

Current Top Issues

Working with member banks, ICBA has identified the following priority issues currently before Congress and/or the regulatory agencies:

Credit Unions. The credit unions are aggressively pushing legislation that would more than double the cap on member business lending from 12.25 percent of assets to 27.5 percent. With numerous cosponsors in the House and Senate, this legislation is a real and imminent threat to community banks. ICBA is making an all-hands effort to stop the legislation. Our effort involves intensive direct lobbying, grass roots, a petition, and a media campaign. At the same time, we are urging Congress to end credit unions' unfair tax and regulatory advantages and to prevent NCUA from erecting roadblocks that keep credit unions from converting to tax-paying banks.

Communities First Act. Advancing the Communities First Act (CFA) is among ICBA's top priorities in 2012. The House version (H.R. 1697) was introduced by Financial Services Committee member Rep. Blaine Luetkemeyer (R-MO) and has over 80 cosponsors with strong representation from both parties. The Senate version (S. 1600) was introduced by Banking Committee member Senator Jerry Moran (R-KS). CFA provides much needed regulatory and tax relief for community banks, their customers, and their communities. Key provisions include:

- Allowing the Financial Stability Oversight Council to veto a Consumer Financial Protection Bureau rule upon finding that it would "adversely impact a subset of the financial industry";
- Increasing the SEC shareholder registration threshold;
- Exempting any bank with assets of less than \$1 billion from the internal control attestation requirement of Sarbanes-Oxley Section 404(b).
- Amending the Dodd-Frank Act to restore bank reliance upon external credit ratings; and
- Extending the 5-year net operating loss (NOL) carry back provision.

We expect CFA to be considered by the House Financial Services Committee in 2012.

Transaction Account Insurance. ICBA is urging Congress to continue full FDIC coverage of non-interest bearing transaction accounts before the program expires at year-end 2012 and reverts to the \$250,000 limit for all depositors. The current program was first crafted by the FDIC in October 2008 to stabilize the banking system. Because the global banking system and the economic recovery remain fragile and depositors remain risk adverse, expiration of full insurance coverage for transaction accounts carries the risk of abrupt dislocation and other unintended consequences for a financial sector that is just regaining its footing. ICBA is seeking to extend the program for an additional five years, giving the economy the additional time it needs to fully recover.

Safety and Soundness Exams. ICBA continues to express grave concerns to regulators and Congress about overzealous safety and soundness examinations that are adversely affecting community banks' ability to lend and further exacerbating the current economic downturn. Since mid-2009, the regulators issued a record number of cease-and-desist orders and entered into numerous consent agreements and MOUs with community banks. Examiners are unjustifiably requiring capital levels much higher than current official standards and are inappropriately downgrading performing commercial real estate loans. ICBA continues to advocate strongly for a more measured approach from bank examiners that doesn't impede community banks' ability to aid recovery efforts. ICBA is also advocating for the creation of an independent appeals process outside of the banking agencies.

Consumer Financial Protection Bureau. ICBA is working aggressively to protect the interests of community banks under the new bureau. We support legislation to give bank regulators meaningful input into CFPB rules, including a bill introduced by Rep. Sean Duffy (R-WI) and passed by the House which would replace the single director with a commission and replace the current, unreasonably high standard for Financial Stability Oversight Council veto of a CFPB rule with a more realistic standard. ICBA also supports joint CFPB rulemaking involving the banking regulators. ICBA will continue to push for greater scrutiny over non-bank financial firms, and will stress that community banks do not abuse consumers through deceptive practices in their mortgages or credit cards and should not be saddled with new regulatory burdens. A one-size-fits-all approach would disadvantage community banks, whose business model is focused on meeting the unique needs of local consumers. ICBA is urging the CFPB whenever possible to adopt tiered regulations, and appropriate exemptions for community banks.

Accounting. ICBA opposes the Financial Accounting Standards Board's (FASB) proposed requirement under its financial instruments project that entities disclose fair values for all financial instruments held in the amortized cost category (including mortgage loans) parenthetically on the face of the balance sheet. The proposed fair value disclosure would be based on the exit price of a given asset, which is defined as the price at which a willing buyer and seller would transact for that asset in a non-distressed market. Implementing the proposed disclosure requirement would create a tremendous burden for community banks while providing little or no incremental benefit to investors or other financial statement users. Community banks would need to implement robust pricing engines and complex valuation methodologies for their loan portfolios in order to satisfy the valuation standard prescribed under the proposed guidance. ICBA supports the proposal of the Financial Accounting Foundation to lessen the financial accounting and reporting burden on private companies including community banks by establishing the Private Company Standards Improvement Council (PCSIC). The PCSIC would review existing and proposed changes to generally accepted accounting principles and advise FASB on private company accounting and ways to provide relief where needed.

Overdraft Payment Services. Within the past 18 months, the FDIC issued its Final Overdraft Payment Supervisory Guidance (favorably clarified by a subsequent Frequently Asked Questions document) and the OCC issued proposed guidance on automated overdraft programs. Both sets of guidance present serious concerns including daily caps on overdraft fees and requirements for customer contacts, opt-in, and underwriting. ICBA is seeking revisions and adjustments to the agency guidance. ICBA is following closely the CFPB's recently announced initiative on overdraft programs and will weigh in with community bank views and concerns. The banking agencies will likely also continue to regulate overdraft programs because of their potential impact on safety and soundness.

Future of Housing Finance. Community banks need a secondary market for residential mortgages as most sell some mortgage loans directly or indirectly to Fannie Mae, Freddie Mac or the FHLBanks. As the Administration and Congress consider how to resolve the conservatorship of Fannie Mae and Freddie Mac, ICBA is working to ensure a secondary market for residential mortgages remains that is financially strong, reliable and impartial – providing equitable access and pricing to all lenders regardless of size or volume. ICBA proposed replacing Fannie Mae and Freddie Mac with cooperative entities owned by mortgage originators and governed on a one-company-one-vote basis. Also, ICBA is opposing an FHFA proposal to significantly reduce or eliminate altogether the minimum servicing fee of 25 basis points earned for performing mortgages and implement a specific fee for non-performing mortgages. Finally, the FHLBanks must remain a healthy, stable, reliable source of funding, liquidity and products to serve the needs of all member-owners, providing them with lendable funds for the local communities they serve.

Mortgage Lending Reforms. As the agencies implement the Dodd-Frank Act “ability to repay” determination and five percent risk retention requirements, they should broadly define the “qualified mortgage” (QM) and “qualified residential mortgage” (QRM) exemptions, respectively, and should coordinate the two standards to limit regulatory burden. With regard to the QM definition, ICBA has urged the CFPB, which will finalize the Federal Reserve’s proposal, to take a safe harbor approach, which would provide lenders with a “bright-line” to assure compliance, and to simplify the exemption for balloon payment loans. The agencies’ proposed QRM definition includes mortgages sold to Fannie Mae and Freddie Mac, for as long as they remain in conservatorship. However, it also includes an unreasonably high down payment requirement (20 percent) that will severely limit credit availability.

Separately, however, the Federal Reserve’s proposed rule implementing the expanded escrow requirement defines the exemption for rural lenders too narrowly. ICBA is urging CFPB to provide an exemption for community bank mortgage loans held in portfolio. We are also engaged in the CFPB’s effort to develop unified RESPA-TILA disclosures. ICBA is pressing the Federal Housing Administration (FHA) to permanently extend its waiver for banks with less than \$500 million in assets from a new requirement to submit audited financial statements for FHA lender approval or renewal. ICBA helped secure the initial waiver, and the additional one-year extension of that waiver till April 7, 2013. We are also asking the FHA for relief from the required audit on compliance with FHA processes and procedures.

Tax Relief. ICBA-advocated lower tax rates currently applied to individual income and Subchapter S income, dividends and capital gains should be extended or made permanent when they expire in 2012. A permanent solution to the estate tax is needed to establish certainty in estate tax planning and prevent a return to pre-2001 levels. The net operating loss (NOL) five-year carryback should be extended and made permanent. ICBA is opposing any new “bank tax” or “financial transactions tax,” and any proposed federal fees specifically targeting the commercial banking industry. ICBA will closely monitor and engage in any tax reform debate or deficit reduction proposals in order to protect community banks and secure needed tax relief. ICBA has funded a new tax study to analyze how proposed income tax reforms would impact small businesses and community banks.

Too-Big-to-Fail/Systemic Risk. ICBA is working to ensure that the regulations implementing the too-big-to-fail provisions of the Dodd-Frank Act effectively reduce systemic risk by reining in large banks and financial firms, particularly with respect to higher capital and liquidity requirements for the large banks. The Financial Stability Oversight Council’s (FSOC’s) process for determining which nonbank financial institutions should be considered systemically important financial institutions (SIFIs) should be a sufficiently broad inquiry to include as many large or interconnected nonbank financial firms as possible. ICBA urges FSOC to accelerate the process and to establish a firm timetable for the identification of SIFIs. ICBA supports the FDIC’s and the Federal Reserve’s rules on contingent resolution plans (also known as “funeral plans”) required of large banks and financial firms under the Act. While ICBA generally supports the proposed rule to implement the “Volcker Rule” prohibition on proprietary trading, we are urging the regulators to limit its impact to those entities that engage in proprietary trading. Community banks should not be required to update or revise their compliance plans.

Interchange Fees. While the Federal Reserve’s final debit interchange rule (effective October 1, 2011) implementing the Durbin amendment to the Dodd-Frank Act was a significant improvement over the December proposed rule, it remains a serious concern. ICBA strongly supports legislation introduced by Reps. Jason Chaffetz (R-UT) and Bill Owens (D-NY) to repeal the Durbin amendment and will work to advance it. At the same time, ICBA is focused on the networks’ implementation of the rule, working on rule modifications that would change payment guarantee provisions since banks will no longer receive interchange fees sufficient to compensate for this risk. ICBA is opposing further legislation to regulate credit card interchange, either through

tampering with antitrust laws or undoing existing pro-consumer network operating rules, which would put community banks at a competitive disadvantage to larger institutions with national footprints. Merchants want to pay less for the benefits they receive by accepting payment cards, and their efforts to regulate interchange would mean fewer choices and higher costs for consumers.

Fair Lending Issues. ICBA has expressed grave concern about harmful, unfair and counterproductive fair lending enforcement actions by the U.S. Department of Justice against some community banks. The DOJ is insisting that the banks expand their Community Reinvestment Act (CRA) assessment areas to include areas where ethnic minorities represent the majority of the population. In a letter to U.S. Attorney General Eric Holder, ICBA cited community banks' strong record of fair lending practices and stated that DOJ is abusing its authority on several grounds. The letter noted that banks are only legally obligated under CRA to provide services in their assessment areas. ICBA has met with the Assistant Attorney General for Civil Rights to discuss these concerns in person. ICBA is also deeply concerned with a Department of Housing and Urban Development (HUD) proposed rule stating that a Fair Housing Act violation may be found when a lending practice has a "disparate impact" on different demographic groups despite the application of uniform, neutral standards. Finally, ICBA is concerned that bank examiners are applying unpredictable standards to measure for fair lending violations. All of these practices and proposals present serious risk of unintended consequences and will likely inhibit the extension of credit.

National Mortgage Servicing Standards. ICBA is urging Congress and the agencies to protect community banks from national servicing standards set forth in the state attorneys general settlement agreement. Targeted at the five largest national mortgage servicers, these standards are expansive, resource intensive and costly. ICBA is deeply concerned that they may become the foundation for national servicing standards to be written by the CFPB along with the Servicer Alignment initiatives from Fannie Mae and Freddie Mac. Community banks have continued to service their mortgage portfolios in a responsible manner and have not been involved in the abuses noted in the settlement. Overly prescriptive standards which require community banks to add unnecessary staff and resources to comply will cause many community banks to exit the business and lead to further consolidation in the mortgage servicing industry.

Basel Capital Rules. ICBA strongly supports minimum leverage requirements for all banks and is working with the regulators to implement fair and equitable capital requirements for community banks, including a more risk-sensitive standardized option. ICBA also supports higher capital, capital buffers, and liquidity requirements for systemically important nonbank financial companies and large bank and bank holding companies. As the regulators implement new standards under Basel III, ICBA opposes the inclusion of accumulated other comprehensive income (AOCI) in the Tier 1 capital calculation. AOCI for community banks almost completely represents unrealized gains and losses on securities held available-for-sale. Inclusion of AOCI in Tier 1 capital calculations will subject community banks to increased capital volatility due to changes in benchmark interest rates.

Key Farm and Rural Issues. Congress is writing a new farm bill to replace the current bill which expires September 30th. ICBA has written Congress urging several policy positions as part of the next farm bill: maintain adequate funding for crop insurance based on current funding levels; and enhance USDA farm loan programs by maintaining adequate funding; removing term limits; removing volume caps on guaranteed programs that are self-funding to increase guaranteed funding bankers can obtain for their customers; and doubling the loan size of guaranteed farm loans. ICBA has also urged adequate funding for USDA's rural housing guaranteed loan program and has supported enhancing the USDA's Business and Industry (B & I) loan guarantee program.

ICBA continues to work to keep FCS institutions from becoming the equivalent of commercial banks with

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credit union-like tax exemptions combined with the inherent advantages of their government sponsored enterprise (GSE) status. ICBA kept broad expansions of FCS powers for non-farm and business lending out of the 2008 Farm Bill and will seek to prevent such expansions in any new farm bill. ICBA vigorously opposes FCA's "Rural Community Investments" proposed regulation, which would allow FCS lenders to make currently illegal (non-agricultural) loans if they are labeled "investments." ICBA opposed a proposal to allow the FCS to purchase loans or loan pools, including those consisting of non-agricultural loans, of failed banks from the FDIC in competition with community banks. The FCA limited the proposal by removing authority to purchase non-agricultural loans and act as a last resort purchaser from the FDIC.

Derivatives Regulation. ICBA is urging the SEC, the CFTC and federal banking agencies when writing rules to implement the Dodd-Frank Act derivatives provisions, not to disadvantage community banks that use low-risk interest rate swaps to provide fixed-rate loan products to their borrowers or hedge their own interest rate risks. Due to the low risks involved, ICBA is advocating that community banks' customized swaps not be subject to higher capital and margin requirements than the plain-vanilla swaps utilized by large institutions and community banks should be exempted from clearing requirements. In addition, the reuse of margin, or rehypothecation, to complete community bank swaps transactions, should not be prohibited in the over-the-counter market, which would significantly increase capital requirements and make community banks swaps uneconomical.

Remittance Transfers. ICBA continues to advocate a safe harbor that would protect most community banks from the onerous and unworkable provisions of the Regulation E final rule, effective February 7, 2013, that requires banks to provide consumers with detailed disclosures of all fees and exchange rates both before and after an international transaction. ICBA continues to work with the financial services industry to educate policy makers of the negative impact of this rule on ACH and wire transfer systems.

Fannie Mae and Freddie Mac Preferred Shares. ICBA is seeking restoration of Fannie Mae and Freddie Mac preferred share value and dividend payments.

Corporate Governance, Executive Compensation and Incentive Compensation. ICBA is working to exempt community banks from the corporate governance and executive compensation provisions of the Dodd-Frank Act, which include a "say-on-pay" (nonbinding shareholder vote) requirement for public companies, an independent compensation committee requirement, and new executive compensation disclosures. The Dodd-Frank Act gives the SEC authority to exempt small companies from these requirements. The SEC's final say-on-pay rule, published January 25, 2011 does not exempt small issuers but postpones the effective date for small issuers until January 21, 2013. Separately, ICBA continues to encourage regulators to focus incentive compensation guidance on the large, complex institutions that contributed to the current financial crisis and to exempt community banks from such supervisory review

Registration of Municipal Advisors. The Dodd-Frank Act requires registration of "municipal advisors" with the SEC and the Municipal Securities Rulemaking Board (MSRB). The SEC's proposed implementing rule, if interpreted broadly, could cover traditional banking products and would require thousands of community banks to register as "municipal advisors." ICBA is urging the SEC to exempt banks from registration, as we believe the rule was intended by Congress to cover unregulated entities. At a minimum, the SEC should exempt traditional products and services that banks offer to municipal customers.

Minority Banks. ICBA has formed a Minority Bank Council to address the unique challenges and issues facing minority banks and to pursue solutions with policymakers.

Industrial Loan Companies. The Dodd-Frank Act imposes a 3-year moratorium on new industrial loan company charters. The moratorium expires July 2013. ICBA will continue to press for a permanent closing of this loophole.

Correspondent Banking. ICBA continues efforts to ensure that regulatory policy and the current examination environment do not jeopardize the successful smaller correspondent banking model and do not unduly burden community bank respondents.

Data Security. ICBA is working to ensure that community banks—which already comply with GLBA requirements—are not saddled with new burdens or enforcement from the FTC and state attorneys general. GLBA-like requirements should extend to retailers and others that handle sensitive customer data, and the entity that was breached should bear the costs of replacing cards and mitigating losses.

Mutual Institutions. ICBA continues to support and defend the option of mutual ownership before all regulatory and legislative bodies, including supporting in judicial proceedings a private right of action for mutual banks under the Savings and Loan Holding Company Act.

Mortgage Bankruptcy. ICBA opposes legislation to allow bankruptcy judges in Chapter 13 cases to modify primary mortgage contracts by “cramming down” principal, reducing interest rates, and stretching out the repayment period to as long as 40 years. This would add risk to mortgage lending, increasing the cost of home ownership for all home buyers.