

Regulatory Relief Proposals for Community Financial Institutions

On behalf of the Independent Community Bankers of America (ICBA) and the nearly 7,000 community banks we represent, thank you for convening this hearing on “Examining Regulatory Relief Proposals for Community Financial Institutions.” We are pleased to have this opportunity to set forth our views on the bills under consideration in this statement for the record.

H.R. 2672, the CFPB Rural Designation Petition and Correction Act

ICBA strongly supports H.R. 2672, introduced by Rep. Andy Barr, which would make the CFPB’s “ability-to-repay” rule more workable for community bank customers. Under that rule, a balloon loan may not be designated a “qualified mortgage,” which is deemed compliant with the rule and thereby shielded from heightened liability, unless it is made by a lender that operates primarily in “rural” counties, under a very restrictive definition of “rural.” (The CFPB has suspended application of the rural lender limitation for two years.)

Community banks rely on balloon loans to serve borrowers whose loans are ineligible for sale into the secondary market because of stringent appraisal requirements, irregular or mixed-use collateral properties, or non-traditional borrower income. The only way for community bankers to extend credit to such customers is to structure the loan as a balloon loan, which is repriced and renewed at maturity, typically 3 to 7 years, and hold it in portfolio. The balloon feature shields the lender from unacceptable interest rate risk. This is why the rural definition, a pre-condition of QM status, is so important to community bank customers. Without QM protections, such loans will not be made and borrowers will lose access to credit.

H.R. 2672 would create a process in which individuals could petition the CFPB in order to have the rural status of a county reassessed. This process would help to more accurately identify rural counties and to ensure individuals in those communities have their mortgage needs met.

A bill to require certain financial regulators to determine whether new regulations or orders are duplicative or inconsistent with existing Federal regulations

ICBA strongly supports this discussion draft, which was circulated by Chairman Capito and Ranking Member Meeks. This discussion draft would require financial regulators, before issuing any new rule, to consider whether it is in conflict, is inconsistent with, or is duplicative of an existing rule. They would also have to consider whether any existing rule is outdated. This discussion draft would help alleviate the mounting regulatory burden which is making it increasingly difficult for community banks to serve their customers and communities.

H.R. 3584, the Capital Access for Small Community Financial Institutions Act of 2013

ICBA has concerns about H.R. 3584 because it would allow credit unions that are not federally insured to become members of Federal Home Loan Banks (FHLBs). The vast majority of federally insured community banks are FHLB members and depend on them as a strong, stable, reliable source of funding.

The current law requirement that banks and credit unions be federally insured as a condition of FHLB membership is not arbitrary. Because the FHLBs are cooperatives, the failure of any one member with outstanding advances will harm the remaining members. The federal deposit insurance requirement is intended to exclude from membership high risk institutions, be they banks, thrifts, or credit unions. Relaxing this requirement for a single class of financial institutions is unwarranted and would put existing FHLB members at risk unnecessarily.

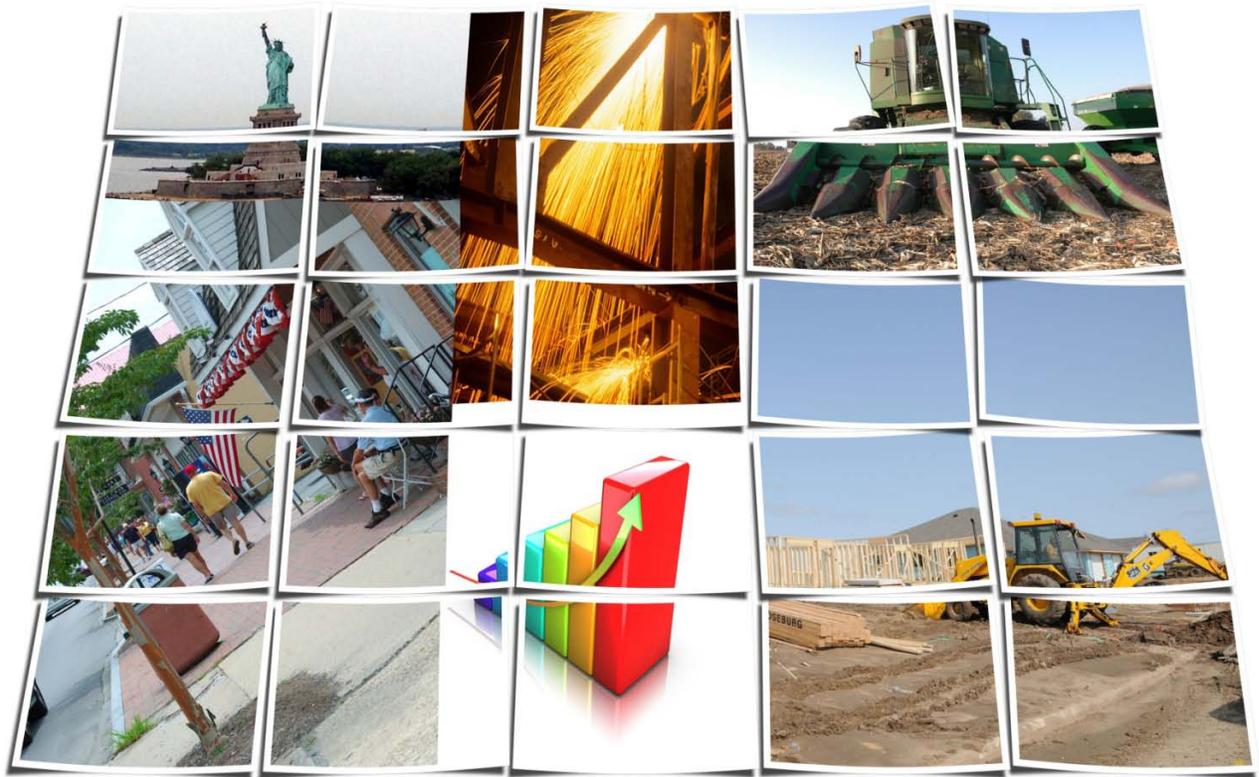
Thank you again for the opportunity to submit this statement for the record. ICBA is very pleased that the first two bills noted above are fully consistent with the Plan for Prosperity: A Regulatory Relief Agenda to Empower Local Communities, which is attached to this statement.

Attachment: ICBA Plan for Prosperity

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Plan for Prosperity



A Regulatory Relief Agenda to Empower Local Communities

2013

Plan for Prosperity: A Regulatory Relief Agenda to Empower Local Communities

America's 7,000 community banks are vital to the prosperity of the U.S. economy, particularly in micropolitan and rural communities. Providing 60 percent of all small business loans under \$1 million, as well as customized mortgage and consumer loans suited to the unique characteristics of their local communities, community banks are playing a vital role in ensuring the economic recovery is robust and broad based, reaching communities of all sizes and in every region of the country.

In order to reach their full potential as catalysts for entrepreneurship, economic growth, and job creation, community banks must be able to attract capital in a highly competitive environment. Regulation calibrated to the size, lower-risk profile, and traditional business model of community banks is critical to this objective. ICBA's Plan for Prosperity provides targeted regulatory relief that will allow community banks to thrive by doing what they do best – serving and growing their communities. By rebalancing unsustainable regulatory burden, the Plan will ensure that scarce capital and labor resources are used productively, not sunk into unnecessary compliance costs, allowing community banks to better focus on lending and investing that will directly improve the quality of life in our communities. Each provision of the Plan was selected with input from community bankers nationwide and crafted to preserve and strengthen consumer protections and safety and soundness.

The Plan is not a bill; it is a platform and set of legislative priorities positioned for advancement in Congress. The provisions could be introduced in Congress individually, collectively or configured in whatever fashion suits interested members of Congress. The Plan is a flexible, living document that can be adapted to a rapidly changing regulatory and legislative environment to maximize its influence and likelihood of enactment. Provisions of the Plan include:

Support for the Housing Recovery: Mortgage Reform For Community Banks. Provide community banks relief from certain mortgage regulations, especially for loans held in portfolio. When a community bank holds a loan in portfolio, it has a direct stake in the loan's performance and every incentive to ensure it is affordable and responsibly serviced. Relief would include: Providing "qualified mortgage" safe harbor status for loans originated and held in portfolio for the life of the loan by banks with less than \$10 billion in assets, including balloon mortgages; exempting banks with assets below \$10 billion from escrow requirements for loans held in portfolio; increasing the "small servicer" exemption threshold to 20,000 loans (up from 5,000); and reinstating the FIRREA exemption for independent appraisals for portfolio loans of \$250,000 or less made by banks with assets below \$10 billion.

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Strengthening Accountability in Bank Exams: A Workable Appeals Process. The trend toward oppressive, micromanaged regulatory exams is a concern to community bankers nationwide. An independent body would be created to receive, investigate, and resolve material complaints from banks in a timely and confidential manner. The goal is to hold examiners accountable and to prevent retribution against banks that file complaints.

Redundant Privacy Notices: Eliminate Annual Requirement. Eliminate the requirement that financial institutions mail annual privacy notices even when no change in policy has occurred. Financial institutions would still be required to notify their customers when they change their privacy policies, but when no change in policy has occurred, the annual notice provides no useful information to customers and is a needless expense.

Serving Local Governments: Community Bank Exemption from Municipal Advisor Registration. Exempt community bank employees from having to register as municipal advisors with the SEC and the Municipal Securities Rulemaking Board. Community banks provide traditional banking services to small municipal governments such as demand deposits, certificates of deposit, cash management services, loans and letters of credit. These activities are closely supervised by state and federal bank regulators. Municipal advisor registration and examination would pose a significant expense and regulatory burden for community banks without enhancing financial protections for municipal governments.

Creating a Voice for Community Banks: Treasury Assistant Secretary for Community Banks. Economic and banking policies have too often been made without the benefit of community bank input. An approach that takes into account the diversity and breadth of the financial services sector would significantly improve policy making. Creating an Assistant Secretary for Community Banks within the U.S. Treasury Department would ensure that the 7,000 + community banks across the country, including minority banks that lend in underserved markets, are given appropriate and balanced consideration in the policy making process.

Balanced Consumer Regulation: More Inclusive and Accountable CFPB Governance. Change the governance structure of the CFPB to a five-member commission rather than a single Director. Commissioners would be confirmed by the Senate to staggered five-year terms with no more than three commissioners affiliated with any one political party. This change will strengthen accountability and bring a diversity of views and professional backgrounds to decision-making at the CFPB. In addition, FSOC's review of CFPB rules should be strengthened by changing the vote required to veto a rule from an unreasonably high two-thirds vote to a simple majority, excluding the CFPB Director.

Relief from Accounting and Auditing Expenses: Publicly Traded Community Banks and Thrifts. Increase from \$75 million in market capitalization to \$350 million the exemption from internal control attestation requirements. Because community bank internal control systems are monitored continually by bank examiners, they should not have to sustain the unnecessary annual expense of paying an outside audit firm for attestation work. This provision will substantially lower the regulatory burden and expense for small, publicly traded community banks without creating more risk for investors. Separately, due to an inadvertent oversight in the recently-passed JOBS Act, thrift holding companies cannot take advantage of the increased shareholder threshold below which a bank or bank holding company may deregister with the SEC. Congress should correct this oversight by allowing thrift holding companies to use the new 1200 shareholder deregistration threshold.

Ensuring the Viability of Mutual Banks: New Charter Option and Relief from Dividend Restrictions. The OCC should be allowed to charter mutual national banks to provide flexibility for institutions to choose the charter that best suits their needs and the communities they serve. In addition, certain mutual holding companies – those that have public shareholders—should be allowed to pay dividends to their public shareholders without having to comply with numerous “dividend waiver” restrictions as required under a recent Federal Reserve rule. The Federal Reserve rule makes it difficult for mutual holding companies to attract investors to support their capital levels. Easier payment of dividends will ensure the viability of the mutual holding company form of organization.

Rigorous and Quantitative Justification of New Rules: Cost-Benefit Analysis. Provide that financial regulatory agencies cannot issue notices of proposed rulemakings unless they first determine that quantified costs are less than quantified benefits. The analysis must take into account the impact on the smallest banks which are disproportionately burdened by regulation because they lack the scale and the resources to absorb the associated compliance costs. In addition, the agencies would be required to identify and assess available alternatives including modifications to existing regulations. They would also be required to ensure that proposed regulations are consistent with existing regulations, written in plain English, and easy to interpret.

Additional Capital for Small Bank Holding Companies: Modernizing the Federal Reserve’s Policy Statement. Require the Federal Reserve to revise the Small Bank Holding Company Policy Statement – a set of capital guidelines that have the force of law. The Policy Statement, makes it easier for small bank holding companies to raise additional capital by issuing debt, would be revised to apply to both bank and thrift holding companies and to increase the qualifying asset threshold from \$500 million to \$5 billion. Qualifying bank and thrift holding companies must not have significant outstanding debt or be engaged in nonbanking activities that involve significant leverage. This will help ease capital requirements for small bank and thrift holding companies.

Cutting the Red Tape in Small Business Lending: Eliminate Data Collection. Exclude banks with assets below \$10 billion from new small business data collection requirements. This provision, which requires the reporting of information regarding every small business loan application, falls disproportionately upon community banks that lack scale and compliance resources.

Facilitating Capital Formation: Modernize Subchapter S Constraints and Extend Loss Carryback. Subchapter S of the tax code should be updated to facilitate capital formation for community banks, particularly in light of higher capital requirements under the proposed Basel III capital standards. The limit on Subchapter S shareholders should be increased from 100 to 200; Subchapter S corporations should be allowed to issue preferred shares; and Subchapter S shares, both common and preferred, should be permitted to be held in individual retirement accounts (IRAs). These changes would better allow the nation's 2300 Subchapter S banks to raise capital and increase the flow of credit. In addition, banks with \$15 billion or less in assets should be allowed to use a five-year net operating loss (NOL) carryback through 2014. This extension of the five-year NOL carryback is countercyclical and will support community bank capital and lending during economic downturns.

The Independent Community Bankers of America®, the nation's voice for nearly 7,000 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. For more information, visit www.icba.org.

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