Recent Legislative & Regulatory Successes

Legislation Enacted to Help Mitigate Drastic Flood Insurance Rate Hikes. On March 21, 2014, the President signed into law The Homeowner Flood Insurance Affordability Act (H.R. 3370) which prevents sharp flood insurance rate hikes while ensuring the actuarial soundness of the National Flood Insurance Program. A few months prior to passage, the legislation was widely-regarded as a remote possibility. ICBA and community bankers worked persistently with a nationwide coalition of interested parties to see the legislation enacted. However, ICBA remains concerned with the impact of higher premiums on commercial properties, which will continue to face rate hikes. Among its provisions, H.R. 3370: reinstates grandfathered status for covered properties, creates an annual individual property rate cap (18 percent) to prevent year-over-year rate increases for homeowners, repeals the home-sale and new-policy rate-increase triggers, provides a refund for people who have realized large premium increases due to the purchase of a pre-FIRM subsidized home without the full transparency from the Federal Emergency Management Agency as to the new rate structure, and requires FEMA to complete an affordability study and to propose an affordability framework to help homeowners cope with dramatically higher premiums.

Government Accountability Office Confirms TBTF Subsidy. On July 31, GAO issued a long-awaited report which confirmed that the taxpayer subsidy continues to exist and provide a competitive advantage to the largest banks and Wall Street firms. This result is all the more significant because GAO was lobbied intensively by firms interested in minimizing or denying the existence of a subsidy. The GAO report adds to a number of independent studies finding a subsidy.

FDIC Withdraws List of "High Risk" Merchants. In last July, the FDIC withdrew its list of "high risk" merchants it said warranted additional scrutiny by banks processing their transactions. ICBA expressed our concerns about the list, which has been used to question long-standing relationships with business customers, directly to the FDIC and before Congress. Community bankers are the best judge of their own reputational risk and have every incentive to properly screen their customers. ICBA remains concerned about Operation Choke Point and supports legislative solutions that will allow community banks to continue to serve legal and legitimate customers.

Appeals Court Decides Against Merchant Challenge Over Debit Card Interchange Price Caps. On March 21, 2014, the U.S. Circuit Court of Appeals rejected the retailers challenge to the Federal Reserve's debit card interchange rule, which had prevailed in a lower court. The merchants sued the Federal Reserve Board in an effort to lower the Board's caps even further. While arguing that consumers would benefit from lower retail prices, there is no evidence that prices have come down as a result. ICBA and a coalition of trade associations filed a friend-of-the-court brief in opposition and participated in oral arguments, arguing that the Federal Reserve's existing price caps did not allow card issuers to cover their costs while receiving a reasonable return on their investments. The merchants have petitioned the U.S. Supreme Court to hear the case.

Regulators Largely Reverse CDO TruPS Divestiture Requirement. In response to direct and urgent appeals from community bankers and ICBA and a coordinated media and congressional campaign, on January 14, 2014, the banking regulators issued an interim final rule concerning the Volcker Rule prohibition on bank ownership interests in "covered funds." Under the interim final rule, banks may continue to hold collateralized debt obligations backed by trust preferred securities (TruPS CDOs) in which the majority of the pool is invested in

TruPS issued by banks with less than $15 billion in assets. The regulators issued a non-exclusive list of 86 (out of a total of approximately 108) TruPS CDOS that qualify. The interim final rule saves community banks hundreds of millions of dollars in write downs. However, community banks that hold other types of TruPS CDOs, including TruPS CDOs backed by insurance company notes, are not helped by the interim final rule. On April 8, 2014, the Federal Reserve Board announced that it intends to give banking entities two additional one-year extensions to conform their ownership interests in and sponsorship of certain collateralized loan obligations (CLOs) covered by the Volcker Rule. ICBA still believes that CLOs should be completely exempted from the Volcker Rule. ICBA continues to pursue relief for banks that hold all types of TruPS CDOs and CLOs.

Plan for Prosperity Bills Gain Momentum. To date, more than 20 bills have been introduced in the House and Senate that incorporate specific provisions of ICBA's Plan for Prosperity. Of particular note, the CLEAR Relief Act (H.R. 1750), introduced by Rep. Blaine Luetkemeyer (R-MO), has 165 bipartisan cosponsors. H.R. 1750 contains eight PFP provisions, including mortgage reform, an increase in the SOX 404(b) exemption, and other provisions. A Senate version of the CLEAR Relief Act (S. 1349), containing fewer provisions, was introduced by Sens. Jerry Moran (R-KS), Jon Tester (D-MT), and Mark Kirk (R-IL). S. 1349 has over 30 bipartisan cosponsors. To date, six PFP bills have passed the full House.

Farm Bill Reflects Community Bank Priorities. On February 7, 2014, the President signed into law a new five-year farm bill, the Agricultural Act of 2014 (P.L. 113-79). The new farm bill maintains robust funding levels for agricultural and rural-oriented programs, as advocated by ICBA. The bill increases funds for crop and revenue insurance programs by several billion dollars. The bill provides several options for farmers to choose from including reference or target prices and insurance against so-called "shallow losses" – losses above those reimbursed by crop insurance. A separate new program addresses the needs of cotton producers. The new bill also provides a permanent disaster insurance protection program for livestock producers. In addition, the bill removes term limits on guaranteed farm operating loans, as advocated by ICBA, and provides other enhancements to guaranteed farm loan programs. The bill does not provide increased lending powers for the Farm Credit System. A multi-year farm bill will allow community bank customers to utilize important risk management tools and make long-term planning decisions. Announcements regarding implementation rules are expected over the next several months.

Final Basel III Capital Rules a Significant Improvement Over Proposal. The final Basel III capital rules, issued in July 2013, include a number of ICBA-advocated changes that significantly improve the original proposal. can continue to use the Basel I risk weights for residential mortgages, as opposed to the complex and onerous risk weighing in the proposed rule. Banks with assets of less than $250 billion have the option not to include accumulated other comprehensive income (AOCI) in regulatory capital. Bank holding companies with assets of less than $15 billion can continue to include the proceeds from trust-preferred securities as regulatory capital, consistent with the Collins Amendment to the Dodd-Frank Act. These accommodations are the direct result of the vigorous and persistent advocacy of community banks and the ICBA. However, the final rule still contains troubling provisions for community banks, including the capital conservation buffer and the new limitations on mortgage servicing rights.

FDIC Responds to Concerns Over Capital Buffer. In July, the FDIC released guidance that stated that it would consider requests to distribute income by banks that do not exceed the buffer on a case-by-case basis, and that highly rated banks could generally expect to have such requests approved. While we are encouraged that

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the FDIC has heard our concerns, ICBA does not believe that this guidance goes far enough to address this significant threat to Subchapter S banks and will continue to pursue a legislative solution in the absence of regulatory action.

Kasasa Deposits Not Deemed Brokered Deposits. The FDIC reversed its decision to treat Kasasa deposits offered by BancVue as brokered deposits. Many ICBA members participate in the Kasasa rewards program which allows them to compete effectively with the megabanks for checking and savings deposits. If the FDIC had not reversed the decision, these banks would have faced higher deposit insurance premiums, possibly lower CAMELS ratings, and additional regulatory scrutiny. In some cases, restrictions on brokered deposits would have forced some community banks to terminate the program altogether. ICBA was instrumental in persuading the FDIC to reverse course.

Municipal Advisor Rule Exempts Traditional Banking Products and Services. In a victory for ICBA's Plan for Prosperity, the Securities and Exchange Commission approved a final rule that exempts banks that provide only traditional banking services to municipal customers from registration as municipal advisors under the Dodd-Frank Act. The SEC's proposed implementing rule could have covered traditional banking products and required thousands of community banks to register as "municipal advisors" – an onerous and costly burden. Relief from this requirement was a provision of the Plan for Prosperity and a major legislative and regulatory priority. Examples of traditional banking products and services that will not trigger registration include municipal deposits in savings accounts, certificates of deposit, extensions of credit (including letters of credit), sweep account services, and bond indenture trustee services. The exemption does not apply to advice to municipalities related to the issuance of derivatives or securities.

Farm Credit System. After strong opposition from ICBA and community bankers, the Farm Credit Administration (FCA), regulator of the Farm Credit System (FCS) decided to withdraw its Rural Community Investments program which would have allowed blanket national authority for FCS lenders to engage in non-farm lending activities if such activities were labeled as "investments" instead of loans. ICBA helped limit an FCA proposal to allow FCS lenders to purchase loans of failed banks from the FDIC by ensuring FCS lenders would be purchasers of last resort. The Department of Housing and Urban Development (HUD) sided with ICBA and withdrew a proposal to allow FCS lenders to participate in Federal Housing Administration mortgage insurance programs.

New Leverage Ratio for Megabanks – In April 2014, the banking agencies approved a final rule to require higher supplementary leverage ratio capital standards on large financial institutions. The new rule significantly increases capital requirements on the too-big-to-fail financial institutions that pose the greatest risks to our financial system. We believe the new rules reflects a shift in Washington sentiment against the megabanks and is a response to the TBTF Act (S. 798), sponsored by Sens. Sherrod Brown (D-OH) and David Vitter (R-LA) and ICBA's campaign to reform too-big-to-fail policy.

FASB Makes Key Accounting Decisions Favorable to Community Banks – The Financial Accounting Standards Board has made some key decisions related to financial accounting and reporting that are favorable for community banks. First, the FASB has concluded that financial institutions that are not SEC registrants will be viewed as nonpublic entities, paving the way for relief for nonpublic community banks as the FASB addresses financial measurement and reporting relief for nonpublic entities in current and future projects. Second, in developing the classification and measurement criteria for all financial instruments, the FASB concluded that assets held with the objective of collecting contractual cash flows can be measured at amortized cost rather than fair value. ICBA has worked closely with the FASB on these issues and has made great progress in highlighting what is different about the community bank regulatory and business model.

The FASB recently decided to partially reverse its view that banks should disclose the fair values for loans held at amortized cost on the face of the balance sheet, a key ICBA concern. The FASB has concluded that nonpublic entities would not be required to present on financial statements the fair value amounts for loans or any other financial assets or liabilities held at amortized cost, saving nonpublic community banks a great deal of time and money.

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