

## Deposit Advance Products are Now Available to Missouri Banks . . . But Mind Your Regulatory Ps & Qs

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Missouri's Senate Bill 254, which will become effective on August 28, 2013, will permit Missouri banks to charge the lesser of \$75 or ten percent of the loan amount on short-term, direct deposit cash advance products. Although existing Missouri law already allows state-chartered banks to offer similar products, the fees in relation to those short-term loans were previously capped at the lesser of \$25 or five percent of the loan. Due to the lower fee cap, most Missouri banks did not offer these products, presumably because the potential fees did not compensate for the related risks.

With the new law making these deposit advance products more economically attractive, more Missouri banks may consider wading into this space. To the extent that is true, we advise bankers to *wade with caution*.

Just this past April, the FDIC issued proposed guidance to state-chartered banks on deposit advance products. There, the FDIC warned that these types of products can pose a variety of safety and soundness, compliance, consumer protection and other risks. In the proposed guidance, the FDIC also discussed supervisory expectations for the use of deposit advance products, including enhanced underwriting and credit administration policies and practices. In addition, the CFPB has issued a whitepaper addressing deposit advance products. In its whitepaper, the CFPB stated that its findings related to these products "raise substantial consumer protection concerns," and that it intends to "use its authority to provide additional protections."

The bottom line here is that, while these deposit advance products are permissible (and even with higher fees expressly authorized by Missouri law), they will undoubtedly be the subject of heightened regulatory scrutiny. If your bank decides to offer these products, carefully review the FDIC's proposed guidance and then make a good faith effort to follow it. Make sure that you document your bank's assessment of the identified risks and also the efforts that you undertake to ensure proper underwriting and administration. Update your existing policies and procedures to address deposit advance products and their related risks *before* you start offering them. Deposit advance products are indeed a way that Missouri banks may legally increase income, but only if they are offered in a manner consistent with regulatory requirements.

[Click Here for a Link to the FDIC Proposed Guidance on Deposit Advance Products](#)

ATTORNEYS

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