



## QUICK INFO FROM CBW & ICBA

### 2011 Year in Advocacy

DECEMBER 19, 2011



By *Karen Thomas*, ICBA Senior Executive Vice President of Government Relations and Public Policy

After a watershed year of major changes to financial services law and regulation in 2010, 2011 was no less significant.

The year began with the swearing-in of a new House speaker and is closing with leadership changes at key regulatory agencies. In between, ICBA and the nation's community bankers have fought relentlessly to ensure fair treatment for Main Street as Washington continues to grapple with an economic downturn born on Wall Street.

Whether in regulations stemming from existing laws and regulatory policies or in new legislation affecting community banks and their customers, our industry has refused to quit in the face of historic challenges. Meanwhile, we continue to seize the high ground by advancing positive measures to provide regulatory and tax relief for community banks.

With so much at stake, ICBA and the nation's community banks must continue our efforts on these and other pressing issues on behalf of our beloved industry in the weeks, months and years to come.

#### **FDIC Assessment Base**

Perhaps the most noteworthy policy success benefiting community banks was the FDIC implementation of a plan long advocated by ICBA to impose parity in the deposit-insurance system and save community banks billions of dollars over the coming years. Under a final rule required by the Dodd-Frank Wall Street Reform and Consumer Protection Act that took effect in April, the agency's deposit-insurance assessment base is now based on average total consolidated assets minus average tangible equity instead of domestic deposits.

The new policy has lowered assessments for 98 percent of community banks with less than \$10 billion in assets, saving them an estimated \$4.5 billion over the next three years. And community bankers are already reporting significant savings. The community banks that posted their savings on ICBA's "How Much Did Your Bank Save" webpage reported an average savings of 41 percent,

with total dollars saved ranging from the tens of thousands to more than half a million annually.

ICBA was the only national banking trade association to push for the new deposit-insurance assessment system.

### **Regulatory Relief**

While the updated assessment base is benefitting the industry's bottom line, ICBA is also working to advance legislation that will help ease the regulatory burden facing community banks. The ICBA-advocated Communities First Act (H.R. 1697/S. 1600) includes a variety of policies to provide sensible and much-needed regulatory and tax relief for community banks.

ICBA has worked closely with Congress and has led a [nationwide grassroots campaign](#) to build support for the bill. In addition to garnering more than 60 cosponsors for the comprehensive legislation, pieces of the Communities First Act are advancing as separate bills. For example, the House recently voted overwhelmingly to approve legislation (H.R. 1965) to raise the SEC shareholder registration threshold for banks and bank holding companies from 500 shareholders to 2,000. It also would increase the deregistration threshold from 300 to 1,200 shareholders for banks and bank holding companies.

The SEC registration reforms are included in the Communities First Act, and the House vote marks the first victory in advancing provisions of the bill. Similar legislation (S. 1941) is pending in the Senate.

While ICBA works to advance provisions in this comprehensive bill, it is also throwing its support behind other measures to address regulatory burdens on community banks. The association strongly supports legislation (H.R. 3213) that would exempt all companies with a public float of \$350 million or less from SOX 404(b) reporting requirements, a significant increase over the current threshold of \$75 million.

ICBA is also supporting legislation to prevent federal banking regulators from arbitrarily penalizing community banks for working constructively with borrowers. The Common Sense Economic Recovery Act of 2011 (H.R. 1723) would stop regulators from assigning non-accrual status to performing loans and would provide for more consistent loan classifications.

The association also backs H.R. 2056, which would require the FDIC inspector general to study examination and resolution policies that may contribute to the current harsh exam environment. The bill would focus the studies on several ICBA concerns, including the effect of "paper losses," or write downs that cause an institution to raise more capital.

ICBA's regulatory-relief efforts have not been limited to Congress, of course. While ICBA testified on these issues several times this year and has worked with lawmakers behind the scenes, we've also met repeatedly with regulatory officials. Among the avenues to express concerns with the

harsh regulatory and exam environment, several ICBA community bankers serve on the FDIC Advisory Committee on Community Banking, where overregulation is a major priority.

### **Consumer Financial Protection Bureau**

In addition to the prudential bank regulators, ICBA also maintains contact with the newly established Consumer Financial Protection Bureau, continually stressing that bureau rules must recognize the unique value and business model of community banks and not impair their ability to meet the needs of their customers. The association was instrumental in ensuring that community banks with \$10 billion or less in assets will not be examined by the bureau. Nevertheless, ICBA has met frequently with bureau officials, including Elizabeth Warren, who helped stand up the bureau this year before moving on to run for senator in Massachusetts.

ICBA also has commented on a variety of CFPB initiatives, such as the Know Before You Owe project to simplify mortgage-disclosure and credit card forms, a proposal to require financial institutions to determine a consumer's "ability to repay" a mortgage loan by satisfying several underwriting requirements, and proposed changes to regulatory escrow requirements for higher-priced mortgage loans.

Meanwhile, ICBA continues to support legislation to reform the bureau's structure. The bill (H.R. 1315) would restructure the CFPB so that it is governed by a five-member commission rather than a single director. The measure also would make it easier for the Financial Stability Oversight Council to veto bureau rules. This legislation has cleared the House.

### **Credit Unions**

While ICBA has been on the offensive on a variety of key issues in Congress, it has also had to play defense to ensure that legislation to expand the powers of taxpayer-subsidized credit unions does not gain traction. ICBA continues to strongly oppose renewed credit union efforts to raise the cap on member business loans that credit unions can make to 27.5 percent of assets (from 12.25 percent); increase the size of loans exempt from the cap; exclude loans made in underserved areas; and repeal certain lending restrictions on undercapitalized credit unions.

In repeated communications with lawmakers, ICBA has made it clear that it will oppose legislation to expand credit union business-lending powers unless lawmakers are prepared to tax credit unions and require them to comply with the Community Reinvestment Act. The association testified on the issue this year and is working diligently to ensure that the credit union industry does not attach its plan to ICBA-advocated bills, which would serve as a poison pill even to bills we strongly support.

### **Interchange**

Among the most high-profile issues of the year was the battle over reforms to the debit card interchange system. ICBA strongly opposed the Durbin amendment to the Wall Street Reform Act, which required the Federal Reserve Board to fix debit card interchange rates. In June, the

Fed voted 4-1 to approve a final rule, which implemented a base fee of 21 cents plus 5 basis points of the transaction amount to cover fraud losses, effective Oct. 1. The vote came just weeks after the Senate failed to advance legislation that would have delayed the proposed rule and required a study of its impact.

While this was an increase from the 12-cent fee cap originally proposed, ICBA remains concerned about the harm of debit card interchange regulation. Despite an exemption from the Fed rule for community banks with less than \$10 billion in assets, ICBA has repeatedly told policymakers that the exemption will not work in the market and that the interchange plan will lead to higher costs and fewer choices for consumers.

Those concerns appear completely justified following the release of a report that found that retailers are not passing on their debit-card-interchange savings to customers despite earning windfall profits from the Durbin amendment.

### **Small Business Lending Fund**

ICBA was instrumental in working with Congress, Treasury and the bank regulators to develop the Small Business Lending Fund, but repeatedly expressed concerns with the implementation of the program and how community bank applications were handled. The association called on policymakers to do everything in their power to ensure all SBLF applicants' concerns were addressed.

Some 330 community banks received more than \$4 billion in capital under the program. In the end, it was as a mixed bag, with too few community banks receiving capital and too many frustrated by the process and unable to receive funds.

### **Accounting and Auditing**

Accounting and auditing changes under development have been key issues for community banks, and ICBA has been working with regulators and standards setters to clarify the industry's concerns. A delegation of ICBA community bankers recently met with the Financial Accounting Standards Board in Norwalk, Conn., to discuss community bank views of its joint project with the International Accounting Standards Board on the accounting for financial instruments.

The proposed accounting changes for financial instruments such as mortgage loans and investment securities would require increased use of fair value accounting and reporting in the financial statements. ICBA said that fair value disclosures for loans held at amortized cost would burden community banks because the required inputs to the fair value calculation would require them to identify exit markets that do not currently and may never exist.

The meeting came after FASB earlier this year moved toward reversing its proposed mark-to-market accounting changes for loans. FASB developed an accounting model that allows companies to carry certain financial instruments including loans at amortized cost. The

preliminary decision reverses FASB's previous exposure draft that would have required bank loans to be carried at fair value with unrealized gains and losses reported in the financial statements.

Separately, ICBA told the Public Company Accounting Oversight Board that it does not support a concept release that would change the framework of auditor independence by proposing mandatory audit firm rotation. In a comment letter, ICBA asked that any implementation of mandatory audit firm rotation exclude community banks and other companies with total assets of \$10 billion or less.

### **Too-Big-To-Fail**

Regulatory efforts to stem the problem of risks posed by too-big-to-fail financial institutions made substantial progress in 2011.

The FDIC approved an interim final rule requiring depository institutions with \$50 billion or more in total assets to submit periodic contingency plans for their resolution in the event of failure. The agency also approved new assessment rate guidelines for large and highly complex banks that replace risk categories and long-term debt issuer ratings with a scorecard approach that combines CAMELS ratings and certain forward-looking financial measures.

Federal banking regulators are also seeking public comment on a proposed regulation to implement the ICBA-backed Volcker rule. The provision bars depository institutions and their affiliates from engaging in short-term proprietary trading for a banking entity's own account. It also prohibits these institutions from owning, sponsoring or having certain relationships with hedge funds or private equity funds.

Additionally, ICBA this year called on bank regulators to impose a moratorium on all acquisitions and mergers involving financial institutions with more than \$100 billion in assets. ICBA said that the moratorium should be in place until the agencies finalize Dodd-Frank Act rules on systemically important financial institutions, among other conditions.

While regulators still have a long row to hoe on the problem of too-big-to-fail, they have made progress in 2011, with many more policies expected to come out in the year ahead.

### **Tax Issues**

In addition to key tax-relief priorities advancing via the Communities First Act, community banks scored important victories this year related to pending tax issues.

In April, President Obama signed into law ICBA-advocated legislation to repeal a tax burden on small businesses that had been scheduled to take effect on Jan. 1, 2012. Without the repeal, all businesses, including community banks, would have been required to report all payments for goods or services totaling \$600 or more to the IRS on Form 1099 and to send 1099s to the

businesses and corporations with which they've done business. ICBA had repeatedly urged Congress to repeal the burdensome reporting requirement.

Also this year, the IRS withdrew an ICBA-opposed proposed rule that would have subjected state banks that are Subchapter S corporations to broader banking rules. The proposal was originally issued in 2006 to sharp criticism from ICBA. ICBA wrote in a 2006 comment letter that the proposed rule would be tremendously damaging to Subchapter S banks, their taxpaying shareholders and the communities they serve and urged the IRS to withdraw it.

### **Overdraft Services**

Overdraft has been on the minds of community bankers this year, with the FDIC's final Overdraft Payment Supervisory Guidance in effect as of July 1. Following several meetings with then-chairman Sheila Bair, the agency released frequently asked questions clarifying that the guidance does not apply to ad hoc overdraft payment programs and focuses instead on automated overdraft payment programs and on easing the requirement for repeated notification to excessive users of overdraft services. It also notes, however, that institutions that authorize overdrafts on an ad hoc basis should manage potential risks.

ICBA has communicated frequently with the FDIC on community banker concerns with the guidance. The association has also encouraged the Office of the Comptroller of the Currency to table proposed guidance on deposit-related consumer credit products, including automated overdraft protection, given comprehensive regulatory requirements and the CFPB's new role in consumer-related regulations.

### **Farm Credit System**

ICBA's ongoing campaign to stunt the tax-advantaged Farm Credit System's expansionist agenda remained a top priority this year.

In October, the association urged the Department of Housing and Urban Development to withdraw a proposed rule that would allow Farm Credit System institutions to participate in Federal Housing Administration mortgage insurance programs. ICBA told the department that the proposal would provide for a "double subsidy" to tax-exempt FCS lenders that is not available to community banks.

ICBA also argued against a Farm Credit Administration final rule allowing Farm Credit System lenders to purchase loans of failed banks from the FDIC. FCA agreed to amend the final rule by removing authority for FCS to purchase ineligible loans and establishing a reporting requirement regarding purchased loans. ICBA sent a follow-up letter to the FCA board urging that the final rule, when published, ensure that FCS lenders are not involved in the initial bidding process, but only after commercial banks have opted not to bid on any remaining loans.

In addition to working the regulatory side, ICBA's Communities First Act includes provisions to

create greater parity with tax-advantaged FCS institutions.

### **Thrift Supervision**

In addition to shifts in leadership at the FDIC and Office of the Comptroller of the Currency, this year's regulatory shakeup was marked by reforms in thrift regulation. In July, the Office of Thrift Supervision was merged with the OCC, which assumed responsibility for examining, supervising and regulating federal savings associations.

The OCC is now integrating OTS guidance into a common set of supervisory policies that applies to both national banks and federal savings associations. The two-phase process involves rescinding a significant number of documents and focusing on guidance that requires further review or substantive revision or is considered unique to federal savings associations.

### **Fair Lending**

Fair lending enforcement has been another top issue in 2011. In an August letter to the Justice Department, ICBA expressed grave concerns with harmful, unfair and counterproductive fair lending enforcement actions against some community banks. In an October meeting with Justice Department Assistant Attorney General Thomas Perez, ICBA President and CEO Cam Fine explained the need for more transparency and guidance in DOJ's fair lending actions.

Fine said that the increased regulatory and compliance burdens require valuable time and resources. ICBA will continue working with the department on this issue.

### **Patent Reform**

Long-awaited reforms to protect community banks from litigation over the use of flimsy business-method patents came through this year. Congress passed and the president signed the America Invents Act (H.R. 1249), which will establish an oppositional proceeding at the U.S. Patent and Trademark Office where business-method patents can be re-examined, using the best prior art, as an alternative to litigation.

### **Other Key Issues**

**Risk Retention:** ICBA this year urged federal financial regulators to scuttle their proposed rule on credit risk retention and develop a new proposal that will reestablish sound underwriting without restricting credit. The association wrote that the agencies should not narrowly define "qualified residential mortgage," which would be exempt from risk-retention requirements.

**Regulation Q:** ICBA is disappointed with final rules released this year from federal regulators implementing the Dodd-Frank Act repeal of Regulation Q, which had prohibited the payment of interest on demand deposits. The rules took effect July 21. ICBA and its affiliated state community banking associations urged regulators to postpone the repeal and formally study the safety-and-soundness implications of allowing the regulation to expire.

**Credit Ratings:** The federal banking agencies are seeking comment on a proposal that includes alternative standards of creditworthiness to be used in place of credit ratings to determine capital requirements for certain debt and securitization positions and to identify investment grade securities eligible to be held by banks.

**G-Fees:** ICBA has been working with policymakers to end fee discrimination against small-volume lenders related to guarantee fees charged by Fannie Mae and Freddie Mac. Volume discounts Fannie and Freddie offer to the largest lenders result in community banks paying more to guarantee their loans, even though they are of higher credit quality.

**Nonresident Reporting:** ICBA continues supporting legislation that would prevent Treasury from requiring banks to report annually on interest paid on deposits held by nonresident aliens. The plan is a threat to savings, investment and the economic recovery.

### **What's Next?**

While 2011 was obviously another crucial year for community banks, many of these and other issues will extend into 2012 and beyond. Meanwhile, in Congress, comprehensive housing-finance reform remained the elephant in the room. Beyond periodic hearings and unresolved policy proposals, the future of the secondary housing market is still very much up in the air. ICBA has laid the groundwork for its participation in the reform effort and will continue meeting with policymakers to ensure that community banks can continue to access the secondary market.

What a year it's been. ICBA thanks its affiliated state community banking associations and the nation's community bankers for their tireless efforts throughout the year. Combined with our industry's sterling reputation, these efforts have helped distinguish community banks in the minds of policymakers and the public at large.

ICBA looks forward to continuing this hard work in 2012 as the nation's voice for community banks.