

FDIC Seeks Comments on Small-Dollar Lending

Article By:

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Yesterday, the FDIC issued a [request for information](#) (RFI) on small-dollar lending, including “steps the FDIC could take to encourage FDIC-supervised institutions to offer responsible, prudently underwritten small-dollar credit products that are economically viable and address the credit needs of bank customers.” (The FDIC supervises state-chartered banks and savings institutions that are not Federal Reserve members.) Comments must be received no later than 60 days after the date the RFI is published in the Federal Register.

In May 2018, the OCC [issued a bulletin](#) intended to encourage its supervised institutions to offer small-dollar loans. The FDIC’s issuance of the RFI signals that the FDIC intends to follow suit.

The RFI requests input on 21 questions dealing with the following topics:

- Consumer demand
- Challenges
- Product features
- Innovation
- Alternatives
- Other considerations

The questions dealing with “Challenges” include one that asks whether there are “any legal, regulatory, or supervisory factors that prevent, restrict, discourage, or disincentivize banks from offering small-dollar credit products.” A glaring regulatory impediment to small-dollar lending by FDIC-supervised institutions is the FDIC’s November 2013 guidance on deposit advance products, which effectively precludes FDIC-supervised institutions from offering deposit advance products. (In October 2017, just hours after the CFPB released its final rule on payday, vehicle title, and certain high-cost installment loans, [the OCC rescinded](#) substantially identical guidance on deposit advance products, applicable to national banks and federal savings associations.)

While the OCC's encouragement of small-dollar lending was in one sense a welcome development, the OCC bulletin raised several concerns. As discussed more fully in our blog post about the bulletin, those concerns were the bulletin's failure to confirm that the National Bank Act authorizes national banks to charge the interest allowed by the law of the state where they are located, without regard to the law of any other state, as well as the bulletin's unfavorable view of bank-nonbank partnerships.

Unlike the FDIC, the OCC did not issue an RFI in advance of issuing its bulletin. The FDIC's RFI thus serves as an opportunity for commenters to provide input that could result in the FDIC's issuance of guidance that addresses the shortcomings in the OCC bulletin. For example, the RFI asks: "What are the potential benefits and risks related to banks partnering with third parties to offer small-dollar credit?" In addition, it invites comment on the structure of small-dollar credit products offered by FDIC-supervised institutions. Thus, commenters can ask the FDIC to consider structures other than the structure suggested by the OCC bulletin—even-payment amortizing loans with terms of at least two months.

Additionally, and perhaps most significantly, this RFI could serve as a vehicle for the FDIC to confirm that, in a properly structured loan program between a bank and a nonbank marketing and servicing agent, the Federal Deposit Insurance Act authorizes state-chartered banks to charge the interest allowed by the law of the state where they are located, without regard to the law of any other state, despite "true lender" and *Madden* arguments to the contrary.

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