



## CBAI's 2020 Federal Legislative and Regulatory Policy Priorities

The Community Bankers Association of Illinois (CBAI) supports fair competition for financial services, tiered regulations, the separation of banking and commerce, the dual banking system/charter choice, and financial innovation; and opposes discrimination favoring certain financial service providers, banking industry consolidation and systemic risk. Based on these guiding principles, CBAI has identified the following 2020 Federal Legislative and Regulatory Policy Priorities which if implemented will help community banks thrive and better serve their customers and communities.

**Support** the Community Bank Response to the COVID-19 Crisis

**Support** the Independent Community Bankers of America's Legislative and Regulatory Agenda Contained in their *Community Focus 2020: The Community Bank Agenda for Expanding Economic Opportunity*

**Support** Completing the Implementation of the Economic Growth, Regulatory Relief and Consumer Protection Act (S. 2155)

**Support** Additional Meaningful Regulatory Relief for Community Banks

**Support** the Community Bank Position on Credit Unions and **Oppose** Their Expanded Powers

**Support** Closing the Industrial Loan Company (ILC) Regulatory Loophole

**Support** the Community Bank Position on the Farm Credit System and **Oppose** its Expanded Powers

**Support** the Federal Reserve's Role in Payments System Improvement

**Support** Modernizing the Community Reinvestment Act (CRA)

**Support** Modifying the FDIC's Brokered Deposit Rule

**Support** a Safe Harbor for Banking Cannabis-Related Businesses

**Support** De Novo Community Bank Formation, the Dual Banking System and Charter Choice

**Support** Sound Principles for GSE Reform

**Support** the Federal Home Loan Banks

**Support** Agriculture and Rural America

**Support** Enhanced Data, Cyber and Payment Card Security (Data Security)

**Support** Consumer Financial Protection Bureau Reform and Meaningful Exemptions for Community Banks

**Support** the Community Bank Positions on Emerging Issues

Special Purpose Fintech National Bank Charters (OCC)

Current Expected Credit Loss Model (FASB)

Customer Data Sharing (CFPB)

Small-Dollar Consumer Lending (CFPB)

Small Business Data Collection (CFPB)

Modernize Reg CC (Federal Reserve)

**Finally Address the Risks of Too-Big-To-Fail Banks and Financial Firms to Protect Our Financial System, the Economy, and American Taxpayers from Future Bailouts**

Community Bankers Association of Illinois

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## CBAI's 2020 Federal Policy Priorities

### *Detailed Information*

#### **Support** the Community Bank Response to the COVID-19 Crisis

COVID-19 has focused community bank efforts on helping their individual and small business customers and their communities' weather the virus crisis and assist in the recovery effort. At the onset and throughout the crisis, community banks remained open for business. Many closed their lobbies but still handled routine transactions through the drive-thru and meeting with customers in the bank by appointment. Many community bank employees either came into the bank in small shifts, worked from home where possible, or were not working but remained on the banks' payroll. As the state reopens and everyone adjusts to a new normal, community banks will continue to do what they do best in times of stress – provide essential financial services in a concerned and sympathetic manner.

Community banks participated in the SBA's Paycheck Protection Program (PPP) which provided their small business customers with the funds necessary to maintain their payrolls and cover essential expenses. This money will benefit not only their employees but also assist the business to resume normal operations as the state-wide lockdown is eased. Helping their small business customers, and many prospects who were stymied in obtaining PPP relief loans from the largest banks, was a process fraught with complications, frustrations and delays caused by the operational failures of the Small Business Administration in rolling out and administering this Program. During the difficult weeks of processing the PPP loans, many community bank employees worked extended hours, nights, and weekends. This was a commitment above and beyond what was normally expected, but one which community bankers were happy to fulfill.

While doing their part in these troubled times, community bankers were frustrated by finding themselves once again on a unlevel playing field. Credit unions will effectively earn more for originating small business PPP relief loans than tax paying community banks because credit unions are tax-exempt. Other benefits and relief programs contain favorable tax treatment including the forgiven portion of PPP loans for small business, an employee retention credit for retaining employees, and the CARES Act stimulus checks are not taxable to the individual recipients. While community banks support the favorable treatment for individuals and small

businesses, they would like to be viewed as having earned reasonable accommodations to offset their additional costs for retaining employees, income and other taxes, losses from the denial of SBA guarantees, and loan losses from future virus crisis small business and personal loan defaults. Community banks stepped-up despite the many challenges and frustrations they encountered, and they should be commended for what they are doing, treated fairly and equally, and not penalized for successfully performing their essential function.

**Support the Independent Community Bankers of America's Legislative and Regulatory Agenda Contained in their *Community Focus 2020: The Community Bank Agenda for Expanding Economic Opportunity***

The importance of community banks cannot be overstated, as they serve their customers and communities honestly and with respect and make 60% of small business and 80% of the nation's agricultural loans. Community banks operate with more than 25,000 locations in 600 counties; and in nearly one in five counties, a community bank is the only physical banking presence. CBAI joins the Independent Community Bankers of America (ICBA) in supporting a more efficient system of regulation, unbiased laws governing the financial sector, a safer and more secure business environment, and more efficient agricultural policies to support the nation's economic growth and development in every corner of the country.

**Support Completing the Implementation of the Economic Growth, Regulatory Relief and Consumer Protection Act (S. 2155)**

CBAI thanks the bipartisan majority of Illinois members of the United States House of Representatives for supporting passage of this long-overdue and well-deserved community bank regulatory relief legislation which became law in May of 2018. The banking regulators have almost completed implementing S.2155 so community banks can benefit from all of the regulatory relief measures. While all but one of the provisions are in effect, and almost all have gone to final rule, several remain in the interim final rule or guidance phase. Community bankers, the associations that represent their interests, and Congress (which represent this vital economic constituency) must diligently insist on the swift completion the rulemaking – consistent with Congressional intent.

**Support Additional Meaningful Regulatory Relief for Community Banks**

Community bankers are seeking additional regulatory relief including modernizing the Bank Secrecy Act (BSA) by raising the Currency Transaction Report (CTR) threshold from \$10,000 to \$30,000, and the Suspicious Activity Report (SAR) threshold from \$5,000 to \$10,000. Community banks are also seeking a tax-exemption for interest earned on loans secured by agricultural real estate or primary residences in rural communities and also the interest earned on small business loans held by community banks. In addition, compliance with the new beneficial ownership reporting requirements has been inappropriately assigned to community

banks. This information should be collected and verified by the appropriate federal/state government agencies when a legal entity is formed or when subsequent changes occur.

### **Support** the Community Bank Position on Credit Unions and **Oppose** Their Expanded Powers

Credit unions have long since strayed from their founding purposes, blatantly abusing their competitive advantages and are virtually indistinguishable from tax-paying community banks. The National Credit Union Administration (NCUA), the "cheerleader regulator" of credit unions, fully supports an expansionist agenda, much of which is a blatant end-around Congressional intent for credit unions to serve individuals of modest means and with a common bond. Credit union expansion must not only be halted – it must be reversed.

Credit union acquisitions of community banks is a recent and disturbing trend that negatively impacts all taxpayers. Every credit union purchase of a community bank diminishes tax revenues and further solidifies this publicly subsidized sector of the financial services industry. This lost tax revenue harms local schools, hospitals, and other projects that are necessary to sustain local communities. The inequity of these acquisitions is compounded by the fact that credit unions are not subject to the same regulations as community banks, including the Community Reinvestment Act (CRA) which encourages financial institutions to meet the needs of low- and moderate-income communities.

This blatant and continuing discrimination against community banks must end. Congress has avoided taking sides on credit union issues but not taking a position unfortunately benefits credit unions to the detriment of community banks. There are incremental options available to begin to address this disparity. For example, allow tax credits or deductions for community banks' lending to small businesses, farmers and ranchers, homebuyers, and low- and middle-income individuals. Also, tax the largest or most growth-oriented credit unions; tax exorbitant credit unions marketing expenditures (e.g., stadium naming rights), allow states to tax federal credit unions, or tax credit unions acquisitions of community banks to offset the loss in tax revenue. Congress should also convene hearings on credit union tax exemption and financial service industry consolidations where these issues can be explored and addressed.

This escalation of credit unions abusing of their tax-exemption should prompt Congress to "Wake Up" and act - NOW. This abuse an existential threat to community banks and the communities they serve.

### **Support** Closing the Industrial Loan Company (ILC) Regulatory Loophole

CBAI has consistently opposed mixing banking and commerce, which ILCs represent, because of the risks they pose to the financial system, our economy and American taxpayers. ILCs are the functional equivalent of banks and should be properly regulated. The risk of ILCs is the regulatory loophole that excludes their holding companies from being supervised and regulated by the Federal Reserve. Completely closing this loophole will be an important

safeguard in times of economic stress. The passage of needed legislation is particularly important now as large tech companies are eyeing ILC charters as a way to enter the banking industry and enjoy its many benefits without their holding companies being subject to Federal Reserve supervision. These new big data, social media, e-commerce, artificial intelligence, and financial technology companies extend an ominous reach into our economic lives, with privacy and conflict of interest concerns. We should not allow the mixing banking and commerce and closing this loophole will avert harm to consumers and the financial system.

### **Support** the Community Bank Position on the Farm Credit System and **Oppose** its Expanded Powers

The Farm Credit System (FCS) has long-since strayed from its founding purposes, blatantly abusing its competitive advantages against community banks. The FCS is supported in its expansionist agenda by its "cheerleader regulator," the Farm Credit Administration (FCA). The FCS is the only GSE that competes directly with community banks. This blatant and continuing discrimination against community banks must end and FCS competitive advantages must be reined-in and the playing field leveled for community banks.

### **Support** the Federal Reserve's Role in Payments System Improvement

A fast and secure payments system is the very foundation of financial services and economy. The United States payments system must be modernized to meet the demands of consumers and to keep pace with the rest of the world. The payments system must not be monopolized by The Clearing House and its 25 large bank owners. The mega banks endangered our financial system and the entire economy during the financial crisis and they cannot be given monopoly power over real-time payments. Community banks, small businesses and consumers must rely on the Federal Reserve to provide access to a safe and secure payments system which requires the Federal Reserve to play a preeminent role in the system's improvements.

In August of 2019, the Federal Reserve announced that it was moving forward with its FedNow Service. The Fed anticipates implementing the new service by 2023/4. CBAI has encouraged the Fed to implement the Service as quickly as possible with robust capabilities; the Service should be interoperable with others; and only regulated financial institutions – not the likes of Amazon or Walmart – should have direct access to the payments system. Policymakers must support the Federal Reserve in its development of the FedNow Service to ensure that all participants have access to a real-time system on a fair and impartial basis.

### **Support** Modernizing the Community Reinvestment Act (CRA)

The Community Reinvestment Act (CRA) was enacted in 1977 and needs to be updated to incorporate new financial products and services delivered in modern ways. Community banks have traditionally excelled in the performance of their CRA compliance and examinations. This high level of performance is indicative of their exemplary treatment of customers and communities and not weak requirements or a flawed examination process that needs to be strengthened. The modernization of the CRA must enhance the ability of community banks to serve their communities and must not impose any additional regulatory burden. All financial service providers must be subject to the CRA to provide a complete picture of every financial institution's performance in serving their communities. A modernization of the CRA that does not encompass credit unions, Farm Credit System lenders and Fintechs (including the OCC's Special Purpose National Banks) will be a sham.

Unfortunately, in May of 2020, the OCC was not joined in its Final Rule by either the FDIC or the Federal Reserve. As a result, only OCC regulated banks will be subject to the new CRA requirements. For those national banks and federal savings associations regulated by the OCC, the threshold limits for compliance with the new rule is \$600 million in assets for the Small Bank category, and \$2.5 billion for those in the Intermediate Bank category, so only a few CBAI members will be subject to the new Rule. The future challenge will be for all three regulators to agree on CRA regulations that modernizes, highlights and retain parts of the original and revised Act, identifies missed opportunities for additional credit, and reduces the regulatory burden on community banks.

### **Support** Modifying the FDIC's Brokered Deposit Rule

The FDIC proposed brokered deposit rule needs to be updated to reflect modern ways of gathering deposits. No all brokered deposits should be considered "hot money," be viewed unfavorably, and subject to unreasonable restrictions. Community banks do not have the same resources that the nation's largest banks so, in order to compete effectively, community banks must be able to engage and partner with service providers who support the banking industry. The FDIC's proposed rule limits a bank's ability to use bank consultants, data service providers and other outside resources without running the risk that all of their deposits will be treated as "brokered" and dismantles business relationships that community bankers have had in place with third-party service providers and whose services are allowed and protected by long-standing FDIC Advisory Opinions. A properly tailored brokered deposit rule will ensure that it does not place undue limits on the reasonable use of brokered deposits by community banks.

### **Support** a Safe Harbor for Banking Cannabis-Related Businesses

Without taking a position on the legalization of cannabis, it is a matter of public safety to have a safe harbor from federal sanctions for financial institutions that choose to serve legally-compliant cannabis-related business in states where cannabis is legal. CBAI has expressed its support in Congress for the Secure and Fair Enforcement Banking Act of 2019 (H.R. 1595)

which provides this safe harbor. CBAI thanks a bipartisan group of Illinois members for voting for this legislation in the U.S. House and for our Senators for cosponsoring the legislation in the U.S. Senate. Progress on the legislation is stalled by the concerns of the Senate Banking Committee Chairman. CBAI responded to Chairman Crapo's concerns and hope this bipartisan and beneficial legislation will pass the U.S. Senate as soon as possible.

### **Support De Novo Community Bank Formation, the Dual Banking System and Charter Choice**

**Newly chartered (de novo) community banks** are vitally important to maintaining a strong, growing, evolving and vibrant profession in the face of banking industry consolidation. The Federal Deposit Insurance Corporation (FDIC) virtually halted de novo community bank formation after the financial crisis. Recently has the FDIC has again tried to get back on the right course. These encouraging signs must persist to assure that many new banks are chartered each year to help maintain the vitality of the community banking profession.

Hand in hand with renewed de novo bank formation is the importance of maintaining **the dual banking system**, which has served our nation well for over 150 years, where chartering and supervision is divided between the federal government and the states. Community banks should be able to choose the banking charter that best fits their unique business model. A banking system with multi-agency (state and federal) regulators and **charter choice** provides the necessary checks and balances on the immense power of the regulators, as well as improved rulemaking, as the benefit of each agencies' expertise and experience is brought to bear on complex and controversial issues.

### **Support Sound Principles for GSE Reform**

GSE reform remains critically important to the future of the housing market and the U.S. economy. American homeowners have benefited from the critical role Fannie Mae and Freddie Mac (GSEs) have played in helping finance homeownership for many decades. The GSEs have provided a steady, reliable source of funding for home mortgage lending through all economic cycles and in all markets. Community banks depend on the GSEs for direct access to the secondary market without having to sell their loans through larger financial institutions that compete with them. The GSEs allow community banks to retain the servicing of the loans they sell, which helps to keep delinquencies and foreclosures low. And, unlike other private investors or aggregators, the GSEs have a mandate to serve all markets at all times, which is critical to maintaining liquidity when the markets are experiencing financial stress.

It has been over a decade since Fannie and Freddie were taken into conservatorship. This seemingly endless and ongoing period of government ownership and control of these GSEs must come to an end but Congress has been unwilling to act. The necessary journey from receivership begins with an end to sweeping GSE profits which keep them thinly capitalized.



Retaining their earnings will allow them to build capital and prepare for exiting government receivership within a broader housing finance reform framework.

### **Support the Federal Home Loan Banks**

Most community banks are members and shareholders of their regional Federal Home Loan Bank (FHLB). The FHLB's provide short-term liquidity, long-term funding, mortgage-related products, and other financial services in order to help their members provide affordable credit to the local communities they serve. The regional structure, special functions, and unique purpose of the FHLBs must be recognized and maintained by the Federal Housing Finance Agency (FHFA). As the Administration and Congress consider reforming the housing finance system, care must be taken not to harm the FHLBs. They must remain healthy, stable, and reliable sources of funding for their members. However, given their unique relationship with thousands of community lenders, it may be appropriate for the FHLBs to support their members' secondary market activities as aggregators or guarantors for residential mortgage loans, provided their current ability to serve their members is not impeded or threatened. Additionally, the FHFA should not impose an ongoing housing mission asset test on FHLB membership, which would in any way undermine the reliability of FHLB funding.

### **Support Agriculture and Rural America**

A vibrant rural economy is vital to America's prosperity. Community banks fund 80% of all agricultural loans and serve a crucial role in creating and sustaining rural economic prosperity. The multi-year Farm Bill provided a strong safety net for farmers and ranchers including adequate price-protection programs and enhanced USDA-guaranteed farm and business loan programs. These programs must be protected from cuts or any adverse changes that would discourage farmer and rancher participation or undermine private-sector delivery.

### **Support Enhanced Data, Cyber and Payment Card Security (Data Security)**

Community banks are strong guardians of the security and confidentiality of their customers' information and are on the frontline of defending against cyber security threats. Unfortunately, many customers of the largest banks, financial firms and retail chains have been the victims of data breaches. Enhanced security standards should be enforced through a tiered system where the more restrictive rules are imposed on the largest and most critical members of the financial system and economy where their lapses pose the greatest threat to the largest number of consumers.

Core data security principals in standards enacted by legislation and regulations must include the complete cost of data breaches being borne by that party that caused the breach; all participants should be subject to verifiable Gramm-Leach-Bliley Act-like data security standards; a national data security breach and notification standard should replace the current patchwork of state laws; and any new data security standard proposals should ensure that

community banks are not burdened with having to reassess existing critical systems, and implement and comply with new regulations, only to achieve the same superior results they currently attain.

### **Support** Consumer Financial Protection Bureau Reform and Meaningful Exemptions for Community Banks

Regulations promulgated by the CFPB must provide community banks with the flexibility to meet the needs of its customers and they must not be burdened with additional and unnecessary regulatory requirements that would prevent them from serving their customers and communities. A one-size-fits-all approach to CFPB regulations harms the successful community bank business model. The CFPB should not be unduly influencing marketplace behavior by targeting financial institutions, products, services, and practices which it deems to be undesirable or inappropriate regardless of what consumers want.

In **reforming the CFPB**, the single Director governance should be replaced by a five-member board or commission; a broader definition of firms that grant credit should be subject to the CFPB rules, they should be robustly supervised and examined; and the focus of any enhanced regulation of financial products should be on the mega banks and financial firms, the unregulated "shadow" financial industry and emerging Fintech companies.

The CFPB has the statutory authority under the Dodd-Frank Act to **exempt any class of providers [community banks]** or any products or services from the rules it writes, but to-date the Bureau has been far too reticent to do so. The effective use of this authority will ensure community banks continue to be a healthy alternative to large banks and non-banks for consumers seeking to use responsible financial service providers.

### **Support** the Community Bank Positions on Emerging Issues

#### **OCC - Special Purpose Fintech National Bank (SPNBs) Fintech Charters**

The Office of Comptroller of the Currency (OCC) intends to issue special purpose national banking charters to Fintech companies. The OCC's intentions, however, raise many concerns. The very legal authority permitting the OCC to charter Fintechs has been challenged by the Conference of State Bank Supervisors as being "fatally flawed." A single regulator acting unilaterally in the chartering, examining, supervising, and regulating Fintechs is not in the best interests of the profession, consumers, and the economy. Congress must provide the explicit statutory authority to charter Fintechs. If the OCC moves forward, it must guarantee that Fintechs will comply with all banking laws, rules and regulations, and that they be held to the same rigorous safety and soundness standards (i.e., supervision and regulation) that are currently being required of community banks and bank holding companies. Fintechs cannot have the advantages of a national bank charter with limited requirements, regulations, and liability.

## **FASB - Current Expected Credit Loss Model**

The Financial Accounting Standards Board (FASB) has approved significant revisions to the way community banks reserve for their loan losses (i.e., the Current Expected Credit Loss (CECL) Model). After robust community banker input, FASB agreed to address community banker concerns and revised their original Model proposal. The revised CECL is more flexible and scalable for community banks by allowing them to evaluate and adjust loan loss amounts using qualitative factors, historic losses, and their current operating systems such as spreadsheets, narratives, and other noncomplex estimation methods. Community bankers and Congress must continue to be vigilant to assure the Model implementation provides a clear, practical, and easy-to-use methodologies for calculating expected losses which can be seamlessly incorporated into existing processes for community banks. The original implementation date for compliance with CECL for many community banks was 2023 but was extended by a year to 2024 because of implementation timeline concerns related to COVID-19.

## **CFPB - Customer Data Sharing**

There is an emerging threat to the security of consumer data from the proliferation of companies seeking to access bank customer account information. The CFPB is responsible under the Dodd-Frank Act to promulgate this rule. While community banks support responsible innovation in financial products and services, the integrity of consumer data and privacy is only as strong as the weakest link. Community banks are financially sound and take great care in protecting consumer privacy, but non-bank entities are typically not well capitalized, have no significant assets, and are financially unable to make restitution from their liability for a loss. They must none-the-less be held responsible for ensuring the safety of the customer information they are accessing and be able to satisfy the liability for any financial harm which they cause community banks and their consumers.

## **CFPB – Small-Dollar Consumer Lending**

The Consumer Financial Protection Bureau's (CFPB) small-dollar lending rule was intended to address its concerns about consumer abuse caused by non-bank payday and vehicle title lenders. The proposed rule was too broadly drafted and would have ensnared and discouraged sensible community bank small-dollar consumer lending. Some exemptions were granted for community banks after a burdensome rulemaking process. Subsequently, the new CFPB Director is proposing to revise the original 2017 rule. Appropriate action will be required, as the implementation of the rule unfolds to assure appropriate and responsible access to small dollar loans by consumers and to minimize any negative impact on community banks' small-dollar consumer lending.

## **CFPB – Small Business Data Collection**

The requirement for reporting small business data stems from Section 1071 of the Dodd-Frank Act and is meant to facilitate the enforcement of fair lending laws in small business lending. While community banks represent less than 20% of banking industry assets, they

make 60% of the small business loans and 80% of agricultural loans. This data clearly suggests fair lending is not a problem at community banks as they treat their customers honestly and fairly. The regulatory burden of the collection and reporting requirements fall disproportionately hard on community banks that lack scale and compliance resources, and Section 1071 should either be repealed, or community banks should be provided with a meaningful exception.

#### **Federal Reserve - Modernize Reg CC**

Fraud losses are increasing at community banks and Reg CC needs to keep pace with the technology that banks and their customers are using, both now and particularly as the payments system transitions to real-time. All banks, credit unions, and others who utilize the payments system should be operating on the same level playing field when it comes to return reasons for fraud and acknowledging and communicating about fraud.

#### ***Finally* Address the Risks of Too-Big-To-Fail Banks and Financial Firms to Protect Our Financial System, the Economy, and American Taxpayers from Future Bailouts**

The financial crisis, taxpayer bail-outs, and subsequent recession was caused by the misconduct of the nation's largest banks and financial firms. The Dodd-Frank Act was intended to reign-in their destructive behavior. Unfortunately, this was an inadequate legislative and regulatory response which has allowed these financial behemoths to grow in size, complexity, and influence; they will continue to abuse their consumers; and they remain a significant threat to our financial system and economy. These megabanks have proven, at great cost to American taxpayers, that they cannot be effectively managed, supervised or disciplined. They are clearly too-big-to-change, too-big-to-fail and must be downsized.

*Updated in June 2020*