INDEPENDENT COMMUNITY BANKS of NORTH DAKOTA

POSITION PAPER AND TOP PRIORITIES FOR 2017
EXECUTIVE SUMMARY

RELIEF FROM CRUSHING REGULATORY BURDEN: Enacting targeted regulatory relief from ICBA's Plan for Prosperity platform to help community banks support the credit needs of their customers, continue serving their communities, and accelerate local economic growth.

TAX-EXEMPT CREDIT UNIONS: Urging Congress to end the credit union industry's unwarranted federal tax subsidy and opposing expanded powers for the industry as long as it remains exempt from taxation and the Community Reinvestment Act.

MORTGAGE LENDING REFORM: Reforming CFPB mortgage rules to protect responsible loan products that meet consumers' diverse needs and provide "qualified mortgage" safe harbor status to all loans originated and held in portfolio.

ENACTING A NEW FARM BILL AND REFORMING THE FARM CREDIT SYSTEM: Calling on Congress to pass a strong farm bill that provides stability to the volatile farm sector and to prevent the Farm Credit System from abusing its tax-advantaged status.

CONSUMER FINANCIAL PROTECTION BUREAU: Supporting legislation that ensures accountability at the Consumer Financial Protection Bureau by replacing single-director governance with a five-member commission and promoting greater participation by the prudential banking regulators.

CYBERSECURITY: Maintaining community banks' existing flexibility to use the cybersecurity framework that best fits their size and complexity while ensuring federal cybersecurity policies recognize existing community bank mandates.

CURRENT EXPECTED CREDIT LOSS MODEL: Opposing any implementation of the Current Expected Credit Loss model that contradicts the Financial Accounting Standards Board's view that smaller community financial institutions should utilize existing processes to project future credit losses.

ENDING TOO-BIG-TO-FAIL: Curbing or ending the advantages enjoyed by too-big-to-fail banks that have resulted in a financial system plagued by excessive concentration, systemic risk, moral hazard and distorted free markets.

TAX POLICY: Advocating tax laws that promote robust economic activity, a vibrant community banking sector, and saving and investment.

DATA SECURITY AND FRAUD: Ensuring all participants in the payments system, including merchants and entities with access to customer financial information, are subject to Gramm-Leach-Bliley Act-like data-security standards.

HOUSING-FINANCE REFORM AND THE GOVERNMENT-SPONSORED ENTERPRISES: Supporting housing-finance reform that preserves market liquidity and stability for all stakeholders while allowing Fannie Mae and Freddie Mac to develop and implement a capital-restoration plan that protects U.S. taxpayers from future bailouts.

FINTECH BANK CHARTERS: Continue raising concerns with the Office of the Comptroller of the Currency's proposed special-purpose national bank charter for fintech companies, such as risks to taxpayers and the financial system and whether the OCC is legally authorized to proceed.

COMMUNITY BANK ACCESS TO CAPITAL: Supporting legislative and regulatory changes that would improve the ability of community banks to raise capital to meet the credit and banking needs of their local communities.

PAYMENTS SYSTEMS ACCESS AND GOVERNANCE: Supporting payment systems that are competitive, progressive and secure and that offer fair and open access to all community banks so they can meet the existing and evolving global payment needs of their customers.

POSITION PAPER AND TOP PRIORITIES FOR 2017
TABLE OF CONTENTS

RELIEF FROM CRUSHING REGULATORY BURDEN

Position

- Community banks need regulatory relief to support the credit needs of their customers, serve their communities, and contribute to their local economies.
- ICBA's "Plan for Prosperity" contains targeted measures that would roll back the Dodd-Frank Act specific provisions among other onerous rules, providing regulatory relief for community banks.
- ICBND 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, thresholds for regulatory accommodations and exemptions based on asset size and transaction volume should be continually reviewed and adjusted upward as community banks consolidate and the average asset size of banks increases.
- In carrying out the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, the regulatory agencies must honor their Congressional mandate and provide meaningful regulatory relief. To date, the EGRPRA proposals have been disappointing.

Background

Regulatory and paperwork requirements impose a disproportionate burden on community banks and diminish their ability to attract capital, support the credit needs of their customers, serve their communities, and contribute to their local economies. Large banks have larger, dedicated legal and compliance staff and can more easily absorb regulatory costs. Credit unions and other nonbank institutions that perform "bank-like" functions and offer comparable bank products and services are not subject to the same taxation, laws and regulations as community banks. This uneven playing field places community banks at a competitive disadvantage and inhibits their ability to serve their customers and their communities. 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 de novo banks to offset consolidation, the industry has become progressively more concentrated to the detriment of all borrowers.

Plan for Prosperity. ICBA's Plan for Prosperity ("Plan") for the 115th Congress is a "legislative platform" or set of community bank priorities positioned for advancement. In the last Congress, approximately 66 bills were introduced and reached various stages of progress in the House and Senate, including the CLEAR Relief Act which included several Plan provisions.

The bill that best represented ICBA's regulatory relief priorities was H.R. 5983, the "Financial Choice Act" ("Choice Act") introduced last year by House Financial Services Committee Chairman Jeb Hensarling (R-TX). The Choice Act contains over two dozen community bank regulatory relief provisions from ICBA's Plan for Prosperity. These include relief from some of the most burdensome **Dodd-Frank provisions.** The bill would fully repeal the Durbin Amendment price controls on debit interchange, grant automatic "qualified mortgage" treatment for mortgage loans held in portfolio, provide short form call reports for well-capitalized community banks, repeal the Dodd-Frank small business data collection requirement, increase the threshold for Consumer Financial Protection Bureau examination and enforcement from $10 billion to $50 billion in assets, and convert the CFPB from a single Director to a bi-partisan commission. In addition, the legislation would create an "off ramp" from Basel III capital standards for any highly-rated bank that maintains a simple leverage ratio of at least 10%. With unified Republican control of the Executive Branch, House and Senate, the Choice Act is well positioned for action during the 115th Congress and will serve as a starting point for regulatory relief legislation.

Wells Fargo Risk. Due to bi-partisan outrage on Capitol Hill, Congress may also turn its attention to addressing many of the abuses perpetrated by Wells Fargo employees on its customers. Community bankers are concerned that legislative and regulatory responses to these abuses will fail to distinguish community banks from the too-big-to-manage megabanks. ICBND will continue to remind Washington policymakers of the significant differences between the community bank relationship-based business model and the transaction-based model of much larger institutions.

Tiered Regulation. ICBND strongly supports a system of tiered regulation—regulatory and supervisory policies that differentiate between community banks and other financial services providers. The Dodd- Frank Act provided for tiered regulation in several areas including an exemption for banks with assets of less than $10 billion from CFPB examination and enforcement, and indemnification of banks with assets of less than $10 billion from FDIC premium increases that will result from increasing the Deposit Insurance Fund minimum reserve ratio from 1.15 percent to 1.35 percent. In addition, the CFPB made special accommodations for certain community banks under the “ability-to-repay/qualified mortgage” rule and the mortgage servicing rule. While these provisions are significant, much more is needed. The basic framework of financial regulation should be based on the principle of tiering proportionate to size, business model, complexity, and risk.

EGRPRA. The regulatory agencies should take full advantage of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, a two-year review of financial regulations to identify outdated, unnecessary or unduly burdensome regulations. Under EGRPRA, the banking agencies (except for the CFPB) are required to conduct a review of their regulations every ten years. During the current EGRPRA review process, the agencies held six outreach meetings across the country with the participation of numerous community bankers. ICBA submitted four comment letters during the current EGRPRA review recommending a number of ways to reduce the regulatory burden on community banks including exempting community banks from Basel III, raising some of the asset and dollar thresholds under the Community Reinvestment Act and the Bank Secrecy Act, and streamlining Regulation O. So far, ICBND has been disappointed with the weak magnitude of some of the burden reduction measures that have been proposed by the regulators including the proposal for a streamlined call report for community banks.

<u>TAX-EXEMPT CREDIT UNIONS:</u> Urging Congress to end the credit union industry’s unwarranted federal tax subsidy and opposing expanded powers for the industry as long as it remains exempt from taxation and the Community Reinvestment Act.

Position

- ICBND urges Congress to end the unwarranted federal tax subsidy of the credit union industry.
- ICBND opposes expanded powers for credit unions, whether pursued by legislation or regulation, as long as credit unions remain exempt from taxation and the Community Reinvestment Act (CRA).
- ICBND believes the National Credit Union Administration’s (NCUA’s) final “member business loan” rule violates the plain terms of the Federal Credit Union Act by allowing credit unions to exceed the member business lending cap. ICBND provided financial support to ICBA in its challenge to the rule in the United States District Court for the Eastern District of Virginia.
- ICBND strongly rejects the NCUA’s field of membership final rule as well as its new proposal to raise the population limit for a community credit union from 2.5 million to 10 million. The new rule and the proposal effectively remove any remaining limitation on credit union membership. Both the rule and the proposal conflict with NCUA’s statutory authority.
- ICBND opposes any legislation or regulation that would allow credit unions to raise supplemental capital, and in effect, cease being exclusively member-owned entities – a condition of their original tax exemption.
- ICBND supports applying CRA requirements to credit unions comparable to and with the same asset size distinctions as banks and thrifts.
- ICBND supports the right of credit unions to convert to commercial banks without bearing greater regulatory conditions than required for national bank conversions to a state charter. ICBND encourages credit unions seeking bank-like powers to convert to bank or thrift charters.

Background

The credit union model has become outdated, and its charter, purpose and tax-exempt status should be reviewed by Congress. 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. As a result, in just the last four years, the total assets of federally insured credit unions have grown by nearly $70 billion and membership has grown by more than 10 million, while the total number of credit unions has declined by over 1,000. Credit unions are also aggressively expanding into business lending. According to the NCUA, total business lending by credit unions ballooned from $13.4 billion in 2004 to $56 billion in September 2015, an annualized growth rate of 14 percent.

ICBND urges Congress to level the tax and regulatory playing field between community banks and credit unions. Bank-like credit unions should be subject to the same laws and regulations as banks – including taxation and CRA. Large, multi-bond and geographic-based credit unions have exceeded their statutory mission and use their tax-exempt, government-subsidized status to gain competitive advantage over taxpaying community banks.

Commercial Lending. ICBND vigorously opposes legislation to expand commercial lending powers of credit unions. Under the Federal Credit Union Act, credit union member business loans are capped at 12.25 percent of total assets. However, there are numerous exceptions to the cap. Small Business Administration loans, as well as any small business loans of $50,000 or less, are exempt from the cap. In addition, nearly 2,000 credit unions are now completely exempt from the member business lending cap as "low-income credit unions." Credit unions also aggregate their commercial lending capacity through the use of participation syndicates which are often marketed and serviced by large, interstate Credit Union Service Organizations or "CUSOs."

ICBA filed a legal challenge to the NCUA's March 2016 member business lending rule. In particular, the suit challenged provisions of the rule that exclude non-member commercial loans or loan participations from the member business lending cap. In ICBA's view, these provisions exceed the NCUA's statutory authority which limits the amount of business lending credit unions may engage in. The court rejected ICBA's claims due in no small part to the Chevron doctrine which unfortunately creates additional hurdles to challenging regulatory agencies in court. ICBA will continue to explore and seek regulatory, legal, and legislative remedies to address the unfair and uneven playing field between tax-exempt credit unions and tax-paying community banks.

Field of Membership. In October 2016, the NCUA finalized a new field of membership rule which, if allowed to stand, will drastically expand the reach of tax-exempt credit unions beyond their statutory limits. The proposal will weaken numerous legal requirements designed to ensure credit unions remain focused on their fundamental mandate of serving people of modest means with a common bond. For instance, federal credit unions would be able to apply to serve much larger areas than metropolitan statistical areas or to include areas contiguous to their existing core-based statistical areas. Credit unions also would have a much easier time converting to community charters and expanding into larger geographical areas. However, after reaffirming in its final rule that the population limits for community credit unions was 2.5 million, the NCUA has now proposed that the population limit be raised to 10 million. This new proposal makes a mockery of the statutory requirement that community credit unions serve local, well-defined communities and is another example of how the NCUA has transformed itself from a regulator to a "cheerleader" for the credit union industry. ICBA strongly supports the American Bankers Association's lawsuit challenging the National Credit Union Administration's rule, which drastically increases the powers of tax-exempt credit unions beyond their statutory limits. ICBA will participate in the lawsuit through a friend-of-the-court brief.

Supplemental Capital. ICBND is adamantly opposed to any legislation or regulation that would allow the NCUA to issue rules allowing tax-exempt, nonprofit credit unions to raise supplemental capital and, in effect, cease being exclusively member-owned ("mutual") entities. If the NCUA allows supplemental capital by regulation, ICBND believes that regulation would exceed the agency's authority under the Federal Credit Union Act. Since their creation, credit unions have been mutual entities that serve their members, not capital investors. This legislation would fundamentally alter the limited, member-oriented character of credit unions – the very basis of their tax exemption. Mutual ownership is one of the few structural characteristics that distinguish credit unions from most commercial banks. Mutual ownership – along with credit unions' original mission of serving people of modest means with a common bond among them – was the original justification for their tax exemption. Congress long ago removed the tax- exempt status of mutual savings banks and should now do the same with regard to credit unions. Supplemental capital could fund and exacerbate the recent trend of credit unions' purchasing community banks.

Community Reinvestment Act. ICBND urges Congress to apply CRA to tax-exempt credit unions in a manner comparable to, and with the same asset size distinctions, as banks and thrifts. Multiple studies have indicated that credit unions are not meeting even the fundamental mandate of their charter to serve people of modest means;

their members have higher incomes and education levels than bank customers. ICBND urges Congress to move towards more regulatory equity by applying CRA standards to all credit unions.

Charter Choice. NCUA routinely approves mergers and conversions from occupational to geographic charters that allow credit unions to serve large population bases without regard to common bond. At the same time, NCUA has made it more difficult for credit unions to convert to mutual savings bank charters. ICBND supports and encourages credit union conversions to bank or thrift charters, and supports legislation to prohibit the NCUA from obstructing these conversions.

MORTGAGE LENDING REFORM: Reforming CFPB mortgage rules to protect responsible loan products that meet consumers' diverse needs and provide "qualified mortgage" safe harbor status to all loans originated and held in portfolio.

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. These products help community banks meet the unique credit needs of their customers and support economic development in many communities.
- All loans originated and held in portfolio – including balloon payment mortgages – by community banks should receive "qualified mortgage" (QM) safe harbor status under the Consumer Financial Protection Bureau's (CFPB's) "ability-to-repay" rules. Mortgage loans originated by community banks and retained in portfolio should not be subject to the CFPB's mandatory escrow requirements regardless of where the property is located or the pricing of the loan.
- ICBND strongly encourages the CFPB to continue to collaborate with ICBA and other stakeholders to take a commonsense approach to amending TRID rules, including the TRID tolerances and timelines. ICBND urges the CFPB to address compliance questions through written guidance and FAQs. We urge all regulators to continue taking a diagnostic and corrective approach regarding good-faith compliance efforts. Additional cure and correction procedures are needed to allow community banks to fix inadvertent errors.
- The CFPB's "small servicer" exemption limit must 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, an increase in the limit must be accompanied by corresponding relief from the punitive capital treatment of mortgage servicing assets (MSAs) under Basel III.
- The CFPB needs to address servicing issues such as the prohibition on initiating foreclosure actions on uncooperative borrowers for loans that are perpetually 90-days delinquent.
- ICBND strongly supports expanding the exemption for reporting under Home Mortgage Disclosure Act by increasing the reporting thresholds under the revised Regulation C. See the Loan Data Collection resolution for a full discussion.
- ICBND strongly supports the use of "property evaluations" performed by qualified bank staff, in lieu of a full residential property appraisal completed by a licensed appraiser, for any mortgage loan retained in portfolio. ICBND also believes reforms are necessary within the appraisal industry to ensure there is sufficient access to appraisers particularly in rural areas.

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. Community banks do not have aggressive marketing programs targeting low-income areas or low-income borrowers. However, they do help borrowers with non-traditional credit histories or imperfect credit, as well as borrowers in rural communities where non-traditional loans, especially balloon loans, are prevalent due to the unique nature of rural properties and rural economies. Community banks often structure loans to meet the unique needs of the borrower based on their type of employment, type of property, value of assets or net worth. These loans are not sold into the secondary market but are kept in portfolio.

Portfolio Mortgage Lending Should be Exempt from Onerous Regulatory Requirements. ICBND supports safe harbor QM status for community bank loans held in portfolio without regard to their pricing, including balloon loans. Limiting safe harbor status for loans held in portfolio, and exposing the lender to litigation risk and greater compliance costs, will not make the loans safer, nor will it make underwriting more conservative. It will merely deter community banks from making such loans and reduce access to credit.

By the same token, community bank loans held in portfolio should be exempt from mandatory escrow requirements, regardless of the location of the property or the pricing on the loan. Mandatory escrow requirements raise the cost of credit for those borrowers who can least afford it, and impose additional unnecessary compliance costs for community bank lenders. Further, community banks should be permitted to use property evaluations completed by qualified bank staff in lieu of a full residential property appraisal for any residential mortgage that a community bank originates and retains in its portfolio. A full appraisal is more costly and may only be completed by a certified appraiser.

Additional TRID Guidance is Needed. The TILA RESPA Integrated Disclosure (TRID) rule is a uniquely complex rule with unclear liabilities. The rule has caused some community banks to cease offering mortgages and has greatly increased compliance expenditures for others. Authoritative guidance is needed on many issues. ICBND appreciates the CFPB's recent proposal to amend and clarify the TRID requirements, but issues remain and new problems continue to surface.

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 must be increased from 5,000 loans to 30,000 loans or a maximum unpaid 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. However, the full benefit of increasing the small servicer exemption limit cannot be realized without corresponding relief from the punitive capital treatment of mortgage servicing assets (MSAs) under Basel III. (See resolution titled "Regulatory Capital: Basel III and the Standardized Approach" for more detail.) 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, consider that the five largest servicers service an average portfolio of 6.8 million loans each and employ as many as 10,000 people each in their servicing departments. The top 5 mortgage servicers each have more than $300 billion in unpaid principal balance on mortgages serviced.

ENACTING A NEW FARM BILL AND REFORMING THE FARM CREDIT SYSTEM: Calling on Congress to pass a strong farm bill that provides stability to the volatile farm sector and to prevent the Farm Credit System from abusing its tax-advantaged status.

Position

Farm Bill Programs

- The Farm Bill (The Agriculture Act of 2014) expires in 2018. A strong Farm Bill provides stability to the volatile farm sector. ICBA and ICBND will work with the new administration and a new Congress to ensure a new bill helps ensure a robust future by allowing private sector community banks to continue working with their farm and ranch customers to survive low commodity prices and other challenges.
- Crop insurance is a successful public-private program that is critical to the ability of farmers and ranchers to survive weather disasters and repay their farm loans. ICBA and ICBND are working to protect the program from further cuts or adverse changes that would discourage farmer and rancher participation, or undermine private sector delivery.
- USDA farm loan guarantee programs benefit farmers and help community banks manage lending risks to farmers and ranchers who would otherwise be unable to obtain commercial credit.

- ICBND supports changes to the USDA loan guarantee program that would significantly raise volume caps and provide additional funds.

Farm Credit System

- FCS lenders enjoy unfair advantages over rural community banks and leverage their tax and funding advantages as a government sponsored enterprise (GSE) to siphon the best loans away from community banks. Such abusive activities wreak havoc on community banks' lending portfolios jeopardizing the future of many community banks and the rural communities they serve.
- ICBND strenuously opposes the successor to the Farm Credit Administration's "Rural Community Investments" proposal, withdrawn in November 2013 but now adopted via regulatory guidance as part of the Farm Credit Administration (FCA's) "case-by-case approval" of FCS's (non-farm) "investments."
- ICBND believes numerous changes to the Farm Credit Act are necessary to modernize the System to correct the FCS's ability to engage in predatory, below-market pricing of loans and other abusive practices. Congress should, among other actions, reform the FCS by equalizing tax treatment between community banks and FCS lenders; prohibiting FCS non-farm lending and loans to corporate borrowers and changing the structure of the FCA board.

Background

Community Banks and the Rural Economy. Thousands of community banks are located in rural areas. Approximately 2,500 community banks are classified as "agricultural" banks and more than 3,000 community banks have agriculture-related portfolios of at least $5 million. Historically, community banks have provided over one-half of all commercial bank agricultural financing.

Farm Bill Reauthorization. The Agriculture Act of 2014 expires in 2018 and may be reauthorized in 2017. It provides lenders and farm customers a long-term policy framework for business and planning decisions. The Farm Bill provides billions of dollars through various programs, including commodity support programs such as price loss coverage (PLC) and Ag Risk Coverage (ARC) options, that circulate through the farm sector and rural communities. The 2014 Farm Bill significantly enhanced crop and revenue insurance programs to better support producers' risk management strategies and ensure their ability to repay bank loans. The new Farm Bill must protect these enhancements and make necessary changes to ensure all of its programs work as intended. Programs authorized for cotton and dairy producers may need to be re-examined to enhance effectiveness.

Crop Insurance. In 2015, 1.2 million polices were sold protecting more than 120 different crops covering 285 million acres, an area larger than Texas and California combined, with an insured value of over $100 billion.

USDA Guaranteed Loans. USDA's guaranteed loan programs allow community banks to lend to higher risk borrowers with a guarantee of repayment. USDA's guaranteed farm loan programs are fully or near fully self-funding. Congress should remove volume caps and significantly raise the total amount of such loans that can be made. In addition, loan size limits should be significantly increased to ensure USDA farm loan programs continue to meet the needs of family farmers and ranchers. ICBA successfully fought to eliminate term limits on guaranteed farm loans, and believes such limits should not be reinstated.

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' agricultural lending.

Farm Credit System. FCS lenders enjoy unfair advantages over rural community banks and leverage their tax and funding advantages as a government sponsored enterprise (GSE) 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, but has in recent years sought numerous non-farm lending powers in an effort to compete directly with commercial banks for non-farm customers.

FCS's compliant regulator, the FCA, has also sought to expand FCS activities through regulatory initiatives such as the "Rural Community Investments" proposal, which would provide authority for non- farm lending by FCS lenders. This proposal was withdrawn in 2013 but has now been implemented via regulatory guidance to authorize non-farm “investment” lending on a case-by-case basis.

Congress should, among other actions, reform the FCS by equalizing tax treatment between community banks and FCS lenders; prohibit non-farm lending including loans to large corporations; and change the makeup of the FCA board.

CONSUMER FINANCIAL PROTECTION BUREAU

Position

- ICBND supports legislation replacing 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.
- ICBND supports the CFPB promulgating regulations that provide community banks the flexibility to meet the unique needs of their customers. Arbitrary requirements that do not take into account the relationship-based community banking model will likely prevent community banks from serving many of these customers. This reduces consumer choice and ends up hurting the very consumers meant to be protected.
- The CFPB’s consumer arbitration and small-dollar lending proposals should be withdrawn or should provide an exemption for community banks. Section 1071 of the Dodd-Frank Act, which requires lenders to collect data on small business loan applications, should be repealed through legislation. See separate resolutions on Small Dollar Lending and Loan Data Collection.
- All firms that offer credit or offer financial products and services should be subject to meaningful supervision and examination, as community banks have long been.
- ICBND and community banks are concerned the CFPB’s reliance on enforcement actions, rather than authoritative written guidance, creates compliance uncertainty for community banks and threatens to reduce access to credit and other financial products and services. The CFPB should work with community banks and other responsible industry participants to develop authoritative written guidance regarding problematic practices and regulatory expectations.
- The CFPB should be granted additional statutory authority to exempt or tier regulatory requirements for community banks and/or community bank products and services where appropriate. Any regulations should directly target identified problems while allowing community banks to continue to provide responsible products and services free from undue regulatory burden.
- 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 regulation.

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 thus build in a system of checks and balances. A commission would promote measured and non-partisan agency action and would result in balanced, high-quality rules and effective consumer protection. Bank regulators have experience and expertise in balancing the safety and soundness of banking operations with the need to protect consumers and provide them with the information they need to make informed financial decisions.

Oversight of Non-Bank Providers. ICBND 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. Industry inequalities confuse and potentially harm consumers and create competitive disparities.

New Rulemakings. Recent proposals restricting community banks’ use of consumer arbitration and imposing stringent ability-to-repay requirements for small-dollar consumer loans would impose substantial new burdens. In addition, community banks are gravely concerned with a forthcoming proposal that would impose HMDA-like data reporting on small business lenders. See resolutions on Small-Dollar Lending and Loan Data Collection for additional information.

Enforcement Concerns. The CFPB is using enforcement actions – including charges of unfair, deceptive, or abusive acts or practices (UDAAP) – as a means of regulating marketplace behavior. This reliance on enforcement actions in place of issuing rules and other authoritative guidance creates significant concerns for community banks which do not have teams of attorneys and compliance professionals to parse the CFPB's many decisions for compliance risk. The CFPB should work with responsible industry stakeholders to develop authoritative written guidance that provides clear examples of permitted and forbidden practices.

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 has sought to address are too often forced to comply with rules intended to target bad behavior by larger financial service providers. Clearer statutory direction would help alleviate this burden.

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 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.

CYBERSECURITY

Position

- Community banks should not be required by regulators to use one framework, tool or assessment over another to identify and mitigate cybersecurity risk. Community banks should maintain their existing flexibility to use the framework, tool or assessment that best fits their size and complexity.
- ICBND supports voluntary information sharing among financial institutions of all sizes, public-private partnerships and between federal agencies for the purpose of identifying, responding to, and mitigating cybersecurity threats and vulnerabilities while appropriately balancing the need to secure customer information.
- Any federal cybersecurity legislation, new or proposed cybersecurity frameworks, regulations or guidance must recognize existing mandates, frameworks, tools, standards and guidance to ensure community banks are not burdened with having to reassess their critical systems against yet another standard to achieve the same results.
- Regulators must recognize community banks' reliance on third party technology service providers and work to ensure community banks are adequately protected by broadening the supervision of service providers to include additional core, IT service providers. Regulators also must ensure that employees and subcontractors of technology service providers comply with nondisclosure and confidentiality requirements similar to existing regulatory requirements for banks.
- ICBND supports community bank use of the .BANK web domain, a trusted, verified, more secure and easily identifiable location on the Internet for the banking community and the customers it serves.
- ICBND supports the adoption of Sheltered Harbor by member banks and their core vendors to protect consumer account data in the event of a significant cyber or other disruptive event.
- ICBA will work with community bank core providers to ensure equitable and reasonable access to sector cybersecurity initiatives for community banks.

Background

The financial services industry and community banks are on the front lines defending against cybersecurity threats and take their role in securing data and personal information very seriously. As a result of growing cyber threats and intrusions, the federal government has focused increasingly on cybersecurity.

Policymakers Must Recognize Existing Cyber Security Frameworks, Tools and Assessments. In 2014 the Commerce Department's National Institute of Standards and Technology (NIST) released a Framework pursuant to a 2013 Executive Order (EO) designed to improve the cybersecurity of U.S. critical infrastructure, which includes the financial services sector. A revised version of the draft Framework was released in early 2017. The framework provides a structure that organizations, regulators, and customers may use to create, guide, assess, or improve comprehensive cybersecurity programs.

In 2015, the Federal Financial Institutions Examination Council (FFIEC) released a Cybersecurity Assessment Tool (CAT) specifically for financial institutions. While voluntary for banks to complete, examiners have begun using the CAT.

In late 2016, Treasury and the Federal Reserve announced adoption of the G-7 Fundamental Elements of Cybersecurity for the Financial Sector, which provide a concise set of principles on best practices in cybersecurity for public and private entities in the financial sector.

Regulators should recognize the unique steps that community banks take to protect their critical systems and customer data. 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 and complexity.

Harmonization of Regulatory Requirements. Any new or proposed frameworks or guidance should be voluntary and consistent with existing frameworks or guidance. A consistent regulatory framework avoids the risk of framework fatigue among community banks, which distracts from their primary business of serving customers. The New York Department of Financial Services was the first state regulatory authority to issue a proposed cyber security regulation for state-chartered banks which differed from the federal standards. Different requirements throughout the country will create a burden on small institutions. Moreover, requiring differing standards may serve to do little by way of cybersecurity preparedness.

Threat Information Sharing is Critical. The sharing of advanced threat and attack data between federal agencies and financial sector participants helps manage cyber threats and protect critical systems. ICBND 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 the public and private sectors' sharing of physical and cybersecurity threat and vulnerability information. ICBND also supports FS-ISAC's cross-sector information sharing efforts to enhance overall resiliency of the nation's critical infrastructure.

Regulators Should Recognize Third Party Risk. Community banks significantly rely on third party 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 these third parties, especially when they have connections to other institutions and servicers, can be challenging. Regulators must be aware of the significant interconnectivity of these third parties and collaborate with them to mitigate this risk. The agencies should evaluate the concentration risks of service providers to financial institutions and broaden supervision of technology service providers to include additional core, IT service providers. Because employees of technology 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.

.BANK Web Domain. 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 several 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 malicious or spoofed sites. .BANK also provides email authentication to mitigate spoofing and phishing and encryption for Internet connections to ensure data privacy and security. ICBA will work with the .BANK registry to promote .BANK registration and implementation among ICBA and ICBND member banks.

Sheltered Harbor. This financial services sector initiative is designed to improve resiliency and provide enhanced protections for financial institutions' customer accounts and data. Sheltered Harbor enables financial institutions to securely store and rapidly reconstitute account information, making it available to customers, whether through a service provider or another financial institution, if an institution is unable to recover from a cyber incident in a timely fashion.

CURRENT EXPECTED CREDIT LOSS MODEL: Opposing any implementation of the Current Expected Credit Loss model that contradicts the Financial Accounting Standards Board's view that smaller community financial institutions should utilize existing processes to project future credit losses.

Position

- ICBND 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.
- Regulators should supply small community banks with clear, practical, and easy-to-implement methodologies for calculating the periodic provision for estimated credit losses that allows for the seamless incorporation of their 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 be incorporated into agency guidance on prudent credit risk management.

Background

ICBND opposes any regulator-driven impairment model for portfolio loans and investment securities that increases costs and regulatory burdens for small community banks. During the due process phase of FASB's current expected loss model (CECL), small community banks were expected to introduce complex cash flow modeling processes that included non-loan-specific factors to generate expected losses over the life of the loan or security. This would have required small 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. However, implementation of the final standard does not start until 2020 or later and many details surrounding appropriate techniques for estimation of future losses have yet to be determined. 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 view of it and do not require small community banks 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. "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.

ENDING TOO-BIG-TO-FAIL: Curbing or ending the advantages enjoyed by too-big-to-fail banks that have resulted in a financial system plagued by excessive concentration, systemic risk, moral hazard and distorted free markets.

Position

- The continued growth and dominance of a small number of too-big-to-fail banks has created 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. Banks that are too- big-to-manage are vulnerable to illegal employee conduct that triggers regulatory overreach.
- ICBND supports legislative and regulatory changes that would curb or end advantages currently enjoyed by too-big-to-fail banks. Such changes should include higher capital and leverage requirements, enhanced liquidity standards, activity restrictions, concentration limits, limitations on the federal safety net, and more effective resolution authority. ICBND also supports proposed new Federal Reserve requirements that would impose total loss absorbing capacity (TLAC) and long-term debt (LTD) requirements for globally significant banks.
- ICBND supports the 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.
- The U.S. Justice Department must end the double standard with regard to prosecutions for bank operations and practices. Despite rampant malfeasance in the years prior to the financial crisis, no senior executives at large banks have been prosecuted.
- The Volcker Rule prohibition on proprietary trading and limitation on investment in and sponsorship of hedge funds and private equity funds by banking companies should completely and effectively exempt community banks.
- While ICBA fully supports higher prudential standards for the largest bank holding companies, as required under Title I of the Dodd-Frank Act, it believes the $50 billion threshold may be too low and that consideration should be given to raising it.

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. In fact, the 12 largest U.S. banks, or 0.2 percent of all U.S. banks, hold nearly 70 percent of industry assets, dwarfing the rest of the banking system and representing 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. As the recent report of the Minneapolis Federal Reserve Bank indicates, the implementation of the Title I and Title II changes mandated by the Dodd-Frank Act have not ended TBTF. The five largest banks hold nearly half of U.S. industry assets, a higher percentage than they held before the 2008 financial crisis. 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.

TBTF Banks Are Too-Big-To-Manage. The Wells Fargo scandal that emerged in the summer of 2016, in which thousands of employees created unauthorized accounts for millions of customers, is a clear consequence of a megabank being too big to manage. Wells Fargo's sprawling operation and transactions-based business model created an incentive for employee abuse of consumers. Community banks' relationship model strongly deters such abuse. ICBND is urging Congress and the agencies to ensure that any legislative or regulatory response to Wells Fargo draws a clear line between community banks and the too-big-to-manage behemoths. Costly, unnecessary new requirements would only hamper community banks' ability to serve their customers and drive further consolidation and concentration of our nation's financial resources.

Enhanced Prudential Standards for SIFIs. ICBA generally endorses higher capital, leverage, liquidity standards, concentration limits, and contingent resolution plans for SIFIs. ICBNA 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 supports the imposition of TLAC and LTD requirements on globally significant banks. However, ICBA supports raising the $50 billion threshold in Title I of the Dodd-Frank Act above which the Federal Reserve Board is required to establish prudential standards for bank holding companies that are more stringent than those that apply to other financial institutions. A higher threshold and a more flexible "SIFI" definition under Title I would more accurately identify those institutions that impose systemic risk to our banking system.

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.

Volcker Rule Should Target Large Banks Exclusively. ICBA is committed to ensuring that the Volcker Rule prohibition on proprietary trading and investment in or sponsorship of hedge funds and private equity funds completely and effectively exempts non-systemically important financial institutions.

TAX POLICY: Advocating tax laws that promote robust economic activity, a vibrant community banking sector, and saving and investment.

Position

- Tax laws should promote robust economic activity and a vibrant community banking sector and foster saving and investment.
- ICBA is actively engaged in the current tax reform debate in order to protect community banks and small businesses and secure needed tax relief. Any tax reform must provide significant rate relief for individuals, businesses, and corporations, preserve the pass-through option, including the Subchapter S corporation, and preserve the ability of business borrowers and mortgage borrowers to deduct interest without further limitation.
- ICBND will oppose 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, ICBND will continue to oppose any legislation – tax or non-tax – that requires revenue offsets or "pay fors" that may target the banking industry.
- 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. ICBND supports legislation to allow banks to organize as limited liability companies (LLCs).
- The tax-exempt status of interest paid on municipal finance for all recipients is critical to municipalities and should be preserved.
- ICBND supports the creation of tax incentives for 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 government function and should receive a tax credit equal to the cost of compliance. See discussion under Bank Secrecy Act resolution.

- ICBND supports full repeal of the estate tax which jeopardizes the inter-generational transfer of many community banks.
- ICBND supports a permanent increase in the bank qualified bond issuer limitation to $50 million to be indexed prospectively.

Background

Tax Policy and Community Banks. ICBND 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 critical source of lending for consumers, small businesses and farms. Any proposed tax reforms must consider the various community bank taxpaying structures including C- and S-Corporations as well as mutual savings banks and thrifts. It is critical, moreover, that policy makers get the details of tax reform right. While tax reform is an opportunity to restructure, modernize and simplify our complex and inefficient tax code, the wrong changes could be disruptive and hinder economic growth.

Deduction for Interest Paid by Business Borrowers. Debt financing plays a critical role in economic growth and job creation. ICBND will vigorously oppose any proposals to curtail the ability of business borrowers, including banks, to deduct interest expense. Such proposals have the potential to stunt the formation and expansion of small businesses that are vital to the American economy. The preferred way to create parity between debt and equity financing of investments is by creating a tax exemption for dividends paid by corporations.

New Capital Options for Subchapter S Banks. Any reforms to the tax code should not only preserve the Subchapter S model but strengthen it as well. In particular, 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. Allowing banks to organize as limited liability companies (LLCs) would provide additional flexibility.

Tax Incentives for Targeted Community Bank 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. ICBND believes tax incentives should support community bank lending to low-to-middle income individuals, small businesses, and small farms.

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. Consolidation reduces competition and results in fewer product offerings, lower rates on deposits, higher rates on loans and higher fees.

Bank-Specific Revenue Raisers. ICBND is strongly opposed to any bank or finance-specific revenue raisers whether they be taxes intended to offset the costs of the financial rescue or 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. ICBND will oppose such measures even when they exempt community banks.

Update Bank Qualified Bond Issuer Limitation. Since 1986, the tax code has provided a special incentive for banks to purchase bonds issued by municipalities, school districts, sanitation districts, and other public entities, provided the issuer expects to issue no more than $10 million of bonds annually. These are known as "bank qualified bonds." Because the $10 million limitation has been severely eroded by inflation, today only a small number of issuers are eligible to take advantage of lower interest rates by issuing bank qualified bonds. The limitation was temporarily increased to $30 million by the American Recovery and Reinvestment Act of 2009. ICBND supports a permanent increase in the limitation to $50 million to be indexed prospectively. A higher limitation would allow local bank deposits to support needed, local public infrastructure investments at a lower interest rate, as originally intended by the 1986 Tax Reform Act.

DATA SECURITY AND FRAUD: Ensuring all participants in the payments system, including merchants and entities with access to customer financial information, are subject to Gramm-Leach-Bliley Act-like data-security standards.

Position

- All participants in the payments system, including merchants, and all entities with access to customer financial information, should be subject to Gramm-Leach-Bliley Act-like data security standards.
- ICBND supports a national data security breach and notification standard to replace the current patchwork of state laws.
- Community banks should be notified of a potential 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 continue to be able to access various cost recovery options after a breach.
- Banks, card networks and financial technology companies must continue to freely innovate to effectively protect consumer data and confidence.
- ICBND strongly supports ongoing regulatory efforts and existing voluntary public-private partnerships to address the growing threat of cyber-attacks.
- ICBND supports stronger data security standards for regulatory agencies and staff.

Background

Data breaches at national retail chains and elsewhere have the potential to jeopardize consumers' financial integrity and confidence in the payments system. Community banks are strong guardians of the security and confidentiality of customer information as a matter of good business practice and legal and regulatory requirements. Safeguarding customer information is central 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. ICBND supports the following legal and regulatory changes to mitigate losses in the event of a breach.

Extend Gramm-Leach-Bliley Act-Like Standards. Under current federal law, retailers 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 financial data at financial institutions is of limited value if it remains exposed at the point-of-sale and other processing points. To most 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 Gramm-Leach-Bliley Act-like standards.

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 potentially 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 Gramm-Leach-Bliley Act-like data security standards for all participants of the payment system – including merchants – 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 when bank customer information, such as account numbers, may have been compromised.

Cost Recovery. Regardless of where a breach occurs, banks are stewards of the customer financial relationship and take a variety of steps to protect the integrity of their customers' accounts, including monitoring for indications of suspicious activity, reimbursing customers for confirmed fraudulent transactions, modifying customer limits to limit fraud losses, and blocking and reissuing cards of affected account holders at an estimated expense of up to $15 per card. 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.

New Technologies Will Reduce Risk but There Is No Single Universal Remedy. Community banks invest in technologies, such as chip technology, tokenization and end-to-end encryption, that better secure payment card transaction processing and thwart criminals. Chip technology may not have prevented the mass retailer breaches but it would have reduced the market value of the card data as it would be far more difficult for criminals to make counterfeit cards. Using chip technology will not protect against fraud in "card-not-present" transactions, such as online purch9oases. Even with these technologies in place, criminals will continue to try to find weaknesses in data security. It is crucial that the marketplace continue to have the flexibility to innovate to create more secure technologies.

Online Business Banking. Community banks offer robust, secure online banking products to their business banking customers. However, community banks should not be liable for breaches that occur as a result of negligence by the business customer.

Regulators Should Hold Data Safely. Despite issuing rules, regulations, guidance, and examining financial institutions for the safekeeping of customer data, regulatory bodies have also been subject to data breaches. During bank examinations, regulators become privy to, and hold, sensitive bank information, including customer information. Like banks, regulatory agencies have a responsibility to safeguard this sensitive information.

Emerging Threats. ICBND supports the efforts of the Federal Financial Institutions Examination Council (FFIEC) and the Financial Services – Information Sharing Analysis Center (FS-ISAC) to develop guidance and best practices to counteract emerging threats. Sharing this type of information with federal agencies and financial sector participants helps manage emerging threats and protect critical systems.

HOUSING-FINANCE REFORM AND THE GOVERNMENT-SPONSORED ENTERPRISES: Supporting housing-finance reform that preserves market liquidity and stability for all stakeholders while allowing Fannie Mae and Freddie Mac to develop and implement a capital-restoration plan that protects U.S. taxpayers from future bailouts.

Position

- ICBND supports housing finance reform which is needed to preserve market liquidity, protect taxpayers, encourage the return of private capital, and ensure a stable national mortgage market for all stakeholders.
- The Federal Housing Finance Agency (FHFA) must ensure that the GSEs operate in a safe and sound manner. FHFA must follow the Housing and Economic Recovery Act of 2008 (HERA) and require both GSEs to develop and implement a capital restoration plan, start to retain earnings and, over time, build capital to a level that adequately supports their operations and protects U.S. taxpayers from future bailouts.
- ICBND generally supports transfers of GSE credit risk through various risk sharing or loss sharing structures. However, ICBND urges the FHFA to actively manage this process to ensure these transactions: 1) are economically sound; 2) actually transfer a meaningful portion of credit risk to the private market; 3) provide benefits that are enjoyed by all GSE sellers and do not advantage any one GSE seller over others; and 4) do not impair the liquidity of the "to-be-announced" (TBA) market for GSE mortgage backed securities (MBS).
- ICBND supports the use of deeper mortgage insurance provided the insurers are well capitalized, and are subject to the oversight and examination of FHFA.

- FHFA should not divert GSE revenues to the Affordable Housing Trust Funds or other housing funds until both GSEs are adequately capitalized.
- Any housing finance reform effort must provide robust and equitable secondary market access for lenders of all sizes, no competition at the retail level, and retention of mortgage servicing rights on transferred loans. The GSE secondary market structure must not be turned over to the largest national lenders and Wall Street institutions.
- Many community banks rely on the FHLBanks' mortgage programs for access to the secondary market, and this access point should be preserved.
- 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.
- Any successor to the GSEs must have a 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.
- ICBND is committed to preserving the 30-year fixed-rate mortgage for creditworthy customers in all markets.
- The recent financial crisis demonstrated that some type of government tie to the secondary market is needed to ensure the continued flow of credit. Any government catastrophic loss protection must be fully and explicitly priced into the guarantee fee and the loan-level price.
- As stakeholders in the FDIC Deposit Insurance Fund, ICBND is concerned with proposals that would provide covered bond investors superior rights in receivership that are not provided to other secured creditors.

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 a recent ICBA survey, nearly 70 percent of community bank respondents sell half or more of the mortgages they originate into the secondary market.[1] 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.

There is widespread agreement the secondary market must be reformed to prevent or greatly reduce the risk of devastating market failures that hobbled our economy. There is bipartisan consensus that, as the market recovers, the government's dominant role in the housing market should be reduced to its more traditional role (less than 50 percent of secondary market sales). The private sector should return to its traditional role of providing the majority of the capital in mortgage finance. ICBND welcomes the return to a more balanced and less concentrated housing finance system with an appropriate role for portfolio lenders, originate-and-sell lenders, and small as well as large lenders. If implemented thoughtfully, such a system would reduce the moral hazard and taxpayer liability of the current system. Pending comprehensive reform, FHFA should require both GSEs to retain earnings and build capital in order to protect taxpayers from another bailout. Risk sharing or loss sharing transfers from the GSEs to the private market must not disrupt TBA market liquidity or contribute to further consolidation of the mortgage business. In particular, FHFA should not divert GSE revenues to the Affordable Housing Trust Funds or other housing funds until both GSEs are adequately capitalized.

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.

Community banks selling directly to the GSEs today enjoy a very liquid market that permits them to effectively hedge interest rate risk and offer rate locks to their customers with relative ease and at a low cost. They access this market on a single loan basis, enjoy a virtually paperless loan delivery process, and generally receive funding from the GSEs in cash within 24 to 48 hours. Any new system of housing finance must be able to match the clear advantages of direct GSE sales enjoyed by community banks today.

Under the current GSE model, selling loans is relatively simple. Banks take out commitments to sell loans on a single-loan basis and are not required to obtain complex credit enhancements except for private mortgage insurance for loans in excess of 80 percent loan-to-value or other guarantees. Any future secondary market structure must preserve this relatively simple process for community banks and other small lenders that individually do not have the scale or resources to obtain and manage complex credit enhancements from multiple parties.

In creating a new housing finance system 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 new system that eradicates liquidity for all but the largest players, limits access to the market or narrows options for smaller lenders, and imposes requirements that make it too costly for smaller lenders and servicers to participate.

FINTECH BANK CHARTERS: Continue raising concerns with the Office of the Comptroller of the Currency's proposed special-purpose national bank charter for fintech companies, such as risks to taxpayers and the financial system and whether the OCC is legally authorized to proceed.

Position

- ICBND continues to have serious concerns with the Office of the Comptroller of the Currency's (OCC's) decision to move forward with issuing special purpose national bank charters for financial technology (fintech) companies that could be used to access the banking system and avoid state licensing and consumer protection laws. ICBND believes the OCC should have explicit statutory authority from Congress before proceeding. Any new federal charter should be subject to the same standards of safety, soundness and fairness as other federal chartered institutions.
- ICBND has been very concerned about the regulatory advantage currently enjoyed by online marketplace lenders and supports a regulatory framework for online lenders that is no less stringent than the framework that applies to community banks.

Background

The OCC has indicated that it will move forward with issuing a limited purpose federal bank charter that would be designed to accommodate certain banking services for online marketplace lenders and other fintech companies, possibly including payment processors. While such a charter would subject the online lenders and fintech companies to more oversight and regulation than they now have—particularly in the area of consumer protection—ICBND is concerned that such chartered institutions would be subject only to limited safety and soundness supervision and examination and would not be subject to the Community Reinvestment Act. ICBND believes that the OCC should have specific legal authority from Congress before proceeding. Furthermore, the OCC should issue rules, subject to notice and comment, which would prescribe the scope and requirements of the charter.

ICBND believes that the recent problems that some of the online marketplace lenders have experienced with liquidity and earnings, as well as with compliance, make it important that these lenders be subject to safety and soundness supervision and regulation. These companies have not experienced a serious economic downturn yet and already they have been subject to serious funding and capital issues. Furthermore, ICBND has also seen how other limited purpose bank charters have evolved—such as industrial loan companies—and is concerned that any limited purpose fintech bank charter could end up having all of the advantages and benefits of a full-service bank charter with limited supervision and regulation.

A fintech regulatory framework that is no less stringent than that which applies to insured depository institutions would promote a fair regulatory system, protect consumers, and support safety and soundness at these unregulated companies.

<u>COMMUNITY BANK ACCESS TO CAPITAL:</u> Supporting legislative and regulatory changes that would improve the ability of community banks to raise capital to meet the credit and banking needs of their local communities.

Position

- ICBND supports legislative and regulatory changes that would improve the ability of community banks to raise capital.
- ICBND supports increasing the asset limit under the Federal Reserve's Small Bank Holding Company Policy Statement from $1 billion to $10 billion. This change would make it easier for many community bank holding companies and small savings and loan holding companies to issue debt and equity that could be used to support their banking subsidiaries.
- 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 present exemption for publicly held community banks from the internal control attestation requirements of Section 404(b) of the Sarbanes Oxley Act should be increased from $75 million in market capitalization to $350 million.
- SEC Regulation D should be revised so that the definition of an "accredited investor" would include individuals with a net worth of $1 million or more, including their primary residence. The number of non-accredited investors allowed to purchase stock pursuant to a Rule 506 private offering should be increased from 35 to 50.

Background

Access to capital for community banks has never been more difficult than it is today. Since 2007, the public capital markets have been either unavailable or unattractive to many community banks and holding companies. Many 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. Furthermore, many community banks will need to raise additional capital not only for business purposes but also to ensure compliance with regulatory requirements including Basel III. Those community banks that have not redeemed their Troubled Asset Relief Program (TARP) or Small Business Lending Fund (SBLF) securities, or that have been deferring dividends on their trust preferred securities, have additional capital needs.

As a result of ICBA's advocacy, Congress passed legislation that raised the asset limit under the Federal Reserve's Small Bank Holding Company Policy Statement to $1 billion and, for the first time, allowed savings and loan holding companies with assets of less than $1 billion to be covered by the Policy Statement. Already, larger community bank holding companies are taking advantage of the institutional bond market and issuing investment grade bonds. ICBND believes the qualifying threshold should be further increased to $10 billion. This change would allow more community bank holding companies to issue debt on an unconsolidated basis and downstream the proceeds as capital to their subsidiary 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).

The present exemption that small publicly held corporations have from the internal control attestation requirements of Section 404(b) of the Sarbanes-Oxley Act should be increased from $75 million in market capitalization to $350 million for community banks. Because community bank internal control systems are monitored continually by bank examiners, they should not have to sustain the unnecessary annual expense of paying an outside audit firm for attestation work.

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 their primary residence. The current definition requires individuals to exclude their primary residence when computing their net worth. The number of non- accredited investors allowed to purchase stock pursuant to a Rule 506 private offering should be increased from 35 to 50. ICBND supports the Community Bank Access to Capital Act (H.R. 1523 and S. 1816) which includes many of these provisions.

PAYMENTS SYSTEMS ACCESS AND GOVERNANCE: Supporting payment systems that are competitive, progressive and secure and that offer fair and open access to all community banks so they can meet the existing and evolving global payment needs of their customers.

Position

- ICBND supports payment systems that are competitive, progressive, and secure and that offer fair and open access to all community banks regardless of size and operational capability so they can meet the existing and evolving global payment needs of their customers.
- ICBND supports industry efforts that improve payments efficiency, security, speed, and efforts that make bank-centric payments models more competitive in an evolving and dynamic marketplace and enable open competition among financial institutions of all sizes and charters.
- Ubiquitous faster payment initiatives should include compensation to the receiving bank for its role in processing the transaction.
- ICBND strongly supports subjecting non-bank payments providers to the same privacy, security and consumer protection requirements as banks.
- ICBND encourages the CFPB to use its authority to regulate large market participants to address non-banks serving as payments channels and to create consistent transparency and protections for consumers as well as a level playing field for all payments providers.
- ICBND encourages a federal and state regulatory framework for virtual currencies and the virtual wallets, exchange services, and merchant enablers that support these services.
- ICBND welcomes the development of digital and mobile wallets as an important consumer innovation. These products must evolve in a way that protects consumer privacy, accommodates bank-centric payments, and allows all financial institutions an equal opportunity to have their cards and accounts at the top of the wallet.
- ICBND supports the Federal Reserve System in its dual role as payment systems regulator and provider/operator of services.
- ICBND strongly supports the Federal Reserve Banks' effort to foster the creation of a ubiquitous, near-real-time payment system and urges the Reserve Banks to participate in this new system as an operator and service provider.
- ICBND encourages the Federal Reserve to use vigorously its authority to identify and regulate systemically important payment, clearing and settlement systems.
- ICBND supports the important roles private-sector rulemaking organizations – payment card networks, check and ACH clearing houses, and standards-setting organizations – play in developing and maintaining rules supporting fair, open, and efficient access to payment systems and promotes community bank participation in the governance and rulemaking of these organizations.
- ICBND encourages both the Federal Reserve Board and private-sector rulemaking organizations to uniformly enforce rules; to timely and transparently refine rules to address new services, technologies, regulatory requirements and marketplace dynamics; and to collaborate on further establishing uniformity and efficiency between the various rules.
- ICBND urges policymakers to raise the safe harbor exemption in Regulation E from 100 to 1,200 transfers in the previous year to provide a more meaningful safe harbor amount for community banks. ICBND urges policymakers to make permanent the temporary provision under Section 1073 of the Dodd-Frank Act that permits insured institutions to estimate certain pricing.

Background

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

Payments Improvement. Community banks need a faster, more efficient and more secure bank-centric payments system to effectively serve their customers and communities. ICBA is a longtime advocate of Same-day ACH and is an active participant in the Federal Reserve's Faster Payments and Secure Task Forces. ICBA partnered with North American Banking Company to submit a faster payments proposal for consideration before the Task Force which stresses low-cost on-ramps to a payments system that can reach any financial institution. Core attributes of any faster payments system should include end-user payment experience, ubiquity, efficiency, inter-bank compensation, and strong oversight by financial institutions.

Non-Bank Providers. The emergence of non-bank payments providers adds risk and threatens the integrity of the payments system as these providers are not subject to the same safety and soundness, oversight and examination requirements as banks. This lack of oversight places consumers and small businesses using these services at greater risk. Additionally, these non-bank providers should not disrupt or disintermediate the bank-centric payments system. These technologies should be safe and secure, adhere to the same regulations and consumer protections as banks, and enable banks, regardless of size, charter-type or location, to play an active role in the customer relationship.

Virtual Currencies. Virtual currencies offer consumers a new choice of payment method and have the potential to create further new options for consumers, international commerce and investors in the future. However, many of these options come with great risk for customers and the banks that serve them, as virtual currencies are often used for illicit purposes. The current limited regulation and oversight applied to the virtual currency marketplace and transactions mean that consumers and investors that use or hold virtual currency are exposed to significant risks. ICBA continues to advocate on behalf of community banks to educate policymakers regarding the risks related to virtual currencies.

Virtual currencies' use of blockchain and distributed ledger technology is spurring significant investments in payments technology. These technologies can be used for executable contracts and international payments, but can also be re-purposed as public records of transactions and can be used for non-payment- related purposes, such as voting and as an exchange value database.

Digital and Mobile Wallets. Digital and mobile wallets, such ApplePay, MasterPass, and Samsung Pay, offer consumers a means of consolidating their payment card and account information. It is imperative that these wallets evolve in a manner that ensures that customer data is protected, login credentials are never shared, non-banks (software companies, retailers, and phone manufacturers) do not have access to customer account information, and bank-centric payments are accommodated. Digital and mobile wallets should be ubiquitous – connecting all consumers to all businesses – through all financial institutions. They should allow for an open competitive environment and not add unrecoverable costs.

Federal Reserve System. The Federal Reserve's ongoing dual payments role as a regulator and a provider of services allows it to maintain efficient, accessible, reliable, and safe payment systems for all financial services stakeholders. The new strategic focus for the Federal Reserve's Financial Services bodes well for all participants as the industry strives to meet the payments needs of consumers and businesses in a dynamic and innovative commerce environment fueled by the emergence of smart-phones, tablets, and other mobile devices. This strategy moves the Federal Reserve's focus from the interbank payments market to the entire payments supply chain to shape the end-user payments experience. It is essential that, as part of this initiative, the Federal Reserve participates as a payments operator and service provider to all banks, regardless of size and charter.

Private-Sector Governance. Given that private sector 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. At the national level, ICBA actively represents the community bank perspective before NACHA --The Electronic Payments Association as new ACH rules and innovative products are vetted and implemented. ICBA Bancard representatives are active participants in the Visa and MasterCard policymaking bodies. Additionally, ICBA and community bankers interject the community bank voice in the Electronic Check Clearing House Organization (ECCHO) rulemaking process governing check image exchange and the Accredited Standards Committee X9 mission to develop standards for the financial services industry.

Remittance Transfers. The CFPB's 2013 remittance transfer rule, designed to protect consumers who send money electronically to foreign countries, exempts community banks and others sending fewer than 100 transfers per year. This threshold, which is unreasonably low and forces community banks to manage volume to stay below it, results in fewer consumer options. Additionally, this rule contains a temporary provision that permits insured institutions to estimate certain pricing. Since most community banks use open networks and cannot predict with certainty the exact amount that will be received, this temporary provision should be made permanent.