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Via electronic submission

May 15, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Rule Docket Number: CFPB-2019-0006 - Payday, Vehicle Title, and Certain High-Cost Installment Loans; RIN 3170-AA80

Dear Director Kraninger:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) notice of proposed rulemaking (“NPRM”) to rescind certain provisions in the November 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule (“2017 Final Rule” or “Final Rule”).

Background

The Bureau is proposing to rescind portions of the 2017 Final Rule known as “Mandatory Underwriting Provisions.” Specifically, the Bureau proposes to rescind the provisions that: (1) consider it an unfair and abusive practice for a lender to make a covered short-term or longer-term balloon-payment loan (“small-dollar loan”), including payday and vehicle title loans, without reasonably determining that the consumer has the ability to repay the loan according to its terms; (2) prescribe mandatory underwriting requirements for making the ability-to-repay

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.

The Nation’s Voice for Community Banks.®

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
PO Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

("ATR") determination; (3) exempt certain loans from the mandatory underwriting requirements; and (4) establish related definitions, reporting, and recordkeeping requirements. The Bureau's decision to issue this NPRM is based on input received from stakeholders through its efforts to monitor and support industry implementation of the 2017 Final Rule, and notably, input received from the Call for Evidence series of Requests for Information issued in 2018.

Executive Summary

As locally owned and operated institutions with strong ties to the customers and communities they serve, most community banks are well positioned to provide small-dollar loans to customers with the greatest need. By their nature, community banks are in the business of serving their customers. Generally, each community bank that makes small-dollar loans underwrite them in a way that works for them and their customers and where there is a financial history upon which to base a credit decision. These products are offered as a customer accommodation, are not typically advertised, and rarely profitable for community banks.

Community banks pride themselves on having close relationships with their customers and being able to provide an affordable product that accommodates their customer's short-term financial needs. Upon release of the Bureau's 2017 Final Rule, ICBA expressed appreciation that community banks were recognized 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 Final Rule exempts thousands of community banks from the onerous full-payment test or the principal-payoff option (consistent with ICBA's recommendation) so long as the bank does not originate more than 2,500 covered loans in a calendar year and does not derive more than 10 percent of its receipts from covered loans. This welcomed exemption acknowledges that community banks offer an invaluable and financially-sound service to customers that should not be hindered or restrained and provides community banks the flexibility to continue providing safe and sustainable small-dollar loans to the customers who need it most.

Since it is not the community bank "way" to roll over loans to generate fee income or steer consumers to unaffordable loan products, many have continued to provide this much needed service, despite the 2017 Final Rule, particularly those that qualify for the exemption. However, others await clear direction and protections to continue to offer the product. Given the recognized status of community banks as responsible lenders, ICBA strongly recommends that any future CFPB action should maintain the exemption noted above 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. Additionally, ICBA recommends the Bureau take the actions noted below:

- ensure that the small-dollar marketplace is fair, transparent and competitive,
- promote community banks as model small-dollar lenders, and
- allow flexibility for banks to develop and manage their own reasonable underwriting guidelines.

ICBA Comments

The small-dollar marketplace should be fair, transparent and competitive for all consumers

The ever changing financial and credit needs of consumers are best met in a financial market full of safe and responsible credit choices. Director Kraninger, in her first public speech, clearly communicated her commitment to leading the CFPB in a manner that will protect American consumers while still enabling a vibrant financial services marketplace.²

This NPRM is evidence of her intent and follows two notable regulatory actions: 1) 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 and, 2) the Federal Deposit Insurance Corporation's ("FDIC") request for information ("RFI") 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.⁴

Consistent with the Bureau's statutory purpose⁵ and following the actions taken by the OCC and the FDIC, ICBA strongly urges that any resulting reconsideration of the Final Rule ensure that the small-dollar marketplace is fair, transparent and competitive for all consumers across the nation.

The community bank model and participation in the small-dollar marketplace

By their nature, community banks are in the business of serving their local customers. Community banks enjoy a reputation of *not* preying upon or taking advantage of a consumer's potential lack of understanding of risks, costs, or conditions of small-dollar loans. While the

² <https://www.consumerfinance.gov/about-us/newsroom/kathleen-kraninger-director-consumer-financial-protection-bureau-bipartisan-policy-center-speech/>

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

⁴ RIN 3064-ZA04 (Request for Information on Small-Dollar Lending)

⁵ "The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S. Code § 5511.

Bureau notes research that underscores the inability of many consumers to withstand financial set-backs without the use of credit, access to credit, or other financial assistance, community banks have historically recognized this reality and have therefore offered fair and transparent small-dollar loans to these same consumers. Community banks report that consumers seeking these loans often 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. In other cases, community banks indicate that they offer small-dollar loans to customers with non-traditional employment and incomes who need assistance bridging the financial gap between seasonal jobs.

As mentioned above, community banks offer small-dollar loans to customers with a financial history upon which to base a lending decision. Small-dollar loans are not a profit center for community banks. In fact, community banks report that they often lose money making small-dollar loans because the fees and interest do not cover the costs of underwriting and processing them. However, even though these loans do not contribute to their profits, community banks make these loans to respond to the needs of their customers.

Community banks have a first-hand look and opportunity to ensure their customers have safe and fair access to small-dollar credit products. They are always committed to providing financial assistance to their customers. The Bureau acknowledged in the 2017 Final Rule that consumers who take out small-dollar loans “typically understand that they are incurring a debt which must be repaid within a prescribed period of time and that if they are unable to do so they will either have to make other arrangements or suffer adverse consequences.”⁶ In the rare event that community banks have experienced defaults, delinquencies, and reborrowing of small-dollar credit products, such adverse consequences were not and are not the results of abusive or unfair lending practices.

Flexible underwriting provisions

ICBA appreciates that this NPRM will have minimal impact on accommodation loans.⁷ The Bureau, through this proposed rule, suggests that eliminating the restrictions in the 2017 Final Rule would allow for the development of small-dollar products that are not currently viable. This point is further underscored by the Bureau highlighting the OCC’s bulletin encouraging

⁶ 82 FR 54472, 54615 (summarizing the Bureau’s rationale for the 2016 proposal).

⁷ https://files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf p. 159

banks to develop additional small-dollar products⁸ and FDIC's recent request for information on ways it can encourage FDIC-supervised institutions to offer small-dollar products.⁹ That said, ICBA continues to advocate for flexible underwriting standards. As highlighted in our response to the 2016 Payday, Vehicle Title, and Certain High-Cost Installment Loans proposed rule ("2016 Proposed Rule"), before extending personal loans, community banks will typically review an applicant's history with their bank, pull a credit report, verify an applicant's major financial obligations and debt, and verify income.¹⁰ As noted above, community banks' relationship-based model also, sometimes, relies on untraditional underwriting for many small-dollar loans. The nature of these loans renders the underwriting requirements in the 2017 Final Rule ineffective, cost prohibitive, potentially impossible, and counterproductive to meeting the short-term financial needs of their customers.

Community banks need space to work with consumers, including those with credit profiles outside of a bank's documented underwriting policy. While many community banks are exempt from the ATR requirements that are the subject of this NPRM, it is crucial that the Bureau continue to provide community banks--proven responsible lenders--the 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 fulfill the bank's commitment to its community. In our letter to the FDIC in response to its RFI seeking ways to encourage more community bank offerings of small-dollar credit products, ICBA recommended the FDIC provide banks the flexibility to develop and manage their own reasonable underwriting guidelines.¹¹ ICBA's calls for underwriting flexibility have been consistent since the issuance of the 2016 Proposed Rule, and in our correspondence with the Bureau, the OCC, and FDIC. Here again, ICBA urges the Bureau to assess ways in which it could allow for flexible underwriting while balancing the need for consumer protections.

Conclusion

In closing, ICBA encourages the Bureau to undertake a thoughtful, deliberate, and cautious approach during this process and ensure that consumers have access to short-term credit. Further, ICBA urges the Bureau to carefully consider ICBA's comments and be reminded that

⁸ Core Lending Principles for Short-Term, Small-Dollar Installment Lending, OCC BULLETIN 2018-14, May 23, 2018

⁹ <https://www.federalregister.gov/documents/2018/11/20/2018-25257/request-for-information-on-small-dollar-lending>

¹⁰ https://www.icba.org/docs/default-source/default-document-library/small_dollar_letter_16-10-07.pdf?sfvrsn=692e6817_0

¹¹ https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/19-01_22_smalldollarcl.pdf?sfvrsn=bb614017_0

community banks are an important source of safe and sustainable small-dollar credit for all consumers. Any CFPB action taken should enhance the ability of banks of all charter types and sizes to offer small-dollar loans tailored for the consumers with the greatest need; otherwise, consumers will be left with unregulated and unlicensed predatory lenders as their only option. We are hopeful that these recommendations will aid the Bureau 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