

ICBA Legislative and Regulatory Successes



ICBA Legislative and Regulatory Success

2006 – 2015

2006

Wal-Mart/ILC Moratorium Imposed. The FDIC instituted a moratorium on industrial loan company acquisitions that kept Wal-Mart out of banking.

Communities First Act and Regulatory Relief Advances. ICBA's community bank tax and regulatory relief bill was endorsed by nearly 50 state bankers associations and attracted nearly 100 co-sponsors. Three CFA provisions were enacted into law, including an increase in eligibility for the 18-month exam cycle to banks with up to \$500 million in assets (an additional 1,000 banks).

Credit Union Powers Expansion Blocked. ICBA worked with key lawmakers to block CURIA, the credit union's powers expansion bill, and the NCUA from erecting arbitrary roadblocks to keep credit unions from converting to tax-paying banks. The House Ways and Means Committee held an historic hearing to examine the credit unions' tax exemption. An ICBA-supported non-partisan Tax Foundation study highlighted unfairness and the cost of the CU subsidy.

Bankruptcy Reform Enacted. Congress passed the ICBA-supported bankruptcy reform bill. The bill was designed to reduce abuses and force high-income filers into repayment plans.

Tax Relief/Permanent Tax Cuts Enacted. ICBA's efforts helped make key tax cuts permanent, benefiting both C and TruPS banks. The 2006 tax bills enacted ICBA-backed priorities to mitigate the impact of the individual Alternative Minimum Tax, extend expiring lower tax rates on dividends and capital gains, and extend beneficial small business immediate expensing.

Subchapter S Improvements Enacted. ICBA-crafted tax changes to beneficial subchapter S tax reforms were enacted allowing many more community banks to elect tax-advantaged S corporation status.

Retirement Savings Enhancements Enacted. ICBA fought to help boost the low U.S. savings rate by crafting legislation to sweeten popular tax-advantaged saving accounts. Pro-saving incentives in the pension law included enhancements to popular education, IRA and 401(k) accounts to boost savings and help community banks attract core deposits.

Health Savings Accounts (HSAs) Improved. ICBA-backed improvements to Health Savings Accounts were enacted as part of the Tax Relief and Health Care Act, making it even more attractive to open a tax-advantaged bank HSA. In 2007, singles can save up to \$2,850 and families up to \$5,650, regardless of the health plan's deductible. The contributions accumulate tax-free and are indexed for inflation.

SBA Lending Authority Approved. ICBA successfully worked to protect the popular SBA 7(a) lending program with legislation to allow a robust \$17 billion in lending authority.

Intermediate Bank CRA Exams Established. Streamlined CRA exams were instituted for intermediate-sized community banks with up to \$1 billion in assets (indexed for inflation) and an expanded list of activities in rural areas became eligible to receive CRA credit.

Farm Credit System Legislation Blocked. ICBA successfully fought legislation allowing Farm Credit System lenders to engage in tax-free lending in cities with populations under 50,000 if in a disaster area. Additionally, ICBA led the fight to get FCA to withdraw its “Farmer Notes” regulation that would have expanded FCS lending to retailers and consumers.

Deposit Insurance Reform/Higher Coverage for Retirement Accounts Enacted. ICBA drove deposit insurance reforms that raised coverage levels on retirement accounts to \$250,000, gave FDIC the authority to adjust all coverage levels for inflation every five years, and provided FDIC with flexibility to manage the fund fairly, safely and soundly.

Basel Capital Rules Improved. ICBA successfully persuaded the agencies to retain the leverage ratio as part of Basel II. On Basel IA, ICBA successfully urged the agencies to allow well-capitalized Basel I banks to continue using existing capital rules rather than adopt the more complex Basel IA.

Sarbanes-Oxley Section 404 Relief Realized. ICBA persuaded the SEC and the PCAOB to revise auditing standards used for Sarbanes-Oxley Section 404 internal control audits to reduce costs. The SEC also delayed Section 404 auditing requirements for an additional year for non-accelerated filers.

Bank Secrecy Act Burden Reduced. Working with regulators, ICBA was instrumental in developing a new comprehensive BSA/AML exam manual to reduce burden, clarify requirements and improve the exam environment.

Hurricane Relief Recommendations Proffered. ICBA was the first to provide nearly 50 hurricane relief recommendations to policymakers after the devastating Gulf Coast hurricanes. Congress passed ICBA-backed tax relief for victims in the hurricane zones. Additionally, ICBA spearheaded the effort to launch a new SBA Gulf Opportunity “Go-Zone” lending program to allow community banks to make direct loans for hurricane rebuilding.

FHLBank Minimum Retained Earnings Requirement Withdrawn. The Federal Housing Finance Board scrapped an ICBA-opposed controversial proposed rule that would have required each FHLBank to limit dividends until it meets a minimum retained earnings requirement.

Internet Gambling Act Improved. ICBA successfully improved the Unlawful Internet Gambling Act of 2006 to allow regulators to exempt payment systems where it’s not reasonably practical to identify and block transactions.

2007

ILC Threat/Wal-Mart and Home Depot Applications Withdrawn. Relentless pressure from ICBA and community bankers led to Wal-Mart and Home Depot withdrawing their ILC applications.

Farm Credit System Expansion Kept Out of Farm Bill. ICBA efforts led to the stripping of FCS expansion provisions from the 2007 farm bill (H.R. 2419). We also kept provisions allowing the FCS to engage in commercial business lending and home mortgages in more highly populated areas out of the Senate farm bill.

Small Business Tax Relief Enacted. In 2007, Congress enacted \$750 million in ICBA-backed small business tax relief as part of the effort to increase the federal minimum wage.

Subchapter S Improvements Enacted. ICBA-crafted subchapter S tax reforms included in the minimum wage package enacted in 2007 built on the successful S corporation changes enacted in recent years.

SBA Lending Reforms Advance. The House and Senate Small Business Committees cleared ICBA-backed SBA legislation (H.R. 1332 and S. 1256), including ICBA-crafted reforms to the 7(a) and 504 loan programs. The House passed an ICBA-requested \$80 million appropriation to help lower SBA fees.

SEC Bank/Broker Rules Improved. ICBA successfully persuaded the SEC to issue simpler and more flexible rules for bank networking arrangements with third party broker-dealers, so that community banks can continue to conduct traditional banking activities that involve securities activities without registering as a broker-dealer.

Military Consumer Lending Rules Narrowed. The Department of Defense followed ICBA's recommendation to narrowly define the credit products (payday, vehicle title and tax refund anticipation loans) subject to new interest rate caps and disclosures for military service members.

2008

Financial Rescue Law Includes Community Bank Priority Provisions. ICBA helped secure important community banks priorities in the Emergency Economic Stabilization Act (EESA) and in rulings to implement the law, including: temporary increase in deposit insurance limit to \$250,000; ordinary tax loss deduction for losses on Fannie Mae/Freddie Mac preferred stock; community bank access to rescue funds; prohibition on Treasury establishing future guarantee programs for money market mutual funds; allowing payment of interest on "sterile reserves" held by banks at the Federal Reserve.

ILC Loophole Closing Legislation Advances. ICBA-backed legislation to close the ILC loophole to keep commercial firms out of banking passed the House (371-16) and was voted on by Senate Banking Committee Members, a testament to the strength of community bank advocacy.

Farm Credit System Expansion Blocked. ICBA-backed efforts were successful in keeping FCS legislative expansion out of the new farm bill.

Credit Union Expansion Blocked. The CURIA was blocked in the 109th Congress, due to overwhelming community banking industry opposition. Community bank opposition to a less ambitious credit union expansion bill in the House led to significant modifications to the bill, curtailing the ability of federal credit unions to add so-called underserved areas to their charters. ICBA opposition stopped the credit unions from advancing commercial lending expansion legislation in the Senate.

GSE Reform Enacted. In July 2008, the Housing and Economic Recovery Act of 2008 was enacted. The law maintained the unique nature of the Federal Home Loan Banks and included ICBA-backed amendments to improve the Community Financial Institutions advances programs that support small business and agricultural lending, including increasing the eligibility limit to \$1 billion in assets.

Economic Stimulus Enacted. ICBA advanced its nine-point economic stimulus recommendations to Congress in January. ICBA's small business tax relief recommendation was enacted as part of the first stimulus package and the first-time homebuyer tax credit recommendation was included in the Housing and Economic Recovery Act of 2008 enacted in July.

Tax Relief Enacted. The 110th Congress enacted more than \$7 billion in ICBA-backed small business tax relief. Three CFA tax provisions were enacted into law, and ICBA small business economic stimulus tax recommendations were enacted in February 2008.

SBA Lending Authority Expanded. ICBA worked with Congress to protect the SBA 7(a) program with legislation allowing robust lending authority and the first SBA budget increase in five years. SBA launched ICBA-recommended “Rural Lender Program,” advanced in the ICBA’s CFA legislation.

Bank Secrecy Act Burden Reduced. ICBA-backed legislation that would simplify exempting seasoned customers from CTR filings passed the House. As a result of ICBA’s ongoing efforts, FinCEN proposed simplifying existing rules for exempting customers from CTR filings.

Internet Gambling Regulations Narrowly Drawn. As urged by ICBA, the Treasury and Federal Reserve’s proposed implementing regulations of the Internet Gambling Enforcement Act of 2007 were narrowly drawn and would require banks with a direct relationship with an Internet gambling business to be primarily responsible for blocking transactions (e.g., banks that originate ACH debit transactions, receive ACH credit transactions or receive wire transfers for Internet gambling companies).

2009

Deposit Insurance Reform Enacted. Congress increased the FDIC’s borrowing authority from Treasury to \$100 billion, and \$500 billion in certain cases; extended \$250,000 deposit insurance coverage through 2013; extended to eight years the time frame for the Deposit Insurance Fund to reach the new minimum reserve ratio; and allowed FDIC to assess holding companies to recoup losses in systemic risk programs such as the Temporary Liquidity Guarantee Program.

Deposit Insurance Special Assessment Liability Shifted to Large Banks. After an intense ICBA lobbying and grassroots effort, the FDIC voted to dramatically cut its proposed emergency special assessment and expand the assessment base so that larger banks would pay a greater share, saving community banks \$1 billion.

FDIC Temporary Liquidity Guarantee/Transaction Account Guarantee Programs Established. The FDIC incorporated a number of ICBA recommendations in the Temporary Liquidity Guarantee Program final rule, such as an increased debt guarantee cap based on total liabilities, a special assessment for holding companies with significant nonbank subsidiaries, a risk-based assessment model, and expanded guarantee coverage for certain transaction accounts.

Deposit Insurance Risk-Based Assessments Final Rule Improved. The FDIC made several favorable changes to its final rule on risk-based assessments, as advocated by ICBA, including: excluding reciprocal brokered deposits from the brokered deposit ratio; increasing the level of secured liabilities such as FHLB advances that trigger higher premiums; and increasing the premium reduction for banks with high levels of Tier 1 capital.

Community Banks Exempted from Consumer Financial Protection Agency Examination. The House Financial Services Committee made a number of critical improvements to their troublesome CFPA proposal: exempted banks under \$10 billion from CFPA’s primary exam and enforcement authority and

from paying agency fees; eliminated the plain vanilla product and “reasonableness” requirements; and removed CRA from CFPB jurisdiction.

Mortgage Bankruptcy “Cramdown” Thwarted. The Senate rejected legislation 45-51 to allow bankruptcy judges to modify primary residence mortgage contracts in Chapter 13 bankruptcy cases.

Mark to Market Accounting Improved. The Financial Accounting Standards Board (FASB) changed its accounting guidance for other-than-temporary impairments (OTTI) and fair-value measurements to moderate the impact on balance sheets and income statements.

Financial Rescue Legislation/TARP. ICBA won exemptions for community banks from executive compensation restrictions for financial institutions participating in TARP programs adopted in response to excessive bonuses at AIG and other large financial institutions. ICBA helped secure TARP Capital Purchase Program access for interested private and subchapter S banks and mutual financial institutions.

Economic Recovery/Tax Relief Legislation Contains Community Bank Priorities. The 111th Congress enacted ICBA legislative recommendations in its economic recovery package, including: Enhancing the ICBA-crafted homebuyer tax credit, AMT relief, allowing a five-year carry back of net operating losses for small business, extending the \$250,000 immediate small business expensing, increasing the ceiling from \$10 million to \$30 million for bank-eligible municipal bond issues to allow community banks to better participate in state and local tax-advantaged bonds, and lowering SBA fees and boosting SBA loan guarantee programs.

TALF Program Established. ICBA led the effort to help jumpstart frozen secondary markets, especially for SBA loans, by urging the establishment of a temporary credit facility for approved SBA poolers. ICBA helped Treasury and the Federal Reserve launch the Term Asset-Backed Securities Loan Facility.

Farm Credit System and Farm Loan Restructuring. ICBA filed an extensive comment letter strongly opposing the FCA’s “Rural Community Investments” regulation. ICBA successfully blocked the Feingold amendment to the Senate’s FDIC bill that would require lenders participating in TARP or related programs to write down the principal and interest of all delinquent farm loans.

Credit Union Legislation Blocked. Community banker grassroots pressure led to withdrawal of an amendment to lift the cap on credit union commercial loans for 12 months.

Subchapter S Benefits Secured. Building on successful S corporation tax changes enacted in recent years, ICBA-crafted S corporation built-in-gains tax relief was enacted as part of the economic recovery package.

SBA Lending Reforms Adopted. The 111th Congress enacted more than \$500 million in beneficial ICBA-crafted SBA reforms to the 7(a) and 504 loan programs that slash lender and borrower fees, increase the guarantee rates, and unfreeze the SBA secondary market.

Bankers’ Banks Rule Adopted. In response to ICBA’s request, the Federal Reserve adopted a new rule establishing a new excess-balance investment option for community banks which permits bankers’ banks and other correspondent banks to deposit the aggregated respondent excess funds with Reserve Banks overnight and pass back the proportional interest to their respondents.

Sarbanes-Oxley Compliance Date Extended. The SEC extended by six months the compliance date for provisions in Section 404 of the Sarbanes-Oxley Act requiring smaller public companies and their independent auditors to report on effectiveness of internal controls. The SEC decided to collect data to determine the impact of SOX 404 on all companies, including smaller public companies, and whether guidance provided to company managers and auditors in 2007 was effective in reducing the cost of SOX compliance.

2010

Dodd-Frank Wall Street Reform Act Enacted. Though the law is a mixed bag, ICBA's core principles for meaningful and fair financial regulatory reform to restore competitive balance to our nation's financial system and put the brakes on excessive risk-taking by the largest financial institutions are generally reflected in this legislation. The law creates a systemic risk regulator, imposes higher capital and more rigorous regulatory requirements on systemic risk institutions, creates new resolution authority for mega institutions, preserves the dual banking system, and bases FDIC assessments on assets, not deposits, so that large institutions pay a higher proportion of premiums. Provisions favorable to community banks include:

- **Deposit insurance assessment base.** Changing the assessment base from domestic deposits to assets saved community banks \$4.5 billion in the first three years alone.
- **Regulation of nonbank competitors.** Nonbank institutions are subject to examination and supervision by the CFPB for compliance with consumer protection rules.
- **SOX 404(b) exemption.** Small public companies (capitalization less than \$75 million) are permanently exempt from SOX 404(b) auditor attestation requirements.
- **\$250,000 deposit insurance coverage.** Deposit insurance coverage levels are permanently increased to \$250,000.
- **Transaction Account Guarantee (TAG) extension.** Unlimited deposit insurance coverage for non-interest bearing transaction accounts is extended for two years.
- **Community bank exemption from CFPB examination and enforcement.** Banks under \$10 billion in assets are exempt from primary examination and enforcement by the CFPB and will continue to be examined by their bank regulators for consumer compliance.
- **Capital treatment of TruPRS.** TruPS proceeds are excluded from Tier 1 capital, but BHCs under \$500 million are exempt (the Fed's small BHC policy statement is protected) and TruPS issued by BHCs of less than \$15 billion are grandfathered.
- **Community banks exempt from higher FDIC assessments.** The deposit insurance fund minimum reserve ratio is raised from 1.15 to 1.35 percent of insured deposits, but only banks of \$10 billion or more must fund the increase.
- **"Skin in the game/risk retention" rule made workable.** Loan originators must retain 5% of any loan sold and securitized, unless it is a "qualified residential mortgage." Low-risk loans that meet certain standards are exempt as are FHA, VA, Farmer Mac and Rural Housing Service loans.
- **Flexibility for rural mortgages held in portfolio.** CFPB is given flexibility to exempt rural mortgages held in portfolio, including balloon loans, from certain qualified mortgage/ability to repay and escrow requirements.
- **Derivatives regulations exempt community banks.** Banks that engage in swaps with their customers in connection with providing loans are not "swaps dealers" subject to regulations,

nor are banks that use swaps to hedge their own interest rate risk. A de minimus provision exempts banks and other entities that use swaps infrequently.

- **The Fed will continue to examine state-chartered community banks and small BHCs.** The Senate bill would have shifted this authority to the FDIC.
- **ILC moratorium imposed.** The law imposes a 3-year moratorium on new industrial loan company charters.

Deposit Insurance TAG Program Extended; DIF Funding Plan Adopted. The FDIC extended its Transaction Account Guaranty Program (TAG) until December 31, 2010 with the opportunity for an additional 12-month extension through December 31, 2011. ICBA supported the FDIC's plan for banks to prepay assessments instead of levying another special assessment. The FDIC implemented ICBA's recommendation to provide an earlier refund for banks that have not exhausted their prepaid assessment by December, 31, 2012.

Small Business Lending Fund Legislation Passed. ICBA was instrumental in convincing the Administration to propose a \$30 billion Small Business Lending Fund that would provide capital to interested community banks. The SBLF was included in the Small Business Jobs Act signed into law in September.

Internet Gambling Regulations Deferred. The Treasury and Federal Reserve extended the compliance date for implementing the Unlawful Internet Gambling Enforcement Act (UIGEO) regulations from December 1, 2009 to June 1, 2010.

2011

Communities First Act Introduced. The Communities First Act, a bill to provide much needed regulatory and tax relief for community banks, their customers and their communities is introduced in the House, H.R. 1697 and the Senate, S. 1600.

Overdraft Protection Guidance Clarified. FDIC clarified that its Overdraft Protection Guidance applies only to automated programs; ad-hoc programs are exempt. Also, required contacts to chronic overdraft users need not be by phone or in person and can be by electronic or paper mail, or included on periodic statements.

GAO Releases Report on the Exam Environment. The Government Accountability Office issued a report on the exam environment, recommending the agencies issue guidance to clarify CRE concentration and risk management requirements to help ensure consistency of application.

Small Banks Exempt from FHA Audit Requirement. Federal Housing Administration mortgage lenders with less than \$500 million in assets will not be required to submit audited financial statements for FHA lender approval or renewal for at least one year.

"Fair Value" Accounting Reversal. FASB reversed its position and announced that loans that are held for the collection of cash flows should be valued at amortized cost, not "fair value."

Bankers' Banks Assessment Base. The FDIC favorably altered the assessment base for bankers' banks, allowing them to deduct from their assessment base balances due from the Federal Reserve Banks (reserve balances) plus federal funds sold.

Farm Credit System Illegal Loans Thwarted. ICBA's opposition has successfully 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."

Guarantee Fee Parity for Community Banks. Legislation enacted in December 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, and not provide guarantee fee discounts to large volume lenders.

2012

Communities First Act Garners Bipartisan Sponsors. The Communities First Act (H.R. 1697) secured over 90 bipartisan co-sponsors, including the Chairman of the House Financial Services Committee and a key subcommittee chairman.

Flood Insurance Reauthorized; Small Banks Exempt from Escrow Requirement. Congress passed a five-year reauthorization of the National Flood Insurance Program, the first long-term extension of the program since Hurricane Katrina. The reauthorization contains a new escrow requirement but exempts lenders under \$1 billion that do not escrow for other purposes.

SEC Registration Threshold Increase Enacted. Legislation to increase the threshold for SEC registration from 500 to 2,000 shareholders and to increase the deregistration threshold from 300 to 1,200 shareholders, a key provision of the Communities First Act, was signed into law as part of the Jumpstart Our Business Startup (JOBS) Act.

Credit Union Member Business Loan Legislation Thwarted. ICBA testimony, grassroots advocacy, a petition, and media and ad campaigns stopped the credit unions' aggressive push to enact legislation (S. 2231, H.R. 1418) to more than double their current member business lending (MBL) authority, and prevented the legislation from becoming part of the JOBS Act. In November 2012, timed for maximum influence over the congressional debate, ICBA released a comprehensive 20-page study titled: "An Analysis of the Impact of Expanding the Ability of Credit Unions to Increase Commercial Loans."

ICBA Overdraft Study Released; FDIC Overdraft Policy Changed. ICBA's efforts to influence overdraft policy will be significantly bolstered by the ICBA Overdraft Payment Services Study released in June and submitted to the CFPB. Also, ICBA 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; though the banks must cease the practice, they will not have to reimburse customers for fees charged in the past.

Legislation to Improve the Examination Environment Advances. 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 Financial Institutions

Examination Fairness and Reform Act (H.R. 3461), intended to strengthen the appeals process and provide consistent, commonsense standards for loan classifications, was introduced.

Mortgage Loan Officer Compensation Rules Clarified. The CFPB clarified that banks 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, despite the Dodd-Frank Act provision banning mortgage loan originators from being compensated based on the terms or conditions of a mortgage transaction.

Subchapter S Tax Provisions. ICBA helped block a Senate bill that would have applied payroll taxes to certain S corporation income. ICBA funded a study by Ernst & Young that analyzes the economic impact of raising taxes on high earners. The study, widely cited in the media and by key members of Congress, finds that such taxes will result in a smaller economy, fewer jobs, lower wages and less investment. The study specifically notes the impact on Subchapter S community banks.

FHA Audit Requirement Exemption Extended. FHA lenders under \$500 million in assets were granted an additional one-year waiver from an audited financial statement requirement.

FHFA Servicing Fee Proposal Withdrawn. The Federal Housing Finance Agency withdrew its 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.

FASB Decisions Benefit Community Banks. The Financial Accounting Standards Board concluded that financial institutions that are not SEC registrants will be viewed as nonpublic entities, paving the way for financial measurement and reporting relief. FASB concluded that assets held to collect contractual cash flows can be measured at amortized cost rather than fair value. The FASB partially reversed its view that banks should disclose the fair values for loans held at amortized cost on the face of the balance sheet. FASB concluded that nonpublic entities are not required to present on financial statements the fair value amounts for loans or any other financial assets or liabilities held at amortized cost.

Farm Credit System Expansion Thwarted. ICBA 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 said purchases would only be a "fill-the-gap" last resort option for the FDIC. HUD sided with ICBA and withdrew a proposal to allow FCS lenders to participate in FHA mortgage insurance programs.

Derivatives Regulation Exempt Community Banks. Derivatives implementing regulations do not label community banks "swaps dealers" which allows them to continue to use customized, low-risk interest rate swaps to hedge their own interest rate risks and meet the loan needs of their customers. ICBA also successfully obtained exemptions from clearing requirements for community banks.

2013

ICBA's Plan for Prosperity Launched; Gains Momentum. More than 20 bills were introduced in the House and Senate that incorporate specific provisions of ICBA's Plan for Prosperity. The CLEAR Relief Act (H.R. 1750), introduced by Rep. Blaine Luetkemeyer (R-MO), has 165 bipartisan cosponsors. H.R. 1750 contains eight PFP provisions, including mortgage reform, an increase in the SOX 404(b) exemption, and

other provisions. A Senate version of the CLEAR Relief Act (S. 1349), containing fewer provisions, was introduced by Sen. Jerry Moran (R-KS), Jon Tester (D-MT), and Mark Kirk (R-IL). S. 1349 has over 30 bipartisan cosponsors.

Qualified Mortgage Rule Makes Special Accommodations for Community Banks. The Consumer Financial Protection Bureau's final "ability to repay/qualified mortgage" rule makes significant accommodations for community banks, including a "safe harbor" for loans that are "qualified mortgages" (including balloon mortgage loans originated and held in portfolio by small creditors serving predominantly rural or underserved areas). "Small creditor" portfolio loans are not subject to the rule's debt-to-income ratio limitation; the rule sets a higher price trigger for small creditors, 3.5 percentage points above the average prime offer rate (versus 1.5), for loss of "safe harbor" liability protection.

Final Basel III Capital Rules Improved for Community Banks. The final Basel III capital rules include significant improvement over the proposed rule, including continued use of Basel I risk weights for residential mortgages, the option not to include accumulated other comprehensive income (ACOI) as regulatory capital for banks under \$250 billion, and continued inclusion of TruPS proceeds as regulatory capital for BHCs with assets of less than \$15 billion.

Downpayment Requirement Dropped from Qualified Residential Mortgage Rule. The re-proposed "risk retention/qualified residential mortgage (QRM)" rule provides that any "qualified mortgage" under the CFPB's "ability to repay" rule is also a QRM and exempt from the risk retention requirement. Loans sold to Fannie Mae or Freddie Mac are also exempt. The 20 percent down payment requirement of the original proposal was dropped.

Municipal Advisor Rule Exempts Traditional Banking Products and Services. The SEC exempts banks that provide only traditional banking services to municipal customers from registration as municipal advisors under the Dodd-Frank Act.

HUD Exempts Small Lenders from FHA Audit Requirement. A final HUD rule permanently exempts banks with less than \$500 million in assets from all audit requirements, including audited financial statements and external audit on compliance with FHA processes and procedures.

CFPB Drops Proposed Restrictions on Mortgage Loan Originator Compensation. The CFPB's final rule on mortgage loan originator compensation allows MLOs to participate in both qualified and non-qualified bonus plans subject to certain conditions. The final rules regarding MLO qualification and training requirements, including background checks, are consistent with practices currently used by community banks.

Small Servicers Exempted in Final Rule. The CFPB's final servicing rule exempts servicers that service 5,000 or fewer loans from requirements to create and maintain new general servicing policies and procedures and to issue monthly statements that would include considerably more information than most community banks already provide, among other new requirements. Small servicers are also exempt from new restrictions on charging for "force-placed" insurance.

Certain Small Creditors Exempt from Escrow Requirement. The final rule regarding escrow requirements for higher-priced mortgage loans exempts portfolio loans held by small creditors predominantly operating in rural areas that do not already escrow.

Redundant ATM Fee Disclosure Requirement Eliminated. Congress passes legislation that eliminates the requirement that ATMs display a physical sign notifying consumers that they will incur a fee. This requirement was not only redundant but was inviting class action lawsuits. In some cases, plaintiffs were removing signs, photographing the ATM, and filing fraudulent suits.

CFPB Delays and Addresses ICBA Concerns in Remittance Transfers Final Rule. The CFPB revised the remittance final rule to make disclosures of foreign taxes and recipient bank fees optional, and remove liability for an uncollectable loss if the consumer provides an incorrect account number, routing number or international identifier.

Impact of Expiring Tax Cuts Limited. The American Taxpayer Relief Act of 2012 significantly limited the impact of expiring tax rates. The estate tax exemption is set at \$5.12 million (\$10.24 million per couple) and indexed for inflation; the top estate tax rate increased from 35 percent to 40 percent. The new top rate on ordinary income of 39.6 percent applies to income over \$400,000 (\$450,000 for married couples filing jointly). A tax rate of 20 percent on capital gains and dividends also applies at the \$400,000 threshold. The Act also provides a permanent fix for the alternative minimum tax.

Freddie Mac Withdraws "Low Activity" Fee. Freddie Mac withdrew a proposed "low activity" fee of \$7,500 a year for financial institutions that did not sell \$5 million in loans per year, or service an aggregate of \$25 million in loans. Instead it instituted a "no activity" fee, to be assessed on institutions that have not sold loans to Freddie Mac in the past 36 months and that are not currently servicing loans for Freddie Mac.

2014

Regulators Largely Reverse CDO TruPS Divestiture Requirement. The banking regulators issued an interim final rule concerning the Volcker Rule prohibition on bank ownership interests in "covered funds" and allowed banks to continue to hold collateralized debt obligations backed by trust preferred securities (TruPS CDOs) in which the majority of the pool is invested in TruPS issued by banks with less than \$15 billion in assets. A divestiture requirement would have led to hundreds of millions in write downs and losses for banks holding TruPS as investments.

Legislation Enacted to Help Mitigate Drastic Flood Insurance Rate Hikes. The Homeowner Flood Insurance Affordability Act (H.R. 3370) prevents sharp flood insurance rate hikes while ensuring the actuarial soundness of the National Flood Insurance Program. ICBA and community bankers worked persistently with a nationwide coalition of interested parties to see the legislation enacted. "The Hill," a widely-read newspaper covering Capitol Hill, recognized the legislation as one of the "Top 10 Lobbying Victories of the Year."

Appeals Court Decides Against Merchant Challenge to Debit Card Interchange Price Caps. The U.S. Circuit Court of Appeals overturned the retailers' challenge that the Federal Reserve's debit card interchange rule set the fee cap too high. ICBA and a coalition of trade associations filed a friend-of-the-court brief in opposition and participated in oral arguments, arguing that the Federal Reserve's existing price caps did not allow card issuers to cover their costs while receiving a reasonable return on their investments.

Plan for Prosperity Bills Gain Momentum. Six PFP bills have passed the full House.

ICBA Wins Changes to TILA-RESPA Integrated Disclosure Rules. The final TILA-RESPA rules dropped the proposed “all-inclusive” definition and disclosure of the annual percentage rate (APR), which would include fees in the calculation. The CFPB also dropped proposed disclosure of the total cost of funds for mortgage loans and a requirement that banks keep a machine-readable version of disclosures. The CFPB also adopted an extended period for banks to comply with the new TILA-RESPA rules.

Farm Bill Reflects Community Bank Priorities. The new 5-year farm bill maintains robust funding levels for agricultural and rural-oriented programs, increases funds for crop and revenue insurance programs by several billion dollars and provides several options for farmers to choose from including reference or target prices and insurance against so-called “shallow losses” (losses above those reimbursed by crop insurance). The new bill also provides a permanent disaster insurance protection program for livestock producers. The bill removes term limits on guaranteed farm operating loans, and provides other enhancements to guaranteed farm loan programs. The bill does not provide increased lending powers for the Farm Credit System.

FDIC Responds to Concerns Over Capital Buffer. The FDIC released guidance stating that it would consider requests to distribute income by banks that do not exceed the capital conservation buffer on a case-by-case basis, and that highly rated banks could generally expect to have such requests approved.

Farm Credit System Withdraws Investments Program. The Farm Credit Administration withdrew its Rural Community Investments program which would have allowed blanket national authority for FCS lenders to engage in non-farm lending activities if such activities were labeled as “investments” instead of loans.

FDIC Withdraws Its List of “High Risk” Merchants. The FDIC withdrew its list of high risk merchants it said warranted additional scrutiny by banks processing their transactions. The list had led to examiner overreach in questioning banks’ long-standing relationships with some business customers. The FDIC issued a Financial Institution Letter encouraging banks “to take a risk-based approach...rather than declining to provide banking services to entire categories of customers.” FDIC examiners must provide notice in writing when an institution is directed to exit a customer relationship.”

New Leverage Ratio for Megabanks. Regulators adopted a final rule requiring higher supplementary leverage ratio capital standards for large financial institutions. The new rule significantly increases capital requirements for the too-big-to-fail financial institutions that pose the greatest risks to our financial system.

Government Accountability Office Confirms TBTF Subsidy. GAO issued a long-awaited report which confirmed that the taxpayer subsidy continues to exist and provide a competitive advantage to the largest banks and Wall Street firms. The GAO report adds to a number of independent studies finding a subsidy.

Easier Terms for De Novo Applicants. Under new FDIC guidance, de novo applicants do not need to provide “upfront” capitalization sufficient to maintain a Tier 1 leverage capital ratio of at least 8 percent for the first seven years of operation. Instead, the initial capital should sustain the bank through the first three years of operation. Also, the business plan can cover the first three years of operation, not seven.

Kasasa Deposits Not Deemed Brokered Deposits. The FDIC reversed its decision to treat Kasasa deposits offered by BancVue as brokered deposits. ICBA was instrumental in persuading the FDIC to reverse course. Without the reversal, these banks would have faced higher deposit insurance premiums, possibly lower CAMELS ratings, and additional regulatory scrutiny. In some cases, restrictions on brokered deposits would have forced some banks to terminate the program.

2015

Community Bank Regulatory Relief Advances. Both the Senate and the House advanced meaningful community bank regulatory relief bills inspired by ICBA's Plan for Prosperity, representing the most progress made on this issue since the passage of the Dodd-Frank Act in 2010. The Senate Banking Committee reported out the Financial Regulatory Improvement Act (S. 1484).

Congress enacts the following in the highway bill:

- **18-month examination cycle** for CAMELS 1 and 2 rated banks with up to \$1 billion in assets
- **Elimination of annual privacy notice** mailings for banks whose policies haven't changed and who do not share information outside one of the statutory exceptions.
- **Easier qualification for "rural lender" status** under CFPB mortgage rules by eliminating the requirement that such lenders operate "predominantly" in rural areas to be eligible for the exceptions in the ability to repay/qualified mortgage rule and the escrow rule.
- **New SEC registration and deregistration** thresholds for thrift holding companies, equal to those that apply to bank holding companies.
- **Restoration of \$3 billion in recent cuts to the federal crop insurance** program included in the budget agreement.

Omnibus Bill Includes Provisions Important to Community Banks. The year-end omnibus spending and tax extenders legislation signed into law does the following:

- Enacts the ICBA-advocated Cybersecurity Information Sharing Act, which encourages the public and private sectors to voluntarily share critical cyber-threat information.
- Requires regulators to study and report to Congress on the effect of the Basel III capital requirements on mortgage-servicing assets.
- Increases by \$3 billion funding for the Small Business Administration's 7(a) guaranteed loan program.
- Reauthorizes SBA's expired 504 refinance program.
- Continues SBA fee waivers for loans to veterans.
- Makes permanent a five-year S-Corp recognition period for built-in gains.
- Permanently extends the S-Corp stock basis adjustment for charitable contributions of property.
- Cements a \$500,000 Section 179 expensing limit.

Fed Stock Dividend Reduction Eased. The Federal Reserve stock dividend reduction provision in the final highway bill exempted community banks under \$10 billion in assets, and pegged the reduction for banks over \$10 billion to the 10-year Treasury note rate rather than reducing it to a flat 1.5 percent.

TRID Effective Date Delayed. After rebuffing industry requests to postpone the effective date and/or provide an enforcement grace period for the Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosures (TRID), the CFPB reversed itself, and delayed the effective date from August 1

to October 3. Regulators said in the early months of implementation, examiners will evaluate an institution's overall efforts to come into compliance, recognizing the scope and scale of required changes.

CFPB Expands "Small Creditor" and "Rural" Definitions. The CFPB expanded the definitions of "small creditor" and "rural" definitions used to implement the exceptions in the ability-to-repay/qualified mortgage rule, the escrow requirement for high-priced mortgages, and other rules. The revised rule raises the annual loan volume origination threshold from 500 to 2,000 first lien mortgages, excluding mortgages held in portfolio, and designates as "rural" any census block not defined as urban by the Census Bureau.

Legislation Enacted to Ensure Community Bank Representation on the Federal Reserve Board. A new law requires that at least one member of the Federal Reserve Board have experience as a community banker or a community bank supervisor, thus ensuring that community bankers have a continuous voice on the Board.

Eligibility Threshold Doubled for the Federal Reserve's Small Bank Holding Company Policy Statement. A new law doubles the Small Bank Holding Company Policy Statement eligibility threshold from \$500 million to \$1 billion, and extends eligibility to thrift holding companies. Bank and thrift holding companies that qualify for the Policy Statement enjoy improved access to capital to support lending in their communities.

Pro-Credit Union Amendment Blocked in Committee. ICBA blocked a credit union attempt to offer an amendment to a House appropriations bill that would have excluded loans secured by 1-4 family, non-owner occupied housing from the 12.25 percent-of-assets cap on member business lending.

FFIEC Proposes Call Report Simplification. The FFIEC announced it is working on a streamlined call report for community banks, a result of ICBA's 15,000 signature petition, call report burden survey and dogged advocacy.

ICE-Libor Waives \$16,000 Annual Fee for 6,000 Community Banks. Due to ICBA's outreach and advocacy, the Intercontinental Exchange (ICE), owner of the Libor index, revised its proposal to charge a \$16,000 annual fee to any bank that uses Libor as a reference index. Instead, ICE exempted any bank with assets of less than \$1.5 billion and charges a fee of \$2,000 to banks between \$1.5 billion and \$10 billion.

Information Reporting Mandate Dropped from Trade Legislation. ICBA led a successful effort to strip onerous new reporting mandates from trade legislation that would have mandated 1099 reporting on accounts that pay less than \$10 in interest and on non-interest bearing accounts.

Data Treasury Patents Invalidated. The Patent Trial and Appeal Board (PTAB), established under the ICBA-advocated America Invents Act of 2012, invalidated check-imaging patents held by Data Treasury Corp. The PTAB ruling continues a string of victories in the fight against patent trolls.

Policy Statement Recognizes Unique Characteristics of Small Banks in Establishing Diversity Policies and Practices. A final interagency policy statement recognizes the need for financial institutions to have flexibility to tailor their diversity policies and practices, as smaller banks or those located in remote

areas face different challenges and have fewer options available. The policy statement encourages banks to use the standards in the statement in a manner appropriate to their unique characteristics.

SEC Proposed Rule Fixes Oversight in Registration/Deregistration Thresholds. The SEC issued a proposed rule that would allow thrift institutions to take advantage of the new registration and deregistration thresholds of 2,000 shareholders and 1,200 shareholders.

NACHA Approves Same Day ACH. NACHA approved a rules amendment establishing same-day ACH, enabling a ubiquitous same-day capability for virtually any automated clearing house (ACH) transaction and establishing an interbank fee, as advocated by ICBA.