



# NEWS RELEASE

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Comptroller of the Currency  
Administrator of National Banks

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## **OCC Concludes Case Against First National Bank in Brookings Involving Payday Lending, Unsafe Merchant Processing, and Deceptive Marketing of Credit Cards**

WASHINGTON – The Office of the Comptroller of the Currency has concluded an enforcement action against First National Bank in Brookings requiring the Brookings, S.D. institution to pay restitution to credit card customers harmed by its marketing practices, terminate its payday lending business and stop merchant processing activities through one vendor. The bank consented to the enforcement action that becomes effective today.

The enforcement action requires the bank to establish a \$6 million reserve to fund the restitution payments to compensate those who were deceived by various credit card marketing practices by the bank.

In requiring Brookings to end, within 90 days, the payday lending business conducted in its name by Cash America and First American Holdings, the OCC was prepared to allege that the bank had failed to manage that program in a safe and sound manner. The bank repeatedly violated the Truth in Lending Act, failed to adequately underwrite or document payday loans, and failed to adequately review or audit its payday loan vendors.

“It is a matter of great concern to us when a national bank essentially rents out its charter to a third-party vendor who originates loans in the bank’s name and then relinquishes responsibility for how these loans are made,” said Comptroller of the Currency John D. Hawke, Jr. “We are particularly concerned where an underlying purpose of the relationship is to afford the vendor an escape from state and local laws that would otherwise apply to it.”

Payday lending involves short-term loans that are usually repaid within one or two weeks, often with a post-dated check that is deposited after the borrower receives his or her paycheck.

In its credit card program, the bank, since June, 1998, has made statements in its marketing that the OCC believes are false and misleading, in violation of the Federal Trade Commission Act.

“Trust is the foundation of the relationship between national banks and their customers,”

said Mr. Hawke. “When a bank violates that sense of trust by engaging in unfair or deceptive practices, we will take action – not only to correct the abuses, but to require compensation for customers harmed by those practices.”

The bank’s marketing led consumers to believe that they would receive a credit card with a usable amount of available credit. However, customers were required to pay \$75 to \$348 in application fees, and were subject to security deposits or account holds ranging from \$250 to \$500 to obtain the bank’s credit card. Because of the high fees and required deposits, a high percentage of applicants received cards with less than \$50 of available credit when the cards were issued. In some programs, consumers paid substantial fees for cards with no available credit when the cards were issued.

While the bank disclosed various fees and deposits, the bank failed to advise customers that they would receive little or no usable credit as a result. In particular, in some programs, the bank failed to disclose, until after customers paid non-refundable application fees, that they would receive a card with little or no available credit.

The OCC received complaints from consumers who had not understood that the card they received would have little or no available credit.

In one program, the bank’s television commercials promised a “guaranteed” card with no “up-front security deposit” and a credit limit of \$500. The bank then placed a \$500 “refundable account hold” on the \$500 credit line. As a result, customers received a credit card with no available credit when the card was first issued. Instead, those consumers would then have to make additional payments to the bank to obtain usable credit.

Television commercials represented that the card could be used to shop on the Internet and for emergencies. All of these benefits require a usable amount of available credit, which the customers did not receive.

Customers who applied by telephone were asked for financial information for “security reasons” and only later were informed that the information would be used to debit their financial accounts for an \$88 processing fee.

In another program, customers were required to make a \$100 security deposit before receiving a card with a \$300 credit limit. An additional security deposit of \$200 and a \$75 processing fee were charged against the card when it was first issued. As a result, the customers who received the card had only \$21 of available credit when the card was first issued.

The bank also engaged in a number of practices that the OCC believes may have confused customers. For example, in a third program, the bank advertised a card with no annual fee, but which carried monthly fees. Although those fees were disclosed, the OCC believes that monthly fees effectively function as annual fees.

The OCC’s action requires the bank to reimburse credit card customers for fees paid in connection with four of the bank’s credit card programs and to change its marketing practices and disclosures for credit cards.

The [Consent Order](#) also requires the Bank to terminate, by March 31, merchant

processing activities conducted through First American Payment Systems (FAPS). The OCC found that the bank had an unsafe volume of merchant processing activities and that bank insiders with financial interests in the company impermissibly participated in bank decisions that affected their personal financial interests.

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The OCC charters, regulates and examines approximately 2,100 national banks and 52 federal branches of foreign banks in the U.S., accounting for more than 55 percent of the nation's banking assets. Its mission is to ensure a safe and sound and competitive national banking system that supports the citizens, communities and economy of the United States.