans.

Please move quickly to ensure that payday lending by banks does not become more widespread and to ensure that those banks currently making payday loans stop offering this inherently dangerous product.

We appreciate your consideration of our concerns.

Sincerely,

National Organizations

AARP
Accion, The US Network
AFL-CIO
AFSCME
Alliance for Retired Americans
Americans for Financial Reform
Black Leadership Forum
BWICA Educational Fund, Inc.
Calvert Investment Management, Inc.
CDFI Coalition
Center for Community Change
Center for Economic Integrity
Center for Responsible Lending
Church of England Ethical Investment Advisory Group
Coalition of Religious Communities
Community Action Partnership
Community Development Venture Capital Alliance
Comprehensive Community Action Program
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumers Union
Corporation for Enterprise Development (CFED)
Courage Campaign
Democratic Processes Center, Inc
Demos
Dominican Sisters of Hope
Dominican Sisters of Hope Justice Committee

Evangelical Lutheran Church in America
Everence Financial
Fair Share Alliance
Fifth Avenue Committee
First Affirmative Financial Network
First Nations Development Institute
Franciscan Sisters of the Atonement
Friends Fiduciary Corporation
Green America
Heartland Alliance for Human Needs & Human Rights
HomeFree-USA
Housing and Economic Rights Advocates (HERA)
Housing Help Inc.
Identika LLC
Innovative Changes
Insight Center for Community Economic Development
Intercommunity Peace & Justice Center
Interfaith Center for Corporate Responsibility
Lawyers' Committee for Civil Rights Under Law
Leadership Center for the Common Good
Mercy Investment Services, Inc.
Mission Asset Fund
Missionary Oblates USA
NAACP
National Alliance of Latin American & Caribbean Communities (NALACC)
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
National People's Action
Neighbors Helping Neighbors
NETWORK, A National Catholic Social Justice Lobby
PathStone
PICO National Network
Public Citizen
Resource Generation
Rural Dynamics Inc
Sargent Shriver National Center on Poverty Law
Sisters of Charity of the Blessed Virgin Mary
Social Justice Committee, Unitarian Universalist Congregation at Shelter Rock, \$300 million under management
The Fund for Community Progress
The Greenlining Institute
The Housing Research & Advocacy Center
The International Brotherhood of Teamsters
The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
The Leadership Conference on Civil and Human Rights
The National Advocacy Center of the Sisters of the Good Shepherd

The Needmor Fund
The Resurrection Project
Trillium Asset Management
U.S. Labor Against the War (USLAW)
U.S. PIRG
United Church Funds
United Church of Christ Justice and Witness Ministries
Ursuline Sisters of Tildonk, U.S. Province
USAction
Woodstock Institute
Xaverian Brothers
Zevin Asset Management

State and Community Organizations

Action for Children North Carolina
Action NC, NC
Action United (PA)
Alabama Appleseed Center for Law & Justice, Inc.
Alliance of Californians for Community Empowerment (ACCE)
American Friends Service Committee - South East New England Office
Aquinas Associates
Arizona Consumers Council
Arizona PIRG
Arkansans Against Abusive Payday Lending
Arkansas Community Organizations
Arkansas Interfaith Alliance
Birmingham Faith in Action
Brooklyn Housing & Family Services, Inc.
Burdge Law Office Co LPA
California Reinvestment Coalition
California/Nevada Community Action Partnership
Catholic Health East
CCISCO: Contra Costa Interfaith
Chelsea Collaborative
Chicago Appleseed Fund for Justice
Chicago Consumer Coalition
Christopher Reynolds Foundation \$24m AUM
Citizen Action/Illinois
Cleveland Housing Network
Clinica Esperanza/Hope Clinic (60 Valley Street, Olneyville)
Coloradans for Payday Lending Reform
Colorado Progressive Coalition
Communities Creating Opportunity
Communities United for Action (OH)
Community Action Kentucky
Community Legal Services, Inc. (Philadelphia, PA)
Community Relations Council of the Jewish Alliance of Greater Rhode Island
Congregation of the Passion, Holy Cross Province

Connecticut Association for Human Services
Consumer Credit Counseling Service of Greater Greensboro, NC
Consumer Federation of California
Consumer Federations SE
Credit Counseling Agencies of NC Association, NC
Cypress Hills Local Development Corp.
Disciples Justice Action Network, Mt. Rainier Christian Church, MD
District Council 37 (New York), AFSCME
Economic Fairness Oregon
Emmaus Way Church, Durham, NC
Empire Justice Center
ESOP: Empowering and Strengthening Ohio's People
Fair Housing Council of Central New York
Financial Pathways of the Piedmont, NC
Financial Protection Law Center, NC
Florida Consumer Action Network
Florida Legal Services, Inc.
Florida Minority Community Reinvestment Coalition
Genesee Co-op Federal Credit Union
Georgia Watch
Grass Roots Organizing (MO)
Human Development Services of Westchester
Illinois Asset Building Group
Illinois People's Action
Illinois PIRG
Iowa Citizens for Community Improvement
Jacksonville Area Legal Aid, Inc.
Jesuit Social Research Institute, Loyola University New Orleans
Kentucky Asset Building Coalition
Kentucky Coalition for Responsible Lending
Kentucky Domestic Violence Association
Kentucky Equal Justice Center
Kentucky Youth Advocates
Lakeview Action Coalition (IL)
Latinos Unidos de Massachusetts (LUMA)
Law Foundation of Silicon Valley
Legal Assistance Resource Center of Connecticut, Inc.
Legal Services of Southern Piedmont, Charlotte, NC
Living United for Change in Arizona (LUCHA)
Long Island Housing Services, Inc.
Louisiana for Fair Lending Coalition
Lower East Side People's Federal Credit Union/PCEI, Inc.
Lutheran Advocacy-Illinois
Mahonnig Valley Organizing Collaborative (OH)
Maine Center for Economic Policy
Maine Equal Justice
Margert Community Corporation in Far Rockaway, NY.
Maryland CASH Campaign
Maryland Consumer Rights Coalition

MASSPIRG
Metropolitan St. Louis Equal Housing & Opportunity Council
Metropolitan Tenants Organization
MFY Legal Services, Inc.
Midwest Coalition for Responsible Investment
Minnesota Neighbors Organizing for Change (NOC)
Missourians Organizing for Reform and Equality (MORE)
Monsignor John Egan Campaign for Payday Loan Reform
Montgomery County Asset Building Coalition
Mountain State Justice of West Virginia
NAACP Providence Branch
NEDAP
Neighborhood Preservation Coalition of NYS, Inc.
New Jersey Citizen Action
New Jersey Communities United
New York Public Interest Research Group, Inc. (NYPIRG)
New York StateWide Senior Action Council, Inc.
North Carolina Assets Alliance
North Carolina Community Development Initiative
North Carolina Housing Coalition
North Carolina Justice Center
North Carolina Latino Coalition
North Carolina State AFL-CIO
Northeast Ohio Legal Services
Northside P.O.W.E.R. (IL)
Northwest Coalition for Responsible Investment
Northwest Side Housing Center
Ohio Poverty Law Center
Olneyville Housing Corporation
Olneyville Unidos
OnTrack Financial Education & Counseling, NC
Oso Vista Ranch Project
Pisgah Legal Services, NC
Policy Matters Ohio
Progressive Leadership Alliance of Nevada
Project IRENE (Illinois organization)
Public Counsel
RAISE Texas
Raleigh Mennonite Church
Reinvestment Partners, NC
Richard Fisher Law Office
Rhode Island Payday Reform Coalition
San Diego City-County Reinvestment Task Force
San Francisco Supervisor John Avalos
SC Appleseed Legal Justice Center
Sisters of Charity of Leavenworth
Sisters of St. Dominic of Blauvelt, NY
Sisters of St. Dominic of Caldwell, NJ
Sisters of St. Francis of Philadelphia

Sisters of the Good Shepherd
 Social Action Linking Together (SALT)
 Southern Bancorp
 Southsiders Organized for Unity and Liberation (SOUL) (IL)
 Spanish Coalition for Housing (an Illinois group)
 Statewide Poverty Action Network
 Step Up Savannah
 Sunflower Community Action (KS)
 Teamsters Local 237
 Texas Appleseed
 The Association for Neighborhood and Housing Development (ANHD), New York, NY
 The Bell Policy Center
 The Central New York Citizens in Action, Inc., Utica, NY
 The Collaborative of North Carolina
 The Delaware Community Reinvestment Action Council, Inc.
 The New York Legal Assistance Group (NYLAG)
 The Sisters of the Presentation of the Blessed Virgin Mary
 The Support Center, NC
 Together Colorado
 Toledo First Church of Seventh-Day Adventists
 Triangle Congregations Associations and Neighborhoods, NC
 Tri-State Coalition for Responsible Investment
 University Neighborhood Housing Program, Bronx, NY
 Virginia Citizens Consumer Council
 Virginia Partnership to Encourage Responsible Lending (VaPERL)
 Virginia Poverty Law Center
 VOCAL-NY
 Voices for Children in Nebraska
 Washington Asset Building Coalition
 Westchester Residential Opportunities Inc.

Individuals (organizational affiliations for identification purposes only)

Alex Mikulich, Jesuit Social Research Institute, Loyola University New Orleans
 Ann Thorne, OP, Dominican Sisters of Hope
 Beth McCormick OP, Dominican Sisters of Hope
 Brenda Procter, Grass Roots Organizing (Missouri)
 Diane Trotta, OP, Dominican Sisters of Hope
 Dixie Palmer
 Eileen Breen
 Gina M. Raimondo, Rhode Island General Treasurer
 Greg Wilson (Delaware Community Reinvestment Action Council)
 Honorable José Cisneros, Treasurer, City and County of San Francisco
 Janet Marachesani
 Kathleen C. Engel, Prof. of Law & Assoc. Dean for Intellectual Life, Suffolk University Law School
 Kathleen Hebbeler
 Louis E. Ruiz, Representative, State of Kansas, District #32
 Margaret Weber, The Congregation of St. Basil

Mary Ann Cirillo, OP, Dominican Sisters of Hope
Mary E. Geiger, Dominican Sisters of Hope
Michael S. Archer CIV, Marine Installations East
Peggy Devlin, OP, Dominican Sisters of Hope
Peter B. Meyer, PhD, Professor Emeritus of Urban Policy and Economics Director
Emeritus, Center for Environmental Policy and Management University of Louisville
Peter Skillern, Reinvestment Partners (North Carolina)
Rita L. Haynes, former Executive Director, Faith Community Credit Union, Cleveland,
OH
Shane A. Culliton, Main Street Program Manager, Neighborworks Blackstone River
Valley
Sister Joseph Marie Levesque, OP
Sr. Susan M Flynn, OP, Dominican Sisters of Hope
State Representative Ana Sol Gutierrez (Maryland District 18)
Walt Dartland, Consumer Federation of the Southeast (Florida)
Xilonin Cruz-Gonzalez, Board Clerk, Azusa Unified School District (California)

¹ Letter from FDIC to Americans for Financial Reform, May 29, 2012, *available at* <http://www.responsiblelending.org/payday-lending/policy-legislation/regulators/Bank-DDA-FDIC-OC12-65R-1.pdf>

² Comments of Center for Responsible Lending, Consumer Federation of America, and National Consumer Law Center (on behalf of its low-income clients) to the OCC on its Proposed Guidance on Deposit-Related Consumer Credit Products, Docket ID OCC-2011-0012, 76 Federal Register 33409 (June 8, 2011) (August 8, 2011), *available at* http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/OCC-Comments-Payday-and-Overdraft-Guidance-Aug-8-2011_Final.pdf.

³ BOKF, NA operates seven banking divisions, all of which are making payday loans: Bank of Albuquerque, Bank of Arizona, Bank of Arkansas, Bank of Kansas City, Bank of Oklahoma, Bank of Texas, and Colorado State Bank and Trust.

⁴ For example, studies in California and Texas have both shown that African American and Latinos are far more likely to have been extended payday loans than the population as a whole. California Department of Corporations, “Payday Loan Study (Updated June 2008); Paige Marta Skiba and Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt University and the University of Pennsylvania (October 10, 2008). This disproportionate share is even more significant because African Americans and Latinos are much less likely to have a checking account—a basic requirement for obtaining a payday loan.

⁵ See, e.g., OCC 2003-2, Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices (Feb. 21, 2003) (noting that excessive fees, “balloon payments in short-term transactions” and “loan flipping” (i.e., repeated refinancings or renewals) are features associated with abusive lending practices).

⁶ Center for Responsible Lending, “Big Bank Payday Loans,” CRL Research Brief, July 2011, *available at* <http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf>

⁷ This APR is based on a fee of \$10 per \$100 borrowed, which most banks making payday loans typically charge. One bank charges \$7.50 per \$100 borrowed.

⁸ “Big Bank Payday Loans” at 5. The analysis found that, on average, bank payday borrowers have 16 loans and, assuming these loans were not concurrent, stay in payday debt for 175 days per year. The average loan duration for all panelists was 10.7 days.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Fiserv Investor Conference, Oct. 11, 2011.

¹² Fiserv Relationship Advance program description available at <http://www.relationshipadvance.com/> as visited August 2011, on file with the Center for Responsible Lending; see also Fiserv unveils Relationship Advance: *Full-service solution provides a safer, more cost-effective alternative to courtesy overdraft programs*, Press Release (Nov. 18, 2009), *available at* <http://investors.fiserv.com/releasedetail.cfm?ReleaseID=425106>; Jeff Horwitz, *Loan Product Catching On Has a Couple of Catches*, American Banker, Oct. 5, 2010.

¹³ <http://www.relationshipadvance.com/> as visited August 2011, on file with the Center for Responsible Lending.

¹⁴ Center for Responsible Lending, *Bank Payday Lending: Overview of Media Coverage and Public Concerns*, CRL Issue Brief, March 7, 2013, *available at* <http://rspnsb.li/12PIPXh>

¹⁵ For further detail, see Center for Responsible Lending, *Prudential Regulators Should Apply Safety and Soundness Standards to Bank Payday Loan Products*, January 24, 2013, *available at* <http://rspnsb.li/Yqd0uH>.