POSITION PAPER AND TOP PRIORITIES FOR 2021
EXECUTIVE SUMMARY

TAX-EXEMPT CREDIT UNIONS: ICBND and ICBA urge Congress to end the unwarranted federal tax subsidy of the credit union industry and/or promote increased tax parity between credit unions and community banks.

REFORM AND REFOCUS THE FARM CREDIT SYSTEM: Farm Credit System (FCS) lenders enjoy unfair competitive advantages over rural community banks, leveraging their tax and funding advantages as government sponsored enterprises (GSEs) to siphon the best loans from community banks' loan portfolios. The FCS's abusive tactic of undercutting market pricing to obtain the best loans jeopardizes the viability of many community banks and the economic strength of the thousands of rural communities they serve.

TIERED REGULATION FOR COMMUNITY BANKS: Community banks need regulatory relief to support the financial needs of their customers, serve their communities, and contribute to their local economies. ICBND and ICBA urge 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.

TAX POLICY: Tax laws should promote robust economic activity and a vibrant community banking sector and foster saving and investment.

CONSUMER FINANCIAL PROTECTION BUREAU: ICBND and ICBA support legislation that would replace single-director governance of the Consumer Financial Protection Bureau (CFPB) with a five-member commission. Prudential banking regulators should actively participate in the consumer protection rule-writing process and the CFPB's governance.

DATA SECURITY AND FRAUD: All participants in the payments and financial sector ecosystem, including but not limited to merchants, aggregators, technology companies, and entities with access to customer financial information, should be subject to Gramm-Leach-Bliley Act (GLBA) like data security standards.

BANK SECRECY ACT AND ENFORCEMENT: ICBND and ICBA strongly support the collection of beneficial ownership information by the appropriate government agency at the time an entity is formed rather than requiring financial institutions to assume this burden. However, financial institutions should have access to that information to assist them in performing customer due diligence.

SUPERVISORY ENVIRONMENT: Community banks generally have been pleased with the exam environment during the pandemic. However, as the pandemic winds down, ICBND and ICBA urge examiners to be broadly flexible in their review of Paycheck Protection Program loans. Given the urgent circumstances under which these loans were made and the ambiguous and frequently shifting guidance from the Small Business Administration, any second guessing of these loans by examiners would effectively punish lenders who acted in good faith and whose only concern was to support their communities in a crisis.

CYBERSECURITY AND INFORMATION SHARING: Any federal or state cybersecurity legislation, regulation, guidance, or framework should recognize existing mandates and standards to ensure community banks are not burdened with the obligation to reassess their critical systems against a duplicative or overlapping standard, which would yield similar results.

CLOSE THE ILC LOOPHOLE AND STOP OCC SPECIAL PURPOSE NATIONAL BANK CHARTERS: Corporate conglomerates or other companies engaged in commercial activities should not be allowed to own full-service or special purpose banks in violation of the long-standing U.S. policy of maintaining the separation of banking and commerce.

CFPB SMALL BUSINESS LOAN APPLICATION DATA COLLECTION: ICBND and ICBA believe that rules under Dodd Frank Section 1071, which requires the CFPB to implement HMDA-like data collection and reporting requirements for small business lending, will have a chilling effect on community banks' ability to price for risk, which allows them to meet the unique needs of local small businesses.

POSTAL BANKING: ICBND and ICBA oppose the formation of new public retail financial service providers and adamantly oppose allowing the USPS to offer financial products and services.

HOUSING FINANCE REFORM AND REGULATION OF THE GOVERNMENT SPONSORED ENTITIES (GSE'S): ICBND and ICBA support both administrative and legislative housing finance reform to preserve market liquidity, protect taxpayers, encourage the return of private capital to housing finance, and ensure a stable national mortgage market for all stakeholders.

BANKING CANNABIS-RELATED BUSINESSES: ICBND and ICBA do not advocate for the legalization of cannabis but do advocate for federal legislation establishing an effective "safe harbor" from federal sanctions for banks that choose to do business with cannabis-related businesses (CRBs), including businesses that provide products or services to CRBs, in states where cannabis is legal under state law.

FASTER PAYMENTS: ICBND and ICBA support the development and evolution of broadly inclusive, safe, highly secure, and efficient payments systems that enable risk mitigation and help community banks remain competitive and meet the payment needs of their customers.

DE NOVO COMMUNITY BANK FORMATION: ICBND and ICBA support a flexible and tailored supervisory policy with regard to de novo banking applicants. Capital standards, exam schedules, and other supervisory requirements should be based on the pro forma risk profile and business plan of the applicant and not on a standard policy that applies to all de novo bank applicants.

POSITION PAPER AND TOP PRIORITIES FOR 2021
TABLE OF CONTENTS

TAX EXEMPT CREDIT UNIONS 4

REFORM AND REFOCUS THE FARM CREDIT SYSTEM 5

TIERED REGULATION FOR COMMUNITY BANKS 6

TAX POLICY 7

CONSUMER FINANCIAL PROTECTION BUREAU 9

DATA SECURITY AND FRAUD 10

BANK SECRECY ACT AND ENFORCEMENT 11

SUPERVISORY ENVIRONMENT 13

CYBERSECURITY AND INFORMATION SHARING 15

CLOSE THE ILC LOOPHOLE AND STOP OCC SPECIAL PURPOSE NATIONAL BANK CHARTERS 16

CFPB SMALL BUSINESS LOAN APPLICATION DATA COLLECTION 18

POSTAL BANKING 19

HOUSING FINANCE REFORM AND REGULATION OF THE GSE'S 19

BANKING CANNABIS-RELATED BUSINESSES 20

FASTER PAYMENTS 21

DE NOVO COMMUNITY BANK FORMATION 22

TAX-EXEMPT CREDIT UNIONS

Position

- ICBND and ICBA urge Congress to end the unwarranted federal tax subsidy of the credit union industry and/or promote increased tax parity between credit unions and community banks.
- ICBND and ICBA staunchly oppose credit unions exploiting their tax subsidy and lax regulatory environment to purchase community banks. These acquisitions are inconsistent with Congressional intent behind credit unions' tax exemption and warrants Congressional scrutiny.
- ICBND and ICBA implore Congress to use its oversight authority to investigate the National Credit Union Administration's alarming failure to regulate and oversee the industry. The NCUA stands in stark contrast to the other banking agencies.
- ICBND and ICBA oppose expanded powers for credit unions—so long as they remain tax-exempt—whether pursued by legislation or regulation, such as acquisitions of community banks, commercial lending, field of membership, and supplemental capital powers.
- ICBND and ICBA support applying Community Reinvestment Act requirements to credit unions comparable to and with the same asset size distinctions as banks and thrifts.
- ICBND and ICBA urge states to prohibit the placement of public deposits in tax-exempt credit unions. Public entities should not support tax-exempt institutions that erode the tax base on which these entities depend.
- ICBND and ICBA support the right of credit unions to convert to commercial banks without excessive regulatory hurdles. It should be no more difficult, from a regulatory perspective, for a bank to purchase a credit union than for a credit union to purchase a bank. ICBND and ICBA encourage credit unions seeking bank-like powers to convert to bank or thrift charters.

Background

The credit union tax exemption is based on an outdated 100-year-old law that has never been revisited. Since that time, credit unions have become larger, more complex, and bank-like in their size, powers, product and service offerings, and fields of membership – a trend that has sharply accelerated in recent years. It is past time to bring credit unions into the 21st century, revoke their privileged status, and tax and regulate them as we do comparable financial institutions. 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. Credit unions' share of Paycheck Protection Program loans was 3.62 percent in 2020.

ICBND, ICBA and community banks are particularly alarmed by the recent trend of credit unions acquiring banks – effectively "weaponizing" their tax subsidy and lax regulatory standards. In addition to their use of tax subsidized earnings, credit unions have a regulatory capital advantage in the acquisitions market: Under NCUA rules, goodwill is treated as regulatory capital (or "net worth"), while banks are required to deduct goodwill in regulatory capital calculations as an intangible asset. This differential effectively allows credit unions to outbid banks in the purchase of other banks.

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

Credit union-bank acquisitions are a perversion of congressional intent. The federal tax exemption was designed to create access to affordable basic banking services for people of modest means who would otherwise lack it. But with these acquisitions, the tax exemption has become a tool of harmful industry consolidation. Larger, out-of-market credit unions are displacing smaller, locally based community banks, creating an environment that is less competitive, has more systemic risk, and offers fewer choices for consumers and small businesses.

ICBND and ICBA urge 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 the Consumer Reinvestment Act. Banks and credit unions should operate on military bases under the same terms. (Credit unions currently operate rent-free on bases.) 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.

The most recent example of permissive regulation is NCUA's adoption of a rule to allow credit unions to raise supplemental capital, which is a tool for outside investments in credit unions, undermining their status as member-owned cooperatives, a long-standing justification for their tax exemption. Supplemental capital will likely be a new source of funding for the acquisition of community banks.

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

REFORM AND REFOCUS THE FARM CREDIT SYSTEM

Position

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

Background

Community Banks and the Rural Economy. Thousands of community banks serve rural areas. As of the first quarter 2019, there were 1,315 "farm" banks representing nearly one-quarter of all FDIC-insured institutions. Agriculture loans held by FDIC-insured institutions totaled $184 billion. Community banks hold nearly 70 percent of total agriculture loans from the banking sector. Community banks of less than $10 billion in asset size hold approximately 80 percent of all banking sector agricultural loans. Approximately 3,000 community banks have agriculture-related portfolios of at least $5 million. Community banks are four times more likely to operate offices in rural counties. Community banks remain the only banking presence in more than 600 counties (nearly 20 percent of all U.S.

counties) and hold the majority of banking deposits in rural counties.

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

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

Recent proposals to allow the FCS to become the equivalent of rural commercial banks would devastate thousands of rural community banks both in urban and rural and remote areas. Such proposals are another FCS-initiative to utilize GSE tax and funding advantages to expand beyond statutory lending constraints, ignore FCS's GSE mission of serving actual farmers and ranchers, and dramatically increase FCS institutions' profits at the expense of tax-paying, private sector community banks.

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

TIERED REGULATION FOR COMMUNITY BANKS

Position

- Community banks need regulatory relief to support the financial needs of their customers, serve their communities, and contribute to their local economies.
- ICBND and ICBA urge 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, risk profile, and transaction volume should be continually reviewed and adjusted upward as community banks consolidate and the average asset size of banks increases.

Background

Regulatory and paperwork requirements impose a disproportionate burden on community banks and diminish their ability to attract capital, support the financial needs of their customers, serve their communities, and contribute to their local economies. Large banks have massive, dedicated legal and compliance staff and can more easily absorb regulatory costs. Credit unions and other nonbank institutions, such as industrial loan companies (ILCs) and fintech companies that perform "bank-like" functions and offer comparable products and services, are not subject to the same taxation, laws and regulations as community banks. This uneven field places community banks at a competitive disadvantage and inhibits their ability to serve their customers. In addition, unreasonable regulatory requirements serve as a barrier to entry for investors who might otherwise contemplate the formation of de novo banks. Without the entry of a sufficient number of de novo banks to offset consolidation, the industry has become progressively more concentrated to the detriment of individuals, families, local communities, and small businesses.

In December 2020, Congress enacted much needed reforms to the beneficial ownership reporting requirements under the Bank Secrecy Act. Adopting these reforms has been a long-standing priority for ICBND and ICBA. Going forward, small businesses will be required to file their beneficial ownership information directly with FinCEN upon business formation. Community banks will be able to rely upon this information, thereby relieving them of an onerous reporting obligation.

In addition, the CARES Act which was passed in April 2020 in response to the COVID-19 pandemic contained several ICBND and ICBA-supported regulatory relief provisions including temporary relief from troubled debt restructurings (TDR) and FASB's Current Expected Credit Losses (CECL), as well as instituting a temporary 8% community bank leverage ratio. To mitigate the impact of community banks participating in the SBA PPP, the regulatory agencies temporarily changed the asset thresholds for a number of regulatory requirements including the accounting and audit requirements under Part 363 of the FDIC regulations, the requirements for an 18-month exam cycle, the Small BHC Policy Statement, and the eligibility requirements for using the CBLR framework. The FDIC also issued rules to mitigate the impact of participating in the SBA PPP on insurance assessments.

ICBA's community bank agenda for the 117th Congress, with full support from ICBND, encompasses regulatory relief priorities including the removal of barriers to entry for de novo community banks, reforms relating to minority depository institutions, and changes to Section 1071 of the Dodd-Frank Act which would impose HMDA-like reporting requirements for small business loan applications. It also includes a range of proposals that would create a more competitive landscape, strengthen data security, preserve and strengthen community bank mortgage lending, and provide tax relief, among other priorities.

For 2021, ICBND and ICBA will also pursue further regulatory relief from the agencies including: (1) a permanent 8% CBLR; (2) a permanent extension of CECL; (3) permanently raising the $500 million and $1 billion asset thresholds under Part 363 auditing and accounting requirements; (4) a consistent CRA regulatory framework among the agencies; and (5) narrowing the small business reporting responsibilities under Section 1071 of the Dodd Frank Act.

TAX POLICY

Position

- Tax laws should promote robust economic activity and a vibrant community banking sector and foster saving and investment.
- The Tax Cuts and Jobs Act has provided significant tax relief for community banks and their customers. Community bank tax savings support community lending and investment in workforce, technology, and physical infrastructure. ICBA will advocate for no increase in the corporate rate and permanent extension of the individual provisions, including the new deduction for pass-through income, a top individual rate of no more than 37 percent, preferential tax rates for capital gains, and an adequate estate tax exemption, before their scheduled expiration in 2026.
- ICBND and ICBA oppose any new bank-specific fees, punitive new tax levies, transaction taxes, limitations on the deductibility of FDIC premiums, or other proposals specifically targeting the financial services sector. Additionally, ICBND and ICBA will continue to oppose any legislation – tax or non-tax – that requires revenue offsets or "pay fors" that 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 and ICBA support the creation of tax incentives for community bank retained earnings and community bank lending to low-to-middle income people, small businesses, and small farms.
- The tax code should create parity among all providers of financial services. Credit unions, Farm Credit System lenders, and community banks offer similar products and services and should be taxed equivalently.

- Banks in compliance with the Bank Secrecy Act are performing a governmental function and should receive a tax credit equal to the cost of compliance. See discussion under Bank Secrecy Act resolution.
- ICBND and ICBA oppose changes that would effectively increase the taxation of estates, including eliminating or curbing stepped up basis in the valuation assets. Such changes would jeopardize the inter- generational transfer of many community banks. Government revenues should not be overly dependent on taxation of wealth, high incomes, or estates. Such policies carry unintended consequences for economic growth and wages.

Background

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

The Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, signed into law in December 2017, provides significant tax relief for both C corporation and S corporation community banks. C corporations are taxed at a rate of 21 percent. S corporation shareholders are generally eligible for a 20 percent deduction of their business income. Among other significant changes, the new law generally preserves the interest deduction for business borrowers, which had been targeted for elimination, reduces individual tax rates, increases the standard deduction, and increases exemption levels for the individual alternative minimum tax and the estate tax. ICBND and ICBA view the recent law as a missed opportunity to eliminate or curb tax subsidies for credit unions and Farm Credit System lenders. ICBND and ICBA will press for extension of the individual provisions, including the pass-through deduction, individual rate structure, lower tax rates for capital gains, and AMT and estate tax relief, well before they are scheduled to expire at year-end 2025. ICBA will oppose any effort to increase the corporate rate.

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

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

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

Estate Tax. The estate tax jeopardizes the succession of community banks from generation to generation. A family estate should never be forced to sell its interest in a community bank to pay a transfer tax. Forced sales of once family-owned community banks to other community banks or, frequently, to larger regional or national banks, coupled with a recent surge in regulatory burden, accelerate the current trend toward consolidation in the banking sector. As noted above, the Tax Cuts and Jobs Act temporarily doubles the estate tax exemption through 2025. ICBND and ICBA will advocate for permanence of the higher exemption level before it expires and will oppose changes that would effectively increase the taxation of estates, such as change to the step up in basis in the valuation of assets.

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

CONSUMER FINANCIAL PROTECTION BUREAU

Position

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

Background

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

Community Bank Exemptions. While the Dodd-Frank Act allows the CFPB to exempt smaller financial institutions – including community banks – from its rules, it has been reticent to use this authority. Consequently, community banks which did not cause the problems the CFPB seeks to address are too often forced to comply with rules intended to target bad behavior by larger financial services providers. Clearer statutory direction would help alleviate this burden. Arbitrary requirements that do not take into account the relationship-based community banking model reduce consumer choice and end up hurting the very consumers they are meant to protect. Additionally, regulation should not be overly prescriptive and deprive consumers of their ability to make financial services decisions.

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

Office of Innovation. The CFPB recently finalized several programs, policies, and regulations that facilitate innovation, including the implementation of its compliance assistance sandbox, its trial disclosure program, No Action Letters, and Advisory Opinions. ICBA urges the CFPB's Office of Innovation to continue striking the proper balance of setting protocols and procedure while preserving flexibility to facilitate innovation in the markets for consumer financial products and services.

DATA SECURITY AND FRAUD

Position

- All participants in the payments and financial sector ecosystem, including but not limited to merchants, aggregators, technology companies, and entities with access to customer financial information, should be subject to Gramm-Leach-Bliley Act (GLBA) like data security standards.
- ICBND and ICBA support national data security standards, including customer incident/breach notifications, to replace the current patchwork of state laws.
- Community banks should be notified by impacted entities of a potential and/or actual breach as expeditiously as possible in order to mitigate losses.
- The costs of data breaches should ultimately be borne by the party that incurs the breach. Barring a shift in liability to the breached entity, community banks should have continued access to various cost-recovery options, including account recovery programs and litigation.
- All stakeholders must continue to freely innovate to effectively protect consumer data and consumer confidence.
- ICBND and ICBA support stronger data security standards and practices for law enforcement, regulatory agencies, and other governmental departments and staff.

Background

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

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

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

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

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

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

BANK SECRECY ACT AND ENFORCEMENT

Position

- ICBND and ICBA strongly support the collection of beneficial ownership information by the appropriate government agency at the time an entity is formed rather than requiring financial institutions to assume this burden. However, financial institutions should have access to that information to assist them in performing customer due diligence.
- ICBND and ICBA strongly support efforts by Congress, the Treasury, the Financial Crimes Enforcement Network (FinCEN), and state and federal regulators to work with industry to find solutions for a more efficient regime and for reducing community banks' mounting costs and regulatory burdens associated with complying with anti-money laundering and terrorist financing laws and regulations. ICBND and ICBA support Bank Secrecy Act/Anti-Money Laundering (BSA/AML) reforms that will ease compliance while providing more useful data to law enforcement.
- ICBND and ICBA urge the federal government to better inform bankers of what specific methods of terrorist financing and money laundering they are trying to prevent and to identify low-risk transactions and accounts to allow banks to better allocate and/or reallocate resources.
- ICBND and ICBA strongly recommend raising reporting thresholds with future increases linked to inflation reflecting an emphasis on quality over quantity.
- ICBND and ICBA recommend that community banks receive compensation for their anti-money laundering and anti-terrorist financing oversight and policing activities on behalf of the federal government either through tax credits or other financial compensation or through reduced regulatory burden in other areas.
- ICBND and ICBA recommend that nonbank institutions that perform "bank-like" functions and offer comparable financial services be subject to the same AML and BSA laws and regulations as banks.
- ICBND and ICBA encourage the Office of Foreign Asset Control to streamline and simplify watch-lists of terrorists for ease of reference and application by bankers.

Background

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

Beneficial Ownership Information Should Be Collected by a Government Agency. Beneficial ownership information should be collected and verified at the time a legal entity is formed, rather than requiring financial institutions to collect this information. In December of 2020, Congress passed the National Defense Authorization Act ("NDAA") which would require affected companies to submit beneficial ownership information directly to FinCEN at the time of formation. However, the NDAA would not relieve community banks from their collection and verification obligations. Collecting and verifying the identity of all-natural person owners of each entity by either the Internal Revenue Service, FinCEN, or other appropriate federal agency and/or state in which the entity is formed would provide uniformity and consistency across the United States. Making the formation of an entity contingent on receiving beneficial owner information would create a strong incentive for equity owners and investors to provide such information. Additionally, periodic renewal of an entity's state registration would provide an efficient and effective vehicle for updating beneficial ownership information. If such information is housed at a government entity, community banks should have access to it.

Bank Secrecy Act Requirements Should Be Flexible and Easily Applied**.** ICBND and ICBA support FinCEN's efforts in exploring ways to enhance AML effectiveness and efficiency to provide banks greater flexibility in the allocation of resources. ICBA also supports FinCEN's efforts to simplify BSA and encourages the government to continue streamlining other reporting requirements.

The federal government should continue working with the banking industry to provide additional guidance—such as best practices, questions and answers, or commentary—that is understandable, workable and easily applied by community banks. FinCEN and law enforcement should communicate the specific methods and criminal activities they are trying to prevent so that banks can more readily identify and report truly suspicious transactions.

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

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

Reporting Thresholds Must Be Updated. Reporting thresholds are significantly outdated and capture far more transactions than originally intended. The currency transaction report (CTR) threshold, which was set in 1970, should be raised from $10,000 to $30,000 with future increases linked to inflation. A higher threshold would produce more targeted, useful information for law enforcement.

Suspicious activity reporting is the cornerstone of the BSA system and is a way for banks to provide leads to law enforcement. Unfortunately, in the current regulatory environment, community bankers have a strong incentive to protect themselves from examiner criticism and liability by over-filing of Suspicious Activity Reports (SARs) as a defensive practice, which dilutes their value to law enforcement. Regardless of the degree of offense, community banks are required to follow the same SAR procedure for every suspicious transaction alert. This mechanical approach makes community bankers doubtful that SARs have real value for law enforcement. Reforming the SAR process to a truly risk-based system with appropriate threshold increases would enable community banks to provide more targeted and valuable leads to law enforcement. Similar to the CTR thresholds, the SAR filing thresholds have not been adjusted since becoming effective in 1992.

Compensation Should Be Provided for Anti-Money Laundering and Anti-Terrorist Financing Efforts. Community bankers are committed to supporting balanced, effective BSA/AML measures. However, for community banks, BSA compliance represents a significant expense in terms of both direct and indirect costs. BSA compliance, whatever the benefit to society at large, is a governmental, law enforcement function. As such, the costs should be borne by the government.

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

SUPERVISORY ENVIRONMENT

Position

- Community banks generally have been pleased with the exam environment during the pandemic. However, as the pandemic winds down, ICBND and ICBA urge examiners to be broadly flexible in their review of Paycheck Protection Program loans. Given the urgent circumstances under which these loans were made and the ambiguous and frequently shifting guidance from the Small Business Administration, any second guessing of these loans by examiners would effectively punish lenders who acted in good faith and whose only concern was to support their communities in a crisis.
- In the wake of the pandemic, ICBND and ICBA urge examiners to be flexible with regard to bank capital levels. Stimulus payments and PPP loans have created an abrupt inflation of balance sheets and have created pressure on capital positions. This should be viewed as an effect of the government's response to the pandemic that warrants examiner flexibility.
- ICBND and ICBA will resist efforts by the regulators to impose hard concentration limits on any type of lending, including lending to fossil fuel or other carbon-intensive industries. ICBND and ICBA will oppose stress testing based on adverse climate change assumptions.
- The banking industry should not be used as a lever to reduce carbon emissions (in the manner of the FDIC's prior "Operation Choke Point") through undue scrutiny of loans to carbon-intensive industries or disclosure requirements.
- Community banks are concerned that certain restrictions or practices that apply to the largest banks will come down to their level as "best practices." Examiners should not apply large bank practices to community banks that operate according to a different, less complex, and more conservative business model.
- ICBND and ICBA oppose a supervisory process that places community banks at a competitive disadvantage to larger institutions due to inconsistent oversight.
- ICBND and ICBA support legislation that would reform the appellate process for agency decisions or actions and allow bankers to appeal to an independent council or ombudsman office an adverse determination made by an examiner in an exam report. The FDIC's proposal to replace the Supervision Appeals Review Committee with a more independent Office of Supervisory Appeals is a positive step.
- ICBND and ICBA support regulation that would limit the use of Matters Requiring Attention (MRAs) to violations of law, regulation, or material safety and soundness issues.
- In some cases of bank failure, the FDIC, in its capacity as receiver, has gone too far in its attempts to recover from directors and officers on the grounds of negligence or gross negligence. The business judgment rule in most states should protect bank directors and officers from business decisions made in the ordinary course of business.

Background

Community Banks and the Pandemic. Community banks have generally been pleased with the exam environment during the pandemic. However, as we emerge from the pandemic, ICBND and ICBA strongly advocate for examiner flexibility. Examiners should not second guess PPP loans which were extended under crisis conditions and with shifting guidance from the Small Business Administration. Examiners should also be flexible with regard to capital levels which are currently under pressure as a result of the impact of stimulus payments and PPP-related deposits on community bank balance sheets.

ICBND and ICBA strongly advocate for an environment where regulators and financial institutions work together to help consumers and small businesses have access to financial products and services. An atmosphere of "gotcha" examination and supervision – which was common before the pandemic – where community banks are exposed to legal and compliance risk for minor, inadvertent calculations or documentation errors, is inappropriate and counterproductive. There should be latitude for informal dialogue. Not every minor suggestion made during an exam should be formally recorded as a "Matter Requiring Attention." These should be limited to violations of law, regulation, or material safety and soundness. Examiners should use reasonable judgement and respect in the conduct of exams. A more flexible approach would allow for less guarded interactions and a more productive partnership between bank management and examiners. Additional concerns include:

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

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

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

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

<u>FDIC Overreach Against Directors and Officers of Failed Banks</u>. ICBND and ICBA believe that in some cases the FDIC is overreaching in its lawsuits against directors and officers of failed banks. State business judgment rules should protect the decisions made by officers and directors in the ordinary course of business, including lending decisions. Officers and directors should only be liable in cases of gross negligence or fraud. Aggressive FDIC lawsuits against directors and officers of failed banks exacerbate the challenge of recruiting and retaining community bank directors and officers.

Impact of Climate Change Initiatives. Congress, the White House, and the Agencies are increasingly focused on the intersection of climate change and the financial industry. Some wish to use finance as a lever to force the reduction of carbon emissions. Others are concerned about the potential impact of climate change on asset values. ICBND and ICBA believe we will see proposals for monitoring and disclosure of bank loan portfolios' exposure to carbon-intensive industries, stress testing based on adverse climate change assumptions, and concentration limits. ICBND and ICBA will oppose these initiatives. Community banks must not be a mechanism for a forced reduction of carbon emissions. Moreover, because they know their customers and communities, community banks are best positioned to monitor the risk of their own portfolios and banking practices.

CYBERSECURITY AND INFORMATION SHARING

Position

- Any federal or state cybersecurity legislation, regulation, guidance, or framework should recognize existing mandates and standards to ensure community banks are not burdened with the obligation to reassess their critical systems against a duplicative or overlapping standard, which would yield similar results.
- Regulators should not mandate the use of any one framework, tool, or assessment, but rather support community banks' ability to use the framework, tool or assessment that best suits their institution's size, complexity, and risk tolerance.
- ICBND and ICBA support voluntary information sharing among financial institutions of all sizes, public-private partnerships, and federal agencies for the purpose of identifying, responding to, and mitigating cybersecurity threats and vulnerabilities while appropriately balancing the need to secure customer information.
- Regulators must broaden their supervision to include additional core processors, fintech companies,and other third-party technology and service providers on which community banks rely. Employees and subcontractors of technology service providers should comply with nondisclosure and confidentiality requirements similar to those that apply to banks.
- Congress must subject credit reporting agencies and other customer financial data collectors/aggregators to federal examination and supervision comparable to that which applies to community banks and other financial institutions.
- ICBND and ICBA support cybersecurity initiatives such as .BANK and Sheltered Harbor and will work with community bank core processors to ensure equitable and reasonable access to these initiatives.
- ICBND and ICBA support stronger cybersecurity standards and practices for law enforcement, regulatory agencies, and other governmental departments and agencies.

Background

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

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

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

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

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

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

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

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

CLOSE THE ILC LOOPHOLE AND STOP OCC SPECIAL PURPOSE NATIONAL BANK CHARTERS

Position

- Corporate conglomerates or other companies engaged in commercial activities should not be allowed to own full-service or special purpose banks in violation of the long-standing U.S. policy of maintaining the separation of banking and commerce.
- Congress should close the ILC loophole and stop the special purpose national bank charters because they not only threaten the financial system but create an uneven playing field for community banks.

- The OCC should have explicit statutory authority from Congress before issuing any special purpose national bank charter for financial technology (fintech) companies. Any new federal charter should be subject to the same standards of safety, soundness, and fairness as other federally chartered institutions.
- ICBA and ICBND urge the Federal Reserve Board to adopt a uniform policy for Federal Reserve Banks that sets forth appropriate criteria for granting a state-chartered or a federally chartered special purpose bank access to the payment system.

Background

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

ICBA was the first national bank trade association to oppose Wal-Mart's ILC application in 2005 and continues to exercise national leadership on banking and commerce separation with its opposition to the deposit insurance applications of SoFi Bank, Square Financial Services, Inc., Nelnet Bank, and RakutenBank America. The Square and Nelnet applications were approved by the FDIC in March 2020. The Rakuten Bank America application has been withdrawn, but the applicant has stated that it will refile its application with the FDIC. In addition, GM Financial Bank recently filed an application for deposit insurance with the FDIC as an ILC. All these applicants have holding companies and affiliates that engage in diverse, non-financial, commercial activities and chose the unique Utah ILC charter to avoid the legal prohibitions and restrictions on commercial activities under the Bank Holding Company Act.

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

Congressional Authority is Needed Before the OCC Can Issue Special Purpose Charters. The OCC should have specific legal authority from Congress before it can issue a fintech charter, particularly since a District Court has ruled that the National Bank Act "business of banking" clause only allows the OCC to issue charters to depository institutions. The OCC is appealing that decision to the 2nd Circuit Court of Appeals. As part of the appeal, ICBA has filed an amicus brief in support of the New York Department of Financial Services' position that the OCC can only issue de novo national bank charters to depository institutions.

Furthermore, it would be a violation of Section 2 of the Federal Reserve Act for the OCC to approve a national bank charter to a non-depository institution. Section 2 is clear that every national bank must be amember of the Federal Reserve System and every member of the Federal Reserve System must be an insured bank. ICBA opposed the Figure Bank de novo national bank application because as a non-insured depository, it would not be subject to the Bank Holding Company Act or the Community Reinvestment Act. Approval of this application would violate the Federal Reserve Act. Moreover, this new bank and charter would endanger the financial system and create an uneven regulatory playing field.

Special Purpose Depository Institutions (SPDIs) Present Novel and Heightened Risk. The Federal Reserve Board should direct the Reserve Banks not to grant non-traditional entities access to accounts or payments services until it has adopted uniform policy governing their exercise of discretion in granting such access. This policy, which should be developed in a transparent manner including notice and comment, should apply to requests submitted by SPDIs created under state law or through other means. It should take into account risks to the payment systems, its direct and indirect participants, and end-users associated with such requests.

Transparent and Consistent Standards for Fintech Companies Seeking a Federal or State Charter. ICBND and ICBA support the development of a fintech regulatory framework that is no less stringent than that which applies to insured depository institutions. The OCC as well as any state banking chartering authority should publish transparent capital and liquidity requirements for these firms with minimum levels for the designation “well capitalized.” This would promote a fair regulatory system, protect consumers, and support safety and soundness at these companies.

CFPB SMALL BUSINESS LOAN APPLICATION DATA COLLECTION

Position

- ICBND and ICBA believe that rules under Dodd Frank Section 1071, which requires the CFPB to implement HMDA-like data collection and reporting requirements for small business lending, will have a chilling effect on community banks’ ability to price for risk, which allows them to meet the unique needs of local small businesses.
- ICBND and ICBA support legislation that would exempt community banks and mission-oriented banks from Dodd-Frank Section 1071.
- Complex lending should not be subject to simplified, rigid analysis, which might give rise to unfunded fair lending complaints.
- If legislative repeal of Section 1071 proves infeasible, ICBND and ICBA urge the CFPB to use its authority under the Dodd-Frank Act to exempt community banks from data collection and reporting, limit any collection to data points required by statute, and prioritize protecting customer privacy as it considers new data reporting requirements.
- In defining which businesses are covered applicants under the rule, ICBND and ICBA urge the Bureau to define a “small business” as one with gross annual revenue of $1 million or less. This is a simple, bright-line definition that will make compliance more efficient and straightforward.
- If the Bureau finalizes a 1071 rule, it should stagger the implementation date so that smaller community banks are among the last entities required to collect and report the data under the rule.

Background

Dodd-Frank Section 1071 requires the CFPB to implement rules for the collection and reporting of data on financial institutions’ small business lending under the Equal Credit Opportunity Act. Section 1071 requires the collection and reporting of 12 pieces of data in connection with credit applications made by women-owned or minority-owned businesses of any size as well as all small businesses regardless of ownership,including the race, sex, and ethnicity of the principal owners of the business. Section 1071 also gives the CFPB discretion to require the reporting of any additional information that would assist the Bureau in fulfilling the purposes of the statute.

This data collection will impose significant new burdens and costs on community banks. Small business lending is a complex business that cannot be “commoditized” in the same way as consumer lending. Each small business loan is unique and has customized terms based on an analysis of numerous factors.

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

The Bureau published an Outline of Proposals in fall 2020 and a Small Business Regulatory Enforcement Fairness Act (“SBREFA”) report. The Outline of Proposals contemplates a definition for “small business” as a business with gross annual revenues of $1 million of less. Banks would only have to collect and report data made by “small business” applicants. The Outline also solicited comment on the compliance date and implementation period for the final rule. The Bureau is expected to publish a proposed rule as early as summer 2021.

POSTAL BANKING

Position

- ICBND and ICBA oppose the formation of new public retail financial service providers.
- ICBND and ICBA adamantly opposes allowing the USPS to offer financial products and services.
- Financial services are best provided in a competitive, private, and free marketplace that openly and efficiently benefits customers.
- Community banks and other financial institutions continue to offer low-cost financial services to underserved communities to help them break from the debt cycle of payday lenders.

Background

There has been a resurgence in interest among certain lawmakers in allowing the United States Postal Service (USPS) to offer retail banking services at their locations. This proposal was included in President-elect Biden's "Unity Task Force Recommendations" document written with Senator Bernie Sanders. The reported purpose of postal banking is to provide a "consumer-friendly" alternative to payday lending and check-cashing services for those without a bank account and to turn a profit to support the moribund finances of the USPS. The argument for the proposal relies on the supposed omnipresence of postal facilities. USPS's "universal service obligation" requires it to maintain postal facilities and personnel in every ZIP code in the country. However, postal banking proponents fail to recognize that commercial bank branch locations outnumber post office locations 3 to 1. There are 31,322 postal locations, but 627,409 branches and ATMs offered by private institutions including community banks. Moreover, under 10 percent of unbanked individuals have cited "inconvenient locations" as a reason for being unbanked, while 34 percent said that they simply didn't have enough money to keep an account open. An ICBA study projected the postal service would lose nearly $500 million per year as a competitor against private institutions in the financial services sector.

<u>Postal Bank.</u> ICBA adamantly opposes allowing the U.S. Postal Service (USPS) to offer financial products and services, as advocated by the Office of the Inspector General for the U.S. Postal Service. These activities would include loan making, deposit taking, and other services that are fundamental to community banks. The encroachment into these activities by a major federal agency would represent a significant, government-sponsored, competitive threat to the ongoing viability of the nation's thousands of private-sector, tax-paying community banks that do an excellent job of serving consumers, small businesses, and farmers and ranchers across America. Financial services are best provided in a competitive, private and free marketplace so they can openly and efficiently benefit customers. Community banks and other financial institutions already offer low-cost financial services to underserved communities to help them break away from the debt cycle of payday lenders. According to the FDIC, 88% of banks offer small-dollar loans and 81% offer free counseling to underserved consumers.

HOUSING FINANCE REFORM AND REGULATION OF THE GOVERNMENT SPONSORED ENTITIES (GSE'S)

Position

- ICBND and ICBA support both administrative and legislative housing finance reform to preserve market liquidity, protect taxpayers, encourage the return of private capital to housing finance, and ensure a stable national mortgage market for all stakeholders.
- ICBND and ICBA support the Federal Housing Finance Administration's (FHFA's) recent actions in coordination with the Treasury to take steps to end the destructive sweep of GSE earnings and to require the GSEs to start retaining their earnings to rebuild their capital.

- ICBND and ICBA support FHFA and Treasury efforts to develop a path forward, which include a robust GSE capital framework, strong oversight and supervision from FHFA, and a plan to end and exit conservatorship.
- Housing finance reform efforts must provide robust and equitable secondary market access for lenders of all sizes, ensure no competition from the GSEs at the retail level, and permit retention of mortgage servicing rights on transferred loans.
- ICBND and ICBA do not support reform proposals that would liquidate and distribute the GSEs' assets, intellectual property, or infrastructure to the largest national lenders and Wall Street institutions.
- ICBND and ICBA do not support reform proposals that call for the creation of additional government-sponsored guarantors to compete with the GSEs or use of the Government National Mortgage Association (GNMA) to provide a government guaranty on GSE mortgage-backed securities (MBS).
- Community banks must be able to sell loans on a single loan basis for cash, effectively hedge interest rates, and offer rate-locks at low cost.
- Secondary market sales must be relatively simple. A process that requires complex credit enhancements, for example, will disadvantage community banks and other small lenders that lack the scale or resources to obtain and manage such enhancements from multiple parties.
- The GSEs must maintain their specific duty to serve all markets, including small towns and rural areas. Appraisal and underwriting guidelines must be flexible enough to accommodate the unique characteristics of these markets.
- ICBND and ICBA are committed to preserving the 30-year fixed-rate mortgage for creditworthy customers in all markets.
- ICBND and ICBA support a government guaranty on GSE-issued mortgage-backed securities (MBS) as catastrophic loss protection that is fully and explicitly priced into the guarantee fee and the loan-level price.
- Single-director governance of the FHFA should be replaced with a five-member commission to bring a diversity of views and create a system of checks and balances that would strengthen rulemaking.

Background

Community banks represent approximately 20 percent of the mortgage market, and secondary market sales are a significant line of business for many community banks. According to an ICBA survey, nearly 70 percent of community bank respondents sell half or more of the mortgages they originate into the secondary market. While many community banks choose to hold most of their mortgage loans in portfolio, robust secondary market access remains critical for them to support mortgage lending demand.This is particularly true for fixed-rate lending. For a community bank, it is prohibitively expensive to hedge the interest rate risk that comes with fixed-rate lending. Secondary market sales eliminate this risk.

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

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

BANKING CANNABIS-RELATED BUSINESSES

Position

- ICBND and ICBA do not advocate for the legalization of cannabis.
- ICBND and ICBA advocate for federal legislation establishing an effective "safe harbor" from federal sanctions for banks that choose to do business with cannabis-related businesses (CRBs), including businesses that provide

products or services to CRBs, in states where cannabis is legal under state law.

- This safe harbor must extend to banks that serve businesses that may serve CRBs ("ancillary businesses") such as landlords, accountants, utility providers, and others as ancillary businesses may be paid in funds ultimately derived from cannabis sales.
- Federal banking regulators should not be able to threaten or limit a bank's deposit insurance, downgrade a loan made to a CRB, force a depository institution to cease providing banking services to a CRB, or take any other prejudicial action in a state where cannabis is legal, solely because the customer is a CRB.
- Traditional banks are fully capable of serving this industry with the creation of an effective "safe harbor" to protect them from government or regulatory reprisal.

Background

The 2020 election saw Arizona, Montana, New Jersey, and South Dakota join 12 states and the District of Columbia in fully legalizing adult recreational cannabis use. Cannabis is legal for medical use in 36 states. As more states legalize cannabis for medical and/or recreational use, it is critically important that cannabis-related businesses (CRBs) have access to services provided by the traditional banking system.

At the federal level, cannabis remains illegal under the Controlled Substances Act. As more states legalize cannabis and this segment of the business community continues to mature, the conflict between state and federal law creates increasingly significant legal and compliance concerns for state and federally chartered banks that wish to service CRBs or continue to serve existing customers that may also do business with CRBs. Due to legal and regulatory uncertainty, CRBs have limited access to the traditional banking system, forcing them to operate mostly in cash. Cash-only businesses, especially those with a high volume of revenue, pose a significant risk to public safety.

FASTER PAYMENTS

Position

- ICBND and ICBA support the development and evolution of broadly inclusive, safe, highly secure, and efficient payments systems that enable risk mitigation and help community banks remain competitive and meet the payment needs of their customers.
- ICBND and ICBA support the development of ubiquitous payments settlement networks – developed by both the public and private sector – that are available to all federally insured financial institutions.
- ICBND and ICBA strongly support and encourage community bank adoption of faster payments and encourages all community banks to develop strategic approaches to offering payments products and services to their customers.
- ICBND and ICBA urge both the Federal Reserve and The Clearing House to make achieving interoperability in their real-time payments systems a priority to ensure ubiquitous adoption.
- ICBND and ICBA strongly urge the Federal Reserve to continue their phased approach to expeditiously launch the FedNow Service which would allow community banks choice in selecting real-time network providers.
- ICBND and ICBA urge policymakers to assess and review the impact of faster payments on the current legal and regulatory framework.
- ICBND and ICBA encourage the ongoing development of a liquidity management tool to enable bank flexibility in managing liquidity associated with the FedNow Service and private sector providers.
- ICBND and ICBA maintain that the continuing adjustment of cutoff times for Fedwire and the National Settlement Service, along with the extension of the discount window to accommodate evening, weekends, and holidays, is a vital step toward payments improvement and should be a priority for the Federal Reserve.
- ICBND and ICBA support the U.S. Faster Payments Council and encourage community banks to join the FPC and actively participate.

Background

Development of a Real Time Gross Settlement System. The addition of a Real Time Gross Settlement (RTGS) system by the Federal Reserve for the settlement of faster payments complements present-day clearing and settlement systems by providing immediate funds settlement transaction-by-transaction on a 24x7x365 basis. Such a platform serves as a foundation for innovation, not just for payments today but as payments evolve in the future. By developing and operating a RTGS service, the Federal Reserve: 1) provides financial institutions an infrastructure option for clearing and settling faster payments; 2) ensures access for all financial institutions; 3) provides a settlement option that is not affiliated with or owned by the nation's largest banks; 4) serves as a backbone to ensure settlement continuity in the event of disruption in the private-sector; 5) provides a settlement option with transparent rules; and 6) encourages competition and innovation.

Ubiquitous Adoption. Ubiquitous adoption among financial institutions should be the primary measure of success for achieving payments modernization in the U.S. The establishment of FedNow provides choice for every community bank that desires to implement a real time settlement solution. Achieving industry-wide ubiquity will require all community banks to evaluate and implement a real-time settlement solution.

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

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

Liquidity Management Tools. The Federal Reserve should continue its efforts to provide tools which assist community banks in managing liquidity on a 24x7x365 basis for real-time interbank settlement of faster payments, such as correspondent and agent transfers or automatic transfer of balances (or "sweeps") based on pre-established thresholds and limits. These tools should also include extension of National Settlement Service (NSS) cutoff times to include holidays and weekends, transfers between financial institutions and Federal Reserve accounts, and access to the Federal Reserve discount window. These tools should be available for the FedNow service and also for any bank-centric private sector real-time payments settlement service. Correspondent banks and bankers' banks play a valuable role in liquidity management by serving as funding agents. Therefore, ICBA encourages continued collaboration between the Federal Reserve, private-sector providers, and correspondent/bankers' banks to ensure that all community banks will be able to participate in these new payment systems.

U.S. Faster Payments Council. ICBA and its members actively support the U.S. Faster Payments Council (FPC). As a founding member of the FPC, ICBA actively contributes by holding a leadership role on the board of directors and through robust participation in workgroups. The FPC was established by the FasterPayments Task Force, which believed that an industry-led framework for cross-solution collaboration and decision making was needed to support achievement of a faster, ubiquitous, broadly inclusive, safe, highly secure, and efficient payments system. Community bank participation in the FPC provides a voice in industry collaboration, a voting responsibility for FPC initiatives and leadership, and an opportunity to influence the development of faster payments.

DE NOVO COMMUNITY BANK FORMATION

Position

- ICBND and ICBA support a flexible and tailored supervisory policy with regard to de novo banking applicants. Capital standards, exam schedules, and other supervisory requirements should be based on the pro forma risk profile and business plan of the applicant and not on a standard policy that applies to all denovo bank applicants.

- The biggest obstacle to de novo bank formation is raising capital. The FDIC believes that it should take from $15 million to $30 million to start a bank, which far exceeds what was expected prior to the economic downturn of 2008-2009. ICBA recommends phasing in its capital requirements for de novo banks particularly minority banks and those in rural and underserved areas where access to capital is limited. The FDIC must also streamline its application process for de novo banks.

Background

The FDIC approved 12 de novo banks in 2019. During 2020, there was an uptick in de novo bank applications from financial technology banks, but the total number of applications for the year will be well below the average before the 2008 economic downturn. Even in the depths of the savings and loan crisis in the 1980s, when 1,800 banks and savings institutions failed, an average of 196 de novo banks and savings institutions were formed annually from 1984 through 1992.

ICBND and ICBA support a flexible and tailored supervisory policy with regard to de novo banking applicants that is based on the pro forma risk profile and business plan of the applicant. To ease the burden of raising capital, ICBND and ICBA recommend that the FDIC consider phasing in its capital requirements for de novo banks, particularly for minority banks and banks in rural and underserved areas where access to capital is limited. At present, the FDIC expects the initial capital of each de novo institution to be sufficient to provide a tier-one-capital-to-assets leverage ratio of not less than 8 percent throughout the first three years of operation. This means that the de novo institution must have capital on day one equal to 8 percent of what it projects its assets will be three years from the opening date. ICBA recommends that the FDIC phase in the capital requirements so that the bank would only be required to have 6 percent capital on day1, 7 percent at the beginning of the second year, and 8 percent at the beginning of the third year. This would give the community bank some extra time to meet current, strenuous capital requirements.

The De Novo Bank Application Form, and in particular the Business Plan section of the Application Form, needs to be significantly streamlined. Wherever possible, ICBND and ICBA believe the FDIC should assist the applicant with answering some of the more difficult questions in the Business Plan. More regulatory feedback should be given at pre-filing conferences, and the whole application process should be shortened to no longer than four months. Once an application is approved, the FDIC should exercise greater regulatory flexibility with regard to compliance with the Business Plan.