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February 7, 2024

Via Electronic Mail

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Mail Stop H-144 (Annex J)
Washington, DC 20580

RE: Unfair or Deceptive Fees NPRM, R207011

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Federal Trade Commission (“FTC” or “Commission”) notice of proposed rulemaking (“NPRM” or “proposal”) to promulgate a regulation that would prohibit unfair or deceptive practices relating to fees for goods or services. The rule would prohibit misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The Commission is seeking comments concerning the scope of the proposed rule. ICBA strongly urges the FTC to exclude community banks from this rulemaking because they are already subject to similar regulations that require them to make disclosures and provide protections to consumers.

According to the FTC, some businesses “do not advertise the total amount customers will have to pay and disclose fees only after consumers are well into purchasing transactions, potentially harming both consumers and competitors in specific industries.”² The proposal targets various industries governed by the FTC and would define a “business” as an individual, corporation, partnership, association, or any other entity that offers goods or services, including, but not limited to, online, in mobile applications, and in physical locations. This definition is industry neutral.³ The Commission believes that the proposed rule will substantially improve its ability to combat the most prevalent unfair or deceptive

¹The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation.

As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at icba.org.

² FEDERAL TRADE COMMISSION 16 CFR Part 464 Trade Regulation Rule on Unfair or Deceptive Fees P. 77421

³ Id, p. 77438

practices relating to fees and other charges and may also strengthen deterrence against these practices in the first instance. While unfair or deceptive practices relating to fees are already unlawful under Section 5 of the FTC Act, the proposed rule (if finalized) will allow the Commission to seek civil penalties against violators and monetary redress for the consumers who are harmed.⁴

ICBA believes the proposed definition of “business” is excessively broad and calls on the Commission to exempt financial institutions (“FIs”), including community banks, from the proposed rule.⁵ Community banks are already required by regulation to provide myriad consumer disclosures and protections, including those established in the Electronic Funds Transfer Act, Truth in Savings Act, Truth in Lending Act, Real Estate Settlement Protection Act, and Consumer Financial Protection Act of 2010. Furthermore, compliance with these strict requirements is regularly examined by prudential regulators and the CFPB.

Community banks serve their customers with care and are intentional with ensuring that their customers are fully aware of any fees associated with the services and products they receive. Community banks consider protecting their customers to be a core of their business. They build positive and trusted relationships with their customers, so it is fundamental to their business to ensure their customers are fully informed. In contrast, many industries do not have disclosure and examination requirements.

While ICBA supports the FTC’s decision to promulgate this rule to create consistency among community bank practices and those of other industries, we strongly urge the Commission to explicitly exclude community banks and all federally supervised FIs, from the definition of “business.” Including them in the Commission’s proposed definition would compound an already complex compliance regime, is redundant, and will result in additional unnecessary regulatory burden.

We appreciate the opportunity to provide comments in response to this request. If you have any questions, please do not hesitate to contact me at 202-821-4451 or Rhonda.Thomas-Whitley@icba.org.

Sincerely,

/s/

Rhonda Thomas-Whitley
Senior Vice President, Senior Regulatory Counsel

⁴ Ibid

⁵ While federally supervised FIs do not fall under the jurisdiction of the FTC, per se, the federal banking agencies adhere to Section 5 of the FTC Act when examining their supervised FIs for UDAP violations. ICBA and its members are reasonably concerned that the agencies will incorporate the Commission’s proposed definition in their examinations.