



INDEPENDENT COMMUNITY  
BANKERS *of* AMERICA

Testimony of

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On behalf of the  
Independent Community Bankers of America

Before the

**Congress of the United States**

**House of Representatives**

**Committee on Financial Services**

**Subcommittee on Financial Institutions and Consumer Credit**

Hearing on

**“H.R. 627, the Credit Cardholders' Bill of Rights Act of 2009; and H.R.  
1456, the Consumer Overdraft Protection Fair Practices Act of 2009”**

March 19, 2009  
Washington, D.C.

Chairman Gutierrez, Ranking Member Hensarling, Members of the Subcommittee, my name is Linda Echard and I am President and Chief Executive Officer of ICBA Bancard. Twenty-five years ago I helped the Independent Community Bankers of America (ICBA) leverage the negotiating power of its membership to allow community banks to enter the costly and competitive business of issuing credit cards to their customers. Today, with a staff of eleven, I work to help level the playing field in the card industry so community bank credit and debit card issuers can afford to participate and meet the costs to compete. As a collective, ICBA Bancard ranks as the 29<sup>th</sup> largest card issuer by outstandings.<sup>1</sup> On behalf of the Independent Community Bankers of America's<sup>2</sup> nearly 5,000 member banks, 70% of which offer credit cards to consumers and small businesses<sup>3</sup>, I appreciate the opportunity to share our views on H.R. 627, the Credit Cardholders' Bill of Rights, and H.R. 1456, the Consumer Overdraft Protection Fair Practices Act.

### **The Credit Cardholders' Bill of Rights**

Community banks believe they have an obligation to treat customers fairly, honestly and without deception. They cannot afford to harm their customers by taking advantage of them through deceptive credit card offerings and practices. There is no denying that a handful of large issuers have engaged in practices unfair to consumers. However, thanks in no small part to the urgings of this Committee, these practices have been largely abandoned.

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<sup>1</sup> *The Nilson Report*. Issue 918, January 2009. Page 10.

<sup>2</sup> The Independent Community Bankers of America, the nation's voice for community banks, represents 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community.

<sup>3</sup> To view an executive summary of the 2007 ICBA Community Bank Payments Survey, please visit <http://www.icba.org/publications/2007paymentssurvey.cfm?ItemNumber=38445>

While we agree that a small number of issuers have engaged in practices that are harmful to consumers, any legislative remedy should more broadly focus on encouraging consumer choice, transparency, and disclosure. This measure, which instead attempts to prohibit specific practices, imposes additional costs and burdens on community bankers who did not contribute to the problems in the industry, and will result in fewer and more expensive sources of credit for all Americans.

ICBA has testified before this committee and others on the dangers of excessive concentration of deposits in the banking sector: It is not in the public interest to have so much power and concentrated wealth in the hands of so few. This same maxim applies to the credit card industry. Public policy should encourage banks of all sizes to offer credit cards.

Throughout my career, I have seen first-hand the implications of excessive regulation on small issuers: the costs become too much to justify continuing the program, the card portfolio is sold to a big bank, and consumers in smaller markets are left with fewer choices with less favorable terms. At a time when everyone agrees that government should be encouraging and supporting efforts by community banks to assist in the recovery of our economy, passing this legislation sends the wrong message to those who are actually in a position to help.

The most powerful force for change in a market as competitive as credit cards is the ability of an educated consumer to shop with his or her feet. Ensuring that consumers are informed on a card's terms and conditions through appropriate and comprehensible disclosures is the best means of combating unfair practices. In fact, community bankers feel they gain a competitive advantage over the competition when an educated consumer walks in

the door, because that individual will be able to discern the better terms and conditions often found at a community bank.

ICBA remains very concerned about the efforts in this legislation to limit a community bank's ability to price and control for risk, which can lead to increased pricing for all customers regardless of risk. Risk-based pricing allows community banks to remain competitive, while being reasonable and flexible to their customers. Without risk-based pricing, community banks will have a difficult time helping people struggling on the margin to get back on sound financial footing. And if community banks aren't able to help, struggling consumers will be priced out of the market, forced to turn to payday lenders and others. While this legislation allows a limited set of circumstances in which an issuer may re-price a consumer's account, the implication will be a dramatic shift among community banks away from fixed-rate cards – which many consumers prefer – to variable-rate cards with limited flexibility.

I would also note that the deadlines set forth in this legislation for full compliance are completely unrealistic. For starters, the vast majority of community banks cannot afford to run their own credit card processing operation, and must rely on third parties. As we are seeing with the implementation of recent regulatory changes affecting credit cards, it takes months for the processor to reconfigure software and back-room operations, weeks of testing to work out the bugs, and more weeks to train employees and sales forces. Beyond that, once actually in the bank, the systems have to be reconfigured, and at least a full testing cycle must elapse before the system can be fully implemented. On top of this is training of bank employees and notifications to customers of the changes being made. All of this takes far more time than the bill allows.

## **Consequences for Consumers**

As consumers, we all recognize the convenience that credit cards afford us in our daily transactions, since they are accepted at over 24 million locations worldwide.<sup>4</sup> Credit cards are open-ended credit plans, as opposed to installment plans like a mortgage or car payment. As a result, credit cards are the only loan or credit product that, generally, allows the consumer to control how much he will owe, and whether he will pay any finance charge or just be a convenience user.

The Credit Cardholders' Bill of Rights Act attempts to restrict what today are considered to be inappropriate practices. This approach could actually create an incentive for those intent on maximizing profits at all cost to simply find new ways to work around the system, while the regulatory and paperwork requirements imposed through this bill will disproportionately burden community banks, diminishing their profitability and their ability to attract capital. Just as importantly, community banks will struggle to meet the credit needs of their consumer and small business customers. No one benefits if community banks exit the marketplace.

In today's struggling economy, access to credit is vital to many families. Many hard-working households use credit cards to budget their cash and spending as well as to deal with emergency or unexpected expenses. Community bankers, with business models based on establishing long-term relationships through good and bad financial times, have remained a solid and cost-effective option for countless consumers when the alternative is often a payday lender. In fact, community banks often extend credit to consumers with imperfect credit scores because they work with people directly: they know the person's character and they

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<sup>4</sup> See <http://www.electronicpaymentscoalition.org/value/business-economy.html>

value the overall relationship a customer has instead of just looking to exploit the maximum revenue from a single product. Whether a potential customer walks into a community bank with a credit score of 800 or 600, today they can feel confident they will be provided personal customer service without ulterior plans to trip them up with excessive fees and billing gimmicks.

But any competitive advantage a community bank may have today can be quickly erased through a legislative approach such as H.R. 627. Its restrictions take flexibility away from community bank lenders and make it nearly impossible to adapt to changing markets and new consumer demands. Moreover, I am concerned that this legislation will cause a transformation of the credit card industry into one that consumers will not like. Today, community banks can offer credit cards that are truly customized to the needs of individual customers. The litany of options a community bank customer has is long: basic cards with a fixed low annual percentage rate, cards with valuable rewards programs, flexible rates that drop with a good payment history, and credit limits designed to match the needs of the consumer are just a few of the choices that consumers have. All of these are possible because of the ability of lenders to innovate and develop new products and services to meet the needs of their customers. For community banks, this creativity allows them to differentiate themselves from the competition.

While the restrictions imposed through H.R. 627 are intended to protect consumers, issuers – especially smaller ones – will be so constrained in their ability to run a card program that balances the needs of consumers with safety and soundness requirements expected by regulators. As a result, cards as consumers have come to appreciate them today will be dramatically changed. I believe this legislation will lead to more homogenous cards,

eliminating choices and options for consumers, fixed-rate cards will be replaced by variable-rate pricing, and interest rates across the industry will rise.

### **Credit Cards Benefit Small Businesses**

The impact H.R. 627 could have on small businesses should not be overlooked. Community banks are incubators for small businesses, and play a vital role in providing the all-important access to capital that entrepreneurs need to succeed. While community banks only account for a small percentage of total domestic banking assets, they provide nearly a third (32.7%) of the total dollar amount of bank business loans under \$100,000,<sup>5</sup> many in the form of small business credit card products. When a small business has no track record, access to funding through a credit card can be the key resource that helps get the business going.

The 2007 ICBA Community Bank Payments Survey<sup>6</sup> revealed that more than 60% of respondent banks offer small business credit cards, and data from a recent National Small Business Association survey showed that credit cards are a leading source of financing for fledgling businesses<sup>7</sup>. A community banker's ability to offer credit cards at competitive rates and terms to entrepreneurs in our local towns is critical to supporting the engine of small business that drives our economy. Community bankers know their customers and live and work in their neighborhoods. The community banker often knows the capabilities and needs of the principals of a small business and the local community, and can help them where help is needed. And should the small business find itself in a tough financial situation, both the

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<sup>5</sup> U.S. Small Business Administration, Office of Advocacy. *Small Business and Micro Business Lending in the United States, for Data Years 2005-2006*. February, 2008.

<sup>6</sup> To view an executive summary, please visit <http://www.icba.org/publications/2007paymentssurvey.cfm?ItemNumber=38445>

<sup>7</sup> National Small Business Association. *2007 NSBA Survey of Small and Mid-Sized Businesses*. Accessed at <http://www.nsba.biz/docs/surveynewfinal.pdf>

banker and the owner have much more of a vested interest in making sure the business succeeds.

The negative consequences for consumers as a result of the restrictions prescribed in this legislation hold true for small businesses as well. Again, ICBA strongly urges this Committee to carefully consider whether this prohibitive and constraining legislative approach is appropriate when small businesses and community banks are both being asked to resurrect the economy.

### **H.R. 1456, the Consumer Overdraft Protection Fair Practices Act**

Many community banks offer overdraft protection programs that are highly valued by their customers. These programs, which automatically cover transactions drawn against non-sufficient funds, have historically been implemented on an ad hoc basis. New technologies have allowed banks to automate these processes in certain instances and honor more overdrafts. This is a convenience for customers who would otherwise inadvertently overdraw their accounts.

ICBA supports ensuring consumers are fully informed about the terms and conditions of any overdraft protection program (ODP) and are made fully aware of choices available to them. However, the burdens imposed in H.R. 1456 would reduce community banks' ability to competitively offer overdraft protection programs. In particular, the provisions of this legislation present technical and practical difficulties that will reduce the availability of overdraft coverage to community bank customers.

First, mandating an opt-in requirement to participate in overdraft programs is not what community bank customers want. Generations of community bank customers have come to expect that their banker will ensure they have access to their accounts, even if granting that

access means overextending temporarily. Community bank customers understand and appreciate that it is in their best interest to accept a reasonable overdraft fee in exchange for their banker clearing a check or allowing a point-of-sale transaction to be completed, rather than paying a non-sufficient fund fee, a bounced check fee, and facing the possibility of being late on a mortgage or other critical payment.

Furthermore, while the legislation mandates that consumers be allowed to decline overdraft coverage at a point-of-sale transaction, it is important to note that real-time balance information does not flow through our payments system. The system is not intended to carry this sort of information, and implementing these changes will not only carry significant cost, but will also disrupt the customer experience going forward by adding to the length of time required to complete a transaction, and also placing the customer at risk of embarrassment in the event a charge is declined. This sort of change will also require significant and costly upgrades to merchants' point-of-sale terminal equipment, another cost that likely will be passed on to consumers.

ICBA also believes overdraft protection programs should not be subject to the Truth in Lending Act (TILA). Regulation and disclosure under TILA is appropriate for open-ended accounts, such as credit cards, where a consumer is offered and extended credit and has certain rights and obligations regarding using and repaying it.<sup>8</sup> The discretionary nature of ODPs, which allows community banks to make overdraft protection available to more consumers while mitigating their own risk, does not fit the criteria for regulation under TILA. While overdraft *lines of credit* are properly addressed under TILA, other overdraft programs are more appropriately addressed under the Truth in Savings Act and Regulation DD. The disclosures provided under TILA are based on specific principal amounts and defined terms,

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<sup>8</sup> See, *inter alia*, 12 C.F.R. §§ 226.1(c), 226.2(a)(14).

elements lacking when overdrafts occur since customers are charged a flat fee, not an interest rate. Also, generic disclosures are not meaningful for consumers but would be required if attempts were made to apply TILA to overdraft protection programs.

Overall, ICBA believes the compliance costs imposed by this legislation would reduce the ability of community banks to compete. Overdraft programs are not all created equal, a fact which gives community banks the ability to leverage the unique and close relationship they have with their customers to offer them competitively priced programs to best meet their needs. This competitive advantage is an important part of what allows community banks to serve their customers, many of whom are already at the margin.

If the burdens and costs of compliance become too great, many community banks will merely reject any transaction that would overdraw an account. Without overdraft coverage, many customers will pay a nearly identical fee for the declined transaction but will also face a merchant fee and the hassle of a returned check. Furthermore, the returned check will be reflected on their records and negatively affect their credit worthiness. In sum, allowing consumers to overdraw their accounts on occasion helps consumers avoid unnecessary fees, helps them avoid a blot on their credit records, ensures transactions are completed in an efficient and timely manner, and are generally welcomed by community bank customers.

## **Conclusion**

Thank you again for the opportunity to testify today on behalf of ICBA and community banks across the country. Our concerns with these two pieces of legislation are straight-forward: overly restrictive approaches such as H.R. 627 and H.R. 1456, while serving well-intentioned purposes of addressing practices we agree are unfair to consumers, will create more difficulties than they cure. Community banks want to be able to offer

competitive credit card products, and also want to be able to help their customers with reasonable overdraft programs.

Empowering consumers to make informed decisions is not only better for them, but is also to the benefit of community bankers who can highlight the strength of their business model. Setting rigid parameters under which a bank may operate a card business or overdraft protection program will discourage already burdened community bankers, pushing them to reduce the number of products and services they can currently offer their customers. Fewer community bank card issuers means less choice for consumers and more business for those larger institutions which, it could be argued, are the principal target of H.R. 627. Overly burdensome conditions on overdraft programs will force community banks to simply stop making the service available to consumers, causing them to reject consumer transactions that otherwise would have been covered. While the latter may seem like a reasonable outcome, community bank customers do not agree.

In today's economic environment, every source of capital, and every form of protection, needs to be an option for consumers and small businesses. Adding further regulatory costs to credit card and overdraft protection programs will make it increasingly difficult for community bankers to remain a viable choice to meet the needs of their communities. ICBA urges this Committee to consider the harmful consequences these two measures would have on community banks and their customers.

Again, on behalf of ICBA and our 5,000 community bank members, thank you for the invitation to testify on these important issues. I look forward to your questions.