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Via electronic submission

January 22, 2019

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St NW,
Washington, DC 20429
Attn: Comments

RE: RIN 3064-ZA04 (Request for Information on Small-Dollar Lending)

Dear Mr. Feldman:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Federal Depository Insurance Corporation’s (“FDIC”) Request for Information (“RFI”) on small-dollar lending. The FDIC is seeking input on steps it can take to enable and encourage FDIC-supervised institutions to offer small-dollar credit products that are underwritten and structured prudently and responsibly.

Background

In addition to maintaining stability in the nation’s financial system, insuring deposits, and assessing safety and soundness, the FDIC is responsible for enforcing consumer protections. Consistent with its consumer protection responsibilities, the FDIC is soliciting public comments on how it can encourage financial institutions to offer small-dollar loans that are prudently underwritten and structured. This RFI follows two notable regulatory actions: 1) the Consumer Financial Protection

¹ *The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.*

Bureau’s (“CFPB” or “Bureau”) issuance of its Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (“Payday Rule” or “Rule”)²; and 2) The Office of the Comptroller of the Currency’s (“OCC”) bulletin encouraging banks to provide short-term, small-dollar installment loans to help meet the financial needs of consumers who rely on short-term credit, including consumers with weaker credit histories.³

Upon release of the Bureau’s Rule, ICBA expressed appreciation that the Bureau’s Rule recognizes community banks as responsible lenders that do not engage in abusive lending practices and work with their customers to establish favorable loan terms that reflect their customer’s financial history and ability to repay. The Bureau’s Rule exempts thousands of community banks from the onerous full-payment test or the principal-payoff option, consistent with ICBA’s recommendation. Additionally, any lender that makes 2,500 or fewer covered short-term or balloon-payment small-dollar loans per year and derives no more than 10 percent of its revenues from such loans is excluded from these requirements. This exemption will enable community banks the flexibility to continue providing safe and sustainable small-dollar loans to the customers who need it most. This exemption acknowledges that community banks offer an invaluable and financially sound service to customers that should not be hindered or restrained.

When the OCC released its Small-Dollar Guidance (“OCC Guidance” or “Guidance”), ICBA also expressed appreciation that the Guidance acknowledges the value of small-dollar lending and noted that community banks can serve an important role in providing consumers with responsible short-term, small-dollar loans. Community banks pride themselves on having close relationships with their customers and being able to provide an affordable product that accommodates their short-term financial needs.

ICBA Comments

Executive Summary

Most community banks are locally owned and operated and have strong ties to their communities. Having strong ties to the customers and communities they serve, well positions community banks

² 12 CFR 1041

³ OCC BULLETIN 2018-14, *Core Lending Principles for Short-Term, Small-Dollar Installment Lending*, May 23, 2018.

to provide small-dollar loan services to customers with the greatest need. By their nature, community banks are in the business of serving their customers. Often community banks will work with customers to structure loans that ensure the customer is able to access safe and sustainable financing. Each community bank that makes small-dollar loans underwrites these loans in a way that works for them and their customers. Since it is not the community bank business model to roll over loans to generate fee income or steer consumers to unaffordable loan products, some continue to provide this service, while others await clear direction and protections before they offer the product.

Generally, community banks offer personal loans as a service to customers where there is a financial history upon which to base a credit decision. These products are offered as a customer accommodation and are not actively or typically advertised. The nature of these loans renders standardized underwriting and credit decision models ineffective or counterproductive to meeting the short-term financial needs of their customers. Additionally, these loans are rarely profitable for community banks due to the small-dollar amounts and the associated overhead and servicing costs.

ICBA strongly recommends that any FDIC action should clarify and enhance the ability of banks of all charter types and sizes to offer small-dollar loans tailored for the consumers with the greatest need. While ICBA understands the need for regulation to police the practices of irresponsible lenders and protect consumers, we are fearful that subjecting small-dollar loans to a rigid supervisory and examination environment will force community banks to cease offering these products and push consumers to predatory and abusive lending alternatives that lead to negative debt cycles and offer little to no consumer protections. It would be extremely detrimental to consumers if community banks are forced from the small-dollar loan marketplace due to the FDIC supervisory and examination actions.

Given the recognized status of community banks as responsible lenders, ICBA is pleased to offer recommendations noted below that the FDIC can take to encourage FDIC-supervised institutions to offer responsible small-dollar credit products:

- promote community banks as model small-dollar lenders;
- provide a presumption of CRA credit for originating small-dollar loans to encourage community banks to develop and/or expand prudently underwritten small-dollar products;
- lessen fair lending examination scrutiny and establish consistent and transparent fair lending examination standards for small-dollar lending;

- clearly communicate support of innovation by promoting partnerships between community banks and fintech companies, and by providing the space and flexibility for how these partnerships provide solutions;
- allow flexibility for banks to develop and manage their own reasonable underwriting guidelines; and
- provide banks the flexibility to offer small-dollar credit products above 36 percent.

Highlight the Community Bank Model

By their nature, community banks are in the business of serving their customers. The community bank relationship-based model leaves no room for predatory and abusive lending practices. Community banks enjoy the reputation for not rolling over loans to generate fee income or steering consumers to unaffordable loan products. They are committed to providing financial assistance to their customers during their time of emergency need. This humanitarian-like business model is one that should be bolstered and promoted by the FDIC to encourage community banks to continue offering (or begin offering) small-dollar loans.

ICBA recommends an aggressive campaign in which the FDIC promotes the community bank small-dollar business model via its consumer education and financial literacy efforts; when highlighting the plight of credit invisibles; when discussing elderly financial abuse; and through all of its social media platforms. This approach would not only encourage community banks but would also facilitate the meeting of consumer demand.

Extend CRA Credit

The Community Reinvestment Act (“CRA”) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low-and moderate-income neighborhoods, consistent with safe and sound banking operations.⁴ The CRA requires that each insured depository institution's record in helping meet the credit needs of its entire community be evaluated periodically by the federal agencies, including the FDIC, that are responsible for supervising depository institutions.

This mission is the essence of what community banks do. On its face, community banks that offer small-dollar loans are meeting CRA’s purpose. Small-dollar loans are not a profit center for

⁴ Enacted by Congress in 1977 (12 U.S.C. 2901) and implemented by Regulations 12 CFR parts 25, 228, 345, and 195.

community banks. As a matter of fact, community banks often lose money because the fees and interest do not cover the costs of underwriting and processing the loan. Even if these loans do not contribute to their profits, community banks make these loans because it is a part of serving the communities in which they do business. We recognize that its premature for the FDIC to take action on CRA given current modernization efforts, however, given the direct link between community banks and their investments into the community, ICBA believes that providing a presumption of CRA credit to small-dollar loans would further encourage them to offer prudently underwritten small-dollar loan products.

Lessen Fair Lending Examination Scrutiny for Small-Dollar Loans

Consistent with their strong track records of providing access to credit in the communities in which they are located, community banks take their fair lending obligations very seriously. A recent trend of increased scrutiny and changed methodologies in fair lending exams and investigations has resulted in “false positive” findings of disparate treatment, thus requiring the affected community banks to spend large amounts of time and money in disproving false fair lending allegations. Community banks are particularly vulnerable to such allegations because they are committed to working with their customers to provide customized loans under exceptional circumstances. This raises red flags and too often draws fair lending allegations.

Underwriting exceptions are the norm for community bank small-dollar lending since community banks offer personal loans as a service to consumers where there is no financial history upon which to base a credit decision; to customers with non-traditional employment and incomes who need assistance bridging the financial gap between seasonal jobs; to consumers who need them for one-time expenses such as funeral costs, moving expenses, vehicle repairs, emergency home repairs, or to purchase fuel for the winter season; and to consumers to consolidate debt into a loan with a reasonable interest rate and an affordable monthly payment. These products – based on relationship and history - are offered as a customer accommodation and are not actively or typically advertised. The nature of these loans renders standardized underwriting and credit decision models ineffective or counterproductive to meeting the small-dollar credit needs of consumers.

Subjecting small-dollar loans to the same fair lending examination scrutiny as mortgage and auto loans is a deterrent to responsible community bank small-dollar lending. ICBA strongly urges the FDIC to lessen fair lending examination scrutiny for small-dollar loans to encourage community banks to continue and/or increase their participation in this market. Additionally, ICBA strongly encourages the use of consistent and transparent standards when the FDIC evaluates a community bank’s fair lending practices for this product.

Support Innovation

ICBA strongly supports a regulatory environment, coupled with a supervisory process and operational environment that encourages innovation, promotes healthy and successful community banks and reduces compliance burdens. Innovation is critical to community banks improving small-dollar lending efficiency, expediency and features. Community banks commonly rely on third-party vendors for innovation, however, many community banks are hindered in creating and/or using innovative solutions due to regulatory uncertainty and the burdensome third-party due diligence requirements. The FDIC is positioned to change this paradigm by encouraging community banks to develop solutions and/or develop partnerships that enable efficient deliveries that take into account the needs, the limitations, and the requirements of borrowers and lenders.

Former acting director of the CFPB, Mick Mulvaney, applauded the Comptroller of the Currency, Joseph M. Otting, for his “move to encourage national banks and federal savings associations to offer short-term, small-dollar installment loans.”⁵ He went further by committing to “working with the OCC and [other partners] on efforts to promote access and innovation in the consumer credit marketplace.”⁶

The FDIC is a vital “partner” and the call of action is simple: The FDIC must do the same in terms of encouraging innovation. A regulatory environment that nurtures innovation to create responsible, prudently underwritten small-dollar credit products would move the needle on encouraging community bank participation. In short, uncertainty and burdensome and prescriptive rules hinder innovation. Mitigating this challenge requires the FDIC to clearly communicate its support of innovation by promoting partnerships between community banks and fintech companies, and by providing the space and flexibility for how these partnerships offer solutions.

Flexible Underwriting Standards

As noted earlier, community banks’ relationship-based model relies on untraditional underwriting for many small-dollar loans.

Community banks need flexibility to work with consumers – even those with credit profiles outside of a bank’s documented underwriting policy. While many community banks are exempt from ATR requirements under the Bureau’s Rule, it is crucial that the FDIC provide community banks the

⁵ Bureau Acting Director Mulvaney Statement on the OCC Short-Term, Small-Dollar Lending Announcement, May 23, 2018.

⁶ *Ibid*

flexibility to underwrite and structure small-dollar loans in a way that works for both the customer and the bank.

These customer-centric practices fulfill the consumer's credit needs, provide the consumer with an achievable repayment plan and fulfills the bank's commitment to its community. To encourage more community bank offerings of small-dollar credit products, ICBA recommends the FDIC provide banks the flexibility to develop and manage their own reasonable underwriting guidelines.

Flexible Annual Percentage Rate

In preparing ICBA's comments to the proposed Payday Rule, discussions with our members revealed that those that offered small-dollar loan products frequently did so with an all-in annual percentage rate ("APR") of 36 percent or higher. Community banks indicate that a 36 percent APR is easy to reach when providing small-dollar loan products for short durations, particularly when credit life and disability insurance is included.

Optional credit life and disability insurance offers important and targeted financial protections to consumers and their families. When tragedies occur, credit life and disability insurance ensure that borrowers and their loved ones are not left without the means to cover their financial obligations. Community banks indicate they would stop offering these valuable insurance products if flexibility is not provided regarding APRs capped at 36 percent.

According to the FDIC's 2007 Financial Institution Letter, the FDIC believes a capped 36 percent APR is appropriate for small-dollar loans for those with low credit scores.⁷ Such pricing does not ensure economic viability for banks and will either result in community banks ceasing the offering or discouraging them from entering the marketplace – either of which is adverse for consumers. ICBA contends that APRs that are not capped at 36 percent will ensure economic viability and incentivize more community banks to participate in offering small-dollar loan products. Therefore, we strongly urge the FDIC to allow community banks the flexibility to offer small-dollar credit products with APRs above 36 percent.

⁷ FDIC Financial Institution Letter : Affordable Small-Dollar Loan Guidelines, 2007

Conclusion

In conclusion, ICBA appreciates this opportunity to communicate our thoughts on steps the FDIC can take to enable and encourage institutions to offer small-dollar credit products that are underwritten and structured prudently and responsibly. We are hopeful that these recommendations will aid the FDIC in its efforts. Should you have any questions or would like to discuss anything further, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or at 202-659-8111.

Sincerely,

/s/

Rhonda Thomas Whitley
Vice President and Regulatory Counsel