

Recent Legislative & Regulatory Successes

Communities First Act – The Communities First Act (CFA, H.R. 1697), a priority ICBA initiative, has been introduced by Financial Services Committee member and former community banker Rep. Blaine Luetkemeyer (R-MO) and has secured over 90 bipartisan co-sponsors, including the Chairman of the House Financial Services Committee and a key subcommittee chairman. The House Financial Services Committee held a hearing on the bill in November 2011, at which then- ICBA Chairman Sal Marranca testified. A companion bill (S. 1600) was introduced in the Senate by Banking Committee member Jerry Moran (R-KS). Congress has already enacted a key provision of CFA which will increase the number of shareholders that triggers SEC registration from 500 to 2,000 (more below). This provision was signed into law on April 5 as part of the Jumpstart Our Business Startups (JOBS) Act. CFA would provide much needed regulatory and tax relief for community banks, their customers, and their communities.

SEC Registration Threshold Increase – Legislation to increase the shareholder registration threshold from 500 to 2,000 and to increase the deregistration threshold from 300 to 1,200 passed Congress and was signed into law by the President on April 5 as part of the Jumpstart Our Business Startups (JOBS) Act. This provision has been a long-standing ICBA priority and was a key component of the Communities First Act. It was bolstered by ICBA’s advocacy for that bill. ICBA was instrumental in defeating an amendment that would have based the registration threshold on “beneficial holders” of company stock – and thereby required costly identification and tracking of such holders. Current law bases the threshold on “street name” stock holders, where all the shares held by a given broker count as a single shareholder.

Credit Unions – ICBA is conducting an intensive all-hands effort – involving executive committee member testimony before Congress, direct advocacy, grassroots contacts by member banks, a petition, and media and ad campaigns – to stop the credit unions’ aggressive push to enact legislation (S. 2231, H.R. 1418) to more than double their current member business lending (MBL) authority. The credit unions have numerous cosponsors in the House and Senate, including the Senate Majority Leader, but have so far failed to bring their legislation before a committee or to the floor of either chamber of Congress. Notably, when 5,000 credit union executives converged on Washington in March during Senate consideration of the JOBS bill, ICBA helped to prevent their top priority: appending S. 2231 to the bill. However, the Senate Majority Leader has promised the credit unions a vote on S. 2231 in 2012. ICBA will continue its campaign to educate members of Congress about the risk of expanding commercial lending, the purpose of the MBL cap (to keep credit unions focused on *consumer* lending to people of modest means, consistent with their original mission), and the unfairness and public expense of their tax exemption. ICBA will continue to expose the myths and distortions spread by credit unions to advance their agenda.

Overdraft Payment Services – On April 4, 2011 the FDIC released a set of Frequently Asked Questions intended to clarify their Overdraft Protection Guidance from November 2010, which was a source of significant concern to ICBA members. The FAQs favorably clarify two provisions of the guidance. First, the guidance applies only to automated programs; ad-hoc programs are exempt. Second, required contacts to chronic or excessive users of automated programs can be made through electronic or paper mail or included on periodic statements, instead of by phone or in person, as the guidance had implied. This important victory for community banks is the result of ICBA’s intervention with the FDIC, including a meeting between Cam Fine and then-Chairman Sheila Bair, as well as additional staff meetings and letters. In addition, ICBA recently convinced the FDIC to no longer cite banks without formal overdraft programs for unfair or deceptive acts or practices violations if they charge fees for overdrafts at the ATM or point of sale. While the FDIC will still

require banks to cease charging fees for overdrafts at the ATM or point of sale if they do not have a formal overdraft program, ICBA convinced the FDIC to no longer require reimbursement to customers for fees charged in the past. Separately, ICBA is urging the OCC to table its recently proposed overdraft guidance, with which we have significant concerns.

Examination Environment – ICBA has been working to convince the banking regulators and Congress that excessively tough exams are having an adverse effect on community banks’ ability to lend and support economic growth. The House passed legislation (H.R. 2056) in July 2011 to require the FDIC Inspector General to study FDIC examination and resolution policies and their contribution to the current economic challenges. The Government Accountability Office (GAO) issued a report on the examination environment as requested by then-House Financial Services Chairman Barney Frank at the suggestion of ICBA. The GAO report recommended that the banking agencies issue further supplemental commercial real estate lending guidance to clarify CRE concentration and risk-management requirements and to help ensure consistency in the application of the guidance, particularly as it relates to reductions in CRE concentrations and the calculation of CRE concentrations. Representative Shelley Moore Capito (R-WV) introduced the Financial Institutions Examination Fairness and Reform Act (H.R. 3461), which is intended to strengthen the appeals process and provide consistent, commonsense standards for loan classifications. Executive Committee member Noah Wilcox testified for ICBA at a recent hearing on H.R. 3461.

ICBA continues to raise concerns that examiners are unjustifiably requiring capital levels much higher than current written standards and are demanding write-downs and reclassifications of loans based on forced sales of real estate that occur during illiquid or dysfunctional markets.

CFPB Reform – In late July 2011, the House passed legislation to make a number of ICBA-supported reforms to the Consumer Financial Protection Bureau. The Consumer Financial Protection Safety and Soundness Improvement Act (H.R. 1315) would change the governance of the CFPB from a single director to a five member commission, adding structural checks and balances to the Bureau. In addition, H.R. 1315 would change the voting requirement for a Financial Stability Oversight Council veto of a CFPB rule from a two thirds vote to a simple majority and broaden the standard under which FSOC may overturn a rule.

Mortgage Loan Officer Compensation – In response to inquiries from ICBA and community bankers, the CFPB issued guidance on April 2 to clarify that financial institutions may contribute to “qualified plans” for their mortgage loan originator (MLO) employees out of a profit pool that includes profits derived from mortgage loan originations. The clarification was necessary due to bank regulator interpretation of the MLO regulation implementing the new Dodd-Frank provision banning mortgage loan originators from being compensated based on the terms or conditions of a mortgage transaction.

Fed to Monitor Small Issuer Debit Interchange Carve Out – While ICBA vigorously opposed the “Durbin Amendment” to impose price controls on debit interchange fees and the Federal Reserve proposed rule to implement it, the final rule creates a new Federal Reserve program, based on ICBA’s input, to monitor the effectiveness of the small issuer exemption and report findings six and 18 months after the rule’s effective date. The program will assess network pricing schedules for community bank issuers before and after the rule, changes in small bank interchange revenue, and the impact on small issuer costs. This program acknowledges the risk faced by small issuers despite the exemption. The full impact of the Durbin amendment will not be felt immediately by community banks but will be felt over time.

Deposit Insurance – The change to the assessment base, a provision of the Dodd-Frank Act, from domestic deposits to assets (minus tangible equity) became effective in the 2nd quarter of 2011 and community banks have experienced significant savings. The change will save community banks \$4.5 billion in the first three years.

Tax Provisions – Working with a coalition of small business groups, ICBA helped block a Senate bill that would have applied payroll taxes to certain S corporation income. In addition, ICBA has helped secure a number of tax provisions that benefit community banks, including:

- A two-year extension of the expiring income tax rates for individuals and S corporations, estates, and capital gains and dividends.
- Ordinary loss treatment of losses on Fannie Mae/Freddie Mac preferred stock. ICBA also secured favorable Treasury guidance allowing ordinary loss tax treatment for a wide range of investments in Fannie/Freddie preferred stock, such as auction rate securities, and stock held in certain banks' investment subsidiaries.
- Immediate small business expensing of \$500,000 for tax years 2010 and 2011.
- Prevented IRS from implementing the "TEFRA haircut" tax increase on Subchapter S bank qualified tax-exempt obligations. More than a third of all banks benefit from Subchapter S tax status.
- Protection of the SBA 7(a) and 504 loan programs with legislation allowing robust lending authority and the first SBA budget increase in five years.
- Repeal of expanded 1099 reporting as required by the Affordable Care Act.

Small Banks Exempt from FHA Audit Requirement –Federal Housing Administration mortgage lenders with less than \$500 million in assets were granted an additional one-year waiver from a new requirement to submit audited financial statements for FHA lender approval or renewal. The waiver, initially set to expire April 7, 2012, has now been extended till April 7, 2013. ICBA worked closely with the agency to address community banker concerns with the auditing requirement, which would have required many community banks to spend tens of thousands of dollars to maintain their status in the FHA program. We are asking FHA to make the waiver of audited financial statements permanent along with relief from the required audit on compliance with FHA processes and procedures.

FASB Decisions Benefit Community Banks --The Financial Accounting Standards Board recently made some key project decisions related to financial accounting and reporting that favorably affect community banks. First, the FASB has concluded that financial institutions that are not Securities and Exchange Commission registrants will be viewed as nonpublic entities. This decision is extremely important for nonpublic community banks as the FASB addresses the need for financial measurement and reporting relief for nonpublic entities in current and future projects. Second, in developing the classification and measurement criteria for all financial instruments, the FASB has concluded that assets held with the objective of collecting contractual cash flows qualify for measurement at amortized cost rather than fair value. This is a departure from previous discussions in which the FASB considered prohibiting classification of financial instruments (including loans and securities) in the amortized cost category if the holder of the instrument could not control loss mitigation efforts. Had this interpretation prevailed, many community bank-held assets would have been excluded from the amortized cost category. ICBA has worked closely with the FASB on both of these issues and has made great progress in highlighting what is different about the community bank regulatory and business model.

Bankers' Banks – On February 7, 2011, the FDIC favorably altered the deposit insurance assessment base for bankers' banks. Since the second quarter 2011, in calculating their assessment base, bankers' banks have been able to deduct balances due from the Federal Reserve Banks (reserve balances) plus federal funds sold. The

final rule also clarified that funds resulting from government capital infusion programs such as TARP and the Small Business Lending Fund, as well as FDIC stock ownership, and employee compensation plan stock ownership will not disqualify a bank from being considered a banker's bank. Both of these changes were made in response to requests from ICBA.

Farm Credit System and Farm Loan Restructuring – Having failed to secure FCS legislative expansion proposals in the 2008 farm bill (due in large part to ICBA opposition), FCS is now seeking expanded powers from its regulator, the Farm Credit Administration (FCA). ICBA's opposition temporarily delayed finalization of FCA's proposed "Rural Community Investments" regulation, which would allow FCS lenders to make otherwise illegal non-farm loans if they are labeled "investments." The regulator has operated the program on a pilot project basis and plans to re-propose this regulation this spring. ICBA also opposed an FCA regulation allowing FCS institutions to purchase loans of failed banks from the FDIC. FCA modified the proposal to disallow the purchase of non-agricultural loans and stated that purchases would only be a "fill-the-gap" last resort option for the FDIC. In addition, the Department of Housing and Urban Development (HUD) recently sided with ICBA and withdrew a proposal to allow FCS lenders to participate in Federal Housing Administration mortgage insurance programs. In letters and meetings with HUD, ICBA accurately characterized the proposal as a "double subsidy" to the benefit of FCS lenders and noted that rural home ownership is higher than non-rural home ownership, according to HUD data. ICBA successfully opposed legislation to require agricultural lenders to write down principal and interest on all delinquent farm loans.

Guarantee Fee Parity – Legislation enacted in December 2011 requires the Federal Housing Finance Agency (FHFA) to provide for uniform guarantee fee pricing among lenders selling loans to Fannie Mae and Freddie Mac with adjustments based on risk levels. ICBA is pressing the FHFA to apply uniform pricing to the entire guarantee fee charged, not limited to the 10 basis point increase required by the legislation. ICBA has been a strong advocate for ending guarantee fee discounts given to large volume lenders.