

# 2022 POLICY RESOLUTIONS

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## **PREAMBLE**

**T**hese resolutions, approved by the ICBA Policy Development Committee and the Board of Directors, broadly describe the association's major policy objectives for 2022. The resolutions are designed to provide policy guidance for ICBA officers and staff and general policy direction for ICBA standing committees, the Federal Delegate Board, councils, and task forces.

These resolutions reflect ICBA's core principles: Community banks support fair competition in financial services; support the separation of banking and commerce; believe in a balanced financial system that does not favor any segment of the financial services sector; support the dual banking system; and oppose the concentration of economic and financial services resources. ICBA is a democratically governed association where each member bank has a voice and a vote.

These resolutions are complemented by ICBA's "[Advocacy in Action](#)," a two-page, dashboard-style document describing the association's advocacy on issues currently before Congress and the agencies. This document, which is updated quarterly, also highlights "Real Results for Your Bank," the recent favorable results of ICBA's advocacy.

## **MISSION STATEMENT**

*Create and promote an environment where community banks flourish.*

A thriving independent community banking sector is vital to the nation's prosperity. Locally owned community banks have a direct and vital stake in their communities. Their business model is founded on personal relationships and direct knowledge of the business owners, families, and individuals that make up their communities.

The value of this business model was clearly demonstrated during the pandemic that began in 2020 and the resulting economic shock. Community banks dedicated their strength, ability and resourcefulness into making the PPP work for small businesses in need. The program was a natural fit for their business model. Drawing on a network of community and small business relationships, community banks were pre-positioned to help borrowers navigate the application process. There are countless stories of small businesses in desperate need that, unable to secure a PPP loan from a larger bank in a timely fashion, turned to a community bank where they were promptly and effectively served, despite sparse and often conflicting guidance from the SBA. With no motive beyond helping small businesses, community bankers worked around the clock to meet an overwhelming demand for PPP loans from existing as well as new customers.

The data tell the story: Community banks have made 60 percent of PPP loans which have supported the retention of over 33.7 million employees. Moreover, 72.6 percent of PPP loans to minority-owned small businesses, 71.5 percent of PPP loans to women-owned small business, and 63.4 percent of PPP loans to

veteran-owned small businesses were made by community banks. ICBA is proud that community banks have stepped up to support the survival of these diverse businesses in a time of crisis. ICBA is committed to confronting mounting threats and adverse trends and ensuring that independent community banks remain a significant part of the U.S. financial system.

Every industry that has undergone consolidation has seen higher consumer costs and eroded consumer choice, value, and benefits. A nation dominated solely by large banks would have a fundamentally different economic and commercial character. Local decision making, customized products, and personalized service – the hallmarks of community banking – would become a thing of the past. ICBA is the only national trade association dedicated exclusively to representing community banks. Through its public communications, ICBA tells the community banking story, promotes our principles, and positions ICBA as the leading source of information on the industry. Through its membership, ICBA aggregates and leverages the political and economic strength of community banks.

## **ORGANIZATION OF RESOLUTIONS**

ICBA’s policy resolutions are structured in six categories connected to our mission. The category themes are: the competitive landscape; tailoring of regulatory and tax burden; fair and equitable access to the financial system; responsible innovation; systemic safety and soundness; and strengthening our collective voice through membership, industry engagement, and support for ICBPAC as well as our state partner associations.

### **Promote a Balanced and Competitive Financial Services Landscape for American Consumers and Businesses**

*Consumers, businesses, and the broader economy can only thrive in a competitive landscape for financial services. Robust competition among numerous providers and a level playing field ensure favorable pricing and innovative, quality services and minimize systemic risk. The competitive advantages enjoyed by tax-exempt credit unions and Farm Credit System lenders warrant special scrutiny.*

## **COMMUNITY BANK ACCESS TO CAPITAL**

### **Position**

- ICBA supports legislative and regulatory changes that would improve the ability of community banks to raise capital.
- ICBA opposes the inequitable capital treatment of community banks, based solely on corporate structure, for banks participating in economic stimulus programs such as the Emergency Capital Investment Program.
- Subchapter S of the tax code should be updated to facilitate capital formation for community banks by increasing the shareholder limit for Subchapter S eligibility, allowing the issuance of preferred shares, and permitting individual retirement account (IRA) shareholders.

- The asset threshold under the Federal Deposit Insurance Corporation Improvement Act (FDICIA) for requiring an annual audit should be raised from \$500 million to \$1 billion, and the asset threshold for an internal control report, also required by FDICIA, should be raised from \$1 billion to \$5 billion.
- SEC Regulation D should be revised so that the definition of an “accredited investor” includes individuals with a net worth of \$1 million or more, including their primary residence.

## **Background**

Since 2007, the public capital markets have often been either unavailable or unattractive to many community banks and holding companies. These community banks have had to rely more on existing shareholders, directors and insiders for capital raises and less on new investors, including institutions and private equity investors. S. 2155, enacted in 2018, included a favorable community bank provision which raised the asset limit under the Federal Reserve’s Small Bank Holding Company Policy Statement from \$1 billion to \$3 billion, allowing more community bank holding companies to more easily raise capital.

Small Bank Holding Company Policy Statement. ICBA is supportive of additional upward adjustments to the asset limits under the Federal Reserve’s Small Bank Holding Company Policy Statement to ensure these thresholds remain current and properly align with industry consolidation trends.

Federal Deposit Insurance Corporation Improvement Act. ICBA supports modernizing the asset thresholds for requiring both an independent annual audit of an insured depository institution and an internal control report under the Federal Deposit Insurance Corporation Improvement Act (FDICIA). The FDICIA asset thresholds should be raised to reflect the overall increase in the size of community banks since these thresholds were last adjusted in 1993 and 2005. The asset threshold for requiring an annual audit should be raised from \$500 million to \$1 billion, and the asset threshold for an internal control report should be raised from \$1 billion to \$5 billion.

Subchapter S Banks. Various tax code changes would facilitate capital formation for Subchapter S banks. The limit on Subchapter S shareholders should be increased from 100 to 200; Subchapter S corporations should be allowed to issue preferred shares; and Subchapter S shares, both common and preferred, should be permitted to be held in individual retirement accounts (IRAs). Additionally, Subchapter S banks should receive the same capital treatment as Subchapter C banks when participating in economic stimulus programs designed to increase capital investments in local communities. For example, favorable capital treatment under the Emergency Capital Investment Program is not available to Subchapter S Community Development Financial Institutions and Minority Depository Institutions.

SEC Regulation D. Community banks often rely on the safe harbor of SEC’s Regulation D when raising capital. However, SEC Regulation D should be revised so that the definition of an “accredited investor” includes individuals with a net worth of \$1 million or more including the value of their primary residence. The current definition requires individuals to exclude their primary residence when computing their net worth.

**Staff Contact:** Chris Cole and Jenna Burke

## DEFENDING THE BANK CHARTER

### **Position**

- Corporate conglomerates or other companies engaged in commercial activities should not be allowed to own full-service or special purpose banks in violation of the longstanding U.S. policy of maintaining the separation of banking and commerce.
- Congress should close the ILC loophole and stop the special purpose national bank charters because they not only threaten the financial system but create an uneven playing field for community banks.
- The OCC should have explicit statutory authority from Congress before issuing any special purpose national bank charter for financial technology (fintech) companies. Any new federal charter should be subject to the same standards of safety, soundness, and fairness as other federally chartered institutions.
- The Federal Reserve Banks should conduct rigorous due diligence of state chartered special purpose depository institutions (SPDIs) before granting them access to the payments system.

### **Background**

Maintain the Separation of Banking and Commerce. The long-standing policy prohibiting affiliations or combinations between banks and non-financial commercial firms (such as Wal-Mart, Amazon, and Google) has served our nation well and was reaffirmed by the Gramm-Leach-Bliley Act (GLBA). Allowing large retail or technology conglomerates to own banks violates the U.S. policy of maintaining the separation of banking and commerce, jeopardizes the impartial allocation of credit, creates conflicts of interest, a dangerous concentration of commercial and economic power, and unwisely extends the federal safety net to commercial interests.

ICBA was the first national bank trade association to oppose Wal-Mart's ILC application in 2005 and continues to exercise national leadership on banking and commerce separation with its opposition to the deposit insurance applications of Square Financial Services, Inc., Nelnet Bank, GM Financial, and Rakuten Bank America. The Square and Nelnet applications were approved by the FDIC in 2020 but the applications of Rakuten Bank America and GM Financial are still pending. All these applicants have holding companies and affiliates that engage in diverse, non-financial, commercial activities and chose the unique Utah ILC charter to avoid the legal prohibitions and restrictions on commercial activities under the Bank Holding Company Act.

ICBA believes that Rakuten, GM Financial Bank, and all other applicants for deposit insurance through ILCs should be subject to the same restrictions and supervision that apply to any bank holding company of a community bank. The FDIC rules for parent companies of ILCs do not provide the same level of supervision that bank holding companies are subject to under the Bank Holding Company Act. Congress should close the ILC loophole because it threatens the financial system and creates an uneven playing field for community banks.

Congressional Authority is Needed Before the OCC Can Issue Special Purpose Charters. The OCC should have specific legal authority from Congress before issuing a fintech charter. It would be a violation of Section 2 of the Federal Reserve Act for the OCC to approve a national bank charter to a non-depository institution. Section 2 is clear that every national bank must be a member of the Federal Reserve System and every member of the Federal Reserve System must be an insured bank.

Special Purpose Depository Institutions (SPDIs) Present Novel and Heightened Risk. The Reserve Banks should conduct a significantly greater degree of due diligence in assessing “novel charter” applicants such as SPDIs for master accounts and access to the payments system. Such applicants should be subject to standards that are as rigorous as those applicable to insured depository institutions or BHCs under federal banking law, including standards for capital, liquidity, risk management, cybersecurity, anti-money laundering, consumer protection, affiliations and affiliate transactions and other prudential requirements. Furthermore, to avoid the possibility of regulatory arbitrage, the Federal Reserve Board should adopt a uniform policy for Federal Reserve Banks that sets forth appropriate criteria for granting a state-chartered or a federally chartered special purpose bank access to the payment system.

**Staff Contact:** Chris Cole and Deborah Matthews Phillips

## **DE NOVO COMMUNITY BANK FORMATION**

### **Position**

- ICBA supports a flexible and tailored supervisory policy with regard to de novo banking applicants. Capital standards, exam schedules, and other supervisory requirements should be based on the pro forma risk profile and business plan of the applicant and not on a standard policy that applies to all de novo bank applicants.
- The biggest obstacle to de novo bank formation is raising capital. The FDIC believes that it should take from \$15 million to \$30 million to start a bank, which far exceeds what was expected prior to the economic downturn of 2008-2009. ICBA recommends phasing in its capital requirements for de novo banks particularly minority banks and those in rural and underserved areas where access to capital is limited. The FDIC must also streamline its application process for de novo banks.

### **Background**

Although there were 16 de novo bank applications to the FDIC for deposit insurance during 2021, many of these applications were either for ILCs or financial technology banks and the number of applications were well below the average before the 2008 economic downturn. Even in the depths of the savings and loan crisis in the 1980s, when 1,800 banks and savings institutions failed, an average of 196 de novo banks and savings institutions were formed annually from 1984 through 1992.

ICBA supports a flexible and tailored supervisory policy with regard to de novo banking applicants that is based on the pro forma risk profile and business plan of the applicant. To ease the burden of raising capital, ICBA recommends that the FDIC consider phasing in its capital requirements for de novo banks,

particularly for minority banks and banks in rural and underserved areas where access to capital is limited. At present, the FDIC expects the initial capital of each de novo institution to be sufficient to provide a tier-one-capital-to-assets leverage ratio of not less than 8 percent throughout the first three years of operation. This means that the de novo institution must have capital on day one equal to 8 percent of what it projects its assets will be three years from the opening date. ICBA recommends that the FDIC phase in the capital requirements so that the bank would only be required to have 6 percent capital on day 1, 7 percent at the beginning of the second year, and 8 percent at the beginning of the third year. This would give the community bank some extra time to meet current, strenuous capital requirements. The De Novo Bank Application Form, and in particular the Business Plan section of the Application Form, needs to be significantly streamlined. Wherever possible, ICBA believes the FDIC should assist the applicant with answering some of the more difficult questions in the Business Plan. More regulatory feedback should be given at pre-filing conferences, and the whole application process should be shortened to no longer than four months. Once an application is approved, the FDIC should exercise greater regulatory flexibility with regard to compliance with the Business Plan.

**Staff Contact:** Chris Cole

## **MUTUAL AND SAVINGS INSTITUTIONS**

### **Position**

- Mutuality is a viable charter alternative that should be accorded parity in all respects with other charter forms. A financial institution has the right to choose the type of charter and business model under which it operates whether it is a mutual institution, a new Office of the Comptroller of the Currency (OCC) charter for mutual national banks, or a “covered savings association” as created under the Economic Growth, Regulatory Relief and Consumer Protection Act, enacted in 2018.
- Mutual institutions should be equally represented and accorded parity in all respects with other charter forms. Any proposed legislation or regulations should consider the impact on the mutual bank business model and its viability.
- No regulatory agency should obstruct the right of a financial institution, including a credit union, to convert to a mutual institution charter. Congress should provide a path for credit unions to convert to mutual savings institutions in a straightforward manner without regulatory or other barriers.
- ICBA supports the authorization of mutual banks to issue Mutual Capital Certificates (MCCs) that would qualify as Tier 1 common equity capital.
- ICBA supports the right of a mutual or savings institution to assert a private right of action under the Savings and Loan Holding Company Act.
- ICBA supports the formation of new mutual savings institutions, particularly those that could be created in low-income and underserved communities and believes that state and federal regulatory agencies should take an active role their formation.
- Regulators must recognize and preserve depositor rights as embodied in Federal and state law, particularly with respect to purchase and assumption transactions by nonbanks including credit unions.

## **Background**

Mutual institutions were established and are maintained for the benefit of their communities, depositors and borrowers. They are well-run financial institutions that provide local service and investment to improve the quality of life in their local communities. ICBA strives to meet the needs of its mutual institution members and will support and defend the choice of mutual ownership before all regulatory and legislative bodies.

Equitable Treatment and Parity for Mutual Banks. ICBA supports legislative or regulatory changes that will provide federal thrift institutions equitable treatment by considering the potential impact a new rule would have on the different business model of federal thrifts.

Charter Choice. ICBA opposes any legislative or regulatory action to pressure mutual institutions to convert to stock form or to eliminate the option of mutuality and supports the right of mutual institutions to refuse funds offered for deposit by persons outside their communities. Mutual institutions must have the ability to retain their mutual charters.

ICBA also supports the right of a mutual institution to defend itself from activist depositor groups and therefore supports a private right of action for mutual and savings institutions under the Savings and Loan Holding Company Act.

New Capital Option. ICBA also supports the authorization of mutual banks to issue Mutual Capital Certificates (MCCs) that would qualify as Tier 1 common equity capital. MCCs would provide a new capital option that would help preserve the viability of mutual banks and allow them to continue to serve their communities.

Future of Mutuality. ICBA believes state and local regulatory agencies should recognize the benefits of chartering and growing mutual banks and should provide resources to aid in their formation, particularly in areas that are underserved. The creation of mutual banks in low-income and underserved communities across the United States can be a very effective way to bring essential banking and lending services to areas of the country that do not currently have adequate banking services. Mutual banks should play a critical role in the future of American banking. Prudential bank and credit union regulators should develop a path for credit unions to convert to mutual banks in a straightforward, noncomplex manner that allows for institutions to change charters without fear or intimidation. Regulators should develop formal plans to expand mutual bank charters through public due process and community outreach.

***Staff Contact:*** James Kendrick

## PAYMENTS ACCESS, CHOICE, AND GOVERNANCE

### **Position**

- ICBA is a strong advocate for secure, financial institution-centric payments systems, and urges policymakers and regulators to maintain their position that direct access to these systems be limited to federally insured financial institutions.
- ICBA strongly urges policymakers to ensure a competitive level playing field for the financial services ecosystem.
- ICBA supports both public and private sector payments settlement networks that facilitate competition and that permit financial institutions to select the provider(s) of their choice.
- ICBA supports the industry rules and the payment market infrastructure (PMI) providers that play a role in developing and maintaining payments systems' access and functionalities. ICBA urges these organizations to ensure that their governance processes enable and foster community bank participation and support transparent, timely, and inclusive rulemaking.
- ICBA encourages standardization efforts in the industry, such as the migration to application programming interfaces (APIs) for customer-permissioned data sharing, that reflect the broad breadth of capabilities and resources of varying financial institutions.
- ICBA advocates for comprehensive and consolidated supervision of novel firms entering the financial services landscape and encourages cross-agency collaboration to harmonize and provide more clarity to regulatory frameworks that apply to digital assets.

### **Background**

Access. Community bank payments systems access must not be limited through the imposition of anti-competitive and discriminatory pricing or policies, membership requirements, operating rules, or technological barriers. Market power and the shifting digital economy should not be used to force changes that would materially or adversely impact the competitive nature of our nation's payments system.

Choice and Competition. No traditional payments system, including checks, ACH, funds transfers, or payments cards, has ever achieved nationwide reach through a single PMI provider. Competition ensures ubiquitous equitable access, provides options for community banks, and fosters systemic resiliency for the settlement of payments.

Rulemaking. Given that industry rules govern the ACH, payment card networks, check clearing houses and the next generation of payments, it is vital for community banks to participate in the rulemaking, operations, and governance of these organization. The rulemaking process should be transparent and ensure that community banks have opportunities to review proposed rules and provide comments. Rules should be refined to address new services, technologies, regulatory requirements, and marketplace dynamics.

Industry Standards. Community banks are highly dependent on their core banking platforms and other solution providers for technology and other digital tools. Standards implementation by different market participants should reflect industry progression, and not leave community banks at a disadvantage from any asymmetry of capabilities and resources.

Nonbank Access. A secure and well-regulated payments system is essential to all financial institutions and the customers and communities they serve. All traditional U.S. payments systems have restricted direct access exclusively to federally insured financial institutions. New technology has enabled the rapid proliferation of non-bank financial technology (“fintech”) companies that are providing a full suite of banking services but sit outside the regulatory perimeter. These differences create an unfair advantage for fintechs, while adding risk to the financial system as these providers are not subject to the same safety and soundness, regulatory oversight, and supervisory requirements as banks.

Novel Business Models. The fragmented supervision of crypto firms poses significant risks to consumers, businesses, the financial system, and the broader economy. Additionally, a growing concern is the complex and opaque nature of decentralized finance (DeFi), which uses smart contracts and digital currencies to provide a variety of financial services without intermediaries and clear oversight from regulators.

*Staff Contact:* Deborah Matthews Phillips and Rhonda Thomas-Whitley

## **POSTAL BANKING AND FEDERAL RESERVE ACCOUNTS**

### **Position**

- ICBA opposes the provisioning of retail deposit accounts and the allocation of consumer credit by the United States Postal Service (USPS), Federal Reserve, or any other federal, state, or quasi-federal or state instrumentality.
- The financially challenged USPS has virtually no expertise in providing financial services to consumers in a cost-effective manner. Greater entry by the USPS into financial services introduces another tax advantaged and lightly regulated entity with limited expertise into the marketplace, akin to credit unions and the Farm Credit System.
- Accounts offered by the Federal Reserve (FedAccounts) would directly compete with community banks, diverting deposits from local communities and create undue taxpayer risk. Requirements for cost recovery under the Monetary Control Act call into question the legality and feasibility of FedAccounts.
- Financial services are best provided in a competitive, private, and free marketplace that openly and efficiently benefits customers.

### **Background**

Postal Banking. There has been a resurgence in interest among certain lawmakers in allowing the United States Postal Service (USPS) to offer retail banking services at their locations. This proposal was included in then-President-elect Biden’s “Unity Task Force Recommendations” document written with Senator Bernie Sanders. The reported purpose of postal banking is to provide a “consumer-friendly” alternative to payday lending and check-cashing services for those without a bank account and to turn a profit to support the moribund finances of the USPS. In September of 2021, the USPS quietly launched an ICBA-opposed pilot in Washington, D.C.; Falls Church, Virginia; Baltimore, Maryland; and the Bronx, New

York. As of January 2022, the pilot had only six customers brought in fee revenue of just \$35.70, indicating almost non-existent demand and a failure to generate revenue to cover expenses. Any attempt to scale up this pilot would only jeopardize the core mission of United States Postal Service (USPS) – the timely delivery of letters and parcels on which American commerce and consumers depend. Improving delivery times must take priority over all other initiatives.

The argument for postal banking relies on the supposed omnipresence of postal facilities. USPS's "universal service obligation" requires it to maintain postal facilities and personnel in every ZIP code in the country. However, proponents fail to recognize that commercial bank branch locations outnumber post office locations 3 to 1. Moreover, fewer than 10 percent of unbanked individuals have cited "inconvenient locations" as a reason for being unbanked. An ICBA issue brief projected the postal service would lose nearly \$500 million per year as a competitor against private institutions in the financial services sector.

ICBA adamantly opposes allowing the USPS to offer financial products and services. The encroachment into these activities by a major federal agency would represent a significant, government-sponsored, competitive threat to the ongoing viability of the nation's thousands of private sector, tax-paying community banks which do an excellent job of serving consumers, small businesses, and farmers and ranchers across America. Financial services are best provided in a competitive, private and free marketplace so they can openly and efficiently benefit customers. Community banks and other financial institutions already offer low-cost financial services to underserved communities to help them break away from the debt cycle of payday lenders. According to the FDIC, 88 percent of banks offer small-dollar loans and 81 percent offer free counseling to underserved consumers.

It would be a serious mistake for the USPS to enter a highly competitive, complex new industry with the potential to compromise its core function and its finances and put American taxpayers at further risk. Effective banking management requires years if not decades to master. In the era of systems hacking, managing financial data has become that much more challenging. This is why commercial banks are subject to the Gramm-Leach-Bliley Act's data-security standards. The stakes are simply too high to allow a backdoor attempt to spend taxpayer dollars on a misguided experiment in postal banking.

FedAccounts. ICBA adamantly opposes the direct provisioning of retail deposit accounts by the Federal Reserve known as "FedAccounts." Fed Accounts would be made available to all citizens, residents, and nonfinancial businesses at taxpayers' expense. These accounts would offer the same services as commercial bank accounts including the issuance of debit cards, ATM access, direct deposit and online bill pay services. They would also support internet and mobile banking. These features put FedAccounts in direct competition with checking and savings accounts offered by community banks and raise serious privacy concerns, as they could potentially be used by the government to track consumer financial transactions.

While advocates propose hosting these accounts at the Federal Reserve, the Fed has repeatedly said it is not suited to offer direct accounts to consumers and is not legally permitted to do so. The Fed is required to meet certain requirements under the Monetary Control Act, including recovering its costs. Adequate cost recovery is likely impossible without charges and fees, which wouldn't be permitted for FedAccounts. Community banks offer affordable accounts for unbanked and underbanked consumers.

Consumers are best served by thousands of competing private institutions, which have a duty to ensure their needs are met.

**Staff Contacts:** Aaron Stetter and Chris Cole

## **REFORM AND REFOCUS THE FARM CREDIT SYSTEM**

### **Position**

- Farm Credit System (FCS) lenders enjoy unfair competitive advantages over rural community banks, leveraging their tax and funding advantages as government sponsored enterprises (GSEs) to siphon the best loans from community banks' loan portfolios. The FCS's abusive tactic of undercutting market pricing to obtain the best loans jeopardizes the viability of many community banks and the economic strength of the thousands of rural communities they serve.
- ICBA strenuously opposes the Farm Credit Administration's (FCA's) initiative to allow FCS to engage in non-farm financing labeled as investments or investment bonds. This initiative is a successor to the "Rural Community Investments" proposal, which was withdrawn in November 2013.
- ICBA rejects legislation proposed by the Farm Credit Council to allow blanket approval authority of these FCS "investments" without FCA's case-by-case review and approval.
- ICBA opposes allowing FCS lenders to become the equivalent of rural banks with powers to establish checking and savings accounts, take deposits, or establish a consumer-oriented deposit insurance plan within the FCA. FCS lenders also must not have access to the Federal Reserve's ACH system for clearing electronic credit and debit transfers.
- ICBA opposes expansion of FCS authorities and supports legislative and regulatory provisions to ensure FCS's adherence to its historical mission of serving *bona fide* farmers and ranchers and a limited number of businesses that provide on-farm services.

### **Background**

Community Banks and the Rural Economy. Thousands of community banks serve rural areas. The FDIC reported that as of September 30, 2021, there are 1153 agricultural banks, defined as those community banks with over twenty-five percent of their loans focused on agriculture. Many additional community banks hold significant agricultural loan volumes. At year-end 2020, although all community banks held only 25 percent of total banking industry assets, their share of farm loans at commercial banks was approximately 88.4 percent, according to the FDIC.

Bank agricultural loans were distributed among more than 4,280 banks (about 85.43 percent of all commercial banks), while only about 67 FCS lending institutions hold agricultural loans. According to the USDA, total farm debt increased from \$356.7 billion in 2015 to \$441.3 billion in 2020 with projected debt for 2022 of \$467.4 billion. The share of the Farm Credit System's (FCS) portion of overall farm debt increased from 40.6 percent in 2015 to 44.3 percent in 2020, rising from \$145 billion to \$195.5 billion. By comparison, the share of overall farm debt held by commercial banks decreased from 42.7 percent in

2015 to 36.2 percent in 2020 as their farm loans rose from \$152.4 billion to 159.9 billion. The FCS now holds 22 percent more farm loans than commercial banks. The growth in FCS loan volume is almost entirely due to their rapid growth in the System's tax-free farm real estate lending, which increased by 45 percent between 2015 to 2020 rising from \$96.7 billion in 2015 to \$140.5 billion in 2020 a growth rate more than twice that of commercial banks. This data strongly supports the need for Congress to pass the ECORA legislation (H.R. 1977 / S. 2202).

Community banks are four times more likely to operate offices in rural counties. Large banks are exiting rural America; their branch presence has declined by 18 percent in the last 10 years. Community banks remain the only banking presence in nearly 1,200 counties (well over a third of all U.S. counties) and hold the majority of banking deposits in rural counties.

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 that provide on-farm services. However, in recent years FCS has sought numerous **non-farm** lending powers in an effort to compete directly with commercial banks for non-farm customers.

FCS's complicit regulator, the Farm Credit Administration (FCA), has also sought to expand FCS activities through regulatory initiatives such as "investment bonds" and the "Rural Community Investments" regulation finalized in 2018. These initiatives provide authority for **non-farm** lending under the guise of "investments," even though such lending goes beyond the constraints of the Farm Credit Act. Additionally, the Farm Credit Council has proposed replacing the FCA's prior approval requirement for these "investments" with blanket authority for FCS lenders to approve any investment without FCA's prior review. ICBA opposes the Farm Credit Council's legislative proposal.

Recent proposals to allow the FCS to become the equivalent of rural commercial banks would devastate thousands of rural community banks in urban and rural and remote areas. Such proposals are another FCS-initiative to utilize GSE tax and funding advantages to expand beyond statutory lending constraints, ignore FCS's GSE mission of serving actual farmers and ranchers, and dramatically increase FCS institutions' profits at the expense of tax-paying, private sector community banks. These expansionist activities pose greater risk of financial loss to U.S. taxpayers, who ultimately stand behind all GSEs.

Congress should reform and refocus the FCS's authorities in order to limit their non-farm lending activities, including through "investments" authorities and "similar entity" loans to large corporations, to ensure these authorities do not circumvent existing statute or go beyond the intent of Congress; prohibit predatory, below-market pricing of loans; equalize tax treatment between community banks and FCS lenders; and change the makeup of the FCA board.

***Staff Contact:*** Mark Scanlan

## STATE-OWNED PUBLIC BANKS

### **Position**

- ICBA opposes the formation of new public banks or other types of public retail financial service providers, whether they are owned by states, municipalities, the United States Postal Service (USPS), or any other federal or quasi-federal instrumentality.
- ICBA opposition extends to the creation of special purpose banks to service the cannabis industry or a National Infrastructure Bank.
- Such banks would directly compete with community banks, diverting deposits from local communities and create undue taxpayer risk.
- Financial services are best provided in a competitive, private, and free marketplace that openly and efficiently benefits customers.
- Community banks and other financial institutions continue to offer low-cost financial services to underserved communities to help them break from the debt cycle of payday lenders.

### **Background**

In recent years, several states and localities around the country have considered proposals to create public banks to operate in competition with the thousands of existing private, for-profit, taxpaying banks that serve our communities. In 2019, the California State Legislature approved the Public Banking Act, which will allow city and county governments to create, or sponsor, public banks. This law was in response to the failure of a 2018 ballot measure that would have allowed for the creation of a Los Angeles city-owned bank. That approach was rejected by voters.

No Public Need to Establish a State-Owned Bank. Today's financial services industry meets the banking needs of both consumers and businesses. In particular, community banks provide 60 percent of all small business loans under \$1 million, as well as customized mortgage and consumer loans suited to the unique characteristics and needs of their customers and local communities. Further, community banks played an outsized role in implementing the SBA's Paycheck Protection Program where they were counted on to generate over 60 percent of the loans to struggling small businesses due to the pandemic. Community banks play a vital role in ensuring economic growth is robust and broad-based, reaching urban, suburban, and rural communities of all sizes and in every region of the country. Community banks compete with large and regional banks, credit unions, farm credit entities and nonbank lenders. In this financial services ecosystem, there is no public policy need for a state or publicly owned bank that would directly or indirectly compete with community banks, leveraging a tax exemption and virtually unlimited access to capital. Public banks would most likely compete with community banks for public deposits as well as for business loans and loan participations.

Taxpayer Risk Associated with Publicly Owned Banks. Public banks create undue risk and exposure for taxpayers. Their deposits, if they choose to forgo or are not provided access to FDIC deposit insurance, would be backed by the full faith and credit of the state or municipality that chartered them, posing substantial risks to taxpayers, a risk heightened by lack of federal supervision. In contrast, any costs associated with handling community bank failures are paid out of the FDIC's Deposit Insurance Fund,

which is fully funded by the banking industry. Notably, a 2019 report by the San Francisco Office of the Treasurer and Tax Collector on the feasibility of three different models of public banking concluded that the bank would break even anywhere between 10 and 56 years with a total capital investment between \$184 million and \$3.9 billion of public funds.

Political Risk. A state-owned bank would be subject to the political whims of a state or local government which would dictate the type of products, services, and loans it would offer or even mandate certain loans through political pressure. This would violate the principle of impartial allocation of credit and sound lending. It would create undue risk ultimately borne by the taxpayer. Moreover, history clearly indicates that even public banks founded for narrow, specialized purposes inevitably expand beyond their original scope. Credit unions, the Farm Credit System, and industrial loan companies have expanded well beyond their original limitations and now compete directly with community banks. Once established, a state or public bank would advocate relentlessly for additional powers to assure its longevity and survival.

Cannabis Industry Does Not Justify Creation of Public Banks. Some groups have argued that a state-owned bank is needed to service the cannabis industry. However, once community banks are legally allowed to service that industry, there will be no need for a state-owned bank for this purpose. A 2018 study of the feasibility of establishing a state bank in California to serve the cannabis industry found that such a bank would not be viable because it would be too costly to capitalize and would not return a profit for at least 30 years.[1]

National Infrastructure Bank. Certain policymakers are supporting a proposal to create a \$5 trillion national infrastructure bank. Such a proposal would create distortions in the municipal bond market used by the community banking sector to fund localized lending activities. Further, the municipal bond market, from both a supply and demand perspective, is working appropriately. There is no demonstrable need for a taxpayer-backed \$5 trillion national infrastructure bank. The Congress recently passed a \$1.2 trillion bipartisan infrastructure package without inclusion or mention of a National Infrastructure Bank.

[1] Laura Alix. “Public Bank Isn’t the Answer for California’s Pot Industry: Report.” American Banker. December 28, 2018. <https://www.americanbanker.com/news/public-bank-isnt-the-answer-for-californias-marijuana-industry-report>.

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## **TAX-EXEMPT CREDIT UNIONS**

### **Position**

- ICBA urges Congress to end the unwarranted federal tax subsidy of the credit union industry and/or promote increased tax parity between credit unions and community banks.
- ICBA staunchly opposes credit unions that exploit their tax subsidy and lax regulatory environment to acquire locally-based community banks.

- ICBA urges Congress to use its oversight authority to investigate the National Credit Union Administration's alarming failure to adequately regulate and supervise industry and to adhere to the original purpose of the credit union tax exemption.
- ICBA opposes expanded powers for credit union service organizations, which are independently-owned, for profit, and not supervised by any federal agency.
- ICBA opposes NCUA's weakening of safeguards on commercial lending and field of membership.
- ICBA opposes NCUA's approval of the largest and most complex tax-exempt credit unions' issuance of subordinated debt to institutional investors. Credit union subordinated debt allows outside investors to exploit the credit union tax subsidy and fuels runaway growth of an industry that has abandoned its founding mission to serve people of modest means.
- ICBA supports applying Community Reinvestment Act requirements to credit unions comparable to and with the same asset size distinctions as banks and thrifts.
- ICBA urges states to prohibit the placement of public deposits in tax-exempt credit unions.

## **Background**

The credit union tax exemption is based on an outdated 100-year-old law that has never been revisited. Since that time, credit unions have become larger, more complex, and bank-like in their size, powers, product and service offerings, and fields of membership – a trend that has sharply accelerated in recent years. It is past time to bring credit unions into the 21st century, revoke their privileged status, and tax and regulate them as we do comparable financial institutions. Credit unions were chartered by Congress to enable people of small means with a “common bond” to pool their resources to meet their basic deposit, savings and borrowing needs. While some credit unions operate that way today, the NCUA has enabled others to grow their membership and their markets well beyond their statutory mission.

ICBA and community banks are particularly alarmed by the recent trend of credit unions acquiring banks – effectively “weaponizing” their tax subsidy and lax regulatory standards. Larger, out-of-market credit unions are displacing smaller, locally based community banks and other credit unions, creating an environment that is less competitive, has more systemic risk, and offers fewer choices for consumers and small businesses. NCUA's recent adoption of a rule to allow credit unions to raise supplemental capital, which is a tool for outside investments in credit unions, will likely be a new source of funding for the acquisition of out of market, locally-based financial institutions.

Credit union acquisitions of community banks and their branches have accelerated rapidly, with the last five years seeing approximately a 400 percent increase over the previous five years. These deals transform taxable business activity at community banks into tax-exempt activity at credit unions, thereby shrinking the tax base, not only at the federal level but at the state and local level as well.

ICBA and the nation's community banks are calling on policymakers and the public to “Wake Up” to the risky practices, costly tax subsidies, and irresponsibly lax oversight of the nation's credit unions. Policymakers must open their eyes to the growing threats posed by credit unions' abandonment of their founding mission facilitated by their captive federal regulator, the National Credit Union Administration.

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## **Advocate for Commonsense and Appropriately Tailored Laws and Regulations for Community Banks**

*ICBA believes that regulation should be calibrated to risk posed to consumers and to the financial system. Regulation that may be appropriate for a large, systemically risky bank with dedicated and expansive compliance resources is an unwarranted burden for a community bank and a diversion of critical resources. We urge policymakers to further refine and calibrate regulation of community banks so that they may better serve their communities.*

### **ACCOUNTING AND AUDITING<sup>1</sup>**

#### **Position**

- ICBA opposes any prohibitions on the ability of community banks to classify mortgage loans and investment securities at amortized cost when the bank's intent is to collect contractual cash flows over the life of the investment.
- ICBA supports the work of the Financial Accounting Foundation's Private Company Council to seek recognition, measurement, and disclosure alternatives for smaller private companies including non-public community banks.
- When accounting standards are developed, provisions should be made for smaller financial institutions and businesses regardless of their financial statement reporting requirements so that the cost of implementing standards does not outweigh their benefit to financial statement users.
- As community banks become larger in size and more complex, FASB should not penalize their business models through more burdensome accounting policies and reporting requirements if their core business activities have not changed.
- The asset threshold under the Federal Deposit Insurance Corporation Improvement Act (FDICIA) for requiring an annual audit should be raised from \$500 million to \$1 billion, and the asset threshold for an internal control report, also required by FDICIA, should be raised from \$1 billion to \$5 billion.

#### **Background**

Recognition and Measurement. ICBA opposes restrictions on the ability of community banks to classify mortgage loans and investment securities at amortized cost under any newly proposed recognition and measurement projects. The alternative to amortized cost, fair value, is based on the exit price of a loan or security, which current fair value guidance defines as the price at which a willing buyer and seller would transact for that asset in a non-distressed market. Carrying financial instruments such as loans and securities at fair value creates a tremendous burden for community banks while providing little or no incremental benefit to investors or other financial statement users. Community banks would need to

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<sup>1</sup> See also resolution titled "[Current Expected Credit Loss Model.](#)"

implement robust pricing engines and complex valuation methodologies for their mortgage loan portfolios in order to satisfy the valuation standards required in current fair value guidance.

Private Company Council. ICBA is encouraged by the work of the Financial Accounting Foundation to promote a different approach to financial accounting and reporting for private companies, including non-public community banks, by creating the Private Company Council (PCC). The PCC is tasked with identifying current and future accounting standards that should be modified for private companies. Such modifications will help address the current financial reporting burden facing community banks by simplifying reporting requirements and reducing the cost of compliance. ICBA believes that the PCC should become a proactive member of the accounting standard setting process by participating directly with the FASB when a proposed accounting change is considered. A proactive stance by the PCC will help ensure appropriate accommodations are made for community banks when harmful accounting changes are being considered. ICBA also believes that the PCC should become central to the implementation of key accounting standard updates that impact community banks. In cases where further clarification is needed, the PCC should be the clearinghouse for managing private company implementation challenges. The PCC should set a goal of generating a separate set of accounting standards specifically tailored to nonpublic entities so that small, non-complex entities like community banks can generate meaningful financial statements without the complexity that characterizes the current financial reporting framework for for-profit entities. Difficult and burdensome concepts like fair value and credit loss measurement should be simplified and streamlined for these nonpublic entities.

ICBA believes that the PCC should consider creating a subgroup that addresses and reports on smaller financial institution accounting concerns under a separate track. Such a subgroup would be permitted to make recommendations on key accounting standards developments as they impact smaller financial institutions such as privately held community banks. The subgroup would ensure that the concerns of the smallest private financial services companies have a dedicated voice and are not overshadowed by larger financial firms.

Federal Deposit Insurance Corporation Improvement Act. ICBA supports modernizing the asset thresholds for requiring both an independent annual audit of an insured depository institution and an internal control report under the Federal Deposit Insurance Corporation Improvement Act (FDICIA). The FDICIA asset thresholds should be raised to reflect the overall increase in the size of community banks since these thresholds were last adjusted in 1993 and 2005. The asset threshold for requiring an annual audit should be raised from \$500 million to \$1 billion, and the asset threshold for an internal control report should be raised from \$1 billion to \$5 billion.

Burdens of Accounting Standards. As accounting standards become more complex, there is great merit in looking at whether all aspects of accounting and disclosure standards are necessary for all companies regardless of whether or not they file financial statements with the SEC. Accounting standards setters should take greater account of the potential impact of changes to accounting standards on community banks and other small businesses, be they private or public companies, which have fewer resources to cope with them. The costs of accounting changes must not outweigh their benefits. The PCC should become a more proactive partner in the accounting standard setting process to ensure that the burdens on small community banks are adequately addressed and reconciled. As community banks become larger and

more complex, FASB should continue to be sensitive to the burden of accounting standards by not imposing more strenuous reporting requirements simply because bank size has increased.

*Staff Contact:* James Kendrick

## **BANK SECRECY ACT AND ENFORCEMENT**

### **Position**

- ICBA steadfastly opposes the mandatory collection of beneficial ownership information of legal entities regardless of risk by financial institutions and advocates instead that this information be universally collected by FinCEN at the time an entity is formed. However, financial institutions should have access to this information to assist them in performing customer due diligence.
- ICBA strongly recommends raising Currency Transaction Reporting (CTR) and Suspicious Activity Reporting (SAR) thresholds with future increases linked to inflation to emphasize quality over quantity in reporting. Reporting should be streamlined to reduce unnecessary burden.
- ICBA supports Bank Secrecy Act/Anti-Money Laundering (BSA/AML) reforms that will ease compliance while providing more useful data to law enforcement.
- ICBA applauds the federal government for working to better inform bankers of what specific methods of terrorist financing and money laundering they are trying to prevent and to identify low-risk transactions and accounts to allow banks to better allocate and/or reallocate resources.
- ICBA recommends that community banks receive compensation for their anti-money laundering and anti-terrorist financing oversight and policing activities on behalf of the federal government either through tax credits or other financial compensation or through reduced regulatory burden in other areas.
- ICBA recommends that nonbank institutions that perform “bank-like” functions and offer comparable financial services be subject to the same AML and BSA laws and regulations as banks.
- ICBA encourages the Office of Foreign Asset Control to streamline and simplify watch-lists of terrorists for ease of reference and application by bankers.
- ICBA asks that FinCEN take a leadership role in combatting ransomware, synthetic IDs, and other types of fraud.

### **Background**

Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. However, Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance has increasingly burdened community banks with identifying, investigating, policing, and reporting potential criminal activity. Each year, community banks must invest more time, money, and resources to combat this threat. However, because BSA/AML requirements become outdated, community banks increasingly doubt their effectiveness in combating financial crime.

Beneficial Ownership Information Should Be Collected by a Government Agency. Beneficial ownership information should be collected and verified at the time a legal entity is formed, rather than requiring financial institutions to collect this information. In December of 2020, Congress passed the Corporate Transparency Act (“CTA”) which would require affected companies to submit beneficial ownership information directly to FinCEN at the time of formation. However, the CTA would not relieve community banks from their collection and verification obligations. In December of 2021, FinCEN issued a Notice of Proposed Rulemaking (NPRM) to implement legal entity reporting of beneficial ownership information to FinCEN. FinCEN also plans to revise its existing customer due diligence rules, which currently include requirements for banks to collect such information.

Reporting Thresholds Must Be Updated. Suspicious activity reporting is the cornerstone of the BSA system and is a way for banks to provide leads to law enforcement. Unfortunately, in the current regulatory environment, community bankers have a strong incentive to protect themselves from examiner criticism and liability by over-filing of SARs as a defensive practice, which dilutes their value to law enforcement. Regardless of the degree of offense, community banks are required to follow the same SAR procedure for every suspicious transaction alert. This mechanical approach makes community bankers doubtful that SARs have real value for law enforcement. Reforming the SAR process to a truly risk-based system with appropriate threshold increases would enable community banks to provide more targeted and valuable leads to law enforcement. Similar to the CTR thresholds, SAR filing thresholds have not been adjusted since becoming effective in 1992. Reporting thresholds are significantly outdated and capture far more transactions than originally intended. The Anti-Money Laundering Act of 2020 (“AMLA”) requires the Treasury to review and determine whether the thresholds should be adjusted and, to streamline CTR and SAR requirements to reduce unnecessarily burdensome requirements.

The CTR threshold, which was set in 1970, should be raised from \$10,000 to \$30,000 with future increases linked to inflation. A higher threshold would produce more targeted, useful information for law enforcement.

Bank Secrecy Act Requirements Should Be Flexible and Easily Applied. ICBA encourages continued efforts by Congress, the Treasury, FinCEN, and state and federal regulators to work with industry to establish a more efficient regime and for reducing community banks’ mounting costs and regulatory burdens associated with complying with anti-money laundering and terrorist financing laws and regulations. ICBA supports FinCEN efforts to expeditiously explore ways to enhance AML effectiveness and efficiency and provide banks greater flexibility in the allocation of resources.

The federal government should continue working with the banking industry to provide additional guidance—such as best practices, questions and answers, or commentary—that is understandable, workable, and easily applied by community banks.

FinCEN should continue its investigation and adaptation of technology to assist banks with their BSA compliance requirements. ICBA also encourages the Office of Foreign Asset Control to streamline and simplify its lists for ease of reference and application by bankers.

To better combat fraud and money laundering/muling, FinCEN should consider utilizing existing FinCEN and OFAC list mechanisms and expand their efforts to include lists of known synthetic IDs and other perpetrators of fraud related to people, businesses, and organizations. Additionally, cooperation and

coordination between the public and private sectors to combat ransomware and other types of fraud and crime should continue and expand.

Regulation Should Be All Inclusive. To ensure a consistent and balanced effort to combat money laundering and terrorist financing, the federal government should have consistent regulations across all financial services providers including nonbank entities. Additionally, the government should require reporting of only truly suspect transactions—and strive to balance those requirements against the need to respect customer privacy.

Compensation Should Be Provided for Anti-Money Laundering and Anti-Terrorist Financing Efforts. Community bankers are committed to supporting balanced, effective BSA/AML measures. However, 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 governmental, law enforcement function. As such, the costs should be borne by the government.

Communication Among Industry, Law Enforcement and the Federal Government Is Critical. Communication and cooperation are critical to an effective working partnership among the government, law enforcement, and financial institutions. Community banks seek more current information from the federal government to better understand what specific methods of terrorist financing and money laundering they are trying to prevent.

*Staff Contact:* Rhonda Thomas-Whitley, Steven Estep, and Susan Sullivan

## **COMMUNITY BANK CLIMATE CHANGE REGULATION**

### **Position**

- With decades of experience managing concentration risks and natural disasters, community banks are seasoned experts at monitoring the risk of their lending and investment portfolios and do not need additional regulation to manage their potential climate-related financial risks.
- While ICBA supports certain incentives to industries affected by climate change, we will oppose any climate risk regulation that adversely impacts community banks and their ability to support their communities and customers.
- The Financial Stability Oversight Council (FSOC), in conjunction with the banking agencies, should conduct a series of outreach meetings with community bankers prior to instituting any supervisory guidance on climate risks. To ensure that the community bank perspective is appropriately represented and that climate-risk regulation does not unfairly penalize or overburden community banks, ICBA recommends that FSOC include an individual with community banking experience on its new Climate-Related Financial Risk Advisory Committee (CFRAC).

### **Background**

Regulatory Initiatives. The Biden administration and the 117th Congress are increasingly focused on climate change and are pressuring the financial regulatory agencies to do more to address the issue. In

response, the OCC has proposed for comment a set of principles to support the identification and management of climate-related financial risks for large national banks. Furthermore, the SEC is expected to propose in early 2022 mandatory climate change disclosures for publicly held banks. FSOC issued a report calling climate change an “emerging threat to the financial stability of the United States” and recommending the regulators issue additional regulation and guidance on climate risks including using scenario analysis, where appropriate, as a tool for assessing climate-related financial risks.

Regulation is Unnecessary and Burdensome. Community banks have decades of experience managing concentration risks and are experts at knowing when and how to reduce their loan concentrations during economic downturns and how to mitigate risks. Community banks’ longstanding and tried-and-tested underwriting and insurance practices sufficiently address climate-related financial risks, as evidenced by the absence of community bank failures following weather events. Since the early 19th century, community banks have prepared for, responded to, and survived myriad natural disasters, including catastrophic hurricanes, tornadoes, flooding, droughts, wildfires, and wind events. Community banks, as stewards of their local communities, are best positioned to monitor the overall risk of their geographically limited loan portfolios and investment practices and should not be subject to overly burdensome, duplicative, or unnecessary regulations aimed at controlling climate-related financial risks posed by complex, global, and systemically important institutions. Subjecting community banks to any type of mandatory climate risk regulation, scenario analysis, or enhanced climate-disclosure requirements is not only unnecessary but will also cause many small businesses that operate within community bank footprints to be “choked off” from the financial system.

ICBA Opposes Community Bank-Adverse Climate Change Regulation. ICBA will resist efforts by lawmakers and regulators to impose or to incorporate as part of their supervision and examination of community banks: (1) hard concentration limits on any type of legal lending, including lending to fossil fuel or other carbon-intensive industries; (2) community bank stress testing or scenario analysis based on remote, highly speculative, or unquantifiable climate change assumptions; (3) mandatory climate change disclosure requirements by community banks; and (4) capital requirements based on climate risks. Mandatory climate change disclosures would be particularly burdensome and unnecessary to community banks and would be viewed similarly to “Operation Chokepoint”—i.e., an attempt to discourage banks from doing business with certain legal but disfavored industries, such as carbon-intensive industries.

Support for Targeted Incentives. ICBA supports providing incentives to industries deemed to be affected by climate change if such incentives reward current and future voluntary practices and if climate impact is verified by accurate scientific analysis. Such incentives could include carbon sequestration or other climate change mitigation efforts.

Regulators Need Community Bank Feedback. FSOC, in conjunction with the banking agencies, should conduct a series of outreach meetings with community bankers prior to instituting any supervisory guidance on climate risks. The purpose of these outreach meetings would be to gather evidence on how community banks are successfully managing climate risks and how burdensome additional “one-size-fits-all” climate risk supervision would be for the community banking industry.

To ensure that the community bank perspective is appropriately represented, and that climate-risk regulation does not unfairly penalize or overburden community banks, ICBA recommends that FSOB include an individual with community banking experience on its new Climate-Related Financial Risk Advisory Committee (CFRAC). Furthermore, in addition to gathering information on climate-related financial risks from a broad array of stakeholders, CFRAC should also examine how community banks currently and successfully incorporate climate risks into their lending and investment strategies.

*Staff Contacts:* Chris Cole, Jenna Burke

## CONSUMER FINANCIAL PROTECTION BUREAU

### **Position**

- ICBA supports legislation that would replace single-director governance of the Consumer Financial Protection Bureau (CFPB) with a five-member commission. Prudential banking regulators should actively participate in the consumer protection rule-writing process and the CFPB's governance.
- Banks with assets of \$50 billion or less should be exempt from examination and enforcement by the CFPB and instead be examined and supervised by their prudential regulators for compliance with consumer protection regulations.
- ICBA supports granting the CFPB additional statutory authority to exempt or tier regulatory requirements for community banks and/or community bank products and services where appropriate.
- ICBA supports a balanced regulatory system in which all firms that offer financial products and services, including non-banks, are subject to meaningful supervision, examination, and enforcement. ICBA strongly urges the CFPB to concentrate its efforts and resources on greater supervision of irresponsible actors that are not regularly examined.
- ICBA urges the CFPB to ensure that adequate small entity public input is sought and considered by enhancing the Small Business Regulatory Enforcement Fairness Act (SBREFA) process to allow additional time for small entity representatives to fully discharge their duties on the panel and by streamlining the notice of proposed rulemaking and final processes.

### **Background**

Strengthened Participatory Governance and Rulemaking. Replacing single-director governance with a five-member commission would allow for diverse views and expertise on issues before the CFPB and build in a system of checks and balances. A commission would promote measured and non-partisan agency decision making which would more likely result in balanced, high-quality rules and effective consumer protection.

Community Bank Exemptions. While the Dodd-Frank Act allows the CFPB to exempt smaller financial institutions – including community banks – from its rules, it has been reticent to use this authority. Consequently, community banks which did not cause the problems the CFPB seeks to address are too often forced to comply with rules intended to target bad behavior by larger financial services providers. Clearer statutory direction would help alleviate this burden. Arbitrary requirements that do not take into

account the relationship-based community banking model reduce consumer choice and end up hurting the very consumers they are meant to protect. Additionally, regulation should not be overly prescriptive and deprive consumers of their ability to make financial services decisions.

Better Risk Targeting of Exam Resources. Raising the exemption level for CFPB examination and enforcement from \$10 billion in assets to \$50 billion would enhance consumer protection by allowing the CFPB to concentrate on the greatest threat to consumers: megabanks and non-bank financial services providers. Banks of less than \$50 billion in assets would continue to be examined for compliance with CFPB rules by their prudential regulators. Community bank supervision is more balanced and effective when a single regulator examines for both safety and soundness and consumer protection.

*Staff Contacts:* Rhonda Thomas-Whitley and Michael Emancipator

## **CURRENT EXPECTED CREDIT LOSS MODEL**

### **Position**

- ICBA opposes any implementation of the current expected credit loss (CECL) model for small community bank loans and investment securities by the banking regulators that contradicts the view of the FASB that smaller community financial institutions should utilize existing processes to project future credit losses when providing for the loan loss provision.
- ICBA has supported FASB's previous decisions to delay implementation of CECL for non-publicly traded community banks but now believes that banks that are not yet required to adopt CECL should be exempt from CECL adoption permanently.
- ICBA supports legislation that would stop the implementation of CECL pending study of the impact of the new standard on lending trends in underserved communities.
- Regulators should continue to supply small community banks with clear, practical, and easy-to-implement methodologies for calculating the periodic provision for estimated credit losses. These methodologies should allow for the seamless incorporation of existing processes.
- For community banks that do introduce modeling into their loan loss provisioning processes, inputs to models should be community or transaction specific and not based on more global economic factors that may be difficult to source, maintain, or apply in a practical manner.
- Examination processes related to model validation and process management should be published for public comment and incorporated into agency guidance on prudent credit risk management.
- ICBA recommends caution and due skepticism in the consideration of third-party vendor solutions. External loan loss estimation methodologies and data stores should be considered only when the size and scale of loan operations warrant such an alternative.
- ICBA supports regulatory capital relief for community banks as they adopt CECL in the form of a phased implementation of the cumulative effect adjustment on the opening balance of retained earnings.

## **Background**

ICBA opposes any impairment model for portfolio loans and investment securities that would increase costs and regulatory burdens for small community banks. The initial version of FASB's CECL model would have required small community banks to use complex cash flow modeling to generate expected losses over the life of the loan or security. Such modeling would have required community banks to dedicate valuable resources to model selection, testing, production, and maintenance in addition to extensive data sourcing, warehousing, and administration. This expenditure of resources would have limited community banks' potential for loan growth and constricted economic expansion in local communities.

Fortunately, in its final version of the standard, FASB determined that smaller institutions should be allowed to utilize existing processes to project future credit losses. These include spreadsheets, narratives, and other noncomplex estimation efforts. Bank regulators have expressed a willingness to accept forward projections of future losses using these existing tools and process as well, though many details surrounding appropriate techniques for estimation of future losses have yet to be determined. ICBA supports the agency rule that allows a three-year phased implementation of CECL as it impacts common equity tier 1 capital on the date that a bank adopts CECL. ICBA had requested that the phase-in period be extended to five years to allow for unforeseen economic conditions that could introduce stress into community bank capital balances. For this reason, ICBA also supports recent amendments to the standard to delay implementation for smaller community banks as well as legislative proposals to delay the standard's implementation until its impact on underserved communities can be studied. In particular, ICBA is concerned that in difficult economic conditions large financial firms could severely curtail lending offerings to subprime borrowers in order to limit the impact on the allowance for credit losses in the financial statements.

ICBA has long supported FASB's CECL delays that allow most community banks to defer CECL until 2023. However, ICBA believes that the costs and implementation burdens of adopting CECL for smaller community banks outweigh any benefits that would be realized through such adoption. Therefore, the community banks that are currently not required to adopt CECL until 2023 should be permitted to continue with the current incurred loss methodology for measuring credit losses indefinitely. These banks represent all privately held institutions and SEC filers that are not large accelerated filers or accelerated filers. If FASB is unwilling to indefinitely suspend CECL for these banks and their bank holding companies, FASB should further delay the implementation of CECL for these banks until 2025 to allow for more time to consider adoption.

It is imperative that ICBA and community banks play an active role in the implementation of the final standard to ensure regulators honor FASB's position that small community banks should not be required to implement complex modeling techniques.

For larger community banks and those that choose to adopt a cash flow modeling approach, modeling inputs should not be more difficult to source, maintain, and apply than is warranted by the underlying risks being identified and measured. Only community banks that have thoroughly studied and investigated third-party CECL vendor solutions should consider using those approaches as an alternative

to internally generated forecasting solutions. “Best practices” with regard to model inputs that may be appropriate for larger institutions must not become de facto requirements for community banks. Finally, regulators must be transparent in their assessment of community bank credit risk management processes. They should publish formal proposed guidance for comment that allows community banks of all sizes to meet examiner expectations for sound risk management policy.

*Staff Contact:* James Kendrick

## **IRS FINANCIAL ACCOUNT REPORTING**

### **Position**

- ICBA opposes legislative or administrative proposals to require banks, credit unions, and other financial entities to report account transaction data to the IRS. We oppose these proposals regardless of thresholds, transactions exemptions, or other efforts to target or narrow reporting.

### **Background**

In an effort to increase tax compliance, the Administration has proposed a requirement that banks, credit unions, and other financial entities report account data on an annual basis to the Internal Revenue Service. This blanket data collection would amount to an effort to profile American taxpayers. The Administration subsequently amended the proposal to limit its scope by raising the *de minimis* threshold and exempting certain types of transactions. ICBA, community banks, and a majority of the American public strongly oppose these proposals for the reasons described below.

#### **IRS Account Reporting Would Compromise Americans’ Financial Privacy.**

Account reporting would amount to an intrusion on Americans’ privacy unsupported by any grounds for suspicion of tax evasion. As such, it would violate Americans’ fundamental due process rights. Tax liability is based on income. The volume or amount of transactions is unrelated to a taxpayer’s income and must remain private financial data.

#### **IRS Account Reporting Would Undermine Efforts to Bring More Americans into the Banking System.**

Intrusive account reporting would undermine the important policy goal of reducing the unbanked population and would potentially drive more Americans out of the banking system. Polling indicates that majorities of Americans do not trust the IRS to monitor their deposit and withdrawal information. In many American communities, there is a high level of distrust of government in general and the IRS in particular. These include certain marginalized communities as well as those recently arrived from authoritarian regimes that spy on their citizens. This distrust is a primary reason why too many Americans opt-out of the banking system.

Data Security. Americans are concerned about the IRS’s poor record of data security which exposes taxpayers’ data, compromises their privacy, and makes them vulnerable to identity theft. In an

environment of frequent data breaches and internal leaks, privacy and enhanced security of taxpayer data must take precedence over the mass collection of new data.

Additional Data Would Make Tax Compliance More Complex. We are concerned that the Treasury proposal would create taxpayer complexity and confusion. Taxpayers will likely have to receive new or modified 1099s for every account they hold containing funds flow information that may not be relevant to their tax liability. Giving taxpayers more forms and more data to sort and evaluate will make tax compliance more difficult. Tax simplicity is an important goal that promotes tax compliance.

Burden on Bank Resources. Community banks object to the resource use associated with implementing an expansive new reporting regime. Banks currently allocate significant resources to Bank Secrecy Act compliance among numerous other reporting requirements. Community bank resources would be better allocated to serving customers and communities, rather than diverted to implementing additional financial reporting.

No Version of Account Reporting is Acceptable. The problems with account reporting proposals are too fundamental to be fixed by a higher threshold or by attempting to exempt certain account flows. A threshold of \$10,000, for example, would capture a worker with minimum wage-level deposits over the course of a year. Attempts to exempt payroll and other deposits are essentially unworkable because it is impossible to identify such payments reliably or consistently.

Given these realities, a bank would resort to applying its judgement in deciding which payments are exempt and which are not – leading to uneven application of the exemptions and customer frustration. Efforts to fix a fundamentally flawed proposal only compound its complexity and unworkability.

*Staff Contacts:* Alan Keller and Steve Keen

## **LIBOR TRANSITION**

### **Position**

- ICBA supports the Paced Transition Plan of the Alternative Reference Rate Committee (ARRC) to transition the banking industry away from the London Inter-bank Offered Rate (LIBOR).
- ICBA recognizes the advantages of the Secured Overnight Financing Rate (SOFR) but has ongoing concerns about its effect on community banks.
- ICBA encourages all community banks to review their LIBOR-based instruments and contracts to ensure that they include adequate fallback language and an alternative reference rate contingent on the discontinuance of LIBOR.
- ICBA calls upon the ARRC and prudential banking regulators to ensure that the integrity of current community bank financial contracts is not harmed by a transition to SOFR and that community banks and their customers are not adversely impacted by any transition.
- ICBA supports recently introduced legislation to resolve legacy LIBOR contracts that cannot clearly be transitioned to SOFR or an alternative reference rate.

## **Background**

There is an estimated \$200 trillion in financial contracts referencing USD LIBOR that could be adversely impacted if LIBOR is discontinued in 2021. ICBA has served as a member of ARRC since 2018 and supports the Committee's Paced Transition Plan for transitioning the industry away from LIBOR.

ICBA also supports the development of an alternative reference rate. One such possibility is the Secured Overnight Financing Rate (SOFR), which has many advantages. SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities. Transaction volumes underlying SOFR, averaging over \$1 trillion of daily trading, are far larger than the transactions in any other U.S. money market and dwarf the volumes underlying LIBOR.

Despite these advantages, ICBA has concerns that SOFR will not consistently and accurately reflect the costs of all types of lending, particularly unsecured lending. The ARRC should ensure that smaller financial institutions are not ignored in the transition from LIBOR to SOFR by playing close attention to the interests of community banks and their contractual relationships with customers. Neither community banks nor their small business customers should be penalized through a forced contractual modification.

ICBA is encouraging all community banks to review their LIBOR based instruments and contracts and amend them to provide for adequate fallback language and an alternative reference rate contingent on the discontinuance of LIBOR. The ARRC has been providing recommended language to amend cash and derivative instruments, and the Federal Reserve Bank of New York, the administrator and producer of SOFR, is now publishing SOFR rates and plans to publish compound averages of SOFR so that term rates can be utilized.

ICBA supports recent legislation (H.R. 4616, The Adjustable Interest Rate (LIBOR) Act) introduced in Congress to remedy legacy contracts that cannot be efficiently transitioned away from LIBOR as a reference rate. ICBA believes that a robust solution is needed to address existing LIBOR contracts that do not have a workable fallback provision in the event that LIBOR cannot be relied upon as a legal reference rate.

*Staff Contacts:* Chris Cole and James Kendrick

## **PUBLICLY HELD COMMUNITY BANKS AND THE SECURITIES AND EXCHANGE COMMISSION**

### **Position**

- ICBA commends the SEC for issuing rules that would (i) significantly expand the number of nonaccelerated filers which are exempt from the auditor attestation requirements of SOX 404(b); (ii) simplify and reduce duplicative disclosure requirements for SEC filings; (iii) simplify private offering rules; (iv) amend the shareholder proposal process; and (v) regulate proxy advisers.

- ICBA strongly opposed the SEC proposal to raise the reporting threshold to \$3.5 billion from \$100 million for Form 13F reports filed by institutional investment managers.

## **Background**

SOX 404(b) Relief. ICBA strongly supports the recent SEC’s final rules regarding nonaccelerated filers that expanded the nonaccelerated filer definition to include “smaller reporting companies” – those with market capitalizations of less than \$700 million and total annual revenues of less than \$100 million. Not only are these companies exempt from the auditor attestation requirements of SOX 404(b), but they may take advantage of scaled disclosure requirements. ICBA supports expanding the nonaccelerated filer definition even further to include all smaller reporting companies with market capitalizations of less than \$700 million regardless of their total revenue. In other words, the total revenue test should be eliminated from the definition of nonaccelerated filer.

Proxy Advisory Firms. ICBA commends the SEC’s new rules on proxy advisory firms that promote greater transparency among the two firms that dominate the industry—ISS and Glass Lewis. Under the new rules, proxy advisors will be forced to publicly disclose (i) their material conflicts of interest and (ii) their policies regarding how a registrant may respond to the proxy advisory’s advice to the registrants’ stockholders.

SEC Simplifies Disclosure Rules. ICBA also supports the SEC simplifying and eliminating duplicative disclosure requirements for SEC filers which will mitigate the reporting burden of smaller reporting companies. ICBA commends the SEC for simplifying the private offering rules particularly with respect to Rule 144 offerings which will help community banks raise capital.

Reporting Thresholds for Form 13F filings. Press reports indicate that the SEC shelved its proposal to raise the reporting threshold for Form 13F reporting from its present level of \$100 million to \$3.5 billion. ICBA opposed the proposal because it would impair the ability of many publicly held community banks to identify their most active shareholders and engage with them.

*Staff Contact:* Chris Cole and Jenna Burke

## **QUARTERLY CALL REPORT**

### **Position**

- Community banks that are highly rated and well capitalized should be permitted to file abbreviated, short-form call reports with only key financial information for the first and third quarters of the calendar year. At mid-year and year-end, these banks would file the full form call report.
- The agencies’ call report relief for community banks as required S. 2155 fails to provide adequate relief and falls well short of congressional intent.

- Recent expanded use of the community bank call report as an information gathering tool for consumer protection regulation damages the effectiveness of the information provided and diminishes the use of the call report as an effective safety and soundness measurement metric.
- Efforts by the Federal Financial Institution Examination Council (FFIEC) to streamline the call reporting process by community banks, while appreciated and supported, will not provide meaningful regulatory relief without the elimination of entire reporting schedules.
- Prudential banking regulators should tailor quarterly reporting requirements to the risk of the individual institution to the safety and soundness of the domestic banking system.

## **Background**

Community banks with less than \$1 billion in assets must complete 51 pages of call report forms each quarter. Banks above this threshold must complete 80 pages of forms each quarter. Ever-expanding schedules fail to support the utility of the call report as a vital safety and soundness metric for prudential regulators. ICBA's call report survey found that the annual cost of preparing the call report has increased for 86 percent of survey respondents over ten years. The call report now represents a significant regulatory burden that diverts critical staff from completing other important tasks within the institution.

With the passage of S. 2155, Congress recognized the unreasonable burden the call report places on community banks and directed the banking agencies to provide relief. Unfortunately, the agencies' implementation of S. 2155 call report relief failed to meet congressional intent and was a significant disappointment to community banks.

The most effective short-term solution to this problem is to permit highly rated and well-capitalized community banks to file a short-form call report for the first and third quarters of each calendar year with full call reports filed at mid-year and year end. The short-form call report would include the income statement, balance sheet, and statement of changes in shareholders' equity, which provides the information needed by regulators to provide prudent oversight over such short reporting intervals.

In 2019, the FFIEC implemented a community bank call report, the 051 reporting form, that includes the elimination of certain reporting elements generally not applicable to community banks. Additionally, the Council indicated that it would continue to consider the removal of data items that the banking agencies do not need to maintain their safety and soundness supervisory activities. While such endeavors are appreciated and supported by ICBA, the regulators should also focus their attention on the frequency of items reported by community banks and whether the reporting of certain schedules on a quarterly basis adds meaningful value in the determination of the safety and soundness characteristics of a community bank. Regulators must provide real relief for community banks by adopting a true short-form call report.

ICBA continues to believe that regulatory reporting through the call reporting process should be tailored to the size and complexity of the financial institution. Smaller banking organizations like community banks should require very little quantitative reporting requirements simply because their community-driven business models keep them from taking excessive risk or acquiring leverage exposure that is difficult to unwind in a financial downturn. Regulators should continue their efforts to shrink call reporting items for smaller community banks to ensure that the call report does not burden these banks. The FFIEC should ensure that bank size is not the sole criterion of the call reporting framework.

Community banks that increase in size but are not engaging in new business activities should be permitted to file abbreviated call reports.

*Staff Contact:* James Kendrick

## **REGULATORY CAPITAL**

### **Position**

- ICBA supports strong capital requirements for all banks and their respective holding companies. ICBA continues to support the community bank leverage ratio (CBLR) but does not support the 9 percent reporting threshold.
- Basel III continues to be punitive and to inhibit lending for community banks that do not elect or do not qualify for the 9 percent CBLR. ICBA supports a full exemption from Basel III for non-systemically important financial institutions (non-SIFIs) or amendments as discussed in the background of this resolution.
- Capital standards should not disadvantage community banks relative to credit unions.
- Banking regulators should not impose liquidity coverage ratio restrictions on high-quality investment securities that would impact the liquidity of those securities for community banks. ICBA supports Congress' efforts to expand the types of municipal securities that can be categorized as high-quality liquid assets when calculating a bank's liquidity coverage ratio. ICBA also believes that Fannie Mae and Freddie Mac securities should qualify as high-quality liquid assets.
- Banking regulators should propose capital modifications that ease the burden of COVID-19-related credit losses and fair value declines on investment securities.

### **Background**

Basel III. The originally proposed Basel III capital rules failed to recognize that community banks were not the cause of the financial crisis of 2008-09. Their simplified balance sheets, conservative lending, and common-sense underwriting shielded their regulatory capital from the losses incurred by large, complex, internationally active and interconnected financial institutions. ICBA achieved major victories in the final Basel III rule. In addition, the community bank leverage ratio (CBLR) allows banks with total consolidated assets of less than \$10 billion to escape the regulatory burden of Basel III by adopting a simple, straightforward capital calculation. ICBA is disappointed that the CBLR was set at 9 percent rather than 8 percent. At minimum, regulators should drop the CBLR to 8.5 percent to address the temporary but penalizing changes in community bank balance sheets caused through various pandemic stimulus programs. Regulators should also work toward a permanent 8 percent CBLR as a more practical alternative for community banks that execute a straightforward lending business model.

Recognition of ALLL Loss Absorption. Basel III largely fails to recognize the loss absorption abilities of ALLL and does not permit its inclusion in tier 1 capital. This failure is based on the agencies' erroneous view that the allowance represents losses already present within a financial instrument. FASB's CECL

accounting guidance clarifies that the allowance actually represents the first layer of the capital cushion to absorb bank losses. As such it should be included in tier 1 capital. Moreover, because the CECL accounting guidance requires the allocation of more capital to ALLL, it results in a larger omission from tier 1 regulatory capital calculations. ALLL should be included in tier 1 capital in an amount up to 1.25 percent of risk weighted assets, and the remaining balance of ALLL should qualify for inclusion in tier 2 capital. (ICBA policy resolution titled: “Current Expected Credit Loss Model” recommends a five-year transition period for regulatory capital calculations at the point that a bank adopts CECL.)

Basel III Punishes Mortgage Servicing. Basel III punishes community banks that service mortgage loans by severely lowering the threshold deduction for holding mortgage servicing assets (MSAs) as well as almost tripling the risk weight assigned to MSAs when they are not deducted. The threshold deductions for mortgage servicing assets should be raised from 25 percent of common equity tier 1 capital to 50 percent of tier 1 capital. Additionally, for mortgage servicing assets that are not deducted, the risk weight should be restored to 100 percent from the overly punitive 250 percent. Regulators have not presented any evidence that community bank MSAs made any contribution to the financial crisis of 2008 and 2009. In fact, in an environment where banks are being asked to consider interest rate sensitivity in their balance sheets, MSAs are a natural hedge against rising interest rates. Regulators must recognize the value of MSAs and adjust deductions to a level closer to their pre-Basel III levels for both the current regulatory capital framework and the community bank leverage ratio.

High Volatility Commercial Real Estate. ICBA supports a more narrow definition of HVCRE in response to the passage of S. 2155. This important legislation has allowed community banks to appropriately assign the 100 percent risk weight to quality acquisition, development and construction (AD&C) loans that would otherwise face capital surcharges. ICBA favors removal of the HVCRE designation altogether for community banks. Regulators have not demonstrated heightened risk with HVCRE loans, especially those originated by community banks. Well underwritten AD&C loans promote construction industry job creation and economic development in communities across the country. ICBA opposes agency actions to expand the definition of HVCRE loans based on their land development characteristics in a financing transaction.

High Quality Assets Must Be Recognized Under Liquidity Coverage Rules. ICBA believes that municipal debt as well as Fannie Mae and Freddie Mac mortgage-backed securities should be categorized as high-quality liquid assets, commensurate with their treatment in the capital markets, under liquidity coverage ratio rules. Failure to so categorize these widely held securities will reduce their liquidity and adversely impact their fair values.

***Staff Contact:*** James Kendrick

## SUPERVISORY ENVIRONMENT

### **Position**

- Community banks generally have been pleased with the exam environment during the pandemic. ICBA commends the banking agencies for implementing off-site examination practices and encourages the regulators to permanently adopt a hybrid examination process that leverages off-site supervision work when practicable.
- As the pandemic continues, and in its eventual wake, ICBA urges examiners to be flexible with regard to bank capital levels. Stimulus payments and PPP loans have created an abrupt and persistent inflation of balance sheets and have created pressure on capital positions. This should not be viewed as “organic growth,” but rather an effect of the government’s response to the pandemic that warrants fair regulatory treatment and relief from asset thresholds.
- ICBA will resist efforts by the regulators to impose hard concentration limits on any type of lending, including lending to fossil fuel or other carbon-intensive industries. ICBA will also oppose disclosure requirements and scenario analysis based on adverse, remote, highly speculative, or unquantifiable climate change assumptions.
- The banking industry should not be used as a lever to reduce carbon emissions (in the manner of the FDIC’s prior “Operation Choke Point”) through undue scrutiny of loans to carbon-intensive industries or disclosure requirements.
- Community banks are concerned that certain restrictions or practices that apply to the largest banks will come down to their level as “best practices.” Examiners should not apply large bank practices to community banks that operate according to a different, less complex, and more conservative business model.
- ICBA opposes a supervisory process that places community banks at a competitive disadvantage to larger institutions and non-bank financial institutions due to inconsistent or lack of oversight.
- ICBA supports legislation that would reform the appellate process for agency decisions or actions and allow bankers to appeal to an independent council or ombudsman office an adverse determination made by an examiner in an exam report. The FDIC’s recent replacement of the Supervision Appeals Review Committee with the newly created Office of Supervisory Appeals is a positive step, and ICBA encourages the other banking agencies to similarly review and modify their internal review processes.
- ICBA supports regulation that would limit the use of Matters Requiring Attention (MRAs) to violations of law, regulation, or material safety and soundness issues.

### **Background**

Community Bank Supervision. ICBA strongly advocates for an environment where regulators and financial institutions work together to help consumers and small businesses have access to financial products and services. An atmosphere of “gotcha” examination and supervision – which was common before the pandemic – where community banks are exposed to legal and compliance risk for minor, inadvertent calculations or documentation errors, is inappropriate and counterproductive. There should be latitude for informal dialogue. Not every minor suggestion made during an exam should be formally

recorded as a “Matter Requiring Attention.” These should be limited to violations of law, regulation, or material safety and soundness concerns. Examiners should use reasonable judgement and respect in the conduct of exams. A more flexible approach would allow for less guarded interactions and a more productive partnership between bank management and examiners. Additional concerns include:

- Compliance exams have broadened in scope and a wide range of loans and disclosures have become subject to scrutiny under fair lending, Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) and the Truth-in-Lending Act.
- Regulatory agreements that limit a bank’s ability to declare dividends harm shareholders and make it more difficult for the bank to raise capital.
- Hard concentration limits on any type of lending, including commercial real estate (CRE), agricultural, or residential mortgage lending will reduce credit availability and harm economic growth.

Applying “Best Practices” to Community Banks. Community banks are concerned that certain restrictions or practices that apply to the largest banks will come down to their level through the examination process as encouraged or expected “best practices.” Examiners should not apply large bank practices to community banks that have a different, less complex, and more conservative business model. Examiners also should not criticize community banks in their final written examination reports for not complying with “best practices” unless the criticism involves a violation of bank policy or regulation. Industry “best practices” should be transparent and sufficiently known throughout the industry before they are cited in an examination report.

Exam Appeals. ICBA supports legislation that would reform the procedure for seeking review of an agency decision or action resulting from an exam, including classification of a loan, an exam rating, or the adequacy of loan loss reserve provision. Currently, bankers can seek review of these actions or decisions within the agency internally or through its ombudsman’s office. However, these appeals are usually not successful. Furthermore, community bankers often choose not to appeal out of fear of retaliation.

ICBA supports legislation that would allow bankers to appeal to an independent council or ombudsman office that would prohibit any sort of retaliation against the bank for exercising its right of appeal. ICBA supported the FDIC’s recent efforts to replace the Supervision Appeals Review Committee with a more independent Office of Supervisory Appeals. However, we further recommend expanding the reviewing panel within the Office of Supervisory Appeals from three to five members and requiring that two of the members be either former community bankers or attorneys that have represented community banks on supervisory issues.

Impact of Climate Change Initiatives. Congress, the White House, and the Agencies are increasingly focused on the intersection of climate change and the financial industry. Some wish to use finance as a lever to force the reduction of carbon emissions. Others are concerned about the potential impact of climate change on asset values. ICBA believes we will see proposals for monitoring and disclosure of bank loan portfolios’ exposure to carbon-intensive industries, stress testing based on adverse climate change assumptions, and concentration limits. ICBA will oppose these initiatives. Community banks must

not be a mechanism for a forced reduction of carbon emissions. Moreover, because they know their customers and communities, community banks are best positioned to monitor the risk of their own portfolios and banking practices.

**Staff Contact:** Chris Cole and Jenna Burke

## **TAX POLICY**

### **Position**

- Tax laws should promote robust economic activity and a vibrant community banking sector and foster saving and investment.
- The 2017 Tax Cuts and Jobs Act has provided significant tax relief for community banks and their customers. Community bank tax savings support community lending and investment in workforce, technology, and physical infrastructure. ICBA will advocate for no increase in the corporate rate and permanent extension of the individual provisions, including the deduction for pass-through income (Section 199A), a top individual rate of no more than 37 percent, preferential tax rates for capital gains, and an adequate estate tax exemption, before their scheduled expiration in 2026. Section 199A should not be capped or phased out, and the net investment income tax (NIIT) should not apply to the active income of Subchapter S shareholders.
- ICBA opposes any new bank-specific fees, punitive new tax levies, transaction taxes, limitations on the deductibility of FDIC premiums, or other proposals specifically targeting the financial services sector. Additionally, ICBA will continue to oppose any legislation – tax or non-tax – that requires revenue offsets or “pay fors” that target the banking industry, in particular account reporting to the IRS. (See “IRS Account Reporting” resolution.)
- Public policy should support community banks’ ability to raise capital including allowing S corporation banks to issue preferred stock, increasing their shareholder limits, and allowing new IRA shareholder investments.
- ICBA supports the creation of tax incentives for community bank retained earnings and community bank lending to low-to-middle income people, small businesses, and small farms.
- The tax code should create parity among all providers of financial services. Credit unions, Farm Credit System lenders, and community banks offer similar products and services and should be taxed equivalently.
- Banks in compliance with the Bank Secrecy Act are performing a governmental function and should receive a tax credit equal to the cost of compliance. See discussion under Bank Secrecy Act resolution.
- ICBA opposes changes that would effectively increase the taxation of estates, including taxation of capital gains at death and eliminating or curbing stepped up basis in the valuation assets. Such changes would jeopardize the inter-generational transfer of many community banks. Government revenues should not be overly dependent on taxation of wealth, high incomes, or estates. Such policies carry unintended consequences for economic growth and wages.
- ICBA opposes any new limitations on Section 1031 exchanges.

## **Background**

Tax Policy and Community Banks. ICBA continues to promote tax and budget policies that foster economic growth and support the community bank 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 source of lending for consumers, small businesses, and farms.

The Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, signed into law in December 2017, provides significant tax relief for both C corporation and S corporation community banks. C corporations are taxed at a rate of 21 percent. S corporation shareholders are generally eligible for a 20 percent deduction of their business income under Section 199A. Among other significant changes, the law generally preserves the interest deduction for business borrowers, which had been targeted for elimination, reduces individual tax rates, increases the standard deduction, and increases exemption levels for the individual alternative minimum tax and the estate tax. ICBA views the 2017 law as a missed opportunity to eliminate or curb tax subsidies for credit unions and Farm Credit System lenders. ICBA will press for extension of the individual provisions without modification, including the pass-through deduction, individual rate structure, lower tax rates for capital gains, and AMT and estate tax relief, well before they are scheduled to expire at year-end 2025. ICBA will oppose any effort to increase the corporate rate.

Tax Code Changes Proposed in 2021 Would Jeopardize Community Bank Viability and Independence. ICBA opposes certain tax provisions under consideration as part of the Build Back Better Act. These ill-advised tax increases come at the expense of community bank capital needed for local lending, business investment and expansion, and hiring. As a package, the impact of these deeply troubling tax changes will be devastating to the continued independence of American small businesses. Objectionable provisions include: The imposition of a 3.8 percent net investment income tax (NIIT) on the income of active Subchapter S shareholders; an increase in the corporate tax rate; an increase in the tax rate on capital gains; an increase in individual ordinary income tax rates; proposals to cap or phaseout of the deduction under Tax Code Section 199A for shareholders in Subchapter S community banks and other pass-through small businesses; proposals to tax capital gains at death or modify the stepped up basis of assets in an estate; limitations on Section 1031 exchanges which are widely used not only in rural areas but in all parts of the country to limit capital gains taxation of farmland and other commercial land.

New Capital Options for Subchapter S Banks. Subchapter S banks need new options to satisfy higher demands for capital from their regulators. These include allowing S corporation banks to issue preferred stock, increasing their shareholder limits, and allowing new IRA shareholder investments.

Tax Incentives for Community Bank Retained Earnings and Targeted Lending. Carefully designed tax incentives for community bank lending would lower credit costs for targeted borrowers and help community banks diversify their loan portfolios and comply with the Community Reinvestment Act. ICBA believes tax incentives should support community bank lending to low-to-middle income individuals, small businesses, and small farms. Tax relief for community bank retained earnings would strengthen community banks and allow them to better serve their communities.

Parity in Taxation of Financial Services Providers. Many of today’s tax-exempt credit unions and Farm Credit System (FCS) lenders are multi-billion-dollar entities. New rules from the National Credit Union Administration (NCUA) will further blur the distinction between credit unions and community banks. Many community banks that serve urban and suburban areas have already been squeezed out of consumer lending by tax-subsidized credit unions. Now, community bank commercial lending is also under threat. FCS lenders pose a similar threat to agricultural community banks. Credit unions and FCS lenders are becoming the equivalent of banks and should be taxed equivalently.

Estate Tax. The estate tax jeopardizes the succession of 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 to other community banks or, frequently, to larger regional or national banks, coupled with a recent surge in regulatory burden, accelerate the current trend toward consolidation in the banking sector. As noted above, the Tax Cuts and Jobs Act temporarily doubles the estate tax exemption through 2025. ICBA will advocate for permanence of the higher exemption level before it expires and will oppose changes, such as those noted above in the discussion of Build Back Better Act proposals, that would effectively increase the taxation of estates.

Bank-Specific Revenue Raisers. ICBA is strongly opposed to any bank or finance-specific revenue raisers whether they be taxes intended to reduce the trading of financial assets or offset the cost of tax cuts. Moreover, in recent years, Congress and the Administration have increasingly turned to the banking sector as a source of revenue, or “pay fors,” to offset the cost of new spending wholly unrelated to the sector. These have taken the form of taxes, fees, revenue cuts, and tax compliance measures administered by banks. The banking sector must not serve as a revenue source for unrelated spending. ICBA will oppose such measures even when they exempt community banks. (See also, “IRS Account Reporting” resolution.)

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## **TIERED REGULATION FOR COMMUNITY BANKS**

### **Position**

- Community banks need regulatory relief to support the financial needs of their customers, serve their communities, and contribute to their local economies.
- ICBA urges Congress and the regulatory agencies to continue to expand and refine a tiered regulatory and supervisory system that recognizes the significant differences between community banks and large, complex institutions in terms of the risks they pose to consumers and to the financial system.
- To preserve their original purpose and remain aligned with an evolving financial services landscape thresholds for regulatory accommodations and exemptions based on asset size, risk profile, and transaction volume should be continually reviewed and adjusted upward as community banks consolidate and the average asset size of banks increases.

## Background

Regulatory requirements and onerous supervisory expectations increase compliance costs, strain employee talent retention and recruitment efforts, and disproportionately burden community banks. These burdens diminish community banks' ability to attract capital, support the financial needs of their customers, serve their communities, and contribute to their local economies. Large banks have massive, dedicated legal and compliance staff and can more easily absorb regulatory costs. Credit unions and other nonbank institutions, such as industrial loan companies (ILCs) and fintech companies that perform "bank-like" functions and offer comparable products and services are not subject to the same taxation, laws, and regulations as community banks. This uneven field places community banks at a competitive disadvantage and inhibits their ability to direct resources toward their customers. In addition, unreasonable regulatory requirements serve as a barrier to entry for investors who might otherwise contemplate the formation of de novo banks. Without the entry of a sufficient number of de novo banks to offset consolidation, the industry has become progressively more concentrated to the detriment of individuals, families, local communities, and small businesses. Both investment and risk are flowing outside the regulated banking system where non-bank entities are not subject to comparable constraints.

The CARES Act, which was passed in April 2020 in response to the COVID-19 pandemic, contained several ICBA-supported regulatory relief provisions including temporary relief from troubled debt restructurings (TDR) and FASB's Current Expected Credit Losses (CECL), as well as instituting a temporary community bank leverage ratio (CBLR) of 8 percent in 2020 and 8.5 percent in 2021. To mitigate the impact of community bank participation in the Paycheck Protection Program (PPP), the receipt of economic stimulus monies, and the resulting swell of deposits held by community banks, the regulatory agencies temporarily changed the asset thresholds for a number of regulatory requirements including the accounting and audit requirements under Part 363 of the FDIC regulations, the requirements for an 18-month exam cycle, the Small BHC Policy Statement, and the eligibility requirements for using the CBLR framework. The FDIC also issued rules to mitigate the impact of PPP on deposit insurance assessments. In 2022, ICBA will continue to advocate that these temporary regulatory relief measures be made permanent, or in the alternative, be extended through 2022 to allow deposit runoff and the return of pre-pandemic deposit levels.

ICBA's community bank agenda for the 117th Congress encompasses regulatory relief priorities such as the removal of barriers to entry for de novo community banks, reforms relating to minority depository institutions, modernization of Bank Secrecy Act reporting thresholds, a community bank exemption from Section 1071 of the Dodd-Frank Act which would impose HMDA-like reporting requirements for small business loan applications, and an extension of the 8.5 percent CBLR. ICBA's agenda also includes a range of proposals that would create a more competitive landscape, strengthen cyber and data security, preserve and strengthen community bank mortgage lending, and provide tax relief, among other priorities.

For 2022, ICBA will also pursue further regulatory relief from the agencies including: (1) a permanent 8 percent CBLR, or in the alternative, an extension of the 8.5 percent CBLR through December 31, 2022; (2) an exemption from CECL for community banks that are not SEC accelerated filers, or in the alternative, delaying the implementation date until 2025 for those community banks that have not yet adopted CECL; (3) permanently raising the \$500 million and \$1 billion asset thresholds under Part 363

auditing and accounting requirements, or in the alternative, extending temporary relief from asset threshold requirements through December 31, 2022; (4) a consistent CRA regulatory framework among the agencies; (5) a robust community bank exemption from the small business reporting responsibilities under Section 1071 of the Dodd Frank Act; and (6) community bank exemptions from proposed climate-related financial regulations.

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## **Champion Fair and Equitable Access to the Financial System**

*ICBA is committed to creating fair and equitable access to the financial system for marginalized individuals and communities. Solutions should build on the strength of community banks which possess first-hand knowledge of their customers and create customized products and services for the communities they serve.*

### **ACCESS THE GOVERNMENT-SPONSORED SECONDARY MORTGAGE MARKET**

#### **Position**

- ICBA will actively engage the Federal Housing Finance Administration (FHFA) and the GSEs regarding overly burdensome policies and practices, including underwriting guidelines, appraisal requirements, and servicing requirements that increase the cost, operational burden, and difficulty for community banks to use the GSEs and thereby reduce access to credit in rural or small-town communities.
- ICBA's principles include:
  - Underwriting and property appraisal guidelines and policies should not discriminate against properties and borrowers in rural or small-town markets.
  - Appraisal requirements need to be flexible to accommodate the unique nature of rural and small-town properties and should not exacerbate the current shortage of appraisers in these markets or drive higher costs for residential appraisals.
  - Mortgage servicing requirements from the GSEs should be tailored to better fit the community bank cost structure and business model.
  - Quality control/loan manufacturing policies and requirements that are overly complex add considerable cost to the process, making it harder for smaller lenders to sell directly to the GSEs.

#### **Background**

Underwriting and Appraisal Guidelines. The GSE underwriting and appraisal guidelines, originally designed for suburban or urban communities, often make it difficult to qualify creditworthy borrowers in small-town or rural communities. In such communities, borrowers frequently have multiple sources of

income such as seasonal, self-employed, or W2 wages, all of which are critical in qualifying the borrower for the loan. While community bankers routinely and safely approve portfolio loans for these borrowers, it has always been difficult to qualify them for a GSE loan. In addition, the diverse nature of properties in these markets makes it challenging for appraisers to document and support the value of a property in a manner that is acceptable to the GSEs. ICBA has and will continue to work with the GSEs on developing case studies and best practices that will help expand acceptance of loans from small-town and rural communities, which in turn will help expand access to credit in these communities.

ICBA is particularly concerned that as appraisers retire or leave the business in rural and small-town communities community bank lenders may not be able to access the secondary market due to their difficulty in obtaining a property appraisal that meets secondary market guidelines at a reasonable price. In particular, as the GSEs update the residential appraisal forms and the information they collect ICBA is concerned that increasing the amount of data points will make appraisals more expensive and difficult to obtain, especially in outlying areas. ICBA will continue to work with the GSEs, the FHFA, and the banking agencies to develop alternatives to standard residential property appraisals, which should improve access to credit in rural and small-town markets.

Servicing. Community bank mortgage loan servicing is based on close ties to customers and communities. The cost to service a mortgage has doubled since the financial crisis, forcing many community banks to exit the mortgage servicing business. The GSEs must structure their servicing guidelines to avoid this outcome. Servicing helps community banks remain competitive in the mortgage origination business. Any changes to mortgage servicing standards or compensation should not promote additional consolidation of the mortgage servicing business in the largest aggregators.

*Staff Contact:* Ron Haynie and Tim Roy

## **BANKING CANNABIS-RELATED BUSINESSES**

### **Position**

- ICBA does not advocate for the legalization of cannabis.
- ICBA advocates for federal legislation establishing an effective “safe harbor” from federal sanctions for banks that choose to do business with cannabis-related businesses (CRBs), including businesses that provide products or services to CRBs, in states where cannabis is legal under state law.
- This safe harbor must extend to banks that serve businesses that may serve CRBs (“ancillary businesses”) such as landlords, accountants, utility providers, and others as ancillary businesses may be paid in funds ultimately derived from cannabis sales.
- Federal banking regulators should not be able to threaten or limit a bank’s deposit insurance, downgrade a loan made to a CRB, force a depository institution to cease providing banking services to a CRB, or take any other prejudicial action in a state where cannabis is legal, solely because the customer is a CRB.

- ICBA opposes any effort by a state or municipality to establish a publicly owned bank or credit union to service the cannabis industry. Traditional banks are fully capable of serving this industry with the creation of an effective “safe harbor” to protect them from government or regulatory reprisal.

## **Background**

In 2021, the trend of state-based cannabis legalization continued. Governors in New Jersey, New York, Virginia, New Mexico, and Connecticut each signed legislation to regulate cannabis for recreational, non-medical use. Currently, 18 states, two territories, and the District of Columbia permit recreational adult cannabis use, and cannabis is legal for medical use in 36 states and four territories. An additional 11 states allow the use of "low THC, high cannabidiol (CBD)" products for medical reasons in limited situations or allow such conditions to be raised as a legal defense. Only Nebraska, Kansas, and Idaho have no public access cannabis programs.

As more states legalize cannabis for medical and/or recreational use, it is critically important that cannabis-related businesses (CRBs) have access to services provided by the traditional banking system. At the federal level, cannabis remains illegal under the Controlled Substances Act. As CRBs continue to mature, the conflict between state and federal law creates increasingly significant legal and compliance concerns for state and federally chartered banks that wish to serve these businesses or continue to serve existing customers that may also do business with CRBs. CRBs have limited access to the traditional banking system, forcing them to operate mostly in cash. Cash-only businesses, especially those with a high volume of revenue, pose a significant risk to public safety.

Community banks should not be placed at a competitive disadvantage by the establishment of public banks or credit unions to serve CRBs. Traditional banks, with the protection of a safe harbor, are fully capable of serving the banking needs of CRBs. Moreover, history clearly indicates that financial service providers founded for narrow, specialized purposes inevitably expand beyond their original scope. Tax-subsidized credit unions and the Farm Credit System have expanded well beyond their original limitations and now compete directly with community banks. Once established, a state or public “cannabis bank” would advocate relentlessly for additional powers to assure its longevity and survival, to the detriment of private-sector competitors.

*Staff Contacts:* Steve Keen, Aaron Stetter, and Rhonda Thomas-Whitley

## **COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS**

### **Position**

- ICBA supports increasing funding for the CDFI Fund, proceeds of which are used to help CDFI banks continue to innovate and help their communities.
- ICBA welcomes Treasury’s Emergency Capital Investment Program (ECIP), which provides nearly \$9 billion in capital, but we urge the Federal Reserve to exclude ECIP capital from the debt-to-equity limits set by the Small Bank Holding Company Policy Statement.

- ICBA endorses the statutory creation of “Impact Bank” designations for qualifying banks serving low-income borrowers.
- ICBA supports the creation of a legal and regulatory framework that promotes CDFI status among community banks and provides more opportunities for community banks to benefit from this special designation, such as an automated or streamlined application for community banks located in low-income areas.
- Community Reinvestment Act exams of CDFIs should account for information that is already provided to the CDFI Fund through the application and annual certification process. Requiring a CDFI bank to provide similar information to two federal agencies is redundant and unnecessary.
- Grant proceeds from the CDFI Fund should be tax-free for CDFI banks, just as they are for CDFIs in other industries.
- ICBA opposes the CDFI Fund’s proposed revisions to the Certification Application and the Annual Certification, as the proposed changes would likely harm existing CDFI banks and significantly deter interest from new CDFI applicants.

## **Background**

Community banks strive to improve the financial health of their customers and communities, particularly those community banks located in low and moderate-income (LMI) areas. Many community banks have attained the special designation of being a community development financial institution (CDFI) which recognizes their dedication to LMI communities.

ECIP was authorized by the Consolidated Appropriations Act of 2021, which empowered Treasury to invest up to \$9 billion into MDIs and CDFIs by purchasing senior preferred stock or subordinated debt issued by the eligible institutions. The FDIC, OCC, and FRB published an Interim Final Rule in February 2021 that would limit S-corporations to issuing subordinated debt to Treasury, which would be counted against their debt-to-equity levels under the Small Bank Holding Company Policy Statement. If this treatment is maintained, approximately one-third of all banks that were awarded ECIP funds would have to accept less capital than they were awarded.

CDFIs are specialized financial institutions that provide financial products and services to populations and businesses located in underserved markets. These institutions have community development missions and a reputation for lending responsibly in low-income communities. Community banks comprise over 20 percent of the CDFIs in the nation.

Before designation as a CDFI, banks must apply to the CDFI Fund for certification. Among other requirements, a bank must demonstrate a primary mission of community development, serve one or more target markets, provide development services to borrowers in conjunction with financing activities, and maintain accountability to its target market.

In summer 2020, the CDFI Fund proposed revisions to its application and annual certification to ensure that entities provide financial products and services in a way that do not harm consumers. While ICBA

supports this goal, the way the Fund proposes to assess these criteria could prove to be troublesome, such as asking a series of questions related to every financial product and setting rate caps on loans.

*Staff Contact:* Michael Emancipator

## COMMUNITY REINVESTMENT ACT

### **Position**

- Community banks strongly support meeting the credit needs of their entire communities, including low and moderate-income areas. ICBA supports fair, equitable, consistent, and transparent implementation of the Community Reinvestment Act (CRA).
- The Federal Reserve Board, OCC, and FDIC should modernize CRA jointly, resulting in a consistent, uniform rule for all banks.
- Consistency between CRA examinations and among agencies is critical for an effective CRA, as are clear expectations and timely feedback for bankers.
- The current asset thresholds defining “small,” “intermediate small,” and “large” banks should be increased to reflect the current banking environment.
- Community banks know and understand their communities and are best positioned to define their assessment areas, not regulators.
- Regulators should provide a non-exhaustive, illustrative list of activities that are presumed eligible for CRA credit.
- Internet banks should have their community reinvestment performance evaluated on a nationwide basis, rather than being evaluated only in the immediate vicinity of their main office. Any nationwide benchmark for internet banks should require a level of community reinvestment that is at least equivalent to CRA expectations for branch-based banks.
- Minority and women-owned financial institutions should be exempt from documenting compliance with CRA regulations. A streamlined approach should be available for certified community development financial institutions.
- Credit unions, fintech companies, and any financial firm that serves consumers and small businesses should be subject to CRA in a manner comparable to, and with equivalent asset-size distinctions, as banks and thrifts.

### **Background**

The CRA was enacted in 1977 to ensure that each insured depository institution serves the convenience and needs of its entire community, including low and moderate-income (“LMI”) neighborhoods, consistent with its safe and sound operation. This mission is the essence of what community banks do.

In December of 2021, the Office of the Comptroller of the Currency (“OCC”) finalized a rescission of its June 2020 CRA rule, returning to the 1995 framework while it works with the FRB and the FDIC to promulgate an interagency proposal. ICBA supports withdrawing certain aspects of the 2020 rule, including the geocoding of deposit data and nationwide performance metrics, but also urges the regulators

to retain certain positive changes such as increased asset thresholds and a qualifying activities list and confirmation process.

The Examination Process Should Be Clear, Consistent, and Timely. Community banks experience inconsistencies in the examination process, which creates uncertainty and confusion. The inconsistent manner in which loans and services receive CRA credit occurs between examinations within an agency, as well as between agencies. This makes it incredibly difficult for community banks to plan and implement their CRA requirements responsibly. Agencies must adopt consistent definitions and qualifying activities criteria. Additionally, there is virtually no feedback during or following an examination until the actual performance evaluation is shared with the bank.

Asset Thresholds Should Be Adjusted to Reflect the Current Banking Environment. ICBA believes that the current thresholds defining “small,” “intermediate small,” and “large” banks for purposes of CRA performance tests do not adequately reflect the extensive consolidation and growth that has occurred in the industry since 1977 when CRA was adopted. The OCC’s 2020 final rule made a positive step by increasing the small bank threshold to \$600 million and the intermediate small bank threshold to \$2.5 billion. ICBA recommends that any interagency rule raise the asset thresholds for small banks and ISBs to no less than the \$600 million and \$2.5 billion levels used by the OCC in 2020. This would ease the CRA regulatory burden for most community banks without impairing agency assessment of CRA performance.

CRA-Qualifying Activities Should Be Expanded and Consistently Applied. ICBA supports a more forward-looking approach in qualifying activities for CRA credit by providing a CRA credit safe harbor for listed activities. An illustrative list was included in the OCC’s final rule and should be emulated by the FDIC and FRB. While the qualifying activities list would not capture the entire universe of activities that would receive credit, it would provide banks with greater clarity.

Alternative Approaches for Minority and Women-Owned Financial Institutions and CDFIs. CRA regulations should exempt minority and women-owned financial institutions from documentation and full-scope examinations. ICBA believes it is appropriate for CRA to support such institutions through compliance relief. Additionally, ICBA supports accommodations for bank-designated, certified Community Development Financial Institutions (CDFIs), which provide credit predominantly to lower-income borrowers and communities that have been historically underserved. We also believe that there should be an incentive for all banks to enter into partnerships with MDIs, CDFIs, and women-owned financial institutions. An incentive could come in the form of a credit multiplier or impact score that would affect performance context.

Parity in the Application of CRA. All financial service providers, including credit unions, fintech companies, and any financial firm that serves consumers and small businesses, should be committed to providing service to entire communities and should be subject to CRA. Branchless, internet banks should be evaluated on a nationwide basis, with performance benchmarks that are at least equivalent to branch based banks. An uneven playing field places community banks at a competitive disadvantage and inhibits their ability to serve their customers and their communities.

***Staff Contact:*** Mickey Marshall

## CREDIT REPORTING

### **Position**

- ICBA supports the use of consumer credit reports and credit scoring models as tools to objectively assess a borrower's creditworthiness and ability to repay a loan.
- ICBA opposes reforms to the credit reporting system that impose significant operational costs on community banks, potentially impacting the affordability of loans.
- ICBA opposes efforts that limit the value of credit scores, such as limiting accurate and legitimate negative information on credit reports. Such limitations make credit more costly for all consumers, especially those that work hard to maintain a good credit score.
- ICBA opposes changes to the Fair Credit Reporting Act's dispute process that would make it easier for individuals to make fraudulent claims of inaccuracies, imposing an undue burden on community banks as furnishers of credit information.
- ICBA opposes the creation and mandatory use of a government-owned and controlled credit bureau which would stifle innovation and could be manipulated for political purposes.
- Congress must subject credit reporting agencies to banking agency examination and supervision comparable to that which applies to community banks and other financial institutions.
- ICBA supports innovative ways to provide credit to unserved and underserved consumers. While we support banks' efforts to consider "alternative data" in credit decision processes, we oppose any efforts to require the incorporation of "alternative data."

### **Background**

Credit Reporting Agencies (CRAs) collect consumer data, such as names, addresses, social security numbers, credit histories, and public information, then compile that information into consumer credit reports. CRAs also use this information to develop proprietary credit scores or share that information with entities that develop credit score models, which indicate a consumer's propensity to repay a loan. These credit reports and credit scores are sold to third parties, such as banks, insurance companies, employers, landlords, and other entities that would like more information on an individual before entering into a formal relationship.

The credit reporting system serves as an independent and consistent mechanism for community banks to assess a consumer's past financial behavior and anticipate their future performance when making underwriting decisions. The accuracy of credit reports, including the completeness and veracity of the information, is of the utmost importance to community banks, since the utility of the credit report is closely correlated with its accuracy and completeness. Competition among CRAs results in more accurate and higher quality data and lower credit costs for borrowers.

Preserving the Usefulness of Credit Reports. ICBA recognizes that mechanisms to correct inaccurate, incomplete, or unverifiable information in reports are necessary. However, we strongly oppose changes to the dispute process that would make it easier for individuals to make fraudulent claims of credit report

inaccuracies. While well intended, such changes could counter-intuitively decrease the credit report's accuracy and usefulness by reducing the time banks have to resolve legitimate disputes. Significant resources would have to be expended by banks to respond to a high volume of fraudulent disputes.

Examination and Supervision of Credit Reporting Agencies. Community banks and other financial institutions are required by statute and regulation to safeguard personally identifiable information. All participants in the payments and financial systems with access to customer financial information should be subject to Gramm-Leach-Bliley Act-like data security standards, as banks are. While the FTC and the CFPB currently have enforcement authority over CRAs, it is imperative that problems are caught and addressed before the enforcement stage. To ensure consumers receive enhanced protection of their personal information, Congress should subject credit reporting agencies to banking agency examination and supervision comparable to that which applies to community banks and other financial institutions.

Alternative Data. ICBA recognizes that there may be potentially millions of consumers with limited credit histories that could become eligible for credit through the use of alternative data and modeling. Alternative data and modeling techniques are changing the way that some financial service providers conduct business. However, new regulations that require community banks to incorporate alternative data into their credit decision processes could prevent community banks from making loans to those who need access to credit the most, increase costs, and stifle innovation. Requiring banks to use alternative data could also have unintended adverse consequences for consumers because some alternative data may actually negatively impact their credit profiles.

*Staff Contacts:* Susan Sullivan and Michael Emancipator

## **DEPOSIT ACCOUNT SERVICES**

### **Position**

- ICBA strongly supports a consistent legal and regulatory framework for deposit account services and deposit-alternative accounts (e.g., prepaid cards) that gives community banks flexibility to provide a variety of services to meet consumers' financial needs and affords non-bank consumers the same transparency and protections bank customers receive.
- ICBA opposes any requirements that would dictate a community bank's deposit account screening and/or closing procedures.
- ICBA strongly urge policymakers to cautiously consider the potential consequences of any future overdraft legislation and regulations, which would have a negative ripple effect on customers who rely on overdraft services.
- Overdraft legislation in its current form would also harm many businesses that receive regular payments by check or allow customers to schedule automatic recurring debit payments—such as insurance or car payments. Pending overdraft legislation would create a significant spike in these transactions being declined or rejected. This would be extremely costly to merchants and cause customer confusion.

- Overdraft rules restricting banks will not address or stop fees for missed or late payments levied by merchants, utilities, landlords, and other payment stakeholders.
- Government regulations should continue to distinguish between ad hoc overdraft payment and automated overdraft payment programs to ensure that banks can continue to meet the varied financial needs of their customers.
- Overdraft legislation and regulations should not require community banks to punish their customers by restricting access to services of convenience that meet their account needs.

## **Background**

Community banks offer many deposit account services to address a variety of consumer needs. These are designed to protect consumers from the harmful consequences associated with payday loans and non-traditional loan products. Examples include a variety of overdraft payment programs, in which the bank analyzes an overdrawn account for payment, and alternative services, in which customers can choose to transfer funds from a designated account or line of credit or to advance funds from a short-term, small-dollar loan to avoid an overdraft. Most community banks leverage their knowledge and relationship with the customer in making overdraft payment decisions and operating their overdraft programs.

Overdraft services are an important aspect of community banks' relationships with their customers. Community banks leverage their personal knowledge of their customers to determine the best way to educate them on the right overdraft program to suit their needs. Increased regulatory and legislative scrutiny of consumer overdraft payment programs has affected many aspects of how community banks offer these services to consumers, as well as how they monitor and manage these services. Yet, despite this regulatory landscape, most community banks continue to offer the service to fulfill consumer demand for overdraft coverage.

Over the last several years, a variety of e-commerce transactions capable of causing overdrafts now include, not only ATM and POS debit transactions, but also online and mobile POS transactions generated by an ever-increasing number of merchants and service providers. As a result, community banks have continued to expand the features of overdraft payment programs they provide to consumers because when overdrafts occur, it is generally in the consumer's best interest for their bank to pay items/transactions rather than returning the items unpaid and triggering returned item and various payee fees levied by merchants, utilities, landlords, and other creditors.

Overdraft restrictions would force many community banks to stop offering overdraft services to their customers, which would result in significantly more bounced checks and declined debit card transactions—leading to unnecessary credit rating harm, merchant late fees, or fees for returned items for these customers. Such restrictions would also harm businesses receiving regularly scheduled payments by creating a spike in these transactions being declined or rejected.

***Staff Contacts:*** Rhonda Thomas-Whitley and Brian Laverdure

## FAIR LENDING

### **Position**

- ICBA strongly supports equal access to credit through the fair lending laws – the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) – and condemns discrimination based on race, ethnicity, national origin, gender, religion, or other listed classification.
- ICBA supports transparency regarding the legal theories and methodologies used when enforcing fair lending laws while preserving the confidentiality of specific community bank information. Analytical methods used to evaluate fair lending law compliance must be disclosed.
- ICBA opposes any cause of action under the fair lending laws for disparate impact that relies on statistical disparity alone without a robust causal connection to a specific policy or practice.
- The 2013 Discriminatory Effect rules under the FHA are not in line with current Supreme Court precedent. Regulators should update fair lending regulations to specifically include the “robust causality” standard established by the Supreme Court in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc (Inclusive Communities)*.
- ICBA supports amending the fair lending laws to clarify that disparate impact without a finding of intentional discrimination does not violate fair lending.

### **Background**

Community banks have a strong track record of providing access to credit in the communities in which they are located and take their fair lending obligations very seriously. A recent trend of increased scrutiny and changed methodologies in fair lending exams and investigations has resulted in “false positive” findings of disparate treatment, thus requiring the affected community banks to spend large amounts of time and money in disproving false fair lending allegations. Community banks are particularly vulnerable to such allegations because they are committed to working with their customers to provide customized loans under exceptional circumstances. This raises red flags and too often draws fair lending allegations.

Premature or unfounded allegations of racial or ethnic discrimination can harm a community bank’s reputation. Therefore, the confidentiality of specific community bank information should be preserved while investigations are being conducted and before conclusions are reached.

In September of 2020, HUD finalized a rule that amended the agency’s interpretation of the Fair Housing Act’s disparate impact standard to better reflect the Supreme Court’s 2015 ruling. However, in June of 2021 HUD proposed rescinding the 2020 rule in favor of returning to the 2013 standard. ICBA believes that a return to the 2013 rule is inappropriate because that standard is not in line with the Supreme Court’s decision in *Inclusive Communities*.

Fair Lending Standards Should Be Consistent and Transparent. Community banks consistently seek information and guidance on how to implement applicable rules. Regulators must provide certainty to those who comply with the law that they will not be unfairly targeted. Information and guidance on the methodologies, standards, and analysis that are used when examining and investigating banks for fair lending should be explicit, publicly available prior to implementation, and applied prospectively so that

community banks can assess and refine, if necessary, their own policies and procedures to ensure compliance.

Use of Statistical Disparity Alone in a Disparate Impact Cause of Action. Community banks devote substantial resources to the advancement of fair lending. In June 2015, the United States Supreme Court upheld the application of disparate impact under the Fair Housing Act (*Inclusive Communities*). Disparate impact may arise when the end results of a lender's operations have different demographic results despite the uniform application of sound, neutral financial standards. However, the Court ruled that disparate-impact claims that rely on statistical disparity alone must fail if they cannot be tied to a policy or policies that caused that disparity. A robust causal connection should be clearly identified before bringing a cause of action in fair lending laws.

Use of Section 1071 Data in Fair Lending Actions. Any Fair Lending Act actions based on data collected under Section 1071 of the Dodd-Frank Act should be based on data collected for no less than three years. This delay will allow community banks to refine data collection systems and procedures and will allow regulators to observe trend data to substantiate any actions.

**Staff Contact:** Mickey Marshall

## **FARM BILL PROGRAMS AND RURAL AMERICA**

### **Position**

- Congress is expected to begin drafting a new farm bill in 2022. The new farm bill should build upon the success of the 2018 Farm Bill, which expires September 30, 2023. The 2023 farm bill should continue to provide essential assistance to the farm sector and to rural America. Robust price support programs provide a financial safety net for many producers during times of low commodity prices.
- The new farm bill should maintain a strong crop insurance program, a successful public-private partnership critical to the ability of farmers and ranchers to survive weather-related disasters and repay farm loans.
- USDA farm loan guarantee programs benefit family farmers and ranchers and allow community banks to better manage the lending risks of producers who would otherwise be unable to obtain commercial credit. These programs should remain primarily financially geared to establishing successful farm and ranch operations. Program fee levels should not discourage participation by community bank borrowers and should not be set at levels that overfund government collections.
- The Farm Bill legalizes hemp in states with plans approved by the USDA and also makes significant changes to rural development programs.
- Farmer Mac should continue to focus on its primary mission of improving secondary market access for community banks. ICBA opposes allowing the Farm Credit System to operate their own secondary market independent from or in competition with Farmer Mac.
- Rural America and farm and ranch families have benefitted from low interest rates, ample energy supplies, and a de-regulatory environment. Congress should not enact policies that discourage

business innovation and activity in rural areas. Congress should also adjust farm programs to allow producers to manage surging inflation levels.

- Climate change programs should not increase regulatory or economic burdens, particularly for small businesses, agricultural producers, or the community banks that serve them.

## **Background**

The U.S. Department of Agriculture reports that net farm income has increased approximately 20 percent or more during the past two years (19.9 percent and 23.2 percent respectively). The 2021 estimate of 116.8 billion in net farm income is the highest level since 2013 and is more than 24 percent above the \$94 billion average of the past twenty years.

Direct government payments, after increasing by \$23.2 billion (103.5 percent) in 2020 relative to 2019, were forecast to fall by \$18.5 billion (40.4 percent) from \$45.7 billion in 2020 to \$27.2 billion in 2021. The decrease is expected due to lower supplemental and ad hoc disaster assistance for COVID-19 relief compared with 2020. Meanwhile, total production expenses were forecast to increase by almost \$30 billion (over 8 percent) to \$388 billion (in nominal terms) in 2021. Spending on nearly all categories of expenses is expected to rise. ICBA is concerned that inflation, particularly in key inputs such as fertilizer and fuel costs, are rising much faster than currently shown in USDA forecasts.

ICBA worked with the administration and Congress to ensure the 2018 Farm Bill facilitated private sector community banks working with farm and ranch customers. In the next farm bill, ICBA will advocate for provisions relating to commodity programs, crop insurance, credit and rural development titles and other relevant issues.

Farm bill provisions are intended, in part, to provide lenders and farm customers a long-term policy framework for business and planning purposes. Farm Bill money circulates through the farm sector in America's rural communities strengthening rural economies and boosting employment and economic activity.

Crop Insurance. The Federal Crop Insurance Program (FCIP) plays a prominent role in helping producers manage financial risk. In crop year 2019, the program sold more than 2 million policies and insured crops and livestock valued at more than \$116 billion, equivalent to about 28 percent of the value of U.S. agricultural production. More than 90 percent of planted acres for corn, soybeans, and cotton and more than 85 percent of wheat planted acres were insured through the FCIP. In all, the FCIP provided coverage for 124 commodities and offered 19 types of insurance policies. Sixteen companies sold crop insurance to farmers, who enrolled a record high 380 million acres.

Crop insurance plays a vital role in helping farmers survive weather-related disasters and repay bank loans. ICBA will continue urging Congress to protect previously adopted enhancements including expanding crop insurance and revenue insurance programs to better support producers' risk management strategies and ensure their ability to repay bank loans.

ICBA is closely monitoring all aspects of the new bill's implementation to ensure community bank interests are understood and adopted to protect these programs during the life of the bill from miscellaneous legislation targeting crop insurance for budget cuts.

The introduction of a new hemp program should ensure community banks' ability to finance hemp growers and related businesses that utilize hemp for commercial products such as CBD oils and other uses once a hemp market becomes established. Crop insurance has also been added for hemp producers. ICBA has encouraged expeditious approval of state plans that will allow hemp production. Likewise, the current farm bill created insurance-style coverages for dairy producers. USDA should continue providing necessary educational materials for producers, lenders, and interested stakeholders.

USDA Guaranteed Farm Loans. USDA's guaranteed loan programs allow community banks to lend to higher-risk borrowers with a guarantee of repayment of 90 percent of principal. USDA's guaranteed farm ownership (real estate) loan program is fully self-funding, and the guaranteed operating loan program has a negligible cost.

ICBA urged Congress to increase loan limits for USDA guaranteed farm loan programs and appreciates the modest increase from the previous \$1.4 million level to a higher level of \$1.75 million indexed for inflation. Congress should ensure the inflation index keeps up with the actual rates of inflation in land values, which have increased in some states by over 20 percent in just the past year. Additional increases in guaranteed loan limits are warranted given the costs of current land prices and operating expenses, particularly with inflation levels reaching their highest rates in the past 40 years. Increased loan limits allow community banks to work with more family farmers particularly during times of financial stress. ICBA successfully fought to eliminate term limits on guaranteed farm loans in the 2014 farm bill and would oppose any efforts to reinstate term limits. Social targeting, or quotas, or similar requirements should be minimized in favor of expanding the program's borrower base as widely as possible. A new supply chain guaranteed loan program has been introduced by USDA, and ICBA encourages this program to be made widely available to community banks.

Rural Development Loans. The 2018 farm bill made several key changes for rural development programs. Congress increased population limits for three USDA rural development programs to communities of 50,000 or less. These three programs are the Community Facilities, Water and Waste Management, and Broadband programs. These programs will have a zero-subsidy rate, meaning they will not be tied to Congressional appropriations, possibly providing a greater volume of loans from the private sector rather than relying on USDA funding. The farm bill also requires USDA to study whether to apply the zero-rate subsidy concept to the Business and Industry (B&I) program and Rural Energy for America Program (REAP). Implementation of these programs should ensure community banks' perspectives are considered.

Farmer Mac. Farmer Mac was created to serve as a secondary market providing rural lenders the option to sell agricultural real estate and rural housing loans, thereby enhancing community bank liquidity. Farmer Mac should continue to focus on its primary mission of improving secondary market access for community banks. ICBA appreciates Farmer Mac's efforts in recent years to reach out to the community banking sector to encourage greater use of the secondary market to assist family farm and ranch

borrowers. ICBA opposes efforts to allow the Farm Credit System to implement their own secondary market in competition with Farmer Mac.

Climate Change. ICBA believes that any policies adopted by Congress or regulators should not increase regulatory or economic burdens upon the business sector, particularly small businesses and agricultural producers, and the community banks that provide credit to these businesses and individuals. Rather, such efforts should incentivize all producers by providing additional payments for practices that help establish healthy soil and water on farming operations.

ICBA believes policies adopted to address climate change should provide economic and regulatory relief incentives to undertake scientifically backed mitigation responses rather than impose new burdens or mandates.

*Staff Contact:* Mark Scanlan

## **THE FEDERAL HOME LOAN BANK SYSTEM**

### **Position**

- The Federal Home Loan Banks (FHLBs) must remain a strong, stable, reliable source of funding for community banks.
- ICBA opposes any legislation or administrative action that would permit any new types of non-depository entities, which are not prudentially regulated, to access any FHLBank program or service, either directly or indirectly.
- The regional structure and cooperative nature of the FHLB system must be maintained as they best address the diverse needs of community bank members.
- Many community banks rely on the FHLBanks' mortgage programs for access to the secondary market. While this access point should be preserved, ICBA does not support proposals that would rely exclusively on the FHLBanks as the sole secondary market aggregators for community banks.
- Advances should remain the FHLBanks' primary focus.

### **Background**

The vast majority of community banks are FHLB members. They are active advance users or rely on the availability of advances as an alternative source of liquidity. Throughout the financial crisis, the FHLBs continued to provide advances to their members without disruption, while other segments of the capital markets ceased to function. Community banks depend on their FHLBs for liquidity, asset/liability management, and match funding for longer term loans. ICBA will work to ensure that as the administration and Congress consider changes to the housing finance system, the FHLBs remain a healthy, stable, reliable source of funding, liquidity and other products to serve the needs of all member-owners and help them provide lendable funds for the local communities they serve.

The FHLB system is owned and governed by its members and any move towards consolidation should develop from the grass roots level, based on what members perceive to be the best operational and/or geographic structure for their district FHLB to meet their needs. The regional structure of the FHLB system must be maintained as it best addresses the diverse needs of community bank members. The cooperative nature of the system also must be maintained with membership having a strong voice in governance. ICBA recognizes the need for both large and small institution membership and the benefits both bring to, and derive from, the system.

*Staff Contact:* Ron Haynie, Tim Roy

## **FINANCIAL INCLUSION FOR UNDERSERVED AND UNBANKED INDIVIDUALS**

### **Position**

- ICBA supports community banks' development and use of technology to more effectively and efficiently provide access to financial services and education for existing and potential customers.
- Guidelines developed for loan products and services for underserved and unbanked individuals should be easily understood by bankers and flexible enough to be adaptable to various markets and operations.
- To expand the availability of affordable products for consumers, it is important to identify barriers to their use, including regulatory and statutory obstacles that may discourage development of these products. Solutions should be created on an interagency basis.
- ICBA supports voluntary, effective financial education. Increasing financial literacy protects consumers, fosters financial stability, and benefits individuals, underserved communities, and our nation as a whole.
- ICBA strongly urges the CFPB not to issue new prescriptive requirements that would disrupt the traditional data and business models that community banks have long employed to safely and soundly make credit decisions.
- ICBA welcomes the interagency guidance on the use of alternative data in credit underwriting, but stresses that field examiners must continue to give banks leeway to find innovative ways to provide credit to unserved and underserved consumers. (See "[Credit Reporting](#)" resolution.)
- ICBA is supportive of voluntary efforts to promote affordable insured transaction and savings accounts, such as FDIC's #GetBanked initiative, in which ICBA and many community banks participate

### **Background**

Financial Health. Only 30 percent of Americans are spending, saving and borrowing in a manner that indicates a financially healthy life. However, community banks are in an optimal position to help consumers improve their financial lives. Community banks are relationship-based providers of financial services and understand the unique situations of the members of their communities, including underbanked consumers.

Technology. Individuals with little or no relationship with a bank may struggle to manage their funds effectively and to save, prepare, or borrow for emergencies. Technology can play a role in raising awareness among such individuals of available products and services and providing access to them.

Affordable Products. Many community banks offer various affordable loan and deposit products and services to their customers. ICBA welcomes opportunities to expand ways to serve new, existing, and potential customers, but guidelines must be simple, easily understood by bankers and examiners, and flexible enough to allow individual community banks to adapt them to their own market and operations. Overly proscriptive requirements could add to burdens and costs and have the unintended consequence of discouraging these types of products.

*Staff Contact:* Michael Emancipator

## **MINORITY OWNED DEPOSITORY INSTITUTIONS**

### **Position**

- ICBA strongly supports Section 308 of the Financial Institution Reform Recovery Enforcement Act (FIRREA), which establishes goals for federal banking agencies to promote, create, and preserve the number and character of minority depository institutions (MDIs).
- ICBA supports regulations that take into account the unique model of minority banks and the communities they serve.
- ICBA supports giving minority banks the first right to bid on the assets and deposits of a failed minority bank and giving them greater consideration or weighting over non-MDI bids.
- ICBA appreciates the federal banking agencies efforts to encourage collaborative relationships and partnerships between minority banks and community banks at large for financial support, lending activities, or technical assistance.
- ICBA supports legislation that would create and strengthen federal programs that provide capital, investments, technical assistance, and mentorship to minority banks, promote de novo minority banks, create a new “Impact Designation” for banks with a specified percentage of loans extended to low-income borrowers, streamline the CDFI certification process for MDIs, and otherwise help MDIs better serve their customers and communities.
- ICBA advocates for the exemption of minority depository institutions from documenting compliance with CRA regulations. A streamlined approach should be available for certified community development financial institutions.
- ICBA supports and encourages opportunities for minority banks to partner with private sector entities for investment, technical assistance, and product/service discounts. ICBA also supports additional resources and education programs that focus on areas unique to minority banks.

## **Background**

Minority owned depository institutions (“MDI” or minority banks) play a unique role serving as catalysts for economic growth and revitalization in the neighborhoods they serve. These banks often play a critical role in providing credit, capital and financial services to low-to-moderate income and minority communities in urban, rural and suburban areas that are economically distressed and have historically been underserved by the financial industry. Minority banks know and understand the culture of the communities they serve and are able to provide customized and culturally sensitive products and services. They finance small businesses, make housing affordable, revitalize community facilities, and provide financial literacy and technical assistance to their customers.

Minority banks are committed to the social mission of helping to improve lives and stabilize neighborhoods despite the difficulties and challenges of operating in distressed communities. It is crucial that minority banks have the legislative, regulatory, and financial support they need to stay operational and profitable. ICBA will promote legislation to help existing MDIs serve their communities, grow, and thrive as well as to foster the creation of new MDIs. ICBA will work with the OCC, FDIC, and the Federal Reserve to improve their minority bank programs and identify opportunities for minority banks to collaborate or partner with larger community banks or private entities. Banks may receive Community Reinvestment Act credit considerations for direct investments, loan participations, sharing of bank staff and resources, and information sharing with minority banks.

ICBA believes that CRA regulations should exempt MDIs from documentation and full-scope examinations, thereby supporting these institutions through compliance relief. The mission of MDIs is fully consistent with the CRA, and excessive compliance burden should not keep MDIs from pursuing this mission.

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## **MORTGAGE LENDING REGULATION**

### **Position**

- Efforts to protect consumers from abusive lending practices should not prohibit responsible, though unconventional, loan products created to meet the diverse needs of consumers, including lower-income borrowers, borrowers in rural and underserved communities, and first-time homebuyers.
- ICBA strongly encourages the CFPB to continue to collaborate with ICBA and other stakeholders to take a commonsense approach to amending and improving the TILA/RESPA Integrated Disclosure (TRID) rules, addressing certain tolerances, timelines, and construction-to-permanent lending. ICBA urges the CFPB to address compliance questions through written, authoritative guidance and FAQs.
- The CFPB’s “small servicer” exemption limit should be increased from 5,000 loans to the higher of 30,000 loans serviced or \$5 billion in total unpaid principal balance of mortgages serviced. Moreover, to be fully beneficial, capital treatment of mortgage servicing assets (MSAs) under Basel III and

under the Community Bank Leverage Ratio, for those banks that opt into it, must not discourage retention of MSAs by community banks.

- The CFPB should address servicing issues such as the prohibition on initiating foreclosure actions on uncooperative borrowers for loans that are perpetually 90-days delinquent.

## **Background**

Community Banks Are Responsible Lenders. As relationship lenders who underwrite based on firsthand knowledge of their customers and communities and who thrive based on the strength of their reputations, community banks have every incentive to make fair, commonsense, and affordable loans. They do not need prescriptive regulations to compel them to do so.

Small Servicer Exemption Limit Must Be Increased. To preserve the role of community banks in mortgage servicing, where consolidation has clearly harmed borrowers, the CFPB's small servicer exemption limit should be increased from 5,000 loans to 30,000 loans or a maximum principal balance of \$5 billion in mortgages serviced. New regulation has approximately doubled the cost of servicing with a direct impact on the consumer cost of mortgage credit. Community banks above the 5,000-loan limit have a proven record of strong, personalized servicing and no record of abusive practices. To put the 30,000-loan limit in perspective, the five largest servicers service an average portfolio of over 6.8 million loans each and employ as many as 10,000 people each in their servicing departments. The top five mortgage servicers each have more than \$300 billion in unpaid principal balance on mortgages serviced.

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## **NATIONAL FLOOD INSURANCE PROGRAM**

### **Position**

- ICBA strongly supports a long-term reauthorization of the National Flood Insurance Program (NFIP), which continues to provide critical support to community banks by providing affordable, reliable flood insurance for both residential and commercial properties securing both consumer and business loans.
- Flood insurance must be affordable and reasonably available to all homeowners and commercial policyholders.
- The program must be managed in a fiscally responsible and actuarially sound way.
- ICBA opposes any exemption of commercial properties from the mandatory purchase requirement.
- ICBA supports efforts to increase the role of private insurers in the flood insurance market.
- Banks must not be required to review and approve private flood insurance policies and must not be held liable for policies that are not adequate.
- The community bank escrow exemption must be maintained.

- The Federal Emergency Management Agency (FEMA) should coordinate with the Federal Housing Finance Agency, FDIC, OCC, Federal Reserve and NCUA to address concerns regarding financial institution compliance with the mandatory purchase requirement.
- ICBA opposes increasing the civil monetary penalties for noncompliance with the mandatory purchase requirement until all maps are accurate and up-to-date.
- ICBA supports increasing the size of the risk pool to provide more risk diversity and increase premium revenue to the program.

## **Background**

Congress created the National Flood Insurance Program (NFIP) 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. The NFIP sells flood insurance to homeowners, renters, and business owners at subsidized rates in participating communities that agree to adopt and enforce ordinances that meet or exceed Federal Emergency Management Agency (FEMA) requirements to reduce the risk of flooding. Homes and businesses located in Special Flood Hazard Areas and secured by federally backed loans are required to maintain flood insurance on the property. This mandate is enforced by the lenders and their federal regulators.

The NFIP has been funded through a series of continuing resolutions since 2017. The current CR is set to expire by February 18, 2022. The last long-term reauthorization of the NFIP in 2012 extended the NFIP for five years. While we always expect Congress will reauthorize the NFIP, it is unclear for how long and what, if any, reforms Congress will seek. This uncertainty creates uneasiness in the market, especially as expirations loom and lapses in the program become a possibility. A long-term reauthorization is needed to bring stability and confidence to the market.

Congress also 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. Many Members of Congress would like to shrink the program and have more properties insured in the private market. ICBA is supportive of increased private market participation as long as community banks are not responsible for certifying that private policies satisfy mandatory purchase requirements and consumers are allowed to return to the NFIP without losing their grandfathered status. Consumers will only leave the NFIP to obtain private policies that are cheaper and better. ICBA also opposes efforts to remove the mandatory purchase requirement for commercial properties, believing this will put community banks at a disadvantage to regional and national banks when competing for loans in flood zones.

ICBA will advocate for community bank priorities in NFIP reform, and above all, ensure that we avoid a lapse in the program that would disrupt the market and delay loan closures.

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## PRIVACY

### **Position**

- ICBA supports privacy measures that hold all entities that handle personal information to the same standards to which community banks and other financial institutions are held through the Gramm-Leach-Bliley Act (GLBA) and other financial regulatory oversight.
- ICBA supports GLBA entity-level exemption from proposed state and national privacy laws.
- ICBA supports a national privacy standard as opposed to a patchwork of state privacy acts and standards.

### **Background**

By their very nature, community banks and other financial institutions must collect sensitive nonpublic personally identifiable information (PII) about customers to meet their needs for financial services, which includes an array of deposit and loan services. This information is also used to prevent fraud and identity theft and to comply with various regulatory requirements. Safeguarding customer information is central to financial institutions maintaining public trust and retaining customers.

Third Party and Non-Bank Privacy Standards. Entities outside of the financial services industry that gather sensitive nonpublic PII are not held to the same standards for safeguarding information. Once information is shared with permissioned third-parties, consumers may no longer have control of their personal and financial information. This leaves consumers vulnerable to entities that may mislead them about what they do with the information they collect and places an extraordinary burden on consumers to be vigilant in their research and knowledge of firms to which they may provide their online account credentials. For this reason, ICBA has profound concerns that non-bank entities that may be authorized by consumers to access their information and store their bank login credentials may not take the same care in protecting consumer privacy and data as community banks.

At a minimum, consumers must have the same GLBA-like privacy protections with permissioned third parties as they have with banks, including limitations on the use of consumer information and limitations on the disclosure of the consumer's information to third parties.

GLBA Exemption. Community banks have protected consumer privacy for the last two decades under the Gramm-Leach-Bliley Act. ICBA supports GLBA and the privacy standards and enforcement it requires. Given the patchwork of state privacy laws currently in place or being considered, as well as the unnecessarily burdensome nature of proposed national-level privacy laws, ICBA supports an entity-level exemption from proposed laws due to the strict privacy requirements in GLBA and stringent enforcement by federal regulators. Complying with both GLBA and the various state or national laws to which community banks may be subject would be both unnecessarily burdensome and duplicative.

GLBA requires financial institutions to provide protections for consumer data and prevents financial institutions from sharing consumers' personal information under certain circumstances without offering consumers a reasonable opportunity to opt out of such sharing. Further, GLBA's Safeguards Rule requires financial institutions to review their consumer data, identify security risks, and develop a comprehensive security program to protect consumer data from unauthorized use and disclosure.

Privacy Standards. Community banks are committed to complying with existing standards to protect consumer privacy as outlined in GLBA and the Safeguards Rule. ICBA fully supports the intent of these laws to protect consumer financial information and PII. However, a patchwork of differing state privacy laws and requirements creates unnecessary costs and burdens for community banks and other small businesses. It is important to maintain one standard as opposed to many complex and potentially competing state-level standards.

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## **SMALL BUSINESS LENDING**

### **Position**

- ICBA promotes Small Business Administration loan programs and federal policies that foster a vibrant small business sector.
- ICBA will continue to support policies that ensure community banks can continue to effectively serve small businesses in urban, suburban, and rural communities as they grapple with the ongoing pandemic. ICBA will advocate for any necessary legislative or administrative adjustments to COVID response programs.
- ICBA opposes proposals to create an SBA 7(a) direct lending program.
- ICBA opposes proposals to raise SBA 7(a) program fees.
- Congress should repeal Section 1071 of the Dodd-Frank Act which requires new data reporting on small business loan applications. If repeal is not possible, the CFPB should exempt community banks under proposed regulations required by statute. Additionally, the CFPB should not use its authority to impose requirements beyond those mandated by statute. (See separate resolution titled “[CFPB Small Business Loan Data Collection Rule](#).”)
- ICBA opposes efforts to impose consumer-like regulations on small business loans.
- ICBA continues to enhance its small business sector relationships and coalition building.

### **Background**

Community banks are prodigious small business lenders. Though they hold less than 20 percent of U.S. banking industry assets, they hold a disproportionate market share of small business loans – a majority of small business loans under \$1 million – supporting a sector responsible for more job creation than any other. The viability of community banks is linked to the success of their small business customers. Community bank small business lending simply cannot be duplicated by a bank based outside the community. As noted in a study by scholars at Harvard’s Kennedy School of Government: “In certain lending markets, the technologies larger institutions can deploy have not yet proven effective substitutes for the skills, knowledge, and interpersonal competencies of many traditional banks.” Many community banks also use the SBA 7(a) lending program.

COVID Response and Paycheck Protection Program. Paycheck Protection Program lending data continue to demonstrate that community banks are justifiably recognized as leaders of the financial response to the

COVID-19 pandemic. Community banks made 60 percent of all PPP loans—including 72 percent of PPP loans to minority businesses.

As the COVID-19 crisis continues, ICBA will continue to support policies that ensure community banks can continue to effectively serve both American consumers and small businesses in urban, suburban, and rural communities as they grapple with these historic challenges. ICBA will continue to advocate to ensure any necessary legislative adjustments to the COVID response programs are made accordingly.

SBA Direct Lending. ICBA opposes proposals to create an SBA 7(a) direct lending program. Such a program could undermine the existing successful public-private partnership SBA loan programs.

SBA direct lending is a poor and costly alternative to private sector lending and would reach fewer borrowers. Today, there is a strong network of community banks, Community Development Financial Institutions, and other lenders already in place to meet demand for small business borrowers. Further, the SBA has a poor track record in direct lending. The last time the agency engaged in direct lending in the 1990s, subsidy rates were found to be “10 to 15 times” higher than for its loan guarantee program, according to the Congressional Research Service. The recent Economic Injury Disaster Loan (EIDL) program, an SBA direct loan program, has been rife with fraud and poorly executed.

Bank and other private sector lender underwriting and expertise are what make the 7(a) program successful. They have direct ties to their communities, knowledge of local economic conditions and expertise honed over generations that cannot be duplicated by the SBA. These lenders should not be displaced.

Small Business Data Collection. Under Dodd-Frank Section 1071, CFPB is required to implement rules for the collection and reporting of data on financial institutions’ small business lending under the Equal Credit Opportunity Act. This requirement covers the collection of certain data in connection with credit applications made by women- or minority-owned businesses and small businesses, including the race, sex, and ethnicity of the principal owners of the business. This data collection will impose significant new burdens on community banks. (See separate resolution titled [“CFPB Small Business Loan Data Collection Rule.”](#))

Additional Small Business Lending Regulations. Various advocacy groups and public officials advocate for consumer-like protections, such as an ability-to-repay test for small business loans. States such as Illinois have pushed for regulation of what is deemed “predatory” small business lending. Many of these efforts are aimed at online marketplace lenders that charge exorbitant interest rates. However, ICBA opposes these efforts as they could result in unnecessary regulations for responsible small business lenders such as community banks and increase the cost or limit access to loans for borrowers.

Small Business Sector Relationships. The vitality of small business and the strength of the community banking industry are connected. ICBA will nurture and enhance working and advocacy relationships with

small business industry alliances and coalitions to leverage the critical role community banks serve in the well-being of their small business customer base.

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## **SMALL BUSINESS LOAN APPLICATION DATA COLLECTION**

### **Position**

- While ICBA supports ensuring that financial institutions meet the credit needs of all small businesses in accordance with fair lending laws, we believe that application of the data collection and reporting requirements of Section 1071 of the Dodd-Frank Act is misguided and will have a chilling effect on community banks' ability to meet the unique needs of local small businesses.
- ICBA supports legislation that would exempt community banks and mission-oriented banks from Dodd-Frank Section 1071.
- If legislative repeal of Section 1071 proves infeasible, ICBA urges the CFPB to use its authority under the Dodd-Frank Act to exempt community banks from data collection and reporting, limit any collection to data points required by statute, and prioritize protecting customer privacy as it considers new data reporting requirements.
- In defining which businesses are covered applicants under the rule, ICBA urges the Bureau to define a "small business" as one with gross annual revenue of \$1 million or less. This is a simple, bright-line definition that will make compliance more efficient and straightforward.
- Any final 1071 rule should stagger the implementation date so that smaller community banks are among the last entities required to collect and report the data under the rule. In addition, any actions under the Fair Lending Act should be based on data collected under 1071 for a period of at least three years. This delay will allow community banks to refine data collection systems and procedures and will allow regulators to observe trend data.

### **Background**

The CFPB has issued a proposal to implement rules for the collection and reporting of data on financial institutions' small business lending under the Equal Credit Opportunity Act. This includes the collection of data detailing whether businesses are women- or minority- owned and will be used by the Bureau and other regulators to facilitate enforcement of fair lending laws.

While the governing statute requires the collection and reporting of 13 pieces of data in connection with credit applications made by small businesses, the CFPB is using its discretionary authority granted by statute to propose collecting an additional 8 data points not required by statute. These discretionary data points have little to do with a borrower's credit risk but will increase the costs of originating loans and pose a privacy risk to small business applicants.

The Bureau has the authority to exempt community banks from compliance with this rule and has proposed to exempt lenders that originate fewer than 25 qualifying small business loans per year. This threshold is far too low, meaning that the data collection requirements would apply to a majority of community banks. If the Bureau fails to increase the exemption threshold, the result will be increased compliance costs for community banks and a higher cost of credit for small business borrowers.

Small business lending is a complex business that cannot be “commoditized” in the same way as consumer lending. Each small business loan is unique and has customized terms based on an analysis of numerous factors. Imposing rigid data collection requirements may limit the ability of community banks to tailor loans to meet the unique needs of their small business customers, which is the cornerstone of relationship lending.

The breadth of the data required to be collected and potentially published under the CFPB’s initiatives may make it possible to identify an individual borrower. Even if individual borrowers are not identified, the perception of that risk is sufficient to drive small business borrowers to larger banks, larger cities, or online lenders to remain anonymous.

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## **SMALL-DOLLAR LOAN RULE**

### **Position**

- ICBA strongly urges regulators to enhance the ability of banks of all charter types and sizes to offer responsible small-dollar loans by:
  - Promoting community banks as model small-dollar lenders.
  - Providing a presumption of CRA credit for originating small-dollar loans.
  - Easing fair lending examination scrutiny and establishing consistent and transparent fair lending examination standards for small-dollar lending.
  - Providing banks the flexibility to offer small-dollar credit products that exceed 36 APR.
- ICBA strongly supports the exemption contained in the CFPB’s original final rule on payday, vehicle title, and certain high-cost installment loans, commonly known as small-dollar loans. Any lender that makes 2,500 or fewer covered short-term or balloon-payment small-dollar loans per year and derives no more than 10 percent of its revenue from such loans is excluded from the rule’s full-payment test or the principal-payoff option.

### **Background**

Having strong ties to the customers and communities they serve positions community banks to provide small-dollar loan services to customers with the greatest need. By their nature, community banks are in the business of creating customized solutions for their customers. Community banks work with customers to structure loans that ensure the customer is able to access safe and sustainable financing. Small dollar loan products offered by community banks help consumers avoid the negative consequences associated

with payday loans and non-traditional loan products offered by non-banks. Each community bank that makes small-dollar loans underwrites these loans in a way that works for them and their customers. The community bank business model does not include rolling over loans to generate fee income or steering consumers to unaffordable loan products.

Generally, community banks offer personal loans as a service to customers who have a financial history upon which to base a credit decision. These products are offered as a customer accommodation and are not typically advertised. The nature of these loans renders standardized underwriting and credit decision models ineffective or counterproductive to meeting the short-term financial needs of customers. Additionally, these loans are rarely profitable for community banks due to the small dollar amounts and the associated overhead and servicing costs.

On October 5, 2017, the CFPB issued a final rule covering payday, vehicle title, and similar loans designed to curb abuses or “debt traps” such as repeat short-term borrowing, default, vehicle seizure, penalty fees, and closure of bank accounts. The rule requires lenders to determine whether a consumer has the ability to repay a loan before extending credit.

On February 6, 2019, the CFPB announced its proposal to rescind certain provisions of its rule. Specifically, the CFPB proposed to drop the rule’s requirement that lenders assess an applicant’s ability to repay and make certain underwriting determinations before issuing small-dollar loans, which the Bureau said would reduce access to credit. On July 7, 2020, the CFPB issued its final rule rescinding the ability to repay and underwriting provisions.

Since the release of the rule, other agencies have signaled their support for banks involvement in small-dollar lending. On May 23, 2018, the OCC issued its core principles, policies, and practices for short-term, small-dollar installment lending to encourage banks to offer such loans responsibly to help meet the credit needs of consumers. On November 14, 2018, the FDIC issued a request for information soliciting input on steps it can take to enable and encourage FDIC-supervised institutions to offer small-dollar credit products that are structured prudently and responsibly. On March 19, 2020, the Federal Reserve, FDIC, and the OCC issued a joint statement on Community Reinvestment Act (CRA) consideration for small-dollar lending activities in response to COVID-19, stating that for CRA purposes, the agencies will favorably consider retail banking and lending activities that meet the needs of affected low and moderate-income individuals, small businesses, and small farms, consistent with safe and sound banking practices and applicable laws. On March 26, 2020, the Federal Reserve, FDIC, the NCUA, OCC, and the CFPB issued a statement encouraging financial institutions to offer responsible small-dollar loans to both consumers and small businesses to help customers meet their need for credit due to temporary cash-flow imbalances, unexpected expenses, or income short-falls during periods of economic stress or disaster recovery.

**Staff Contact:** Rhonda Thomas-Whitley

## **Advance Responsible Innovation**

*ICBA embraces financial innovation as a means of reaching new customers and delivering faster, streamlined and tailored services more quickly. Community banks are poised to lead in the development and implementation of such services. Policymakers must ensure that such innovation does not create systemic risk or undermine the competitive landscape essential to consumers and the broader economy.*

### **CORE PROCESSORS**

#### **Position**

- ICBA strongly urges core processors and other technology partners to help community banks enhance their market position and achieve ongoing efficiency by:
  - Meeting and exceeding evolving customer expectations for banking and payments products and services in a timely manner.
  - Complying with legal and regulatory requirements.
  - Managing operational risk.
  - Providing information about incident response and business continuity plans.
  - Enhancing customer information security.
- ICBA urges technology partners to engage in negotiations with community banks that result in contracts that are reasonable, fair, and clearly disclose fees.
- ICBA urges core processors to provide adaptable, flexible, timely, and affordable platforms that enable community banks to innovate in a nimble and efficient manner through open application programming interfaces (APIs).
- ICBA encourages core processors and digital banking providers to develop systems that permit bank customer-authorized data sharing with third parties through APIs, which replace third-party collection and storage of customer online banking credentials and limit the amount of data accessed by third parties.
- ICBA urges core processors to provide access to secure data analytics solutions so community banks can better understand and serve their customers and leverage market opportunities.

#### **Background**

The Critical Role of the Core Processor Relationship. Over the years, the community bank-core processor relationship has evolved from a back-office record-keeping vendor relationship to a digital cornerstone of the bank's relationship with its customers. Core processors play a critical role in providing open communication, visibility into cyber and operational risk management, and education regarding new and enhanced products and services, modern technology, and marketplace developments. The community bank-core processor relationship should be treated as a key strategic relationship, given the critical role of the core processor in supporting a community bank's long-term technology and business objectives, ability to remain compliant, and for the bank's continued success. ICBA encourages community banks to remain actively engaged with their technology partners to influence innovation, product development and speed to market so banks remain competitive.

Contract Terms. Community banks must negotiate relationships with technology providers which bolster their ability to compete and flourish. Contracts must clearly define terms, with reasonable fees for services and access to bank data, and provisions that assign liability to the technology partner when it is responsible for failing to meet service level standards or is unable to deliver the contracted services.

Core Processing Technology. Core processing technology, the foundational infrastructure for customer transactions, balances, and histories, is now under greater industry scrutiny and market pressure due to advances in digital banking channels, as well as the entry of non-traditional firms. The established and interconnected nature of core processing technology further compounds community banks' reliance on these capabilities to stay compliant, competitive, efficient, and viable. Forward-thinking core processors enable early adoption and speed to market at a price supporting community banks' revenue growth, providing community banks with a considerable competitive advantage.

Open Infrastructure. Open core infrastructures allow banks to innovate more efficiently, reducing the effort and expense of fintech and third-party integrations with the core platform. APIs are becoming the preferred industry standard for allowing bank customers to securely share their personal financial data with authorized third parties without forfeiting usernames and passwords. Access to core data through APIs enables community banks to offer enhanced customer experiences while limiting the scope of data a permissioned third party can access.

Data Analytics Solutions. To compete, community banks require access to their data and analytical solutions which provide actionable insights for serving their customers. Currently, many of the core processor solutions are limited to historical reporting or may be cost-prohibitive, and therefore do not provide community banks with the ability to harness the power of sophisticated data analytics to execute their strategy. Uncovering the needs and expectations of today's digital consumers requires new tools.

Community banks need analytical tools for interrogating their own proprietary data as well as data from third-party sources to create improved customer experiences.

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## **CUSTOMER DATA ACCESS/OPEN BANKING**

### **Position**

- ICBA supports responsible financial services innovation and urges policymakers to carefully consider the privacy, regulatory compliance burden, data security, and legal implications presented by permissioned third-party access to consumer bank accounts.
- ICBA encourages adoption of the CFPB's common principles and industry standardization efforts by data access ecosystem participants in the sharing and use of permissioned customer financial account information in a secure, transparent manner that allows consumers to control their information.
- ICBA is firmly against mandating standards that threaten to leave community banks at a disadvantage from any asymmetry of capabilities and resources.

- ICBA encourages development of data-sharing technologies and adoption of standards that offer more secure access to data and enhanced privacy. Core processors and technology providers should enable accelerated adoption of these capabilities to ensure that community banks are well-positioned to compete in an evolving market. ICBA strongly supports limiting the use, sharing, and storage of data to that which is authorized by the consumer. ICBA urges the CFPB to prohibit the sale of customer-permissioned data to unpermissioned third-parties.
- Data aggregators should be brought under the supervision of the CFPB which would result in consumer protection compliance obligations and subject these entities to annual examinations.
- Data access disclosures should clearly indicate the entity that is obtaining permission from the customer and provide the customer with clearly stated instructions for revoking their permission
- Regulators should not interpret customer-permissioned aggregator access to a bank's data as a direct vendor relationship.
- ICBA firmly asserts that liability should follow the custody of the data and that all costs associated with a breach or system intrusion should be borne by the entity that incurs the breach.

## **Background**

Data Sharing. Section 1033 of the Dodd-Frank Act requires a bank to make a consumer's data and financial records available upon request. Community banks should assess the risks related to open access by third parties, also known as open-banking, including financial and reputational risks, and take necessary actions to mitigate risks.

Common Principles and Industry Standards. The CFPB issued data-sharing principles in 2017 that ensure consumers remain protected when sharing their financial data. These principles include user-permissioned access and the ability to revoke consent as well as the use of applicable laws and industry best practices with regard to data privacy and security. The industry is moving towards adoption of standardized Application Programming Interfaces (API) to address technical inconsistencies and enable these common principles. However, there is only limited adoption of APIs among community banks because APIs are highly dependent on their core banking platforms or other solution providers for API integration capabilities. To date, there has been insufficient progress and speed to market by core and other technology providers to enable adoption of APIs. Standards implementation by different market participants should reflect industry progression and must not leave community banks at a disadvantage from any asymmetry of capabilities and resources.

Data Minimization. Data for which the consumer has authorized access should have limited application functionality, providing only minimal access, collection, and storage for a restricted period of time and thereby protecting consumers in the event of a breach or misuse of their data. These restrictions should include limiting data to the original entity that has received permission and affirmatively prohibiting the sale of data to unpermissioned third parties.

Regulatory Oversight of Data Aggregators. Title X of the Dodd-Frank Act authorized the CFPB to establish a supervisory program for nonbanks that offer consumer financial products or services. Such authority ensures consumer safeguards and levels the playing field among all industry participants. However, to date, aggregators benefit from unregulated access to sensitive consumer financial data

without the oversight of examinations. Many aggregators are now expanding their services, but these companies sit outside the regulatory perimeter. The longer they benefit from lack of supervision, the more risk of harm to consumers as aggregators become more enmeshed with their data. This unequal regulatory dynamic diminishes community bank competitiveness because aggregators are not subjected to the same obligations nor oversight.

Transparent Consent Disclosures. Consumers must clearly understand which company they are granting permission to access their banking data. Banks should not be required to provide disclosures on behalf of permissioned third parties. Use of bank logos and branding elements create confusion and mislead bank customers, creating customer support difficulties for banks. Consent disclosures should identify specific data to be accessed and instructions on how to revoke permission. Services that go beyond financial aggregation, such as money movement, should require separate and explicit consent disclosures from the permissioned third party to inform the customer of risks created by such services.

No Vendor Relationship. Regulators should not interpret customer-permissioned aggregator access to a bank's data as a direct vendor relationship. Banks and aggregators are brought together at the direction of a consumer authorizing access to their data. The aggregator is not an agent, nor a third-party service provider, acting on behalf of the bank. Absent the consumer connection, there is no contractual or other business relationship between the bank and the data aggregator that would trigger vendor due diligence requirements. As such, banks should not be required to conduct vendor-like due diligence on aggregators, and the requirement to do so is yet another unfair and misplaced regulatory burden.

Third-Party Responsibility for Financial Losses. A community bank's success is largely dependent on its reputation for fostering customer trust. Maintaining the integrity of customer financial relationships is of utmost importance to community banks, not only because it is required by law but also because it is the right thing to do. If a customer experiences a financial loss with a permissioned data aggregator or third party, the customer is likely to seek redress from their bank. Regardless of where a breach occurs, banks take a variety of steps at their own expense to protect the integrity of customer accounts and should have access to all cost recovery options. Too often, the breached entity evades accountability while financial institutions are left to mitigate the customers damages.

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## **FASTER PAYMENTS**

### **Position**

- ICBA supports the development and evolution of broadly inclusive, safe, highly secure, and efficient faster payments systems that enable risk mitigation and help community banks remain competitive and meet the payments needs of their customers. ICBA encourages its members to focus on their readiness efforts in 2022 to prepare for the launch of FedNow in 2023.

- ICBA applauds the development of ubiquitous payments settlement networks – developed by both the public and private sector – that are available to all federally insured financial institutions.
- ICBA strongly urges the Federal Reserve to continue their phased approach to expeditiously launch the FedNow Service which would allow community banks choice in selecting real-time network providers.
- ICBA strongly supports and encourages community bank adoption of faster payments and urges all community banks to develop strategic approaches to offering faster payments products and services to their customers.
- ICBA urges the Federal Reserve to implement a fair, equitable pricing model that recognizes the investment required to add instant payments capabilities, ensuring that even the smallest community banks have a level playing field for competing with the largest institutions.
- ICBA also recognizes that core processors play a critical role in ensuring community bank readiness and encourages banks to work with their processors and technology partners to prepare for FedNow's launch.
- ICBA encourages the U.S. Treasury Department to utilize faster payment methods to deliver government payments to citizens' bank accounts.
- ICBA urges both the Federal Reserve and The Clearing House to make achieving interoperability in their real-time payments systems a priority to ensure ubiquitous adoption.
- ICBA urges policymakers to continue to assess and review the impact of faster payments on the current legal and regulatory framework.
- ICBA maintains that the continuing adjustment of cutoff times for Fedwire and the National Settlement Service, along with the extension of the discount window to accommodate evening, weekends, and holidays, is a vital step toward payments improvement and should be a priority for the Federal Reserve.

## **Background**

Development of an Instant Payments System. The addition of an instant payments system by the Federal Reserve for the settlement of faster payments complements present-day clearing and settlement systems by providing immediate funds settlement transaction-by-transaction on a 24x7x365 basis. Such a platform serves as a foundation for innovation, not just for payments today but as payments evolve in the future. By developing and operating an instant payments service, the Federal Reserve: 1) provides financial institutions an infrastructure option for clearing and settling faster payments; 2) ensures access for all financial institutions; 3) provides a settlement option that is not affiliated with or owned by the nation's largest banks; 4) serves as a backbone to ensure settlement continuity in the event of disruption in the private-sector; 5) provides a settlement option with transparent rules; and 6) encourages competition and innovation. ICBA recognizes that 2022 will be a pivotal year as the industry prepares for the launch of FedNow and urges all community banks to develop and implement strategic plans to provide faster payments products and services to meet customer needs.

Competition and Innovation. The implementation and ubiquitous adoption of instant payment systems will strengthen the US economy by providing a platform for continued innovation and economic growth. Some policymakers are concerned that other countries may gain a competitive advantage if the US payment system does not evolve quickly enough. ICBA recognizes that instant payments can play a vital

role in sustaining economic growth and ensuring that American businesses and consumers can access payments products and services that meet the needs of the 21<sup>st</sup> century economy. ICBA urges community banks to prioritize preparations for the launch of FedNow in 2023.

Expedite Government Payments. National emergencies and natural disasters have highlighted a growing need for the federal government to have the ability to distribute recovery funds and stimulus payments quickly and efficiently to citizens' accounts. The 2021 American Rescue Plan Act directed the Internal Revenue Service and the Bureau of Fiscal Services to deliver nearly \$400 billion in Economic Impact Payments to help Americans recover from the pandemic; nearly 90 percent of these payments were deposited directly into accounts via the ACH Network.<sup>2</sup> ICBA encourages the federal government to continue to utilize faster payment methods, such as Same Day ACH, to reduce inefficiencies associated with issuing checks and promote the benefits of electronic payments and bank accounts.

Ubiquitous Adoption. Ubiquitous adoption among financial institutions should be the primary measure of success for achieving payments modernization in the U.S. The establishment of FedNow provides choice for every community bank that desires to implement a real time settlement solution. Achieving industry-wide ubiquity will require all community banks to prioritize implementation of a real-time settlement solution. As community banks prepare for the launch of FedNow, they recognize the urgency to adopt an instant payments solution and develop plans to successfully deliver new products and services. Policymakers should support community banks as they prioritize instant payments by eliminating undue regulatory burdens that may impede adoption.

Interoperability. Both the public and private sector providers should aim for interoperability at the earliest possible date, but the Federal Reserve should not delay launching FedNow as the path to interoperability is discussed and charted.

Impact of Existing Legal Framework. The attributes of real-time payments potentially impact consumer protection and risk mitigation strategies. Many of the protections included in the existing legal and regulatory framework need to be revisited to accommodate new payments settlement networks such as FedNow, RTP, or card-based solutions.

Liquidity Management Tools. The Federal Reserve should continue its efforts to provide tools and templates to support the impact of the 24-hour business day and accounting changes. A key aspect for financial institutions to manage and maintain the right cash position and liquidity is detailed electronic transaction reporting to facilitate reconciliation and address potential risks arising from the new 24x7x365 transaction processing environment.

Crucially, bankers' banks play a vital role in aiding community banks with liquidity management. The ability of participants in the FedNow Service and their agents to access and manage funding during the end-of-day cycle and provisional timeframes period (i.e., after-hours, weekends, and holidays) will be important in avoiding overdrafts of a bank's master account at the Federal Reserve. Lack of controls to

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<sup>2</sup> U.S. Treasury Department, "Treasury & IRS Release State-by-State Data on Third Round of Economic Impact Payments Totaling Nearly \$390 Billion." Press Release, June 29, 2021. <https://home.treasury.gov/news/press-releases/jy0248>.

moderate the velocity of payment flows over their master accounts and offer greater certainty about their balances could pose payment system risk with downstream implications.

Fair and Equitable Pricing. Emerging changes in the payments landscape are disintermediating banks and threatening the important revenues community banks derive from payment cards. Payment card revenue is used to fund capital accounts which support community lending. In an environment of compressed community bank non-interest revenues, it is important to implement a fair, equitable pricing model for FedNow. ICBA advises the Federal Reserve to consider short-term monetary incentives such as fee reductions for early adopters to help offset early investments. ICBA also encourages the Federal Reserve to routinely review and update pricing to ensure that community bank participants remain competitive in offering payments services to their customers.

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## **INNOVATION**

### **Position**

- ICBA supports and encourages community banks to innovate, both organically and through partnerships with other innovators, to provide their customers with high-tech products and services while still providing relationship-based banking.
- ICBA supports a legal and regulatory framework, coupled with a supervisory process, that fosters innovative financial services.
- ICBA supports banking and markets regulators' Offices of Innovation's efforts to create balanced and flexible policies and regulations that facilitate bank exploration of innovative products and services.
- ICBA supports the Agencies' efforts to consolidate their individual third-party guidance into a harmonized framework.
- ICBA supports industry and regulatory efforts to streamline and harmonize existing regulations to equally cover financial institutions, financial technology companies ("Fintechs"), and third-party services providers that provide products and services to the financial industry.
- ICBA recommends that Congress amend the Bank Service Company Act ("BSCA" or "Act") to provide (1) an option for direct supervision of fintechs and (2) a presumption of compliance for banks that form a relationship with those fintechs.
- ICBA believes that regulators should not act prematurely to promulgate rules and regulations that inadvertently stifle innovations that could lower costs and benefit the industry and consumers alike.
- ICBA encourages regulatory agencies to publish examination results of third-party service providers and fintechs in a timely manner. Current FFIEC examination results, for example, are often not available to banks to use in their vendor management programs for as long as a year from examination date.
- ICBA encourages community banks to actively participate in efforts to establish standard-setting and voluntary-certification programs that support community banks' efforts to implement models and manage model risk.

## **Background**

- Fintech and Third-Party Service Providers. Fintechs offer new channels to financial products and services for consumers and small business. Fintech companies can serve as valued partners to community banks. The regulatory frameworks governing these relationships should maintain harmonized due diligence requirements to reduce burdens for both the bank and fintech companies. Third-party service providers provide both products and services to the financial sector in the form of software, core solutions, processing, cybersecurity, and other services.
- Innovation. Technological innovation and deployment, particularly digital innovation, continue to alter the ways that consumers and businesses conduct banking and commerce and influence the products that community banks offer. Additionally, technology deployment may alter the risk profile of community banks and subject them to a myriad of regulatory requirements and oversight while often fintechs and third-party service providers are not held to the same regulatory requirements thereby creating a competitive advantage over banks and increasing risk within the financial sector.

Guidance for Novel Technologies. The banking agencies play a valuable role in defining and identifying the risks of existing and emerging technologies for both community banks and their service providers. However, guidance should be crafted in a manner that does not hamper innovation or impose undue burden. For example, there have been great advancements in the use of artificial intelligence and machine learning, quantum computing, and alternative data. Continued publication of guidance is helpful for community banks that want to explore these technologies, while maintaining compliance with safety and soundness, consumer protection, and data security/privacy laws.

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## **PAYMENT CARDS**

### **Position**

- ICBA strongly supports the continued viability payment card systems that recognize the important role of community banks as digital delivery channels evolve.
- ICBA urges policymakers, payments networks, and digital wallet providers to ensure that the customer can choose their top-of-wallet card or preferred card-on-file payment method.
- ICBA strongly opposes efforts that, while theoretically intended to prevent unfair, deceptive, or abusive payment card acts or practices, would adversely affect community bank payment card issuers and agents as well as their customers.
- ICBA strongly opposes efforts to have the government set or limit payment card interchange or other fees, mandate interchange fee disclosure to consumers, or create antitrust exemptions allowing merchants to “negotiate” or “operate” in anti-competitive and collusive ways to the detriment of community banks and their customers. Government intervention should not diminish issuer or consumer choice by providing one payment card an advantage over another payment card.
- ICBA supports consumer choice in payment card offerings through enhanced transparency, education and fairness. However, ICBA opposes any efforts to create a disclosure regime that would have the

effect of limiting choices for consumers across the socio-economic spectrum or subject community banks to burdensome legal and compliance scrutiny.

- ICBA supports efforts to improve payment card security and decrease fraud risk through evolving card security technologies, including data analytics, biometric technology, neural networks, tokenization, authentication, and end-to-end transaction encryption.

## **Background**

Digital Delivery Channels. Technology has improved traditional payment cards with enhancements such as tokenization and 3D Secure. Digital delivery channels such as contactless mobile payments and scan-and-pay allow consumers to make payments by holding or swiping their phones near a terminal. This technology has become increasingly common in the United States with the proliferation of contactless credit and debit cards.

Consumer Choice. Digital wallets can enable greater choice by allowing the customer to select from multiple cards issued by multiple financial institutions. Wallets should accommodate any card issued and branded by a chartered and federally insured financial institution and honor the consumer's preferred choice of payment card.

Consumer Protection. Community banks provide a menu of payment card services to execute the exchange of monetary value. Community banks strive to balance transparency, safety, soundness, and profitability in payment card programs that support the needs of a financially varied customer base. Congress and the federal agencies must exercise caution by ensuring that efforts to establish and maintain an environment protecting consumers from unfair, deceptive, or abusive acts or practices do not unnecessarily impede community banks' ability to respond expeditiously to changing markets and consumer needs. Policies that generate more compliance costs for community banks will not benefit consumers. Congress and the federal agencies must recognize that community bank payment card programs need to be profitable. If not, community banks will be forced to consider discontinuing various products including cards, further consolidating the industry, resulting in fewer choices and limited access for consumers.

Payment Security. Payment card system stakeholders are concerned about mitigating security risks and the need to adopt more sophisticated and secure technologies such as chips, tokenization, analytics, neural networks, biometrics, authentication, cardholder controls and end-to-end encryption. To mitigate the risks resulting from increasing digital transaction volumes, it is critical for all stakeholders to deploy advanced technologies optimally designed to keep pace with the evolving threat landscape.

Government Intervention. The debit interchange price controls implemented by the Durbin Amendment continue to harm community banks, small businesses, and consumers. Additionally, merchants are vigorously pursuing various regulatory and legislative strategies to further shift their payment card interchange costs to consumers and are likely to continue to push Congress to regulate credit card interchange fees and further weaken payments network rules in the future. ICBA remains adamantly

opposed to government intervention and price controls that negatively impact community banks and their customers.

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## **Protect the Safety and Soundness of the Financial System**

*ICBA urges policymakers to be proactive in addressing longstanding as well as emerging threats to safety and soundness. Anticipating and preventing systemic failure must be a priority – whether it stems from poorly functioning markets, the exploitation of technology by nefarious actors, widespread fraud or other sources.*

### **CENTRAL BANK DIGITAL CURRENCY**

#### **Position**

- As the Federal Reserve and Federal agencies evaluate whether to create a U.S. central bank digital currency (CBDC), they must consider the risks, policy trade-offs, and challenges with the practicalities of introducing a CBDC in the United States, alongside the goals, use cases, technological considerations, and benefits.
- ICBA opposes the creation of a CBDC because the associated risks would outweigh its potential benefits. The policy goals that have been articulated in support of a CBDC would best be addressed through alternatives that are readily available in the market today.
- Before instituting a CBDC, Congress would need to exercise its authority to evaluate a solid legal framework for a CBDC and examine the risks and unintended consequences associated with a CBDC.
- ICBA adamantly opposes the direct provisioning of retail accounts at the Federal Reserve.
- The issuance of a CBDC would unfairly position the Federal Reserve as a direct competitor for bank deposits. A widely accessible and attractive CBDC could lead to largescale bank disintermediation, obstructing banks' ability to provide vital lending services to customers that rely on their local banks as a source of credit.
- ICBA recognizes that the U.S. dollar must remain the foundation of the U.S. financial system to safeguard and strengthen national security. However, ICBA believes that the dollar's role globally remains secure and would not be undermined without a CBDC, as proponents have argued.
- ICBA does not believe that a U.S. CBDC will displace or impede the growth of unregulated, private sector cryptocurrencies which offer anonymity that a CBDC would not. On the contrary, a CBDC, which could allow the federal government to track holdings and transactions, might trigger more interest in privately issued digital assets.
- Essential to the analysis of a U.S. central bank digital currency, ICBA urges the Federal Reserve to lead collaboration and broad engagement with a diverse array of stakeholders, including community banks.

## Background

Expediently Assess the Policy Trade-Offs and Rationale of a CBDC. In January 2022, the Federal Reserve released its long-awaited report on a CBDC, beginning a policy dialog around the risks, costs, and benefits of issuing a CBDC in the U.S. The Fed noted that it was not seeking to promote a specific outcome and issued a request for information. Separately, a Biden administration Executive Order requires the Treasury Department to analyze the implications of a CBDC on economic growth and stability, financial inclusion, and illicit financial activity and to assess whether legislation is required to create a CBDC.<sup>3</sup> Reports are due in September and October 2022. Any legislation proposed by the Administration would be based on Treasury’s findings and input from the Federal Reserve. It is unclear whether a CBDC would achieve policy goals that cannot be better achieved by other means. The economics of a CBDC – both direct costs to build and deploy as well as the economic impact– are not well understood and are not explained in the Fed consultation paper. A white paper by the Kansas City Fed concluded that, “...it is unlikely that all benefits of a CBDC will be able to co-exist in practice.”<sup>4</sup>

Destabilization Risk to the Existing Banking and Payments Systems. A CBDC could threaten the health of the U.S. financial system by destabilizing existing banking and payments systems that are the backbone of our economy and markets. It would alter the roles and responsibilities of the private sector and the central bank in an unprecedented way. The introduction of CBDC could also erode the Federal Reserve’s ability to conduct monetary policy and interest rate control by altering the supply of reserves in the banking system and forcing the Fed to balloon its balance sheet. Because a liability of the central bank is riskless, depositors may prefer CBDC over bank deposits in a crisis even if the CBDC has a less attractive rate of return, introducing the potential for bank runs.

Preserve the Critical Role of Community Banks. The Fed defines a CBDC as “a digital liability of a central bank that is widely available to the general public.” While Americans are already accustomed to holding money in digital form as bank deposits recorded as computer entries on commercial bank ledgers, a CBDC differs in that it is not a liability of any commercial bank, but of the Federal Reserve itself. The Fed’s consultation paper stated, “The substitution effect could reduce the aggregate amount of deposits in the banking system, which could in turn increase bank funding expenses, and reduce credit availability or raise credit costs for households and businesses.” This would have a disastrous effect on the availability of credit, particularly to the small businesses served by community banks. The Federal Reserve must preserve the vital role of community banks as economic engines of the U.S. economy. Additionally, creation of a CBDC would require significant private sector investment without a clear business case or an expected return on community bank investments. The Fed report stated that in an “intermediated” model, banks would be expected to provide vital privacy, identity-verification, know-your-customer

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<sup>3</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/09/fact-sheet-president-biden-to-sign-executive-order-on-ensuring-responsible-innovation-in-digital-assets/>

<sup>4</sup> Maniff, Jesse Leigh, "Motives Matter: Examining Potential Tension in Central Bank Digital Currency Designs," Payments System Research Briefing, Federal Reserve Bank of Kansas City, July 2020, <https://www.kansascityfed.org/research/payments-system-research-briefings/motives-matter-examining-potential-tension/>

(KYC), anti-money laundering (AML), and other compliance processes. A CBDC could represent new burdens for community banks with no clear benefit, compensation, or new opportunities.

Legal and Regulatory Framework. The Fed promised in its report not to move forward “without clear support from the executive branch and from Congress, ideally in the form of a specific authorizing law.” Federal legislation would be required to establish the roles and responsibilities of the various stakeholders—including the Treasury Department, Federal Reserve, and the private sector. Congress would need to exercise its authority to preclude any actions that would disrupt the stability of the economy and inject safety and soundness risks to the financial system. Critically, any participant of the CBDC ecosystem must be subject to regulations and oversight tailored to the activities and risks they pose and commensurate with those that apply to federally insured banks.

Opposition to FedAccounts and Direct Access by Fintechs. ICBA adamantly opposes the direct provisioning of retail accounts at the Federal Reserve, which have been referred to as FedAccounts. The Federal Reserve has repeatedly said it is not positioned to offer direct accounts to consumers and is not legally permitted to do so. Consumers are best served by thousands of competing private institutions, which have a duty to ensure their needs are met. ICBA also strongly opposes direct access to Federal Reserve accounts by fintechs and other nonbank providers that sit outside the regulatory perimeter, avoiding the supervisory and regulatory framework that applies to banks while adding risk to the financial system. Allowing "regulated nonbank financial service providers" to compete in an open market for CBDC wallets, as proposed by the Fed, could introduce regulatory arbitrage risk and unfairly advantage these entities if they are not regulated as stringently as banks.

The Dollar’s Role in the Global Economy. Proponents of a CBCD have argued that it would support the dollar’s role in the global economy. However, the Federal Reserve notes that dollar dominance today is based off the depth and liquidity of U.S. financial markets, the size and openness of the U.S. economy, and international trust in U.S. institutions and rule of law. They note that competitive CBDCs could add a new dynamic but would not replace these key factors. As noted in a Federal Reserve white paper, "Overall, U.S. dollar dominance has remained stable over the past 20 years...Diminution of the U.S. dollar's status seems unlikely in the near term."<sup>5</sup>

Existing and Emerging Payments System Improvements May Accomplish Policy Goals More Effectively. The additive value of a CBDC is unclear and unproven, particularly given existing efforts by the private and public sectors to modernize the payments system. The U.S. has a diverse and highly competitive payments system today, with significant consumer choice. Safe, efficient Federal Reserve and private-sector interbank payment systems exist now that offer increased transaction speed and reduced costs. In public comments, Nellie Liang, the Undersecretary for Domestic Finance at the Treasury Department, discussed additional means of addressing unequal access to the financial system. She cited the FedNow<sup>SM</sup> system, a payments platform being developed by the Federal Reserve, that “will be low cost to users. Because FedNow relies on the banking system, there already are safeguards for consumers and

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<sup>5</sup> <https://www.federalreserve.gov/econres/notes/feds-notes/the-international-role-of-the-u-s-dollar-20211006.htm>

businesses.”<sup>6</sup> With the impending introduction of FedNow instant payment services and increased Same Day ACH adoption, Americans are enjoying faster transactions clearance and can expect further innovations to be built upon these rails. ICBA urges policymakers to give FedNow a chance to succeed in achieving payments modernization. The launch of a CBDC will be many years away, as pointed out by Treasury Secretary Yellen in a recent speech.<sup>7</sup> A decision at this time to establish a U.S. CBDC would be premature.

Privacy, Security and Operational Concerns. A CBDC would require a public record of all transactions to be maintained by the central bank, significantly undermining the privacy of consumers. Questions remain about how to ensure the appropriate level of surveillance and enforcement without unduly compromising financial privacy or eliminating promised efficiency benefits. This feature may impede a CBDC’s ability to foster financial inclusion, particularly for those who mistrust institutions and government. In addition, the Federal Reserve’s role as central processor of the CBDC ledger would dramatically increase its profile as a target for hackers, including sophisticated criminal gangs and hostile nations. If a U.S. CBDC were disrupted by hacking, it would undermine confidence in the dollar as a global reserve currency.

CBDC Taskforce. ICBA encourages the Federal Reserve to convene a broad group of stakeholders, including community banks and their technology partners, to analyze and explore the merits, opportunities, and challenges of introducing a CBDC in the United States. A CBDC taskforce comprised of a diverse spectrum of stakeholders will help ensure a strategic and inclusive approach that considers the interests of community banks and their customers.

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## CRYPTOCURRENCIES

### **Position**

- Wider adoption of cryptocurrency is altering global digital commerce and the global financial system. ICBA has serious concerns regarding threats posed by cryptocurrency to privacy, consumer protections, and financial stability resulting from increases in money laundering, terrorist financing, and fraudulent activity. Unregulated cryptocurrency threatens to disintermediate community banks and undermine their ability to provide funding to support local economic activity, growth, and development.
- ICBA urges policymakers to ensure public trust by fostering collaboration between domestic and international regulatory authorities to mitigate risks as the adoption of cryptocurrency continues to increase.

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<sup>6</sup> <https://home.treasury.gov/news/press-releases/jy0673>

<sup>7</sup> <https://home.treasury.gov/news/press-releases/jy0706>

- ICBA supports ongoing efforts by policymakers to harmonize regulations to ensure strong, clear, and consistent oversight of cryptocurrency service providers and establish a path forward with guidelines for permissible activities by banks.
- ICBA urges policymakers, regulators, law enforcement, and national security organizations to coordinate their efforts to combat ransomware and prevent bad actors from using cryptocurrencies for illicit activities.
- ICBA supports efforts by policymakers to resolve regulatory and legal debates about the classification of digital assets as securities, commodities, or banking products. Regulatory uncertainty inhibits wider adoption and impacts community banks' ability to compete in a rapidly evolving digital economy.
- ICBA encourages regulators to collaborate on a comprehensive approach to prevent the rise of a shadow banking system filled with unregulated, decentralized platforms that pose risks to consumers, the financial system, and U.S. national security. Decentralized finance (DeFi) threatens to disintermediate community banks and exposes consumers to significant risks from hacks, including the complete loss of user assets.
- ICBA urges policymakers to bring stablecoins within the regulatory perimeter to address serious risks to financial stability, national security, and consumer protection. Unregulated stablecoins and stablecoin products threaten to disintermediate community banks and heighten risks for disruptions to the wider economy.
- ICBA encourages community bankers to educate their staff on cryptocurrencies, follow market and regulatory developments, and evaluate their bank's exposure to cryptocurrency through customer activities. ICBA also urges regulators to prioritize examiner training on digital assets to ensure fair and accurate assessments during exams and fulfill their oversight responsibilities.
- ICBA is strongly opposed to special purpose bank charters being granted to crypto-asset companies that do not fully meet the requirements of federally insured and supervised chartered banks.

## **Background**

Market Evolution Includes Community Banks. Cryptocurrencies are expanding from a niche investment class to function as means of payment and stores of value. Although cryptocurrencies such as bitcoin are not yet widely accepted by merchants, several crypto companies are developing solutions to enable crypto payments for consumers and businesses. Some community banks are beginning to explore offering cryptocurrency products and services to meet customer demand, such as cryptocurrency debit card rewards programs or custody services for cryptocurrencies. Numerous financial service providers and fintech companies now offer consumers and businesses access to cryptocurrency-related activities, such as investments, lending, and custodial services. ICBA has encouraged regulators to collaborate on a comprehensive digital assets regulatory framework. The Federal Reserve, FDIC, and OCC released a plan to provide additional guidance on digital assets products and services in 2022.

Stablecoins. Stablecoins are a type of digital asset that attempts to maintain a stable value by being pegged to a national currency or backed by assets, such as commercial paper or commodities. In 2021, the total stablecoin market surged more than 500percent since October 2020; the top three stablecoins have

more than \$125 billion in circulation as of December 2021.<sup>8</sup> In response to growing concerns about the rapid growth of stablecoins and the risks they may pose to financial stability and consumer protection, the President’s Working Group on Financial Markets issued several recommendations in November 2021 to bring stablecoins within the regulatory perimeter. ICBA and its members remain committed to work with regulators and policymakers to mitigate the hazards posed by stablecoins. ICBA urges policymakers to develop a consistent regulatory framework for stablecoins and other digital assets that preserves the separation of banking and commerce, which is threatened by Big Tech firms operating payments systems and industrial loan companies that serve as full-service banks without adequate oversight.

Decentralized Finance (DeFi): DeFi is a term that describes a growing ecosystem of financial applications that run on public blockchains, such as Ethereum. DeFi applications, known as dApps, rely on smart contracts, or automated programming, to execute specific functions in an effort to replicate traditional products and services like payments and lending. However, DeFi is designed to deliver this variety of financial services without the use of centralized parties, such as banks, insurance companies, or brokerages. DeFi threatens to disintermediate community banks and create a shadow banking system filled with unregulated platforms that pose risks to consumers, the financial system, and U.S. national security. DeFi protocols are also frequent targets of hacks and other malicious activity that result in substantial losses for users.

Risk. Limited regulation and oversight applied to the cryptocurrency marketplace and transactions mean that consumers and investors that use or hold cryptocurrency are exposed to significant risks, including highly volatile fluctuations in value. Cryptocurrencies also present several operational risks and concerns, including flaws in smart contract programming and the loss of cryptographic keys that can jeopardize users’ assets.

Private stablecoins pose substantial threats, including the potential to erode monetary authority and disrupt financial stability. Community banks are at risk of disintermediation if private stablecoins become more widely adopted for payments. A migration of commercial deposits to alternative currencies held in digital wallets could reduce community banks’ source of credit funding, with severe implications for the thousands of communities across our country that depend on their local bank for credit and other financial services.

Money Laundering, Terrorist Financing, and Fraud. Cryptocurrencies have a long history of being used for criminal and illicit activity, undermining law enforcement. Criminals frequently use cryptocurrencies to launder funds, hijack computer systems with malware to surreptitiously mine cryptocurrency, and use cryptocurrencies to facilitate payments for illegal goods and services. Anonymity-enhanced cryptocurrencies, or cryptocurrencies designed to evade scrutiny and cloak users in greater secrecy, are utilized by fraudsters around the world for a variety of criminal actions.

Digital Assets Classification. Unresolved questions about how cryptoassets should be classified and regulated contribute to marketplace confusion and may impede wider adoption. Depending on various attributes and design, digital assets may qualify as securities, commodities, derivatives, or banking products and services. The appropriate classification of digital assets is critical to ensure that issuers and

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<sup>8</sup> See Coinmarketcap.com for data on total market capitalization of stablecoins.

intermediaries adhere to applicable laws and regulations and consumers have adequate protection. ICBA encourages interagency efforts to clarify how existing regulations may apply to cryptocurrencies.

Scope of Regulation. Policymakers are beginning to address the need for greater clarity in cryptocurrency regulations and policies. Any regulatory regime applied to cryptocurrency should be comparable to the multitude of regulations applicable to traditional, functionally similar payments products and services offered by the banking system. Appropriate regulation of participants in the cryptocurrency industry, such as exchanges, must mitigate significant risks. The scope of regulation should include capital adequacy and reserves; activity restrictions; due diligence; information security and privacy; business resiliency, ownership and control of data; anti-money laundering and anti-terrorist financing; reporting and maintenance of books and records; consumer protections; safeguarding customer information; vendor and third-party management; and ongoing examination. Without such a regime, the lack of parity with the banking industry poses a heightened level of risk to consumer privacy, digital commerce, and the global financial system.

Special Purpose Cryptocurrency Bank Charters. Innovation in financial services offers many benefits to consumers and businesses. However, innovation cannot come at the cost of ensuring a safe and sound banking and payments system. In the past year, several cryptocurrency companies began pursuing bank charters from the Office of the Comptroller of the Currency and from a small, but growing, number of states. These novel charters for non-banks firms raise a number of regulatory concerns—such as violation of the long-standing principle of the separation of banking and commerce, lack of application of traditional banking statutes and regulations governing safety and soundness and consumer protection, and most significantly, the potential introduction of systemic risk into the payments system. ICBA urges policymakers to ensure that cryptocurrency companies fully meet the requirements of federally insured and supervised chartered banks before granting any charter or access to the Federal Reserve’s payments systems.

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## **CYBERSECURITY AND INFORMATION SHARING**

### **Position**

- Any federal or state cybersecurity legislation, regulation, guidance, or framework should recognize existing mandates and standards to ensure community banks are not burdened with the obligation to reassess their critical systems against a duplicative or overlapping standards, which would yield similar results.
- Regulators should not mandate the use of any one framework, tool, or assessment, but rather support community banks’ ability to use the framework, tool or assessment that best suits their institution’s size, complexity, and risk tolerance.
- ICBA supports voluntary information sharing among financial institutions of all sizes, public-private partnerships, and federal agencies for the purpose of identifying, responding to, and mitigating

cybersecurity threats and vulnerabilities while appropriately balancing the need to secure customer information.

- Regulators must broaden their supervision to include additional core processors, fintech companies, and other third-party technology and service providers on which community banks rely. Employees and subcontractors of technology service providers should comply with nondisclosure and confidentiality requirements similar to those that apply to banks.
- Congress must subject credit reporting agencies and other customer financial data collectors/aggregators to federal examination and supervision comparable to that which applies to community banks and other financial institutions.
- ICBA supports cybersecurity initiatives such as .BANK and Sheltered Harbor and will work with community bank core processors to ensure equitable and reasonable access to these initiatives.
- ICBA supports stronger cybersecurity standards and practices for law enforcement, regulatory agencies, and other governmental departments and agencies.

## **Background**

The financial services industry, including community banks, is on the front lines defending against cybersecurity threats and takes its role in securing data and personal information very seriously. As a result of sophisticated and constantly evolving cyber threats and intrusions, the federal government and private industry are increasingly focused on cybersecurity.

Cybersecurity Risk Assessment Tools. Standards and technology policymakers must not be proscriptive in the use of cybersecurity frameworks. There are many acceptable tools and assessments such as the National Institute of Standards and Technology's Cybersecurity Framework, and the Federal Financial Institutions Examination Council (FFIEC) Cybersecurity Assessment Tool (CAT).

Threat Information Sharing is Critical. The sharing of advanced threat and attack data between federal agencies and financial services sector participants helps manage cyber threats and protect critical systems. ICBA supports community banks' involvement with services such as the Financial Services Information Sharing and Analysis Center (FS-ISAC), a non-profit information-sharing forum established by financial services industry participants to facilitate public and private sector sharing of physical and cybersecurity threat and vulnerability information. ICBA supports FS-ISAC's cross-sector information sharing efforts to enhance overall resiliency of the nation's critical infrastructure. ICBA's Sector Fraud Working Group shares fraud intelligence with a wide range of public and private stakeholders.

Oversight and Mitigation of Third-Party Risk. Community banks significantly rely on third party technology and service providers to support their systems and business activities. While community banks are diligent in their management of third parties, mitigating sophisticated cyber threats against them can be challenging, especially when they have connections to other institutions and servicers. Regulators must be aware of the significant interconnectivity of these third parties and collaborate with them to mitigate risk. The agencies should evaluate the concentration risks of service providers to financial institutions and broaden supervision of technology service providers to include additional third-party technology and service providers. Among other issues, employees of technology and service providers have access to confidential bank information that could be used to commit fraud, damage a bank's reputation, or compromise customer privacy. Regulators must ensure that these service providers

implement nondisclosure and confidentiality requirements similar to existing regulatory requirements for banks. They must provide disclosure when employees or contractors are non-U.S. citizens.

Examination and Supervision of Credit Rating Agencies. The 2017 Equifax data breach demonstrated how important it is that the credit rating agencies (CRAs) and other collectors/aggregators of customer financial data be subject to examination and supervision by prudential regulators. The release of this information has the potential to adversely affect American consumers for the remainder of their lives and presents unique challenges for all financial institutions in authenticating new and existing customers. Subjecting CRAs and similar organizations to appropriate oversight may prevent future breaches.

Sector Cybersecurity Initiatives. The .BANK web domain is a trusted, verified, secure, and easily identifiable location on the internet for the banking community and the customers it serves. With rigorous security standards in place, users of a .BANK website can be assured they are landing on participants' actual websites as opposed to being redirected elsewhere such as a malicious or spoofed site. .BANK also provides email authentication to mitigate spoofing and phishing as well as encryption for internet connections to ensure data privacy and security.

Sheltered Harbor is designed to improve resiliency and provide enhanced protection for financial institution customer accounts and data. Sheltered Harbor enables financial institutions to securely store and rapidly restore account information. When an institution is unable to recover from a cyber incident in a timely fashion, Sheltered Harbor makes account information available to customers through a service provider or another financial institution.

Governmental Departments and Agencies. Despite issuing cybersecurity regulations and guidance covering financial institutions, governmental departments and agencies have also been subject to data breaches. The government has a responsibility to safeguard sensitive information. Liability and costs of a breach of governmental systems may be unfairly assigned to the banking sector and result in a loss in confidence. Additionally, there is high risk of identity theft of American citizens.

*Staff Contacts:* Joel Williquette, Susan Sullivan, Steven Estep

## **DATA SECURITY**

### **Position**

- All participants in the payments and financial services sector ecosystem, including but not limited to merchants, aggregators, technology companies, and entities with access to customer financial information, should be subject to Gramm-Leach-Bliley Act (GLBA) like data security standards.
- ICBA supports national data security standards, including customer incident/breach notifications, to replace the current patchwork of state laws.
- Community banks should be notified by impacted entities of a potential and/or actual breach as expeditiously as possible in order to mitigate losses.

- The costs of data breaches should ultimately be borne by the party that incurs the breach. Barring a shift in liability to the breached entity, community banks should have continued access to various cost-recovery options, including account recovery programs and litigation.
- All stakeholders must continue to freely innovate to effectively protect consumer data and consumer confidence.
- ICBA supports stronger data security standards and practices for law enforcement, regulatory agencies, and other governmental departments and staff.

## **Background**

Data breaches at credit bureaus, retailers, hotel chains, social media networks, data aggregators, technology companies, and elsewhere jeopardize consumers' financial integrity and confidence in the financial services industry. Community banks are strong guardians of the security and confidentiality of customer information as a matter of good business practice and legal and regulatory compliance. Safeguarding customer information is critical to maintaining public trust and retaining customers. However, bad actors will continue to look for weaknesses in the payments and information systems in various industries, and breaches will occur.

Extend Gramm-Leach-Bliley Act-Like Standards. Under current federal law, retailers, data aggregators, technology companies, and other parties that process or store consumer financial data are not subject to the same federal data security standards and oversight as financial institutions. Securing data at financial institutions is of limited value if it remains exposed at the point-of-sale and other processing points. To effectively secure customer data, all participants in the payments system, and all entities with access to customer financial information, should be subject to and maintain well-recognized standards such as those created by the Gramm-Leach-Bliley Act (GLBA).

A National Data Security Breach and Notification Standard is Vital. Many states have enacted laws with differing requirements for providing notice in the event of a data breach. This patchwork of state notification laws and overly broad notification requirements only increase burdens and costs, foster confusion, and ultimately are detrimental to customers. While notifying customers is appropriate, any national notification standard needs to be accompanied by GLBA-like data security standards for all participants of the financial services industry to provide consumers a greater level of protection. Federal banking agencies should continue to set the standard for financial institutions.

Banks Need Timely and Enhanced Breach Notification. It is equally important that community banks receive timely notification concerning the nature and scope of any breach that may have compromised customer information so that they may take steps to mitigate any damage. Enhanced breach notification can save community banks time and money and is in the best interest of customers. Technology and service providers should also, as a matter of course, provide visibility into their business continuity, incident response, and other critical resiliency plans.

Breach Liability Should Incentivize Stronger Security. Regardless of where a breach occurs, as stewards of the customer financial relationship, banks take a variety of steps at their own expense to protect the integrity of customer accounts. However, these costs should ultimately be borne by the party that incurs the breach. Barring a liability shift, community banks should have access to various cost recovery options.

Too often, the breached entity evades accountability while financial institutions are left to mitigate damages to their customers.

Governmental Departments and Agencies Must Safeguard Data. Despite issuing rules, regulations, and guidance, and examining financial institutions for the safekeeping of customer data, regulatory bodies and governmental agencies have also been subject to data breaches. During bank examinations, regulators become privy to and hold sensitive bank information, including customer information. Banks also submit information on customers to the Financial Crimes Enforcement Network through Suspicious Activity Reports (SARs). Like banks, Governmental departments and agencies have a responsibility to safeguard sensitive information. Liability for a breach of governmental systems may be unfairly assigned to the community banks that submitted data to them, though they did so securely.

*Staff Contacts:* Joel Williquette, Susan Sullivan, Steven Estep

## **DEPOSIT INSURANCE**

### **Position**

- Our nation’s federal deposit insurance system is critical to depositor confidence in the banking system, to the protection of small depositors, and to the funding base of community banks. A strong Deposit Insurance Fund (DIF) is important to maintaining public confidence that the FDIC has adequate resources to protect the nation’s depositors.
- ICBA commends the FDIC for remaining flexible during the pandemic and establishing a Deposit Insurance Fund Restoration Plan that provides until September 30, 2028 to restore the DIF reserve ratio to 1.35percent. This will allow deposits to return to pre-pandemic levels without increasing insurance assessments.
- ICBA supported S. 2155 which ensures that reciprocal deposits are not considered brokered deposits under the Federal Deposit Insurance Act.
- ICBA commends the FDIC for substantially mitigating the impact of SBA PPP lending on FDIC insurance assessments.

### **Background**

Deposit insurance has been the stabilizing force of our nation’s banking system for more than 85 years. It promotes public confidence by providing safe and secure depositories for small businesses and individuals alike.

Deposit Insurance Fund Restoration Plan. The Federal Deposit Insurance Act requires the FDIC to maintain a minimum reserve ratio for the DIF of 1.35 percent and to establish a Deposit Insurance Fund Restoration Plan if the reserve ratio falls below the statutory minimum. Due to economic stimulus measures enacted in response to the pandemic, and elevated savings rates during this time, quarterly deposit growth rates outpaced deposit growth in the DIF causing the reserve ratio to decline below the required 1.35percent minimum. ICBA commends the FDIC for establishing a Deposit Insurance Fund

Restoration Plan that provides sufficient time and flexibility for the surge of insured deposits to recede and normalize without increasing community bank insurance assessments.

SBA Lending. ICBA commends the FDIC for substantially mitigating the impact of SBA PPP lending on FDIC insurance assessments. For instance, nearly every ratio that determines a small bank's assessment rate excludes PPP loans because of the FDIC's recent rule changes. These ratios include: the net income before taxes to total assets ratio, the nonperforming loans and leases to gross assets ratio, the other real estate owned to gross assets ratio, the brokered deposit ratio, the one-year asset growth measure, and the loan mix index (LMI). Furthermore, the assessment base used to determine assessments excludes PPP loans.

*Staff Contact:* Chris Cole and Jenna Burke

## **ENDING TOO-BIG-TO-FAIL**

### **Position**

- The continued growth and dominance of a small number of too-big-to-fail banks has led to an overly 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 measures that would curb or end advantages currently enjoyed by too-big-to-fail banks, and help mitigate the risk they pose to the financial system and economy. Such measures include higher capital and leverage requirements, enhanced liquidity standards, activity restrictions, concentration limits, limitations on the federal safety net, and more effective resolution authority.
- ICBA supports the Federal Deposit Insurance Corporation's (FDIC's) and the Federal Reserve's rules on contingent resolution plans and encourages the agencies to use the provisions of the Dodd-Frank Act requiring systemically important financial institutions (SIFIs) to divest their assets if they do not file credible plans.

### **Background**

Dominance of the Largest Banks. The greatest ongoing threat to the safety and soundness of the U.S. banking system is the dominance of a small number of too-big-to-fail megabanks. The megabanks have become even larger since the financial meltdown of 2008. In fact, the 12 largest US banks, just 0.002 percent of all US banks, account for 52.6 percent of industry assets, dwarfing the rest of the banking system and posing massive systemic risk.

Because these firms are too big to fail, they act with impunity and court risks that no smaller firm would tolerate. The markets offer them credit at rates that do not reflect their true risk—rates that are subsidized by an implicit taxpayer guarantee. In addition, large or interconnected institutions are too big to prosecute and their executives are too big to jail.

No banker should be above the law. The same prosecutorial standards and enforcement procedures must apply to community banks and megabanks alike. Many of these megabanks such as Wells Fargo are also too big to manage.

To address TBTF, we must both reduce the riskiness of megabanks to make it less likely they will fail in the first place and, when an institution is failing, ensure that tools are available to implement an orderly liquidation of the institution without causing a destabilizing systemic impact.

Enhanced Prudential Standards for Systemically Important Financial Institutions (SIFIs). ICBA generally endorses higher capital, leverage, liquidity standards, concentration limits, and contingent resolution plans for SIFIs. 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 (TLAC) and long-term debt (LTD) requirements on globally significant banks. ICBA supported S. 2155 which increased the asset threshold at which certain enhanced prudential standards apply, from \$50 billion to \$250 billion, while allowing the Federal Reserve discretion in determining whether a financial institution with assets of \$100 billion or more must be subject to such standards. S. 2155 also increased the asset threshold at which company-run stress tests are required from \$10 billion to \$250 billion and increased the asset threshold for mandatory risk committees from \$10 billion to \$50 billion.

FDIC as Receiver; “Funeral” Plans. ICBA supports the orderly liquidation rules of the FDIC and the provisions of the Dodd-Frank Act that provide a process for the appointment of the FDIC as receiver of a failing financial company that poses significant risk to the financial stability of the United States. ICBA also supports the FDIC’s and the Federal Reserve’s rules requiring SIFIs to submit contingent resolution plans that enable the FDIC, as receiver, to resolve the institution under the Federal Deposit Insurance Act. It is essential that the largest financial companies submit credible contingent resolution plans that would facilitate a rapid and orderly resolution of the company and describe how the liquidation process could be accomplished without posing systemic risk. If a company cannot submit a credible plan, the FDIC and the Federal Reserve should exercise their authority under the Dodd-Frank Act to order a divestiture of those assets or operations that might hinder an orderly resolution.

*Staff Contact:* Chris Cole and Jenna Burke

## **HOUSING FINANCE REFORM AND REGULATION OF THE GOVERNMENT SPONSORED ENTERPRISES**

### **Position**

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

- ICBA supports the Federal Housing Finance Administration's (FHFA's) recent actions in coordination with the Treasury to take steps to end the destructive sweep of GSE earnings and to require the GSEs to start retaining their earnings to rebuild their capital.
- ICBA supports FHFA and Treasury efforts to develop a path forward, which include a robust GSE capital framework, strong oversight, and supervision from FHFA.
- ICBA urges FHFA and Treasury to resolve Treasury's ownership based on the Preferred Stock Purchase Agreements (PSPAs) with a goal of allowing the GSEs to access the capital markets to raise outside equity which will help them to fully recapitalize.
- ICBA does not support perpetual conservatorship or complete government ownership and control of the GSEs.
- Housing finance reform efforts must provide robust and equitable secondary market access for lenders of all sizes, ensure no competition from the GSEs at the retail level, and permit retention of mortgage servicing rights on transferred loans.
- ICBA does not support reform proposals that would liquidate and distribute the GSEs' assets, intellectual property, or infrastructure to the largest national lenders and Wall Street institutions.
- ICBA does not support reform proposals that call for the creation of additional government-sponsored guarantors to compete with the GSEs or use of the Government National Mortgage Association (GNMA) to provide a government guaranty on GSE mortgage-backed securities (MBS).
- Community banks must be able to sell loans on a single loan basis for cash, effectively hedge interest rates, and offer rate-locks at low cost.
- Secondary market sales must be relatively simple. A process that requires complex credit enhancements, for example, will disadvantage community banks and other small lenders that lack the scale or resources to obtain and manage such enhancements from multiple parties.
- The GSEs must maintain their specific duty to serve all markets, including small towns and rural areas. Appraisal and underwriting guidelines must be flexible enough to accommodate the unique characteristics of these markets.
- ICBA is committed to preserving the 30-year fixed-rate mortgage for creditworthy customers in all markets.
- ICBA supports a government guaranty on GSE-issued mortgage-backed securities (MBS) as catastrophic loss protection that is fully and explicitly priced into the guarantee fee and the loan-level price.
- As a consequence of a recent Supreme Court ruling, the FHFA Director now serves at the pleasure of the President, which could result in significant shifts in policy and supervision as Administrations change. Single-director governance of the FHFA should be replaced with a five-member commission to bring a diversity of views and create a system of checks and balances that would strengthen rulemaking.

## **Background**

Community banks represent approximately 20 percent of the mortgage market, and secondary market sales are a significant line of business for many community banks. According to Home Mortgage Disclosure Act (HMDA) data, approximately two-thirds (64 percent) of ICBA banks sell half or more of the loans they originate on the secondary market. While many community banks choose to hold most of their mortgage loans in portfolio, robust secondary market access remains critical for them to support

mortgage lending demand. This is particularly true for fixed-rate lending. For a community bank, it is prohibitively expensive to hedge the interest rate risk that comes with fixed-rate lending. Secondary market sales eliminate this risk.

The current GSE secondary mortgage market structure has worked well for community banks by providing equitable access, not competing at the retail level, and permitting community banks to retain mortgage servicing rights on the loans they sell.

The goal in reforming the housing finance system must be to address the problems of the old system and restore balance among portfolio lenders, small financial institutions, and large lenders. Policymakers must be careful not to create a system that eradicates liquidity for all but the largest players, limits access to the market, or narrows options or imposes requirements that make it too costly for smaller lenders and servicers to participate.

ICBA urges the FHFA Director and the Treasury Secretary to work to resolve the obstacles to recapitalization of the GSEs and develop a plan for them to exit conservatorship by a certain date. Perpetual conservatorship is harmful to the long-term health of the GSEs and the mortgage market more broadly. The GSEs are private companies that are publicly traded. FHFA control of these companies under a conservatorship that has lasted beyond 14 years continues to set a bad precedent for any regulated entity.

*Staff Contacts:* Ron Haynie, Tim Roy

## **PRESERVING THE INDEPENDENCE OF THE FEDERAL BANKING AGENCIES**

### **Position**

- ICBA opposes any action that erodes the independence of the federal banking agencies.
- ICBA supports bipartisan board oversight at the federal banking agencies.
- ICBA strongly supports the independence of each federal bank supervisor but encourages enhanced and improved cooperation and consultation among the agencies.

### **Background**

Independence. Bank regulators should be objective, nonpartisan and protected from political influence. Independence helps prevent the politicization of bank supervision and regulation and avoids politically motivated direction of policies. It is essential for promoting consumer confidence in the banking system, the smooth functioning and safe and sound operation of the banking system, and in turn, the health of the national economy.

Bipartisan Oversight. Bipartisan oversight of the federal financial agencies is an important check-and-balance mechanism that provides stability between changing political administrations and prevents frequent, polarizing shifts in regulatory policies. Bipartisan boards encourage robust dialogue, diverse

viewpoints, and thoughtful deliberation in policy development, and have been a core tenet of community bank oversight since 1933 when Congress created the FDIC.

Agency Cooperation and Coordination. While regulatory choice is important, interagency cooperation and coordination of efforts among the federal banking agencies is equally necessary. Congress has increasingly directed the agencies to adopt concurrent rules and policies and the Federal Financial Institutions Examination Council (FFIEC) helps foster cooperation and coordination amongst its member agencies. While concurrent rules may take more time and effort to develop, interagency or concurrent rules offer greater acceptability and legitimacy—especially for complex or controversial issues—when the expertise and experience of each agency is brought to bear. Further, interagency rulemaking ensures institutions of similar size and complexity are subject to consistent regulation, regardless of charter.

*Staff contacts:* Chris Cole and Jenna Burke

## **Strengthening Our Political Voice**

### **COMMUNITY BANKER REPRESENTATION**

#### **Position**

- To ensure community bank views are considered by key policy bodies, ICBA supports the appointment and election of ICBA member bankers to public and private sector boards, advisory groups and task forces that influence the development of regulations and policies affecting the banking industry.
- ICBA supports the statutory requirement that at least one member of the Board of Governors of the Federal Reserve System have experience as a community banker or community bank regulator.
- ICBA strongly supports the existence of the FDIC’s Advisory Committee on Community Banking, the Federal Reserve’s Community Depository Institutions Advisory Council (and the Federal Reserve Banks’ similar local advisory councils), the CFPB’s Community Bank Advisory Council, the OCC’s Mutual Savings Association Advisory Committee and the OCC’s Minority Depository Institutions Advisory Committee.

#### **Background**

Community banker participation is essential to ensure community banking views are considered by a variety of key policy bodies. The various councils and committees sponsored by bank regulators are important avenues through which community banks can provide the agencies with advice and recommendations on a broad range of policy issues that impact community banks and the communities they serve. The councils and committees foster a dialog and help ensure that the policies and rules adopted by the regulators will take proper account of the unique role community banks play to support a vibrant small business sector and healthy local communities, especially in a challenging regulatory environment.

Likewise, community banker participation is essential to ensure community banking views are considered by other key policy bodies such as Federal Home Loan Bank boards of directors, NACHA-The Electronic Payments Association, the Bank Secrecy Act Advisory Group, the Financial Accounting Standards Advisory Council, the FASB Small Business Advisory Committee, the Financial Services Sector Coordinating Council and the Financial Services Information Sharing and Analysis Center, and special task forces.

**Staff Contact:** Lilly Thomas

## **INDEPENDENT COMMUNITY BANKERS POLITICAL ACTION COMMITTEE**

### **Position**

- ICBPAC supports candidates for federal office without regard to party affiliation. ICBA is neither Republican nor Democratic. We are focused on the politics of community banking.
- ICBA urges CEOs of all member banks, corporate associate members, and state and regional partners to sign an ICBPAC Prior Authorization form and make an individual contribution to ICBPAC.
- ICBA encourages all leadership bankers and Federal Delegate Board members to contribute to ICBPAC.
- CEOs should encourage their eligible officers and employees to contribute to ICBPAC individually or by adopting payroll deduction as a contribution method.
- CEOs should encourage their directors to contribute to ICBPAC. All banks that achieve 100 percent PAC participation from their board of directors are eligible for membership in ICBPAC's Directors Club.

### **Background**

ICBPAC is the only federal political action committee dedicated exclusively to supporting community banks in Washington. ICBPAC plays an integral role in supporting ICBA's overall advocacy efforts by building relationships with Members of Congress serving in House and Senate Leadership, on key committees of jurisdiction, and policymakers with a proven record of supporting community banks top legislative priorities.

ICBPAC operates in a bipartisan manner to educate and support the campaigns of pro community banking candidates and elected officials that work to generate legislative wins for ICBA's membership and the communities ICBA banks proudly serve.

ICBPAC has a history of raising over \$1.85 million from over 2,500 ICBA leadership bankers, bank employees, and ICBA staff each election cycle. Contributions from ICBA membership allow ICBPAC to strategically identify opportunities to enhance ICBA's visibility in Washington and build community bank champions in Congress through coordination with the ICBA Congressional Relations team, leadership bankers, and state association leaders.

ICBPAC disbursed nearly \$600,000 to over 300 federal candidates and committees during 2021 and will continue supporting industry advocates in 2022 as midterm elections approach. ICBPAC is among the top federal PACs nationwide and is essential to ensuring that the voices of community bankers are heard on Capitol Hill. Broad support of ICBPAC through contributions by member bank CEOs, employees, and directors is vital for the success of ICBA's advocacy activities.

*Staff Contact: Mary Randolph Gannon*

## **STATE AND REGIONAL PARTNER ASSOCIATIONS AFFILIATED WITH ICBA**

### **Position**

- ICBA works closely with a network of 44 affiliated state associations to promote the ICBA mission on behalf of our members and the entire community banking industry. A strong and vibrant network of state banking associations enhances ICBA's advocacy effectiveness before Congress and regulatory agencies in support of our membership.

### **Background**

ICBA continues its work, together with 44 affiliated state banking associations that represent community banks throughout the country, to advance the ICBA mission through partnership with affiliated state associations. This approach allows ICBA to reach the broadest community bank audience possible, as the collective number of banks represented by ICBA and/or their respective affiliates have more than 50,000 locations nationwide and hold more than \$5 trillion in assets.

Affiliated state associations that endorse and support ICBA services and subsidiaries receive non-dues revenue benefits from ICBA and ICBA Services Network<sup>®</sup>. Since its inception in 1982, the ICBA non-dues revenue sharing program has provided over \$41 million to participating partner associations. ICBA faithfully and continually strives to enhance the value of the ICBA-state association affiliation. ICBA state relations, together with ICBA leadership bankers and staff, supports and encourages state association efforts to advance the ICBA Mission and provide high value programs and services to community bankers. These include:

- Conference calls, outreach events, staff briefings at state association visits to DC, and access to staff expertise.
- Presentations at state conventions, conferences and educational seminars designed to inform, educate and inspire community bankers in their states.
- Articles for monthly magazines and newsletters to help state associations keep their members updated on advocacy issues and efforts to address their concerns.
- Customizable press releases and media support to help state associations better promote their message and mission.
- Professionally facilitated strategic planning services that help state independent community bank associations develop, design, and project for the future and thereby stay vibrant and strong.

- Responding to individual state association requests in a prompt, succinct and mutually beneficial fashion that honors our commitment to our affiliation partnership.

With diligence, ICBA continues to ensure that our network of affiliated state association partners remains strong and vibrant in support of the community banking industry and the ICBA Mission.

*Staff Contact:* Joe Schneider

## **STRENGTHENING MEMBERSHIP**

### **Position**

- ICBA, the exclusive national voice for community banks, represents community banks of all sizes and types. ICBA is focused on providing the highest membership value available for community banks.
- Leveraging strategic partnerships, educational offerings, innovation programs, and government and regulatory policy advocacy, the Member Relations team positions ICBA as a key strategic partner for the community banking industry.

### **Background**

ICBA communicates its multifaceted membership benefits and policy positions to all community bankers through a variety of outreach methods. These outreach efforts include one-on-one visits from regionally positioned Member Relations Officers and Member Relations Directors, virtual meetings, direct phone outreach, targeted marketing campaigns, webinars, state convention participation, regional member meetings, daily electronic communication, and special alerts. To increase engagement and expand membership value, each member bank has two defined points of contact within the Member Relations team, a Member Relations Officer and a Member Relations Director. The Member Relations team is also responsible for recruiting and engaging with non-member banks to strengthen overall ICBA membership.

ICBA's educational offerings play a critical role in strengthening membership. ICBA's timely, high-quality and relevant educational programs and services are designed to promote community bank growth and prosperity. Community Banker University® provides professional development and educational choices that add value to the community banker, the community bank, and the communities they serve. In addition, a comprehensive array of professional development and continuing education seminars, and educational products are designed to help community bankers successfully overcome the ever-changing challenges of the banking industry. ICBA has developed nine certification institutes that require attendees to meet predetermined qualifications to attain certification in critical areas of internal audit, compliance, BSA/AML, risk, security, technology and lending (commercial, consumer, credit analysis). Programs, including the Bank Director Program and Leadership Academy, deliver specialized instruction and resources to community bankers across the country. Additionally, Community Banker University's Online Training Library serves 350+ online courses to more than 55,000 individual learners.

All ICBA's efforts are centered around the association's core mission: "To create and promote an environment where community banks flourish." The Member Relations Team endeavors to integrate the association as a strategic partner and resource for all community banks. The team seeks to introduce appropriate solutions commensurate with a bank's strategic vision and overall balance sheet needs. Effectively executing this strategy translates into growth and success for both ICBA and the community banking industry.

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