Community Reinvestment Association of North Carolina
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National Community Reinvestment Coalition
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National Consumer Law Center
77 Summer Street 10th Floor, Boston, MA 02110
U. S. Public Interest Research Group
218 D Street SE, Washington, DC 20003

October 9, 2003

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 17th Street
Washington, DC 20429-9990

Dear Mr. Powell:

It is becoming painfully evident that the Federal Deposit Insurance Corporation is the regulator of choice for payday loan companies who wish to misuse bank charters to make loans that would be illegal if made directly by the store front payday lender. We suspected this when the FDIC payday loan guidelines were in development. Now that a Federal Reserve member bank has switched regulators to the FDIC in order to stay in the rent-a-bank payday loan business, our fears are confirmed. Clearly, payday lending is so lucrative that a bank would rather switch regulators than give up the flow of funds from vulnerable consumers.

In April, CFA and over sixty consumer and community organizations wrote the Federal Reserve Board of Governors to protest the role of First Bank of Delaware in the payday loan market. We described the bank's payday loan practices and the unsafe and unsound effect of making triple-digit interest rate loans to vulnerable consumers without regard for their ability to repay loans. We noted regulatory action by bank regulators concerning First Bank of Delaware's payday loan partners and requested the Federal Reserve to take immediate action to prevent safety and soundness risks at this bank. (Copy of letter follows.)

Although the Federal Reserve did not announce a formal enforcement action, the parent company, Republic First Bancorp, Inc., filed a report with the Securities and Exchange Commission on June 27 announcing that the Board of Directors of First Bank of Delaware had decided to stop making payday loans as of October 31, 2003. The bank's SEC 8-K filing cited "materially increased regulatory requirements for participation in that line of business that the Bank does not believe it can satisfy."

This week we learned that First Bank of Delaware has instead relinquished its membership in the Federal Reserve System and has been accepted by the FDIC for continued operation as an insured Delaware state-chartered bank. As FDIC rules do not require that this change of status be made public, the public had no advance notice or opportunity to comment. According to Republic First Bancorp's October 2nd 8-K filing at the SEC, there is a Memorandum of Understanding with the FDIC and the Delaware Bank Commissioner that permits First Bank of Delaware to continue rent-a-bank payday loan operations for the time being.

This development suggests that the Federal Deposit Insurance Corporation is willing to accept banking practices that the Federal Reserve Bank of Philadelphia likely rejected. FDIC regulations require an applicant bank to include information about outstanding or proposed corrective programs or supervisory agreements with the Federal Reserve System and a statement that the bank's Board of Directors is willing to enter into similar programs or agreements with the FDIC. We are not privy to the Memorandum of Understanding between the FDIC and First Bank, but can only conclude that the "increased regulatory requirements" from the Federal Reserve reported to the SEC in June are not part of the FDIC agreement in October. Otherwise, First Bank of Delaware would still be unable to operate its payday loan business while satisfying those regulatory requirements.

When the New York Attorney General announced a civil action against one of your banks last month, General Spitzer noted "This modern day 'loan sharking' scheme exploits vulnerable consumers with offers of quick cash, when in reality, the exorbitant, illegal interest rates trap people in a cycle of long-term debt." The New York complaint charged County Bank with aiding and abetting violation of New York's criminal usury cap. To date the FDIC has taken no public action against County Bank, either.

We are dismayed that the FDIC has apparently become a safe haven for state banks that persist in rent-a-bank arrangements with storefront payday lenders. We request an opportunity to meet with you to discuss what steps the FDIC has taken or is planning to take concerning First Bank of Delaware's payday loan operation. We believe that strong action by the FDIC is necessary to stop federally-insured banks from engaging in unsafe and unsound practices as partners with payday lenders. If you have any questions or to schedule a meeting, please call Jean Ann Fox at 757-867-7523.

Sincerely,

Jean Ann Fox
Consumer Federation of America

Peter Skillern
Community Reinvestment Association of North Carolina

Rob Schneider
Consumers Union

John Taylor
National Community Reinvestment Coalition

Elizabeth Renuart
National Consumer Law Center

Edmund Mierzwinski
U. S. Public Interest Research Group

Enclosure

cc: The Honorable John M. Reich
The Honorable John D. Hawke, Jr.
The Honorable James E. Gilleran
The Honorable Richard C. Shelby
The Honorable Paul S. Sarbanes
The Honorable Michael G. Oxley
The Honorable Barney Frank
The Honorable Edward Gramlich
Mr. Christopher Spoth