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Via electronic submission

July 1, 2019

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

RE: Docket Number CFPB-2019-0023, Overdraft Rule Review Pursuant to the Regulatory Flexibility Act

Dear Director Kraninger:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“Bureau” or “CFPB”) Overdraft Rule Review pursuant to the Regulatory Flexibility Act (“RFA”)².

The RFA requires each agency to consider the effect on small entities for certain rules it promulgates. As part of this review, the Bureau is seeking comments on the economic impact of the Overdraft Rule on small entities. Such feedback may assist the Bureau as it determines whether the Rule should continue without change, or be amended or rescinded to minimize any significant negative economic impact upon a substantial number of small entities, consistent with the stated objectives of applicable statutes.

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.

² Public Law 96-354, 94 Stat. 1164.

Background

In November 2009, the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) amended Regulation E and the regulation’s official staff commentary, which implements the Electronic Fund Transfer Act (“EFTA”), by limiting the ability of financial institutions to charge overdraft fees for paying automated teller machine (“ATM”) and one-time debit card transactions that overdraw consumers’ accounts (“POS transactions”).³ In 2011, the CFPB re-codified Regulation E including the amendments made by the Overdraft Rule (“Rule”), after taking over rulemaking responsibility under the EFTA pursuant to the Dodd-Frank Act.⁴

Under the Rule, financial institutions may not charge consumers (both existing and new account holders) an overdraft fee for paying ATM and POS transactions unless a consumer affirmatively consents or opts into overdraft coverage for these transactions. Additionally, financial institutions must provide a written or electronic notice containing applicable fees before the consumer opts into overdraft coverage. The Rule does not apply to checks, Automated Clearing House (“ACH”) debits, and other debit transactions creating overdrafts.

ICBA Comments

Changing Landscape for Overdraft Services

Overdraft services are an important aspect of community banks’ relationships with their customers. Community banks strive to serve customers on an individual basis and encourage sound financial management to prevent recurring overdrafts. Community banks leverage their personal knowledge of their customers to determine the best way to educate them on the right overdraft program to suit their needs. Increased regulatory scrutiny of consumer overdraft payment programs has affected many aspects of how community banks and other financial institutions offer these services to consumers, as well as how they monitor and manage these services. Yet, despite this regulatory landscape, most community banks continue to offer the service to fulfill consumer demand for overdraft coverage.

In the nine years since the Federal Reserve Board issued the Overdraft Rule, a variety of e-commerce transactions capable of causing overdrafts now include, not only ATM and POS debit transactions, but also online and mobile POS transactions generated by an ever-increasing number of merchants and service providers. As a result, financial institutions continue to expand the features of overdraft payment programs they provide to consumers because when overdrafts occur, it is generally in the consumer’s best interest for their bank to pay

³ <https://www.federalregister.gov/documents/2009/11/17/E9-27474/electronic-fund-transfers>.

⁴ <https://www.federalregister.gov/documents/2011/12/27/2011-31725/electronic-fund-transfers-regulation-e>.

items/transactions rather than returning the items unpaid and triggering returned item and various payee fees.

It is common practice for community banks to regularly tailor their automated programs to meet the changing needs of their customers. For example, some community banks adjusted overdraft thresholds to exempt low-dollar transactions and low-dollar overdrafts from fees. Others revised the order in which they post transactions to mitigate potential overdraft situations.

Overdraft Services Regulatory Environment

ICBA strongly believes that the Overdraft Rule coupled with other federal laws, regulatory guidance, and ongoing regulatory scrutiny fulfill EFTA's purpose by enhancing consumer awareness and understanding of overdraft services and the associated fees and options through the use of the mandated disclosures. The Bureau should rest assured that the current regulatory environment coupled with the Rule work in tandem to protect the interests of consumers. Any amendments mandating change in the Rule's compliance requirements would be onerous and costly for community banks to implement, and counter to the RFA's purpose of minimizing the economic impact of rules on small entities.

As burdensome as the requirements are for overdraft services, community banks have risen to the challenge of complying because, at their core, they believe in the consumers' right to retain the ability to choose overdraft services that best fit their financial needs. Regulatory policy should emphasize consumer choice so that consumers can choose services that are right for them and avoid being locked into an ill-fitting overdraft payment service or program. As such, ICBA urges the CFPB not to impose any additional regulatory requirements on financial institutions offering overdraft services but instead collaborate with other regulatory agencies to: 1) ensure that any regulatory guidance provide financial institutions the flexibility to meet the needs of their customers; 2) provide compliance certainty in the marketplace; and 3) streamline any existing or future guidance while remaining mindful of the relationship-based business model of community banks versus the more impersonal large banks.

Interagency agency collaboration and coordination with federal regulators would ensure a consistent and stable environment for community banks, relieve some of the compliance pressure, motivate them to continue offering overdraft services and possibly enhance existing offerings to meet the needs of their customers. Moreover, such a regulatory environment would help ensure consumers have access to community banks' responsibly administered overdraft services instead of more costly forms of small-dollar credit such as payday and vehicle loans offered by nonbanks. ICBA believes this approach is not only reasonable, but best suited to provide relief to small entities.

ICBA appreciates the opportunity to provide recommendations for the Bureau's RFA review of the Overdraft Rule. If you have any questions or would like additional information, please contact Rhonda Thomas-Whitley (Rhonda.Thomas-Whitley@icba.org) at 202-659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President & Regulatory Counsel