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LEGISLATIVE PRIORITIES *Full version*

INDEPENDENT BANKERS ASSOCIATION OF TEXAS



Challenges abound for community banks in Texas and across the nation. The Independent Bankers Association of Texas (IBAT) applauds the remarkable contributions of these banks and bankers who have stepped up to support their communities and customers through some difficult times and reinforced the value and importance of community banking.

The proportionately outsized level of participation in the Paycheck Protection Program (PPP) by community banks has saved millions of jobs in thousands of communities across the country, and allowed a multitude of small businesses that would have otherwise failed to continue to create economic value, serve their customers and provide meaningful employment for those who depend upon them. Data from the Small Business Administration on this important and successful program reflects a total of \$799.8 billion advanced in PPP loans, with banks having assets of less than \$10 billion accounting for \$335.3 billion. These smaller banks represent a mere 12% of total industry assets, yet booked almost 42% of the dollar amount of PPP loans.

The business models of community banks and the global financial giants could not be more divergent. While there is more regulatory scrutiny on the systemically important entities, all banks—regardless of risk profile or business activities—must adhere to basically the same set of rules and regulatory expectations. IBAT has long pushed for a recognition of the unique business model of community banks and the positive contributions these institutions make in meeting the needs of small business borrowers, working with low- to moderate-income customers, contributing to their communities and creating jobs and economic activity. We encourage Congress to focus on business activities and risk profiles when determining appropriate regulatory treatment of various categories of banks.

Among the priority issues facing the community banking sector in the 117th Congress are:

- IBAT has consistently opposed the mixing of banking and commerce. Recent approvals and additional applications for FDIC insurance and access to the payments system through the chartering of an industrial loan corporation (ILC) by several fintech and commercial companies with a diverse array of other business lines are troubling. In addition to further tilting an already unlevel playing field to the detriment of community banks, the small businesses and individual customers we serve, such an arrangement would foster further consolidation and concentration in the industry, promote credit allocation, provide multiple avenues for consumer privacy risks and potentially create more risk to the FDIC fund. The FDIC should declare a moratorium on ILC insurance applications, and Congress should promptly close the ILC loophole. **We are fully supportive of H.R. 5912 (Close the ILC Loophole Act), and urge your support and co-sponsorship.**

Further, we are in strong opposition to the creation of a “post office bank” and have significant concerns regarding inefficient government entry into a private sector function. Finally, we are strongly opposed to any proposals authorizing additional direct lending by the SBA and encourage streamlined applications and documentation requirements to meet the needs of smaller borrowers.

- We continue to strongly oppose efforts by the credit union industry to expand field of membership, business lending authority and raising capital from outside sources whether by legislation or regulatory fiat. The recent purchases of community banks by credit unions are clearly an indication that these business models have few, if any, differences. We are supportive of efforts to provide for rent parity between banks and credit unions operating on military bases. Further, regulatory restrictions on the conversion of a credit union to a bank charter are significant and inappropriate. It is time to seriously examine the tax-exempt status and regulatory treatment of this ever-expanding industry.
- IBAT supports extending tax credits and deductions for community bank lending to small business borrowers, consumers in underserved communities and farmers and ranchers. In addition to providing some level of parity in competing with credit unions, Farm Credit System lenders and others, the benefits would be significant to the constituencies served and provide a significant return on investment to the federal government. **We are fully supportive of H.R. 1977/S. 2202 (ECORA) and urge you to support and co-sponsor this initiative.**
- “Regulatory burden” is frequently cited as a primary reason for selling a community bank. The regulatory pendulum appears to have swung back to a more aggressive approach. Many community banks simply do not have the resources to comply with the regulatory expectations, especially in the areas of CRA, fair lending and HMDA as they have evolved. We would submit that a community bank should have the opportunity to correct a violation of consumer protection law or shortcoming in a compliance management system or protocol prior to a formal (and public) order being issued. Further, to mitigate the damaging “whipsaw effect” of administration changes on bank regulatory approach, we continue to strongly support structural changes to the CFPB to establish an oversight commission/board and provide Congress with budget authority.

Community banks spend a disproportionate amount of time and resources attempting to comply with an ever-increasing level of regulatory scrutiny in the consumer compliance area. IBAT strongly believes that consumers should be treated fairly, but also is of the opinion that the present environment is counterproductive and is making credit and banking services less accessible to those the government is purporting to protect. Further, this is clearly a result of a “one-size-fits-all” regulatory framework in which egregious behavior by some of the larger institutions has created a difficult environment for smaller banks.

A return to a much more robust level of regulatory scrutiny regarding fair lending enforcement appears to be the new reality. Sadly, the result of this practice in the past has been that banks simply stopped making small loans to individuals, thus pushing these customers into the realm of high-cost and frequently predatory lenders. Regulatory restrictions on the availability of overdraft programs have further limited opportunities for those seeking short-term credit.

We are particularly concerned that the CFPB’s proposed data collection rule on small business loans mandated by Section 1071 of the Dodd-Frank Act will potentially have a similar effect on small business lending. As discussed above, community banks control a shrinking percentage of the overall banking assets in this country yet make nearly half of the small business loans under \$1 million. These loans do not “fit in a box” and each is unique. In addition to the extra burden and expense to comply with these requirements, meaningful comparisons will simply not be possible. With small business loans making up a significantly higher proportion of total loans, costly and burdensome reporting will have a

“disparate impact” on community banks and will ultimately lead to less credit availability for small business borrowers. “Balance” would appear to be key as these areas are addressed, with a focus on cost/benefit and minimizing unintended consequences.

- IBAT opposes efforts to require further analysis and evaluation of climate risk in the community banking space and believes that community banks are well-aware and experienced in dealing with potential disruptions and severe weather events. Further, legislative or regulatory directives to constrain lending to legally operating businesses or industry sectors are unacceptable in any form.
- BSA/AML compliance continues to be a costly and aggravating burden for community banks. IBAT was extremely gratified with the recent changes to appropriately shift the “Beneficial Ownership” responsibility to the applicant/customer and require FinCEN to serve as the data repository. We believe that a significant increase in decades old reporting thresholds would also be appropriate.
- IBAT supports reasonable measures to allow a safe harbor for banks doing business with marijuana related businesses (MRB) in states where cannabis is legal. The House passed the SAFE Banking Act (H.R. 1996/S. 910) in April 2021 on a bipartisan basis. We encourage the Senate to promptly pass this bill without amendment to address these significant issues.
- Subchapter S offers benefits to allow smaller banks to remain viable and compete with tax advantaged credit unions and farm credit system lenders. We support raising the limit on shareholders from 100 to 500, allowing Sub S banks to issue preferred stock, making dividends on those shares tax deductible, and allowing those dividends to be treated as ordinary income for tax purposes. Further, we support an LLC structure for banks.
- Data security breaches continue to be a significant and costly problem for all banks. We are supportive of requiring the same Gramm-Leach-Bliley standards banks must adhere to for all entities that handle sensitive customer data. Further, we encourage Congress to take the necessary steps to counter ever-increasing threats in the cybersecurity space.
- The ongoing proliferation of “patent assertion entities,” or “patent trolls,” continues to be a source of frustration and expense. IBAT strongly supports the very simple fix of exempting “end users”—those who simply purchase software or a product from a third party—from any liability for alleged patent infringement.
- Lenders under the Farm Credit System umbrella are also competing directly with our banks in numerous markets and are straying from their purpose with loans to large entities and dubious ties to either agriculture or rural development. Tax-advantaged GSEs should not be competing with the private sector outside of their stated mission.
- Recent accounting standards regarding loan impairment (CECL) are adding significant costs and burdens to community banks with questionable, if not nonexistent, benefits. Community banks should be exempted from the onerous requirements of this “solution in search of a problem” in our sector of the industry.