



The Voice of the Retail Banking Industry

April 8, 2014

The Honorable Jeb Hensarling
Chairman
Financial Services Committee
US House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Financial Services Committee
US House of Representatives
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

The Consumer Bankers Association (CBA)¹ commends you for calling today's hearing to examine the current regulatory landscape of our financial services industry and appreciates your continued oversight of the rules and regulations governing financial institutions. Even as the U.S. banking industry faces an unprecedented regulatory environment, CBA member financial institutions work daily to fulfill the needs of their customers and communities – thus not just contributing to but leading the sustainable economic growth and recovery in the U.S. Consumer and small business lending are growing as banks are meeting new regulatory obligations in a timely manner without imposing burdens on their customers.

Following the financial crisis of 2008, Congress responded with a thorough overhaul of the outdated laws governing our nation's financial system and created a new set of policies to protect consumers. While many of those changes were necessary for a complex and rapidly changing system that had outgrown its regulations, much of the interpretation of Congress' intent was left to regulatory agencies to determine how best to apply new laws to the industry. Unfortunately, some steps taken by regulatory agencies in the name of consumer protection and safety and soundness may have run counter to Congress' intent by limiting consumer choice, transparency, and market competition, while pushing vulnerable consumers to more expensive and often less regulated financial services providers.

One year ago, the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) issued nearly identical proposed supervisory guidance to clarify the agencies' application of principles of safe and sound banking practices and consumer protection in connection with deposit advance products (DAP). DAP, which are now no longer being offered to consumers by CBA member institutions, were created to serve consumers in critical need of short-term, small-dollar credit who did not qualify for other traditional credit products. These were not closed-end loans; they were lines of credit that were repaid automatically from a verified recurring direct deposit. The maximum amount advanced was

¹ The Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

limited to the lesser of a cap (typically \$500) or a percentage of the average recurring payment (e.g. 50%). The terms of the DAP were clear and easy to understand.

Consumer satisfaction with DAP was extremely high. For several reasons, DAP offered consumers a vastly superior option to other low-dollar short-term financing such as non-depository payday loans, pawn brokers, and title loans. DAP were only available to bank customers with established checking account relationships in good standing and included features such as maximum loan size and cooling off periods to prevent consumers from becoming overly reliant on the product. These products were offered by banks for many years and – appropriately – were highly regulated for consumer protection and safety and soundness concerns.

There has always been, and will always be, a need for small-dollar, short-term credit. Historically, the FDIC and other prudential regulators have encouraged depository institutions to meet this particular consumer credit need. However, after the OCC and FDIC finalized their guidance late last year, banks offering DAP quickly decided to cease offering the product.

The decision was made for several reasons, but primarily because the guidance would have required banks to use more traditional underwriting and in addition, overlay a cash flow analysis that would not have been well suited to deposit advances and would have increased the cost of the product. Regulators assumed consumers were using their checking accounts to build reserves or savings as opposed to using them as transactional accounts, an assumption contrary to the purpose of a traditional checking account. Additionally, even though bank-offered DAP imposed a mandatory cooling off period, the FDIC and OCC guidelines would have required each deposit advance to be repaid in full before the bank could extend another deposit advance, and banks were discouraged from offering more than one advance per monthly statement cycle. These guidelines were inconsistent with the structure of DAP which provided immediate access to the exact amount of money needed. By limiting a customer to one deposit advance per month, banks were concerned customers would have been encouraged to take a larger amount than was needed “just in case,” which would have resulted in higher overall costs.

For these reasons, the CBA strongly encouraged the FDIC and OCC to withdraw its guidance and to work with the industry on a practical solution – to build a foundation to fully support short-term lending needs. Though there are some positive signs of economic recovery in the U.S., unfortunately a large number of Americans have yet to feel the positive impact. According to the American Payroll Association, in data released on March 26, 2014, more than two-thirds of Americans stated they live paycheck to paycheck. Sixty-eight percent of survey respondents said it would be “somewhat difficult” or “very difficult” if their paychecks were delayed just one week. Limiting banks’ ability to serve the small dollar loan market leaves consumers with more costly alternatives and will drive them out of the regulated financial services industry. Because

of this, they will ultimately face the prospect of further late payments, nonsufficient funds and returned check fees ultimately driving up the costs.

CBA members also have seen regulations limiting consumer choice in the area of providing student loans. Congress decreed in 2010 that, despite the fact that most colleges preferred the bank-based guaranteed loan program, it would replace that program with a direct government loan system. Today, the federal government's Direct Loan Program makes up about 93 percent of all loans to college students and their parents. The remaining, relatively tiny, private student loan business, despite being small, is highly regulated in ways that are often excessive and costly.

Banks must make 16 distinct disclosures to borrowers three separate times before originating a private student loan. Bank lenders also are subject to scrutiny by both their prudential regulators, such as the OCC or FDIC, and the CFPB, which has special authority to supervise all student loan programs no matter how small on behalf of consumers. This is a major administrative burden for banks.

Private student loans are borrowed for various reasons, usually to supplement federal student aid, but sometimes because borrowers simply would prefer not to be in debt to the government. These loans make higher education possible for thousands of students every year. Despite the fact that only a few banks participate in student lending in a major way, and the volume of private student loans is tiny compared to federal student loans, private lenders are often incorrectly perceived as the cause of the student loan debt problem. It is an absurd position, given that the government has 93 percent of the student loan market.

Banks answer with facts: the performance of private student loans is exemplary, with delinquency rates by the major lenders hovering in the three percent range. But the potential for negative publicity is such that despite the performance of private loan portfolios, the small size of the remaining private loan marketplace, and the duplicative regulation of the business leaves banks wondering if it is worthwhile to continue.

Bank behavior and impact on consumer options going forward on a number of issues is still yet to be determined based on either recent regulatory guidance or by rules yet to be written. Specifically:

- Only time will tell how the QM mortgage rules will impact the non-QM market.
- The CFPB's approach to supervising and enforcing the indirect auto finance industry has raised numerous questions about how to price loans and monitor for fair lending compliance.
- Section 1071 of the Dodd-Frank Act amends the Equal Credit Opportunity Act (ECOA) to create a HMDA-like set of requirements for small business credit applications. While



The Voice of the Retail Banking Industry

no rules have been promulgated to date, the statutory provisions as written would have a significantly negative effect on small business lending.

CBA's members stand ready to work with the prudential regulators to find practical solutions to balance consumer protection with responsible access to credit for our customers.

We appreciate the opportunity to comment on today's hearing.

Sincerely,

A handwritten signature in black ink that reads 'Richard Hunt'. The signature is written in a cursive style with a large initial 'R'.

Richard Hunt
President and CEO
Consumer Bankers Association