Via electronic submission

June 19, 2018

The Honorable J. Michael Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities [Docket No. CFPB-2018-0011]

Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities [Docket No. CFPB-2018-0012]

Dear Acting Director Mulvaney:

The Independent Community Bankers of America ("ICBA")[1] welcomes this opportunity to provide comment on the Bureau of Consumer Financial Protection's ("BCFP" or "Bureau") requests for information ("RFI") regarding (1) the Bureau's Adopted Regulations and New Rulemaking Authorities and (2) the Bureau's Inherited Regulations and Inherited Rulemaking Authorities.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") transferred to the Bureau rulemaking authority for federal consumer financial laws previously vested in other federal agencies ("inherited regulations"). The Dodd-Frank Act also provided the Bureau with new rulemaking authorities not previously vested with other agencies ("adopted regulations"). The Bureau is now seeking comment through two separate RFIs on adopted regulations and inherited regulations. Due to the fact

[1] The Independent Community Bankers of America®, the nation's voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With nearly 52,000 locations nationwide, community banks employ 760,000 Americans, hold $4.9 trillion in assets, $3.9 trillion in deposits, and $3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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that adopted regulations often amend inherited regulations, ICBA is responding to both RFIs in this unified comment letter.

ICBA Comments

Executive Summary

ICBA offers the recommendations noted below for the Bureau's consideration as it continues its review of its regulations and rulemaking authorities.

Consumer Access to Financial Records

- ICBA contends that the Bureau's statutory authority concerns consumer access to their own data, and is not a mandate to provide account data to third parties.
- While ICBA supports responsible financial services innovation, we strongly urge the Bureau to carefully consider the privacy, regulatory burden, data security, and legal implications posed by third-party account access.
- ICBA urges the Bureau to adhere to its statutory limits and not promulgate a rule that would dictate how community banks share customer information with permissioned third parties.

Fair Debt Collection Practices

- ICBA encourages the Bureau to concentrate its efforts and resources on greater supervision of irresponsible actors that are not regularly examined by regulators instead of writing more rules that impact community banks which are proven responsible lenders and already sufficiently examined.
- ICBA urges the Bureau to use its statutory authority to exclude first-party debt collectors such as community banks from any debt collection rulemaking.

Fair Lending

- ICBA contends that the Bureau should develop consistent and transparent fair lending regulations.
- If the Bureau determines that the disparate impact theory is applicable under the Equal Credit Opportunity Act ("ECOA"), any Regulation B amendments should maintain consistency with the United States Supreme Court ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities*.
- ICBA urges the Bureau to amend Regulation B to confirm that guarantors are not included in the definition of applicant under ECOA.

Mortgage Lending Regulations

- ICBA supports extending the qualified mortgage ("QM ") safe harbor status to all community bank loans held in portfolio without regard to their pricing, including balloon loans.
- ICBA encourages the Bureau to make permanent the "Government Sponsored Enterprise or GSE QM patch" that exempts loans underwritten and documented according to the GSE automated underwriting systems from the requirements of Appendix Q and the 43 percent debt-to-income

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ratio and revise the 43 percent debt-to-income ratio of the QM rule to include compensating factors.

- ICBA strongly urges the Bureau to increase the small servicer exemption limit from 5,000 loans to 30,000 loans, or a maximum unpaid principal balance of $5 billion in mortgages serviced, to preserve the role of community banks in mortgage servicing.
- ICBA encourages the Bureau to initiate a rulemaking or issue authoritative guidance to provide compliance certainty in several unresolved areas. The BCFP's more recent effort to amend and clarify the TRID requirements, while appreciated, left unresolved issues and new problems continue to surface.

Prepaid Accounts

- ICBA encourages the BCFP to remove the long-form disclosure requirements from the final prepaid accounts rule as this information is already provided to the consumer in the short-form disclosure.
- ICBA supports excluding non-reloadable products from coverage under the rule and prohibiting issuers from using repeated re-issuances or other tactics to circumvent compliance with the rule.
- ICBA urges the Bureau to remove the costly and unreasonably burdensome requirement for community banks to anticipate a viewer's desktop capabilities by requiring electronic disclosures to be viewable across all screen sizes.
- ICBA adamantly opposes using Regulation Z protections for regulating overdraft services for prepaid accounts.
- ICBA supports the Bureau amending the prepaid rule to permit each issuer to submit account agreements to the Bureau on an annual basis instead of the current quarterly submission requirement.
- ICBA urges the BCFP to eliminate the thirty-day wait period before offering to link a credit feature to a prepaid account.

Remittance Transfers

- ICBA strongly recommends that the Bureau increase the de minimis safe harbor from 100 to 1200 transactions annually and modify the definition of "remittance transfer" to provide an exemption for transfers greater than $1,000.
- ICBA recommends the Bureau make permanent the provision allowing depository institutions to provide estimates of third-party fees and exchange rates to low-volume corridors in which it is not feasible/economical for providers to make arrangements that enable exact disclosures.
- ICBA supports reducing the time for consumers filing complaints from 180 days to 90 days.
- ICBA urges the Bureau to eliminate the "availability date" to remove the burden of community banks having to "predict" when they believe funds would be available in a foreign location.
- ICBA recommends the Bureau eliminate the combined prepayment/receipt disclosure requirements as there is no evidence that consumers "comparison shop" for service rates and eliminate several other duplicative disclosure requirements.
- ICBA urges the Bureau to eliminate the 30-minute cancellation requirement since most consumers value transaction speed over reversibility.

- ICBA recommends the Bureau remove the inequitable provisions requiring the provider to absorb fees and costs resulting from sender error and assigning liability to the provider for violations committed by an agent.

Small Business Loan Data Collection

- ICBA believes that this data collection will impose significant new burdens on community banks at a time when they are absorbing numerous other regulatory requirements. Imposing any new data collection and reporting requirements under Section 1071 on community bank small business lenders would negatively impact small business lending and lead to unfortunate, unintended consequences for small business owners seeking credit.
- ICBA urges the Bureau to continue collecting information about the small business lending market and the impact Section 1071 will have on community bank small business lenders and other stakeholders and hold a Small Business Advocacy Review (SBAR) panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) before issuing any rulemaking.
- ICBA urges the BCFP to use its authority under the Dodd-Frank Act to exempt community banks from data collection and reporting, limit any regulation to data points required by statute, and prioritize protecting customer privacy as it considers new data reporting requirements.

Consumer Access to Financial Records

In 2017, the Bureau published an RFI to better understand the consumer benefits and risks associated with market developments that rely on access to consumer financial account and account-related information. Specifically, the Bureau was interested in receiving comments on third-party service providers and data aggregators. The RFI cited section 1033 of the Dodd-Frank Act as providing the Bureau with the statutory authority to explore consumer access to financial records.

Section 1033(a) states, "[s]ubject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of such person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, or series of transactions, to the account including costs, charges, and usage data."

First, ICBA contends that this statutory authority concerns consumer access to their own data and is not a mandate to provide account data to third parties. There is no legal basis to require banks to provide permissioned third-party access. Consumers must be free to access and use their own account data, but the Bureau simply does not have authority to require community banks to open their systems to third parties and other entities seeking access to the customer's account data.

Second, while ICBA supports responsible financial services innovation, we strongly urge the Bureau to carefully consider the privacy, regulatory burden, data security, and legal implications posed by third-party account access.

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ICBA has profound concerns that non-bank entities that access customer information and store bank login credentials do not take the same care in protecting consumer privacy and data as community banks. It is also worrisome that many third parties which are seeking to access consumer data are not well capitalized, may have no real assets and do not have prescribed legal and regulatory requirements for protecting consumer data.
Regardless of where a data breach occurs, banks are the stewards of the customer financial relationship. They take measures to restore consumer confidence in the financial system and absorb any upfront costs, i.e., reimbursement for fraudulent transactions, which may be significant, related to third-party data intrusions by responding to customer concerns and inquiries, protecting against fraud and absorbing any other expenses.

ICBA urges the Bureau to adhere to its statutory limits and not promulgate a rule that would dictate how community banks share customer information with permissioned third parties. Requiring that community banks provide unfettered access to permissioned third parties would impose tremendous financial and reputational risks beyond their control, as well as undue burden. While ICBA fully supports consumers' rights to have access to their own information, any such access should be properly balanced with ensuring that consumer privacy is not needlessly threatened, and consumers and their financial institutions are not subject to fraud and financial loss.

Fair Debt Collection Practices

The Fair Debt Collection Practices Act ("FDCPA") was passed in 1977 to protect consumers from harmful debt collection practices. The BCFP is the first federal agency to possess the authority to issue substantive rules for debt collection under this statute. The Bureau initially released an ANPR on debt collection in 2013 followed by an outline of proposals published in 2016, in conjunction with a SBREFA panel. Both the ANPR and outline contemplated additional requirements on both third-party and first-party debt collectors. ICBA urges the Bureau to exclude first-party debt collectors, such as community banks, from any proposed rulemaking.

The FDCPA, however, does not apply to all collectors of debts. The statute generally covers the collection activities of third-party collectors for debts in default at the time they are obtained. Among other things, the FDCPA was enacted to eliminate abusive debt collection practices by debt collectors. Because community banks understand that debt collection can be sensitive for their customers who may have difficulty making timely payments, collection practices are conducted with the goal of helping customers to the best of the bank's ability. Moreover, the majority of community banks do not use third-party debt collectors due to their relationship-based business model and commitment to avoid subjecting their customers to collection practices beyond the bank's control.

ICBA encourages the Bureau to concentrate its efforts and resources on greater supervision of irresponsible actors that are not regularly examined by regulators instead of writing more rules that impact community banks which are proven responsible lenders and already sufficiently examined. ICBA urges the Bureau to use its statutory authority to exclude first-party debt collectors such as community banks from any debt collection rulemaking.[2]

Fair Lending

ICBA strongly supports equal access to credit through the fair lending laws, including the Equal Credit Opportunity Act ("ECOA") and its implementing regulation, Regulation B, and condemns discrimination based on race, ethnicity, national origin, gender, religion, or other listed classification. ICBA recommends the Bureau use its fair lending authority to: 1) determine the applicability of the disparate impact theory to the ECOA and if so, amend Regulation B to maintain consistency with the United States Supreme Court ("Court') ruling (discussed below); 2) develop consistent and transparent fair lending standards; and 3) amend Regulation B to confirm that guarantors are not included in the definition of "applicant" under ECOA.

Community banks have a strong track record of providing access to credit in the communities in which they are located and take their fair lending obligations very seriously. However, there has been a trend in recent years of increased scrutiny and changed methodologies in fair lending exams and investigations as well as an improper reliance on the controversial legal theory of disparate impact. This has resulted in "false positive" findings of illegal discrimination, 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 which raises red flags and too often draws allegations of fair lending violations.

If the Bureau determines that the disparate impact theory is applicable under the ECOA, the Bureau should maintain consistency with the United States Supreme Court ("Court") ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[3] In June 2015, the Court upheld the application of disparate impact under the Fair Housing Act. However, the Court ruled that disparate-impact claims that rely on statistical disparity alone must fail if they cannot be tied to a policy or policies that caused that disparity. A robust causal connection should be clearly identified before bringing a cause of action under fair lending laws. The Court also established a burden-shifting framework for courts and government adjudicating disparate impact claims.

Specifically, the Court ruled that a charging party or plaintiff bringing a disparate impact claim must first demonstrate a causal connection between the challenged practice and the statistical disparity affecting a protected class. This protects defendants from being held liable for racial disparities they did not create.

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[2] *See* 12 U.S.C. § 5512(b)(3), granting the Bureau the authority to exempt any class of covered persons from any Bureau rule.
[3] *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).

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The Court reiterated that a plaintiff who fails to allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection cannot make out a prima facie case of disparate impact.

If the charging party or plaintiff proves a prima facie case, the defendant can then show a business rationale for the challenged practice to rebut the disparate impact claim. Finally, the burden shifts back to the charging party or plaintiff to show that an available alternative exists that has less disparate impact and serves the entity's legitimate business needs.

Applying this framework to Regulation B (if it is determined that the disparate impact theory would apply) would mitigate false positive findings and premature or unfounded allegations of racial or ethnic discrimination which, as smaller lenders, will particularly harm community banks. Not only are community banks especially vulnerable to reputational damage no matter how groundless claims might be, they simply cannot afford to withstand protracted litigation. Depriving consumers of their service and lessening competition would further harm consumers.

Community banks consistently seek information and guidance on how to implement applicable rules. As such, fair lending standards should be consistent and transparent. The Bureau must provide certainty to those who comply with the law that they will not be unfairly targeted. Information and guidance on the methodologies, standards, and analysis that are used when examining and investigating banks for fair lending should be explicit, publicly available prior to implementation, and applied prospectively so that community banks can assess and refine if necessary their own policies and procedures to ensure compliance.

Additionally, ICBA urges the Bureau to amend Regulation B to confirm that guarantors are not included in the definition of "applicant" under ECOA. Under ECOA, Congress defined an "applicant" as someone who applies directly for credit. In its original interpretative regulations, the Federal Reserve Board ("Board") stated that "applicant" did not include guarantors. In 1985, however, the Board amended Regulation B to provide that for purposes of the spousal signature requirements of ECOA, the term "applicant" included guarantors. Therefore, amended Regulation B enables spouses to bring ECOA claims if the lender requested the spouse's signature on a guaranty of corporate debt. ICBA supports the original intent of Congress limiting the definition of "applicant" to someone who applies for credit.

Mortgage Lending Regulations

As relationship lenders who underwrite based on firsthand knowledge of their customers and communities, community banks have every incentive to make fair, commonsense, and affordable mortgage loans. Community banks help borrowers with non-traditional credit histories or imperfect credit, as well as borrowers in rural communities where non-traditional loans, especially balloon loans, are prevalent due to the unique nature of rural properties and rural economies. Community banks often structure loans to meet the unique needs of the borrower based on their type of employment, type of property, value of assets or net worth. Generally, these loans are not sold into the secondary market but are kept in portfolio.

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Qualified Mortgages

ICBA supports extending the qualified mortgage ("QM ") safe harbor status to all community bank loans held in portfolio without regard to their pricing, including balloon loans. Additionally, community bank loans held in portfolio should be exempt from mandatory escrow requirements, regardless of the location of the property or the pricing on the loan. Mandatory escrow requirements raise the cost of credit for those borrowers who can least afford it and impose additional unnecessary compliance costs for community bank lenders. Further, community banks should be permitted to use a property evaluation completed by qualified bank staff in lieu of a full residential property appraisal for any residential mortgage that a community bank originates and retains in its portfolio. A full appraisal is more costly and may only be completed by a licensed and certified appraiser. This is especially challenging in some rural markets where there are few licensed and certified appraisers.

ICBA encourages the Bureau to make the "Government Sponsored Enterprise QM patch" permanent, and to revise the 43 percent debt-to-income ratio of the QM rule to include compensating factors.[4] While community banks with assets below $10 billion may be exempt from certain portions of the QM rule, many institutions still need to comply with it.

Mortgage Servicing

ICBA strongly urges the Bureau to increase the small servicer exemption limit from 5,000 loans to 30,000 loans, or a maximum unpaid principal balance of $5 billion in mortgages serviced, to preserve the role of community banks in mortgage servicing. Since it took effect, the mortgage servicing rule has approximately doubled the cost of servicing with a direct impact on the consumer cost of mortgage credit. Community banks above the 5,000-loan limit have a proven record of strong, personalized servicing and no record of abusive practices. Currently those community bank servicers that exceed the small servicer threshold must adhere to the same servicing requirements as the largest mortgage servicers. To place the 30,000-loan limit in perspective, the five largest servicers service an average portfolio of 6.8 million loans each and employ as many as 10,000 people each in their servicing departments. The top five mortgage servicers each have more than $300 billion in unpaid principal balance on mortgages serviced. Most community banks have fewer than 100 employees total.

[4] *See* 12 C.F.R. § 2026.43(e)(4), providing that loans eligible for purchase by the Government Sponsored Enterprises are classified as QM loans. This expands the types of loans that can be considered QM beyond those where a borrower has a 43 percent or lower debt-to-income ratio. This provision is set to expire by January 10, 2021 or when the Government Sponsored Enterprises exit conservatorship, whichever occurs earlier.

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TRID

The TILA RESPA Integrated Disclosure ("TRID") rule is a uniquely complex rule with unclear liabilities. The rule has caused some community banks to cease offering mortgages and has greatly increased compliance expenditures for others. The BCFP's more recent effort to amend and clarify the TRID requirements, while appreciated, left unresolved issues, and new problems continue to surface. For example, community banks would like to see borrowers have the ability to waive the three-day waiting period from receipt of the Closing Disclosure to consummation of the transaction. This continues to be a big source of consumer dissatisfaction. Another area would be to exempt "lot" or land loans from TRID. ICBA encourages the Bureau to initiate a rulemaking or issue authoritative guidance to provide compliance certainty in these unresolved areas.

Prepaid Accounts

ICBA requests modifications to the Bureau's adopted rule for Prepaid Accounts under the Electronic Fund Transfer Act ("Regulation E") and the Truth In Lending Act ("Regulation Z"), as modified in a final rule issued by the Bureau on Jan. 25, 2018).[5] ICBA was engaged throughout the entire prepaid rulemaking process, as evidenced by the submission of comment letters to the Bureau's Advanced Notice of Proposed Rulemaking on May 24, 2012, the Bureau's Proposed Rule published on Dec. 23, 2014, and the amendment to the final rule on Aug. 14, 2017.

While the Bureau made some positive changes to the rule, such as extending the its effective date and removing the requirement to apply Regulation E error resolution and limited liability protections to unverified prepaid accounts, ICBA recommends the modifications discussed below.

- Remove the long-form disclosure requirements from the rule as this information is already provided to the consumer in the short-form disclosure. This redundancy provides consumers with no additional benefit. The Bureau's own research concluding that long-form disclosures confused consumers was ultimately ignored.[6] Since these disclosures cause more harm than good, they are counterproductive and need to be removed from the rule.
- Exclude non-reloadable products from coverage under the rule. The Bureau failed to follow ICBA's recommendation to exclude non-reloadable prepaid accounts which are typically gift cards and serve different purposes than prepaid accounts functioning as deposit accounts and, therefore, do not need the same requirements. Additionally, ICBA encourages the Bureau to prohibit issuers from using repeated re-issuances or other tactics to circumvent compliance with the rule.

[5] 81 Fed. Reg. 83934 (Nov. 22, 2016); 83 Fed. Reg. 6364 (Feb. 13, 2018).
[6] *See* 79 Fed Reg. 83934, 77150 (Dec. 23, 2016), explaining that in the Bureau's testing, many participants reported feeling overwhelmed by the amount of information included on a prototype long form and they struggled to compare two long form disclosures, even those that listed identical fee types.

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- Remove the costly and unreasonably burdensome requirement for community banks to anticipate a viewer's desktop capabilities by requiring electronic disclosures to be viewable across all screen sizes.
- Develop a regulatory framework that provides issuers the flexibility to offer prepaid cards with overdraft services, if they so desire. Application of Regulation Z to overdraft services on prepaid products is not the proper regulatory framework because overdraft services are not a normal extension of credit and, as such, Regulation Z disclosures would not be meaningful to the consumer. Further, because financial institutions reserve the discretion to pay overdrafts, typical credit disclosures are insignificant.
- Amend the rule to require account agreement posting and submissions on an annual rather than quarterly basis. In our comment letter dated, May 23, 2015, we asserted that "providing account agreements on a quarterly basis to the Bureau is burdensome to prepaid card issuers and not helpful to consumers."[7] In that same letter, ICBA noted the Bureau's opinion during its proposed rulemaking on credit card agreements, that its process was "unnecessarily cumbersome for issuers and may make issuers' own internal tracking of previously submitted agreements difficult."[8] ICBA's position remains the same. An annual submission requirement will not only reduce the burden but is consistent with regulatory submission/filing mandates required by other agencies. Further, changes to the names of relevant parties (to an otherwise substantively unchanged agreement) has been acknowledged by the Bureau as a frequent occurrence; as such, annual submissions will avoid institutions becoming bogged down tracking frequent name changes to agreements and allow the Bureau to reconcile the burden it has acknowledged.
- Eliminate the thirty-day wait period before offering to link a credit feature to a prepaid account. Community banks should have the flexibility to extend credit to their customers to address their financial needs and access credit building services.

Remittance Transfers

The Bureau has sought public comment on its remittance transfer rule on numerous occasions. Each time, ICBA has provided the Bureau with detailed feedback, most recently in May 2017, on how the Bureau could improve the rule. While we appreciate the Bureau's outreach efforts to the financial services industry during the original rulemaking process, ICBA remains concerned that the rule discourages community banks from offering this service and thereby hampers product growth.

ICBA estimates that about one-third of community banks offer remittance transfer services with less than five percent planning to offer it in the next two years. Of the community banks that offer remittance

[7] Proposed Rule Regarding Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) [Docket No. CFPB-2014-0031 and RIN 3170-AA22]
[8] 80 Fed. Reg. 10418 (Feb. 26, 2015).

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transfers, 98 percent use wire transfer, ten percent use ACH and five percent use a closed loop system.[9] Additionally, ICBA continues to assert that the rule covers more than remittance transfers (sending relatively small-dollar, transfers to other countries) and covers large dollar international investments and down-payments.

ICBA strongly recommends the rule modifications below to reduce unnecessary burden for customers and community banks, improve product availability and improve the customer experience.

- Increase the de minimis safe harbor from 100 to 1200 transactions annually. This safe harbor would enable many more community banks to grow the service to a meaningful level. The current safe harbor serves as a deterrent to community banks offering and improving these services. Once the threshold of 1200 transfers per year is exceeded, community banks will be in a better position to comply with the rule, and less likely to terminate the program.
- Make permanent the provision that allows depository institutions to provide estimates of third-party fees and exchange rates to low-volume corridors in which it is not feasible/economical for providers to make arrangements that enable exact disclosures. Most community banks use open payments networks such as wire transfer and ACH and providing precise quotes of downstream activity is next to impossible. Additionally, the dynamic nature of exchange rates and conversion make accurate estimates extremely difficult, even in a real-time environment.
- Modify the definition of “remittance transfer” to provide an exemption for transfers in the amount of $1,000 or more. Typically, remittances are most commonly the payment instrument used by consumers sending small dollar transfers of their earnings to family members in other countries. Large dollar transfers are used for investments and property purchases and the customers requesting these require speed above all. The additional disclosures and the cancellation period present unnecessary speed bumps that could present costly delays. As it stands, the current definition is cumbersome and lacks any real rationale supporting its use.
- Reduce the time for filing complaints from 180 days to 90 days. The 180-day requirement is excessive and goes beyond what is currently required under Subpart A of Regulation E which dictates the time in which a consumer must assert an error (See 1005.6(b)(3)). A sender would not need 180 days as the sender would likely realize an error upon the intended recipient’s attempt to access to funds.
- Eliminate the “availability date” which would remove the burden of community banks having to predict when they believe funds would be available in a foreign location. The availability date is often padded to ensure compliance. The removal of this requirement would place a higher expectation on providers to ensure funds are available as soon as possible.
- Eliminate the combined prepayment/receipt disclosure requirements as there is no evidence that consumers “comparison shop” for service rates.
- Eliminate duplicative disclosure requirements to senders making multiple, concurrent transactions by phone. Duplicative disclosures simply add to consumer frustration because it prolongs what is meant to be a quick and convenient alternative to a face-to-face, time-consuming process.

[9] 2013 ICBA Payments Survey, adjusted in 2017 to reflect community bank trends.

- Eliminate the 30-minute cancellation requirement since most consumers value transaction speed over reversibility. This requirement currently slows down the process as most providers delay transmittal by 30 minutes and simply wait for a customer to potentially return during that timeframe rather than running afoul of compliance requirements. A customer conducting a remittance transfer is more committed to the transaction and the likelihood of a cancellation within 30 minutes is low.
- Remove the inequitable provision requiring the provider to absorb fees and costs resulting from sender error. While the Bureau's approach is designed to protect the consumer, such protection should not be at "all costs" and to the detriment of the provider.
- Eliminate the provision assigning liability to the provider for violations committed by an agent.

Small Business Loan Data Collection

Dodd-Frank Section 1071 requires the BCFP to implement rules for the collection and reporting of data on financial institutions' small business, woman-owned business, and minority-owned business lending under the Equal Credit Opportunity Act. ICBA believes that this data collection will impose significant new burdens on community banks at a time when they are absorbing numerous other regulatory requirements. Imposing any new data collection and reporting requirements under Section 1071 on community bank small business lenders would negatively impact small business lending and lead to unfortunate, unintended consequences for small business owners seeking credit.

The cost of this new mandate will be disproportionately high for community banks that simply do not have the scale to spread compliance costs over a large asset base and will result in negatively impacting those the statute is trying to help – woman-owned, minority-owned and small businesses. Unlike large financial institutions, community banks have small staffs that often perform multiple functions. They cannot afford to hire several people to process the data collection on small business credit applications. It is common for the same employee that meets with an applicant and gathers information during the application process to make or participate in the credit decision. As such, it would be extraordinarily costly to segregate the information collection and storage process from the decision-making process. In addition to increasing staff to ensure the information collection is segregated from the decision-making process, community banks would have to develop a separate database to store and report such information.

Community banks would have to create and develop an entirely new small business lending process to accommodate a new data collection and reporting requirement and remove the nuanced and unique nature of community bank small business lending. Community banks would need to revert to a check-the-box system and algorithm where small businesses either meet a predetermined set of standardized credentials or do not. Homogenization of small business lending would drive various small business credit out of small banks and significantly reduce access to credit for the businesses that need it most – small businesses with unique credit needs.

Community banks do not use standard applications for small business loans. Unlike other types of consumer credit, each small business has its own distinctive characteristics with unique credit needs.

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Existing business lending practices do not conform to a standard data collection practice and would require extraordinary change to comply. Unlike the residential mortgage market, where there is a standard portfolio of products, each small business has its own unique characteristics and credit needs. As a result, there is no standard application for small business loans. The current small business lending process for community banks would not conform to a standard data collection process.

In addition to community banks' inability to comply with a 1071 rule, the breadth of the data required to be collected and potentially published under the BCFP's initiatives may make it possible to identify an individual borrower or business. Consequently, private and potentially embarrassing financial data about applicants could be revealed. This is especially true in rural and smaller markets where the small number of loans and households make it easier to identify individual borrowers. Special consideration should be given to lenders that serve such areas.

ICBA urges the Bureau to continue collecting information about the small business lending market and the impact Section 1071 will have on community bank small business lenders before issuing any rulemaking. It is clear that this market is complex, and it is important to understand the market dynamics before potentially increasing small business borrowing costs and reducing access to small business loans. ICBA recommends that the Bureau continue its outreach to all stakeholders and hold a Small Business Advocacy Review (SBAR) panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA). After further exploration, ICBA urges the BCFP to use its authority under the Dodd-Frank Act to exempt community banks from data collection and reporting, limit any regulation to data points required by statute, and prioritize protecting customer privacy as it considers new data reporting requirements.

Conclusion

ICBA appreciates the Bureau's comprehensive review of its adopted and inherited regulations and rulemaking authorities. We firmly believe that the recommendations made above will help the BCFP achieve its statutory goals while simultaneously relieving burden and improving product offerings for community banks and the consumers they serve.

Should you have any questions or would like to discuss anything further, please do not hesitate to rhonda.thomas-whitley@icba.org or michael.empanicator@icba.org at 202-659-8111.

Sincerely,

/s/

Viveca Y. Ware
Group Executive Vice President
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