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January 21, 2010

Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Dodd and Ranking Member Shelby:

On behalf of our 5,000 member community banks nationwide, I am writing to express the support of the Independent Community Bankers of America (ICBA) for your joint efforts to advance legislation in the Senate to reform the laws governing our nation's financial institutions, and to share with you our views on some of the key issues you will be confronting.

ICBA is encouraged by your joint statement released on December 23 that you are committed to working together on legislation to create a sound regulatory structure, and that meaningful progress is being made. As you know, ICBA has long advocated meaningful and fair regulatory reform to address the systemic danger posed by too-big-to-fail financial companies, both banks and non-banks, and restore the competitive balance between Wall Street and Main Street. Our nation, still reeling under the consequences of reckless and irresponsible risk-taking by too-big-to-fail institutions, can no longer afford to live with the status-quo.

Below are ICBA's comments on the issues and goals identified in your joint statement.

- **“We seek to end ‘Too Big to Fail.’”**

Ending the too-big-to-fail policy is one of the most urgent goals facing our nation today, and one ICBA advocated long before the current economic crisis began. The only way to truly protect consumers, our financial system, and the economy, is to end

the doctrine of too-big-to-fail and tighten the reins on systemically dangerous institutions.

Institutions that are so large and so complex that their failure would pose a grave threat to our financial system and the national economy must be eliminated. Financial regulators must be given the authority to restructure, downsize, and even dissolve, in the most extreme cases, the institutions that fall into this category. This is not only desirable, it is essential to avoid future financial crises. It is clearly not in the public interest to have so much power and wealth concentrated in the hands of so few, giving them the ability to de-stabilize our entire economy.

ICBA supports many of the provisions in the November Dodd draft to increase the regulatory scrutiny on “specified financial companies” and incentivize them to downsize. In addition, we support Dodd draft provisions that allow regulators to require institutions to divest certain risky activities. This serves the dual purpose of reducing risk and forcing institutions to downsize.

ICBA also supports reducing and strengthening the 10% national deposit concentration cap. The current cap is insufficient to control the growth of systemically dangerous institutions whose failure could once again destabilize our economy.

- **“We need to protect American taxpayers from future bailouts by enhancing our resolution regime.”**

Large, complex financial institutions caused the current economic crisis through poor underwriting practices, predatory credit practices, and a system of financial interdependence that no one, even in these companies, fully understood. As a result, Congress and the Administration were forced to apply more than \$10 trillion in capital, loans and guarantees to shore up these institutions and rescue the troubled economy. In addition to shouldering American taxpayers with this burden, consumers lost more than \$12 trillion in personal net worth. This is an unconscionable burden to impose on the American people and future generations because of the reckless and irresponsible behavior of a few Wall Street moguls. It must never happen again.

ICBA supports two types of systemic risk fees against systemically dangerous companies to protect and compensate taxpayers and the deposit insurance fund from future risk exposure. First, Congress should impose a systemic risk premium on all systemically dangerous holding companies to help defray the cost of enhanced regulation of these companies and to pay for the orderly unwinding of the affairs of a failed institution. This fund should be pre-paid to ensure that all systemically-dangerous institutions – including those that may eventually need assistance – contribute to the fund, and to ensure that such costs are never again passed on to taxpayers.

Second, Congress should require all FDIC-insured affiliates of systemically dangerous financial companies to pay a systemic risk premium to the FDIC in addition to their regular FDIC premiums to compensate the FDIC for the increased risk they pose. Enhancing resources available to the FDIC through a systemic-risk premium would reduce the risk that taxpayers would be burdened once again with the cost of future bank failures.

ICBA believes the provisions in the November Dodd draft are consistent with these recommendations, though the language could be enhanced to ensure full implementation.

In addition, Congress must ensure there is a solid mechanism in place to declare an institution in default and appoint a conservator or receiver to unwind or sell off the institution's operations in an orderly manner. We strongly support the proposal in the November Dodd draft to grant exclusive receivership, conservatorship and bridge bank authority to the FDIC to operate an insolvent institution, including its holding company and affiliates, and develop a restructuring, downsizing or dissolution plan. The FDIC should have sole authority to determine how a systemically important institution should be resolved. The FDIC has extensive experience resolving banks and has the infrastructure in place to exercise conservatorship and receivership powers over financial companies.

- **“We agree that consumer protections need to be strengthened.”**

ICBA believes that taxpayer and consumer protections should be strengthened. Average Americans did not cause the economic crisis, yet, as taxpayers, are being asked to bear the cost of it. So yes, consumer protections for taxpayers, as well as customers of financial products, should be strengthened.

Highly-regulated community bankers always put their customers first. The best way to protect consumers in the future is, first of all, to put an end to too-big-to-fail policies that have already cost American consumers dearly through the collapse of the housing and stock markets, and sapped their net worth.

ICBA believes separating consumer policy and enforcement from safety and soundness enforcement would give rise to conflicts of interest and be counter-productive to a balanced regulatory system. Bank regulators have expertise in balancing the safe and sound operation of a financial institution with the need to provide consumers with the information they need to make informed financial decisions and protect them from unfair and harmful practices.

The central focus of any enhanced regulation of consumer financial products should be on the unregulated “shadow” financial industry, the sector that has victimized consumers the most while avoiding serious regulatory scrutiny. Community banks should not face new regulatory burdens on top of the scores of regulations already imposed on them.

Community banks pride themselves on the safety and soundness of the loans they make, and their customers benefit from the reliable and sensible treatment they

receive. Banks under \$20 billion in assets should not have to pay for the operations of a new agency or for additional regulatory burdens associated with the establishment of new examination and enforcement regimes. As such, for these smaller institutions, all examination and enforcement functions should remain with their primary prudential regulators. And CRA examination and enforcement also should remain with prudential regulators.

The nation's prudential banking agencies should be full partners in writing uniform consumer protection rules. Various legislative approaches should be considered, including those that utilize the expertise that already exists within the existing regulatory structure and do not require the creation of an entirely new agency with its attendant costs and uncertainty. ICBA looks forward to working with the Senate to explore these alternatives. Only through enhanced coordination among regulatory agencies can consumers be truly protected and a healthy and vibrant financial system maintained.

- **“We believe that our regulatory structure needs to be modernized while preserving the dual banking system.”**

ICBA agrees the regulatory structure needs to be modernized to address systemic risk while preserving the dual banking system. There needs to be a new focus on eliminating institutions so large and complex that their failure could destabilize the national economy.

ICBA supports a strong and robust regime of systemic risk regulation and oversight, including the creation of a systemic risk regulator with the power to ensure identification and consolidated supervision of systemically-dangerous firms. There should be higher capital and liquidity requirements and limits on leveraging for such institutions to protect taxpayers from future bailouts. Reining in systemically dangerous companies will serve as a safeguard for the future so large and unwieldy mega institutions do not again have the potential to threaten our entire banking system and the national economy.

Many provisions dealing with regulatory restructuring in the November Dodd draft are generally consistent with these principles. However, we strongly oppose provisions in the draft to consolidate the existing regulatory agencies and create a single, monolithic federal regulator. The current system of multiple federal regulators provides valuable checks and balances in policy making and implementation, and creates a healthy tension among the regulators that produce sound public policy.

The single regulator concept addresses a problem that simply does not exist. The unregulated parts of the financial industry, such as Wall Street investment houses and mortgage brokers, caused the problems in our economy. Congress should focus on addressing these challenges, and target systemically risky institutions to reduce the dangerous concentration of economic assets.

ICBA also is concerned that the single banking regulator could eventually lead to the demise of the dual banking system, an outcome none of us supports. The current system of bank supervision has weathered the current crisis reasonably well, and ICBA strongly urges that it be retained.

“Maintain the Separation of Banking and Commerce”

Another regulatory issue of vital importance to community bankers is the future of commercially owned industrial loan companies (ILCs). Despite federal law and long-standing policy that prohibits the mixing of banking and commerce, a number of commercial firms have been operating FDIC-insured banks under a provision of the Bank Holding Company Act that exempts ILCs from the BHC’s restrictions on commercial ownership. In the previous Congress, the House acted to close this “loophole,” and members of the Senate Banking Committee voted to approve similar legislation. But it was never enacted into law.

ICBA strongly encourages you to close this “loophole” once and for all. If Congress fails to act, commercial companies will continue to use the ILC “loophole” to take retail deposits, exert control over the nation’s payments system, and leverage conflicts of interest to the detriment of consumers and small businesses. As part of your effort to modernize the system of bank regulation, ICBA urges you to eliminate the exemptions in the Bank Holding Company Act and make the system of holding company supervision uniform for all types of financial institutions.

- **“We agree that the Federal Reserve should be more focused on its core responsibility – conducting monetary policy.”**

The structure of our banking regulatory system will define the future of the banking industry. The current system of multiple federal banking agencies and the dual banking system provide checks and balances which promote consumer choice and a diverse and competitive financial system that is sensitive to financial institutions of various size and complexity.

The Federal Reserve has played a critical role in the banking regulatory system as the bank holding company supervisor and as a supervisory option for state chartered community banks. ICBA believes that the local nature of regional Federal Reserve Banks, working in harmony with state bank regulators, gives them a unique ability to serve as the primary regulator for state member banks, and that role should be continued. These functions ensure that the Federal Reserve has an eye on Main Street, as well as an eye on Wall Street.

ICBA agrees that monetary policy is a critical function of the Federal Reserve. Maintaining its bank supervisory role is integral to that mission. Taking it away would deny the Federal Reserve an efficient means for gauging the soundness of the banking sector, information which is critical to developing and implementing sound monetary policy. For this reason, ICBA also believes that the Federal Reserve should retain its supervisory role for all bank holding companies

- **“And finally, we need to modernize regulation and oversight of the derivatives market.”**

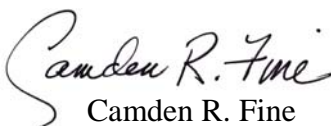
ICBA endorses stronger regulation of the over-the-counter derivatives because of the central role credit default swaps played in the current financial meltdown.

ICBA also supports further hedge fund regulation including requiring hedge funds to: (1) register with the Securities and Exchange Commission, and, (2) disclose appropriate information on an ongoing basis to allow supervisors to assess the systemic risk they pose individually or collectively.

Any risk-retention requirement for mortgage-backed securities should be coupled with an exemption from the retention requirement for mortgages subject to comprehensive standard underwriting requirements, such as loans sold to the housing government sponsored enterprises and Farmer Mac or guaranteed by the Federal Housing Administration.

ICBA deeply appreciates your commitment to work together in a bi-partisan manner to ensure enactment of fair and meaningful regulatory reform. ICBA is ready to work with you to address the concerns of our nation’s community bankers to ensure that the reckless and irresponsible actions of a few systemically dangerous firms will never again lead us down the path to economic chaos.

Sincerely,



Camden R. Fine
President and CEO

