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April 8, 2022

Via Electronic Submission

Comment Intake
Bureau of Consumer Financial Protection
Attention: PRA Office
1700 G Street NW
Washington, DC 20552

RE: Docket No. CFPB-2022-0017 — Notice and Request for Comment Regarding the Electronic Fund Transfer Act (Regulation E)

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to respond to the request for comment (“RFC”) issued by the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) regarding its Paperwork Reduction Act (“PRA”) review of information collected under Electronic Fund Transfer Act (“Regulation E”) and ways to minimize the burden of the collection of information on respondents.

Regulation E requires accurate disclosure of the costs, terms, and rights relating to electronic fund transfer (“EFT”) services and remittance transfer services to consumers. Financial institutions and other entities offering EFT services must provide consumers with information regarding their rights and responsibilities in connection with EFT services. The regulation also establishes error resolution procedures and limits consumer liability for unauthorized transfers; imposes disclosure and other requirements on issuers of gift cards, gift certificates, and prepaid cards; establishes protections for consumers who use prepaid accounts; and regulates overdraft credit features offered in connection with prepaid accounts.

¹The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA 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 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 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.®

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For purposes of this RFC, ICBA will focus its comments on Regulation E requirements pertaining to the remittance transfer rule and how the Bureau can minimize the burden of the collection of information on respondents.

Changes to the Remittance Transfer Rule

The CFPB amended Regulation E, which implements the Electronic Fund Transfer Act, and the accompanying official interpretation to Regulation E, to establish new rules governing remittance transfer providers as required by section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Dodd-Frank Act requires remittance transfer providers to provide disclosures to consumers who plan to initiate international funds transfers. Specifically, remittance transfer providers must give senders a written prepayment disclosure pertaining to the sender’s remittance transfer as well as a written receipt that includes both the information on the prepayment disclosure and additional specified information. As amended, Regulation E also provides for specific error resolution procedures and standards as well as cancellation and refund policies and liability standards for remittance transfer providers, including those that act through agents.

The compliance burden associated with the remittance rule has resulted in a significant number of community banks exiting this service. The lack of community bank presence in the remittance market leaves their customers to the mercy of larger banks, or more likely forces them to use non-bank remittance providers that traditionally have high fees and poor exchange rates – thereby disadvantaging consumers and creating an unlevel playing field.

The Bureau has sought public comment on its remittance transfer rule on numerous occasions, and each time ICBA has provided detailed feedback. In 2018, ICBA advocated for overall changes to the remittance rule to ease regulatory burden. We continued our advocacy efforts in 2019 in response to two comment requests that sought public input on increasing the normal course of business safe harbor threshold from 100 remittance transfers to 500 remittance transfers annually.² While we viewed the proposed threshold increase to 500 as moving in the right direction, ICBA advocated for an increase to 1200 transfers annually. However, on May 11, 2020, the CFPB issued a final rule reflecting an increase to 500 remittance transfers.

ICBA appreciates the Bureau’s past efforts, but we remain concerned that the rule discourages community banks from offering this service and thereby hampers product growth, disrupts the marketplace, and reduces a safe, reliable, and convenient option for customers. Furthermore, impeding competition and options would be contrary to section 1073(b) of the Dodd-Frank Act, which requires the Treasury and Federal Reserve to expand international remittance services.

² ICBA’s response to the Request for Information Regarding the Bureau’s Adopted Regulations and New Rulemaking Authorities [Docket No. CFPB-2018-0011]; and ICBA’s response to the Request for Information Regarding the Bureau’s Inherited Regulations and Inherited Rulemaking Authorities [Docket No. CFPB-2018-0012]

Hence, as we did in 2018 and 2019, ICBA again offers the following suggestions as ways to minimize the burden of the collection of information on respondents:

- Increase the “normal course of business” safe harbor threshold to 1,200 remittances annually and/or exempt small financial institutions from the rule altogether. ICBA strongly believes that the driving factors that should ultimately persuade the Bureau to raise the threshold to 1,200 are: (1) the need to ensure customers have access to reliable and less risky remittance services through their depository institutions, and (2) ensuring community banks are able to compete in the market.
- Include in the definition of “remittance transfer”³ 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 rationale supporting its use.
- Reduce the time for filing complaints from 180 days to 60 days. The 180-day requirement is excessive and goes beyond the 60-day complaint notice that 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 having community banks 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 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 to 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.

³ The current definition of “remittance transfer” excludes transfer amounts of \$15 or less Subpart B of Regulation E (See 1005.30(e)(2)(1)).

ICBA appreciates this opportunity to offer ways that the Bureau can minimize the burden of the collection of information on respondents. If you have any questions or would like additional information, please contact me at Rhonda.Thomas-Whitley@icba.org or (202) 821-4451.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President and Regulatory Counsel

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