



COMMUNITY FOCUS 2020:

# The Community Bank Agenda for Expanding Economic Opportunity

*2020 Legislative and Regulatory Agenda*

Community Focus 2020:

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Community banks are local financial institutions that serve their customers and communities in unparalleled ways. By channeling \$3.4 trillion in loans to local consumers, small businesses, farms and agricultural enterprises, community banks spur job creation, foster innovation and help realize their customers' goals in communities throughout America.

Comprising 99 percent of U.S. bank charters, community banks make nearly 60 percent of the nation's small-business loans and nearly 80 percent of agricultural loans from the commercial banking sector. They are the nation's preeminent source of capital for Americans who wish to put their deposits to work in their own communities.

Serving the nation's rural, suburban and urban communities with more than 52,000 locations, and a presence in every congressional district, strong and prosperous community banks are critical to ensuring that every local community can join in the nation's broad economic prosperity. In more than 600 counties—nearly one in five U.S. counties across the country—a community bank is the only physical banking presence.

To better disperse economic opportunity across and throughout every local community, ICBA's Community Bank Agenda for Expanding Economic Opportunity supports economic principles that every member of Congress and policymaker can stand behind. ICBA and community banks across the nation support a more efficient system of regulation, unbiased laws governing the financial sector, a safer and more secure business environment, and more effective agriculture policies. The plan includes specific, common-sense recommendations developed by community bankers to establish a level regulatory and competitive playing field that allows them to better serve customers while also preserving consumer protections and bank safety and soundness.

ICBA and community bankers look forward to working with policymakers on advancing this agenda.

# Regulatory Relief

Overregulation continues to encumber community bank lending, which plays a critical role in spreading the economic recovery to regions that have not yet experienced strong growth. Excessive regulation of community banks drives industry consolidation that will directly harm consumers and small businesses. Regulation should be tiered to the size, complexity and interconnectedness of the institution. Not all institutions present the same risk to consumers or to the financial system, and one size does not fit all. ICBA supports intelligent, risk-based regulation focused on the too-big-to-fail and too-big-to-manage institutions that have repeatedly abused consumers and whose failure would disrupt the financial system. Community bank regulatory relief will better promote the flow of credit and economic opportunity for all individuals and families.

### **Modernizing the Bank Secrecy Act**

ICBA recommends raising the currency transaction report (CTR) threshold from \$10,000 to \$30,000 and indexing future increases on an annual basis. The current threshold, set in 1970, is significantly outdated and captures far more transactions than originally intended. A higher threshold would produce more targeted, useful information for law enforcement. ICBA also supports the creation of a tax credit to offset the cost of Bank Security Act (BSA) compliance. See Community Bank Tax Relief for more information.

### **Banking Services for Legal Cannabis-Related Businesses**

As more states legalize cannabis for medical and/or recreational use, it is critically important as a matter of public safety that cannabis-related businesses, as well as those businesses that serve them, have access to the traditional banking system. ICBA supports legislation that would create a safe harbor from federal sanctions for financial institutions that serve cannabis-related businesses in states where cannabis is legal.

### **Strengthening Accountability in Bank Exams: A Workable Appeals Process**

An independent body should be created to receive, investigate, and resolve material exam complaints from banks in a timely and confidential manner. This would create much-needed checks and balances in the current system, which grants examiners almost unfettered and unassailable authority. A workable appeals process would hold examiners accountable and prevent retribution against banks that file complaints.

### **Relief from Internal Control Mandates**

An exemption from Securities and Exchange Commission (SEC)-mandated internal control audit requirements should be created for publicly traded banks with a market capitalization of \$350 million or less. This should be paired with an equivalent exemption from FDIC-mandated internal control audit (Part 363) for banks with assets of less than \$5 billion. Under current law, any company with market capitalization of \$75 million or less is exempt from the SEC mandate, and any bank with assets of less than \$1 billion is exempt from the FDIC mandate. Because community bank internal control systems are monitored continually by bank examiners, they should not have to sustain the unnecessary annual expense of paying an outside audit firm. This provision would substantially lower unnecessary accounting costs for small banks without creating more risk for investors or the Deposit Insurance Fund. It would allow these banks to redirect resources toward community lending.

### **Facilitate New Capital Investment Through Private Offerings**

SEC Regulation D should be reformed so that anyone with a net worth of more than \$1 million, including the value of their primary residence, would qualify as an “accredited investor.” The number of non-accredited investors that could purchase stock under a private offering should be increased from 35 to 70.

### **Customer Due Diligence Rule**

FinCEN’s Customer Due Diligence Rule requires banks to collect information on the beneficial owners of legal entities that open accounts. The purpose of the rule is to create more transparency and thereby deter the abuse of anonymous legal entities for money laundering, corruption, fraud, terrorist financing and sanctions evasion. ICBA recommends that beneficial ownership information be collected and verified by either the Internal Revenue Service or other appropriate federal or state agency at the time a legal entity is formed. This solution would provide uniformity and consistency across the United States. Making the formation of an entity contingent on receiving beneficial owner information would create a strong incentive for equity owners and investors to provide such information.

A woman with long brown hair and glasses, wearing a white long-sleeved shirt and a blue and white striped apron, stands with her arms crossed in a greenhouse. She is smiling. The background shows green wooden structures, a wicker basket with yellow flowers, and several potted plants with pink and purple flowers. A large green diagonal shape covers the left side of the page, containing the title and text.

# A Competitive Landscape for a Dynamic Economy

ICBA recognizes the evolving nature of the American financial services marketplace. Community banks embrace innovation in financial technology, which offers the promise of reaching more consumers and expanding products and services. As Congress continues to review and reform the legal and regulatory framework of financial services, we urge them to ensure that the framework promotes, rather than hinders, critical innovation. Any review of the competitive landscape should promote a level playing field between current providers of financial services, such as community banks, and new entrants in the marketplace. The competitive advantages enjoyed by tax-exempt credit unions and Farm Credit System lenders warrant special scrutiny.

### **Curb or Eliminate Tax Subsidies for Rapid-Growth, Bank-Like Credit Unions**

Tax-exempt credit unions have become virtually indistinguishable from tax-paying commercial banks. Today's credit unions are leveraging their tax subsidy for rapid growth, purchasing multi-million-dollar stadium naming rights, flaunting their nearly unlimited fields of membership, and expanding their activities well beyond their original mission. The largest credit union is approaching \$100 billion in assets. Many credit unions are aggressively pushing into commercial lending. Others are trying to get into wealth management. ICBA urges Congress to restore balance to the American financial services marketplace and help close the growing budget deficit by re-examining the outmoded credit union tax subsidy.

### **Farm Credit System Crowding Out Rural Community Bank Lending**

Farm Credit System (FCS) lenders enjoy unfair advantages over rural community banks and leverage their tax and funding advantages as government-sponsored enterprises (GSEs) to siphon the best loans away from community banks. The FCS is the only GSE that competes directly against private-sector lenders at the retail level. FCS was chartered by Congress to serve bona fide farmers and ranchers and a narrow group of farm-related businesses. In recent years FCS has sought non-farm lending powers in an effort to compete directly with commercial banks for non-farm customers.

### **ILC Loophole Promotes Corporate Consolidation and Threatens the Federal Safety Net**

A loophole in the Bank Holding Company Act allows commercial companies and fintech companies to own or acquire industrial loan companies (ILCs) without being subject to federal consolidated supervision. ILCs are the functional equivalent of full-service banks. Commercial company ownership of ILCs will effectively combine banking and commerce, contrary to long-standing American economic policy. In the new era of dominant Big Data, social media and e-commerce conglomerates, artificial intelligence, and financial technology, we should be cautious before giving these companies yet more reach into the economic lives of Americans. Any such far-reaching change should be debated by Congress. ICBA supports statutory closure of the ILC loophole.

### **No Regulatory Subsidy for Fintech**

Congress should ensure that online marketplace lenders or other fintech companies are not given an unfair regulatory advantage over depository institutions such as community banks. In particular, the Office of the Comptroller of the Currency should not issue a special-purpose charter for fintech companies without explicit statutory authority from Congress. Any new federal charter should be subject to the same standards of safety, soundness, and fairness as other federally chartered institutions.

# Data Security, Fraud and Privacy

Community banks are committed guardians of the security and confidentiality of customer information as a matter of good business practice as well as legal and regulatory compliance. Safeguarding customer information is central to maintaining public trust and retaining customers. Nonetheless, community banks are only one of numerous entities that store consumer financial data. As bad actors continue to look for vulnerabilities in the payments and information systems of various industries, breaches will continue to occur. Data breaches at a national credit bureau, national retailers, major hotel chains, and elsewhere have the potential to jeopardize consumers' financial integrity and confidence in the payments system.

### **Strengthen Weakest Links**

All participants in the payments and financial systems, including merchants, aggregators and other entities with access to customer financial information, should be subject to Gramm-Leach-Bliley Act-like data security standards.

### **Uniform Breach Notification Will Mitigate Losses**

ICBA supports a national data security breach and notification standard to replace the current patchwork of state laws. Community banks should be notified of a potential or actual breach as expeditiously as possible in order to mitigate losses.

### **Align Incentives to Better Secure Data**

The costs of data breaches should ultimately be borne by the party that incurs the breach. This is not only a matter of fairness; a liability shift is needed to properly align incentives for entities that store consumer financial and personally identifiable data to strengthen their data security. When breaches have a material impact on entities' bottom lines, they will quickly become more effective at avoiding them. Barring a shift in liability to the breached entity, community banks should continue to be able to access various cost-recovery options after a breach, including account-recovery programs and litigation.

### **Privacy**

Any privacy legislation considered by the Congress must recognize the existing requirements community banks undertake to protect customer information and privacy.



# Preserve Liquidity for Robust Community Bank Mortgage Lending

For decades, American homeowners have benefited from the critical role Fannie Mae and Freddie Mac (the government-sponsored enterprises, or GSEs) play in helping finance homeownership. The GSEs have provided a steady, reliable source of funding for home mortgage lending through all economic cycles and in all markets. GSE securities trade with the same ease as U.S. Treasury debt. The GSEs operate as friendly aggregators and a source of capital for mortgage-lending institutions of all sizes and charters.

Community banks depend on the GSEs for direct access to the secondary market without having to sell their loans through a larger financial institution that competes with them. Unlike other private investors or aggregators, the GSEs have a mandate to serve all markets at all times.

### **ICBA Supports Reform**

ICBA supports housing finance reform to preserve market liquidity, protect taxpayers, encourage the return of private capital, and ensure a stable national mortgage market for all stakeholders.

### **Earnings Sweeps Jeopardize GSE Capital**

The Federal Housing Finance Agency (FHFA) must take steps to end the destructive sweep of GSE earnings that will bleed all capital from the GSEs to the Treasury, result in another taxpayer bailout, and possibly cause disruption in the housing market.

### **Preserve Community Bank Access**

Housing finance reform must provide robust and equitable secondary market access for lenders of all sizes, no competition from GSE successors at the retail level, and retention of mortgage-servicing rights on transferred loans. The GSE secondary market structure must not be turned over to the largest national lenders and Wall Street institutions.

### **30-Year Fixed-Rate Mortgage a Staple of American Homeownership**

ICBA is committed to preserving the 30-year fixed-rate mortgage for creditworthy customers in all markets.

### **A Long-Term, Financially Responsible National Flood Insurance Program Will Promote Mortgage Lending and Homeownership**

Congress created the National Flood Insurance Program in 1968 to help property owners protect themselves financially from the risk of flooding at a time when flood insurance was not readily available in the private market. Long-term authorization of the NFIP will stabilize the program and prevent disruptions in the mortgage market. Congress needs to strike a delicate balance between setting the program on sound financial footing and making sure that rates are affordable for the homeowners and businesses who depend on flood insurance coverage. ICBA is supportive of increased private market participation as long as certain conditions are met that would protect both consumers and lenders.

# Community Bank Tax Relief

ICBA continues to promote tax and budget policies that foster economic growth and support the community banking sector by providing direct tax relief and encouraging private savings and small business investment. A fair and unbiased tax code will enhance the viability of community banks and the vital role they serve in the U.S. economy as a critical source of lending for consumers, small businesses and farms.



### **Preserve Competitive Corporate Rate**

ICBA strongly supports the new corporate tax rate of 21 percent created by the Tax Cuts and Jobs Act, which benefits community banks and many of the businesses they serve. It is critical that the United States maintain a tax rate that is competitive with other industrialized economies. Over time, the new tax rate will strengthen corporate investment and create a more productive workforce. ICBA will oppose any efforts to increase the corporate tax rate.

### **Make Permanent the New Deduction for Pass-Through Shareholders and All Individual Rate Reductions**

ICBA will press for extension of the individual provisions of the Tax Cuts and Jobs Act, including the 20 percent pass-through deduction for shareholders of Subchapter S banks and Alternative Minimum Tax and estate tax relief, well before they are scheduled to expire at year-end 2025. The pass-through deduction helps create rough parity between the taxation of C corporation and S corporation banks.

### **Incentivizing Credit for Low- and Middle-Income Customers and American Agriculture**

ICBA supports the creation of new tax credits or deductions for community bank lending to low- and moderate-income individuals, businesses, and farmers and ranchers. Such tax credits or deductions would help to sustain and strengthen lending to these borrowers and would help to offset the competitive advantage enjoyed by tax-exempt credit unions and Farm Credit System lenders.

### **Modernize Subchapter S Constraints**

Subchapter S of the tax code should be updated to facilitate capital formation for community banks. Congress should: increase the limit on Subchapter S shareholders from 100 to 200; allow Subchapter S corporations to issue preferred shares; and permit the holding of Subchapter S shares, both common and preferred, in individual retirement accounts (IRAs). These changes would improve the ability of the nation's 1,900 Subchapter S banks to raise capital and increase the flow of credit.

### **Estate Tax Repeal**

ICBA supports full, permanent repeal of the estate tax, which jeopardizes the succession of many community banks from generation to generation. A family estate should never be forced to sell its interest in a community bank to pay a transfer tax. Forced sales of once-family-owned community banks, coupled with regulatory burden, accelerate the current trend toward consolidation in the banking sector.

### **Tax Credit for Bank Secrecy Act Compliance Costs**

For community banks, BSA compliance represents a significant expense in terms of both direct and indirect costs. BSA compliance, whatever the benefit to society at large, is a purely governmental, law-enforcement function with no direct benefit to the bank or its customers. As such, the costs should be borne by the government. ICBA supports the creation of a tax credit to offset the cost of BSA compliance.



# Industry Concentration and Systemic Risk

The continued growth and dominance of a small number of too-big-to-fail banks has led to a dangerously concentrated financial system, created unacceptable moral hazard and systemic risk, thwarted the operation of the free market, and harmed consumers and business borrowers. ICBA supports legislative and regulatory changes that would curb or end advantages currently enjoyed by too-big-to-fail banks.

### **Enhanced Prudential Standards for the Largest Banks**

ICBA endorses higher capital, leverage, and liquidity standards; concentration limits; and contingent resolution plans for systemically important financial institutions. ICBA supported the requirement for a higher supplementary leverage ratio on the largest banks and their holding companies adopted by bank regulators. ICBA supports a significant capital surcharge on SIFIs and the imposition of total loss-absorbing capacity and long-term debt requirements on globally significant banks.

### **National Deposit Cap Must Be Strengthened**

Current law prohibits bank mergers or acquisitions that would result in a single bank holding more than 10 percent of all U.S. deposits. ICBA supports a “hard” 10 percent deposit cap that would apply whether deposit growth was organic or a result of mergers or acquisitions. A hard deposit cap would help to curb further industry concentration.

# Agriculture and Rural America

A vibrant rural economy is critical to America's prosperity. Community banks, funding nearly 80 percent of all agricultural loans from the commercial bank sector, serve a critical role in creating and sustaining rural economic prosperity. The following provisions will help rural America by strengthening community banks.



### **Crop Insurance and Lending Limits**

Farm loan balances that are protected by federal crop and revenue insurance should be exempt from banks' lending limits.

### **Agricultural Loan Concentration Limits**

Federal banking regulators should not impose concentration limits on community bank agricultural loans that would needlessly curtail lending relationships. Many banks in rural areas do not have economic choices beyond agriculture, and arbitrary concentration limits could dramatically increase their risk by forcing them into new lending markets.

### **Tax Relief for Rural Lending**

ICBA supports the creation of tax incentives to support agricultural and residential mortgage lending in rural areas. Congress should consider the creation of new tax credits or deductions for community bank lending to farmers and ranchers. Such incentives should include an exemption for interest income on mortgage loans equivalent to the exemption provided to the Farm Credit System. There should be parity among all lenders that serve rural areas regardless of legal entity type. This will allow community banks to maximize credit and services to farmers, ranchers, and residents of remote rural areas while helping to offset the competitive advantage enjoyed by tax-exempt credit unions and Farm Credit System lenders.



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