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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC-2017-0019]

Rescission of Guidance on Supervisory Concerns and Expectations Regarding Deposit

Advance Products

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Rescission of guidance.

SUMMARY: The OCC is rescinding its supervisory guidance entitled “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” and OCC Bulletin 2013-40 (collectively, Guidance), which address the OCC’s expectations regarding the offering of deposit advance products by national banks and federal savings associations (collectively, banks). The OCC is rescinding the Guidance in light of the adoption of a final rule on payday, vehicle title, and certain high-cost installment loans by the Consumer Financial Protection Bureau (CFPB), which overlaps with the Guidance, resulting in potentially inconsistent regulatory guidance for banks.

DATES: This Guidance is rescinded effective October 5, 2017.

FOR FURTHER INFORMATION CONTACT: Paul Reymann, Director, Consumer Compliance Policy, (202) 649-5470; Steven Jones, Director, Retail Credit Risk, (202) 649-6220; Kenneth Lennon, Director, Community and Consumer Law, (202) 649-6350; Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597.

SUPPLEMENTARY INFORMATION:

In 2013, the OCC issued the Guidance to set forth the agency's expectations regarding deposit advance products offered by banks.¹ A deposit advance product is a small-dollar, short-term loan or line of credit that a bank makes available to a customer whose deposit account reflects recurring direct deposits. The customer obtains a loan, which is to be repaid from the proceeds of the next direct deposit. The Guidance highlighted potential credit, reputation, operational, compliance, and other issues associated with deposit advance products and encouraged banks to be aware of these issues so that banks offering these products in response to their customers' short-term, small-dollar credit needs did not engage in practices that would increase these risks or result in the unfair treatment of bank customers.

Since adoption of the Guidance in 2013, the regulatory and marketplace landscapes have changed, and the OCC has gained supervisory experience with application of the Guidance to deposit advance products. Most recently, the CFPB adopted a rule entitled "Payday, Vehicle Title, and Certain High-Cost Installment Loans" (CFPB's Final Rule),² regarding short-term, small-dollar loans, which overlaps with the Guidance and will therefore apply to many of the loans addressed by the Guidance. For example, the CFPB's Final Rule includes underwriting requirements for covered loans that are inconsistent with certain aspects of the Guidance. In addition, the CFPB's Final Rule provides for cooling-off periods that differ from those set forth in the Guidance. Thus, the continuation of the Guidance would subject banks to potentially

¹ 78 FR 70624 (November 26, 2013).

² Today the CFPB announced that it adopted and submitted the CFPB's Final Rule for publication in the *Federal Register*. <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans/>. The CFPB issued its notice of proposed rulemaking on payday loans in 2016. 81 FR 47864 (July 22, 2016).

inconsistent regulatory direction and undue burden as banks prepare to implement the requirements of the CFPB's Final Rule.

In addition, based on the changed regulatory and marketplace landscape and our supervisory experience noted above, the OCC is concerned that banks are able to serve consumers' needs for short-term, small-dollar credit. As a practical matter, 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.

Accordingly, the OCC is rescinding the Guidance. In rescinding the Guidance, the OCC considered that many other OCC guidance documents cover key elements of consumer lending, and these guidance documents remain in effect and will continue to apply to deposit advance products.³

The OCC continues to support and encourage banks and savings associations to develop and use innovative products to meet customers' short-term, small-dollar credit needs and will continue to ensure that banks that choose to offer this type of product do so responsibly. In providing deposit advance products and other short-term, small-dollar loans, banks should be guided by basic principles of prudent underwriting and risk management as well as fair and inclusive treatment of customers. In particular, banks should consider the following core principles when offering innovative, short-term, small-dollar loan products:

³ See, e.g., Advisory Letter 2000-7, "Abusive Lending Practices"; *Comptroller's Handbook*, "Deposit-Related Credit" (underwriting, credit administration, management oversight); OCC Bulletin 2010-16, "Guidance for Evaluating Capital Planning and Adequacy" (capital planning); OCC Bulletin 2001-37, "ALLL Methodologies and Documentation" (ALLL); OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," as supplemented by OCC Bulletin 2017-21, "Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29." The "Deposit-Related Credit" booklet, which provides guidance to and procedures for examiners, will be revised to remove references to the Guidance.

- All bank products should be consistent with safe and sound banking, treat customers fairly, and comply with applicable laws and regulations.
- Banks should effectively manage the risks associated with the products they offer, including credit, operational, compliance, and reputation.
- All credit products should be underwritten based on reasonable policies and practices, including guidelines governing the amounts borrowed, frequency of borrowing, and repayment requirements.

OCC examiners will continue to assess how banks offer short-term, small-dollar loan products, including whether management oversight is appropriate, whether risks posed by third-party relationships are appropriately managed, and whether the product complies with applicable federal consumer protection statutes. The OCC will take appropriate action to address any unsafe or unsound banking practice or violations of law associated with these products.

Dated: October 5, 2017.

Keith A. Noreika,
Acting Comptroller of the Currency.

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