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November 16, 2017

The Honorable Orrin Hatch	The Honorable Ron Wyden
Chairman	Ranking Member
Committee on Finance	Committee on Finance
United States Senate	United States Senate
Washington, D.C. 20510	Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the more than 5,700 community banks represented by ICBA, I write to thank you for undertaking the critical and ambitious policy challenge of comprehensive tax reform. ICBA and community banks strongly support your efforts to craft pro-growth tax reform. We are encouraged by many provisions of the Chairman's Mark of the Tax Cuts and Jobs Act (the TCJA), including the permanent 20 percent corporate rate, estate tax relief, repeal of the alternative minimum tax, permanent extension of Section 179, and preservation of non-qualified deferred compensation which is widely used by community banks to supplement the pension income of key employees.

However, we are disappointed that the TCJA does not eliminate or curtail the generous taxpayer subsidies given to credit unions and Farm Credit System lenders. While we won't reiterate our arguments here in full, we will note that many of today's credit unions and FCS lenders are multi-billion-dollar entities that compete against much smaller taxpaying community banks. Credit unions are the equivalent of banks and should be taxed equivalently. FCS lenders seek unconstrained lending authorities to siphon away community banks' best consumer and commercial customers in any market. We hope you will revisit this tax inequality before the bill is enacted.

As you continue Finance Committee consideration of the TCJA, we take this opportunity to note our significant concerns with certain provisions of the bill.

Deduction for Business Interest Expense

Community bank credit is a critical source of capital for small businesses, which typically have very limited or no access to equity capital, especially in the early stages of their development. Increasing the after-tax cost of debt financing by altering the interest deduction would strand new investment opportunities and the economic growth potential they carry.

ICBA appreciates your effort to create a safe harbor that will allow small business to continue to deduct their net interest expense. We appreciate the exemptions you have created for farming businesses and real property development, construction, acquisition and related businesses, which are important community bank borrowers.

ICBA strongly urges you to strengthen the safe harbor in the TCJA by broadening the base of earnings to which the 30 percent limitation on the net interest deduction applies and by raising the threshold for businesses that are exempt from the limitation. We believe that the terms of H.R. 1, which applies the 30 percent limitation to earnings before interest, tax, depreciation, and amortization (EBITDA) and fully exempts businesses with gross receipts of less than $25 million annually, provide a workable safe harbor. We further recommend indexing the gross receipts threshold so that it's value is not eroded over time.

Limits on FDIC Premium Deductibility

The TCJA would remove the deduction for FDIC premiums paid banks over $50 billion in assets and phase out the deduction for banks between $10 and $50 billion. FDIC premiums are clearly a business expense as is any other form of insurance premium. No sufficient rationale has been offered for limiting their deductibility. ICBA opposes this assault on FDIC insurance.

Taxation of Pass Through Income

Nearly 2,000 community banks in the United States, one third of the total number, have elected S corporation status and are taxed as pass-through entities. S corporation community banks are closely-held businesses dedicated to creating prosperity in their communities through the provision of customized loans and other financial services. ICBA is very pleased that community banking would not be classified under the TCJA as a "specified service activity," which is ineligible for the 17.4 percent deduction.

However, we remain strongly concerned that this deduction falls far short of creating rate parity between the thousands of American small business organized as pass-through entities and C corporations, as promised by the United Framework. Our analysis indicates that the 17.4 deduction would leave as much as a 12 percent differential between the effective tax rate paid by pass though entities and that paid by C corporations. This effective rate differential is larger for pass through entities located in high tax states because they would be denied the state and local tax deduction, which would continue to be available to C corporations.

Today's community banks compete with multi-billion-dollar credit unions and farm credit system lenders that leverage their tax advantage with expansive lending and field of membership powers. Under the TCJA, large national banks (as well as many community banks) would be taxed at a rate of 20 percent. We strongly support this pro-growth tax relief. However, we believe that the taxation of S corporation community banks under the TCJA would create a wide, anti-competitive tax disparity that would drive more consolidation in financial services to the detriment of consumers, small business borrowers, and communities. Tax reform should strengthen competition in financial services by narrowing the disparities in today's tax code.

ICBA strongly recommends that you resolve this concern by approximately doubling the deduction, which would create near effective rate parity between S and C corporation banks, and by restoring the state and local tax deduction for Subchapter S community banks.

Thank you for your consideration. We look forward to working with you on growth-oriented tax reform in the coming weeks.

Sincerely,

/s/

Camden R. Fine
President & CEO

CC: Members of the Senate Banking Committee