



Wall Street Reform Act

Victories, Helpful Exemptions and Harmful Measures for Community Banks

Overview

- **Congressional action inevitable.** Given public outrage and the demand for a policy response to the financial crisis and economic collapse, major legislative action from Congress was inevitable. While ICBA never supported or opposed the overall financial reform bill, ICBA worked to focus lawmakers on correcting the abuses of Wall Street and the causes of the financial crisis.
- **Differentiating community banks.** ICBA and its state community bank association allies ensured that lawmakers understood how Main Street banks are different from Wall Street banks. The bill enacts into law a major precedent that financial policies should reflect and accommodate the differences between community banks and large, complex financial institutions. ICBA will continue to advocate for legislation and regulations that build on this vital precedent.
- **Legislation is not perfect.** The bill affects every aspect of our nation's financial services marketplace. The bill contains many constructive measures that ICBA and its state community banking association allies promoted. Nevertheless, some harmful measures could not be modified or eliminated, despite strong opposition. However, ICBA's active participation led to specific provisions that avoid many negative measures for community banks.
- **Financial reform process is not over.** Passing the bill is just one step in the process of financial reform that will continue to unfold for years to come. ICBA will continue to fight for community banks and Main Street as regulators implement the legislation, and work with Congress wherever possible to correct negative or unintended consequences of the legislation.

Victories

These precedent-setting ICBA-advocated provisions will help level the regulatory and competitive playing field for community banks.

- **Asset-based deposit insurance assessments**—FDIC assessments will be based on bank assets rather than domestic deposits, which will reduce assessment rates by a third and save community banks \$4.5 billion over the next three years. Savings will compound for community banks as regular assessments continue.
- **Too-big-to-fail**—The largest financial institutions will face higher capital and liquidity standards, a new systemic risk council and new resolution authority for the largest institutions so that they are wound down instead of propped up when they fail.
- **Nonbank competitors**—The Consumer Financial Protection Bureau will reduce the unfair competitive advantage these firms have long enjoyed as unregulated financial services entities.

- **Deposit insurance limit increase**—Deposit insurance coverage limit is permanently increased to \$250,000.
- **Transaction Account Guarantee extension**—Unlimited deposit insurance coverage is extended for non-interest-bearing transaction accounts for two years.
- **SOX Section 404(b)**—Public companies with capitalization of less than \$75 million are permanently exempted from the auditor attestation requirements of Sarbanes-Oxley Section 404(b).
- **Volcker rule**—The largest banks are generally prohibited from engaging in proprietary trading or holding or obtaining an interest in a hedge fund or private equity fund, though there is a *de minimis* exception. Also included are exceptions for securities that community banks typically invest in.

Partial Victory

- **Industrial loan companies**—A three-year moratorium is imposed on new industrial loan company charters. ICBA will work for a permanent closing of the banking-and-commerce loophole.

Helpful Exemptions

These exemptions will help community banks avoid the impact of some of the law’s provisions.

- **Consumer Financial Protection Bureau (CFPB) exemptions**—Banks with less than \$10 billion in assets are exempt from primary examination and enforcement by the bureau. Community banks will continue to be examined by their bank regulators for consumer compliance and will not be assessed any fees for any CFPB oversight.
- **Checks on CFPB rule-writing**—The CFPB is required to consult with current banking agencies before proposing a rule and during the comment process. The CFPB will have to respond in writing to any objections raised by prudential regulators. The Financial Stability Oversight Council may set a CFPB rule aside if, upon a two-thirds vote, the council finds that the regulation or provision would jeopardize the safety and soundness or stability of the U.S. banking system.
- **Trust preferred securities**—Proceeds from trust preferred securities are excluded from Tier 1 capital because capital requirements for bank holding companies can’t be any less stringent than those for banks themselves. However, bank holding companies of less than \$500 million in assets are exempt from this provision because the Fed’s small bank holding company policy statement remains in effect. Trust preferred securities issued before May 19, 2010, by bank holding companies of less than \$15 billion in assets are grandfathered.
- **Risk-retention rule**—Loan originators must retain 5 percent of any loan they sell or securitize, except for mortgages that meet low-risk standards to be developed by regulators. The bill specifically exempts all Federal Housing Administration, Veterans Administration, Farmer Mac and Rural Housing Service loans. Regulators can also exempt commercial loans “that meet certain underwriting standards.”
- **Mortgage underwriting**—A definition of “qualified loans” exempts lenders from new heightened legal liability to ensure that a borrower has the ability to repay a loan. Although balloon loans and *loans exceeding* a points-and-fees threshold are not exempt, the Federal Reserve has flexibility to adjust the rules for rural and smaller loans.

- **Derivatives rules**—Derivative regulations largely exempt derivatives used by community banks, particularly those used to provide loans to customers or to hedge their own interest rate risk. A *de minimis* provision also exempts banks and other entities that use swaps infrequently.
- **Large-bank FDIC premiums**—Banks with more than \$10 billion in assets will pay higher FDIC premiums to reach a new mandated 1.35 percent Deposit Insurance Fund minimum reserve ratio by Sept. 30, 2020. No funds will be transferred from the DIF to fund other federal programs.
- **Concentration limits**—Federal Home Loan Banks are exempt from federal loan concentration limits. Without this exemption, FHLB advances to community banks might have been curtailed.

Harmful and Disappointing Measures

These harmful or negative provisions in the financial reform bill that ICBA vigorously opposed will create significant difficulties or impose new burdens for community banks.

- **Debit interchange**—The Federal Reserve is directed to set interchange rates for debit-card issuers with more than \$10 billion in assets that will not account for the full cost of supporting debit transactions. Merchants will be allowed to discriminate or discount based on payment type and to set minimum payment amounts for acceptance of debit and credit cards.

Despite the exemption for smaller banks, the provisions will significantly reduce community bank debit interchange income and harm the overall debit payments marketplace. ICBA will work with regulators and seek legislative changes to mitigate the damaging effects of the provisions.

- **Auto dealer CFPB exemption**—Auto dealers are exempt from consumer-protection-bureau regulations, a setback in requiring all nonbank lenders to comply with the same regulations as community banks.
- **Executive compensation**—Shareholders of publicly traded community banks must be given a non-binding vote on executive compensation. The SEC has authority to exempt small companies from the requirement or at least make it less burdensome for them.
- **BHC risk committees**—Publicly traded bank holding companies with more than \$10 billion in assets must establish risk committees with independent directors. The Federal Reserve may also require smaller publicly traded bank holding companies to establish such committees.
- **Expanded affiliate transactions rules**—The definition of “covered transaction” in the affiliate transactions rules would be expanded to include repurchase agreements, derivatives transactions and securities borrowing and lending.
- **Insider transaction rules.** Banks would be subject to new Federal Reserve rules governing purchases of assets from, or sales to, insiders.
- **“Source of strength” rules for BHCs**—Bank holding companies would be subject to new “source of strength” rules with regard to their depository institution subsidiary.