

H.R. 1697, the Communities First Act (CFA)

Title I Targeted Regulatory Relief for Community Banks

Section 101. Call Reports: Permits highly rated, well-capitalized banks with assets of \$10 billion or less to file a short form Call Report in two non-sequential quarters of each year.

Reduces substantially the burden on smaller banks with minimum impact on safety and soundness or the ability of agencies to collect economic information.

Section 102. Sarbanes/Oxley: Exempts insured depository institutions with consolidated assets of \$1 billion or less from the internal control attestation requirements of Section 404(b) of the Sarbanes Oxley Act. (Dodd-Frank provides relief for public companies with market capitalizations under \$75 million).

Increases the exemption level provided under the Garrett amendment to Dodd/Frank. Will benefit smaller, public institutions substantially.

Section 103. Small BHCs: Requires the Federal Reserve to revise the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors so that the policy applies to BHCs with pro forma consolidated assets of less than \$1 billion, an increase from the current threshold of \$500 million. Qualifying BHCs must not have a significant outstanding debt or be engaged in nonbanking activities that involve significant leverage.

Eases and simplifies capital requirements for small BHCs that do not have nonbanking activities. The Fed has increased the level in recent years.

***Section 104. Accounting Principles/Business Model:** Require the SEC to ensure that accounting principles truly reflect the business model of the preparer.

FASB has repeatedly imposed reporting requirements that assume that all banks are high-volume traders in assets and liabilities. This is not the case for community banks. Frequent revaluations of assets and liabilities which community banks hold long-term distorts their balance sheets and confuses investors.

Section 105. Accounting Principles/Cost-Benefit: Require SEC to conduct both a cost/benefit analysis and economic benefit analysis for proposed changes to any existing accounting principle, as well as for any proposed new accounting principle.

*Underlined sections indicate new provisions not found in the CFA legislation introduced in 2007 during the 110th Congress.

Updated: May 2011

SEC may not issue an amended principle or a new principle unless the benefits of such principle significantly outweigh the costs. Also, SEC may not issue any principle which could create an undue negative economic impact upon community banks with assets of \$10 billion or less.

SEC frequently imposes standards that disrupt community bank activities but provide no value to investors in community banks.

Section 106. Shareholder Threshold: Increases SEC shareholder registration threshold to 2,000 from 500 for banks. To de-register stock for banks, increase shareholder threshold from 300 shareholders to 1700 shareholders.

These thresholds have not been adjusted in many years and do not take into account the increase in the number of shareholders that comes about when community bank shares are inherited by multiple individuals.

Section 107. FSOC Review: Revise FSOC review of CFPB regulations by lowering the threshold and allowing FSOC to veto a rule that could adversely impact a subset of the industry in a disproportionate way.

The existing threshold requires a finding that a CFPB rule would have an adverse impact on the entire financial system. This is simply an unrealistic threshold.

Section 108. Fed Exam Authority: Amend sec. 1012 of Dodd-Frank to make it clear that the Fed may not delegate to the CFPB its authority to examine insured depository institutions with assets of \$10 billion or less.

This provision solidifies the intent of the Act to exempt community banks from CFPB examinations.

Title II Regulatory Relief for Banks and their Customers

Section 201. Escrows: Amend Dodd-Frank to provide that mortgage loans held in portfolio by banks under \$10 billion in assets are excluded from escrow requirements.

Community banks generally do not require escrows, since they know their customers well. They would retain the option to do so under this section when they deem it necessary.

Section 202. Annual Privacy Notices: Requires a bank to provide annual privacy notices to consumers when it either shares consumer information (other than as

*Underlined sections indicate new provisions not found in the CFA legislation introduced in 2007 during the 110th Congress.

Updated: May 2011

provided by an exception) or changes its policies. Annual privacy notices would otherwise be eliminated.

Consumers receive no benefit from receiving the same notice year after year.

Section 203. Agriculture Loans: Lower origination and program fees in the Business and Industry guaranteed loan program for borrowers of rural, small business loans under \$5 million, and allow guarantee of up to 90% of principal.

This will help rural America develop its economy.

Section 204. Reimbursement for Mandatory Production of Records: Requires reimbursement by the Federal government to institutions with assets of \$10 billion or less for the production of records for any law enforcement or investigative purpose, modeled after the provision in the Right to Financial Privacy Act.

Demands for production of records are especially burdensome for smaller institutions. This will require Federal agencies to reimburse them for this cost.

Section 205. Loan Amortization: For purposes of regulatory capital, temporarily allow banks with assets of \$10 billion or less to amortize over 10 years any mark-to-market losses on property acquired through foreclosure, or on impaired loans secured by real estate.

This is a temporary provision modeled after a similar program for agricultural loans in the 1980s.

Section 206. Loan Appraisals: Creates a 5-year rolling average of real estate loan appraisals.

This will lessen the burden on community banks when classifying loans during a serious economic downturn.

Section 207. Credit Ratings: Amend Dodd-Frank mandate which removes references to external credit ratings by directing bank regulators to require that ratings-based determinations be confirmed by additional analysis of the probability of a loss from holding such an asset, but only where external credit ratings present an incomplete picture of the risks or where those risks are heightened due to concentrations in particular asset classes.

Community banks lack an adequate substitute for these ratings. The provision requires additional analysis where the ratings themselves are inadequate.

*Underlined sections indicate new provisions not found in the CFA legislation introduced in 2007 during the 110th Congress.

Section 208. Small Business Data Collection: Amend Dodd-Frank to exclude insured depository institutions with assets of less than \$1 billion. Requiring small community banks to publicly report this information would make personally identifiable information readily available in small communities across the country.

Data collection and reporting for the government is a major burden for community banks and making that information public could violate privacy. This exempts the smaller community banks from this reporting.

Title III

Tax Relief for Bank Depositors, Rural Banks, Municipalities, Banks Organized as Limited Liability Companies, and Young Savers

Section 301. Long Term CDs: Reduces tax rate and defers income on long-term certificates of deposit (All Savers Account). Defers tax recognition of individual interest income on long-term CDs (term of 12 months or more) until maturity and reduces the tax rate to long-term capital gains tax rate.

Would encourage savings.

Section 302. Enhanced Rural Lending: Excludes from taxable income of a bank or savings association income earned on agricultural real estate loans and mortgage loans in communities with a population of 2,500 or less. This mirrors exclusion available to the Farm Credit System.

This helps put community banks on a more equal footing with the Farm Credit System.

Section 303. Update Tax-Exempt Bond Limits: Increases from \$10 million to \$30 million the annual issuance limitation for tax-exempt obligations. The limitation would be indexed for inflation prospectively.

This level needs to be updated to reflect the increased size of these issues.

Section 304. LLCs: Allows bank, bank holding company, savings association or savings association holding company with assets of under \$10 billion to elect to be treated for tax purposes as a limited liability company in a tax-free transaction.

This increases flexibility for community banks in their tax planning.

Section 305. Young Savers Accounts: Permits a Roth IRA account for individuals under age 26 to encourage early savings.

This helps encourage long-term savings on behalf of young people.

*Underlined sections indicate new provisions not found in the CFA legislation introduced in 2007 during the 110th Congress.

Title IV

Targeted Tax Relief for Community Banks and Holding Companies

Section 401. Limited Community Bank Credit: Allows banks, bank holding companies, savings associations and savings association holding companies with up to \$5 billion in assets that are taxed as C corporations to take a 20% credit against their taxable income up to a cap of \$250,000. Shareholders of financial institutions that are S corporations would be able to exclude 20% of the distributable income from the financial institution up to an aggregate cap of \$1,250,000. Also creates a 50% tax credit for financial institutions with up to \$5 billion in assets that are operating in distressed communities and/or designated enterprise or empowerment zones, or qualifying New Market Tax Credit Census tracts not to exceed \$500,000. Financial institutions that are operating in these areas and that are S corporations would be able to exclude 50% of distributable income not to exceed \$2.5 million of income.

This provision helps offset the tax advantages enjoyed by credit unions.

Section 402. Qualifying Investments in Small Bank Issuers. Allows community banks under \$10 billion in assets to raise additional capital without losing net operating loss carry-forward tax benefit.

This provision helps community banks raise additional capital without adverse tax consequences.

Section 403. NOL Carry Back: Extend 5 year NOL carry back. Allow community banks with \$15 billion or less in assets to spread out their current losses with a 5 year carry back allowed through 2011.

This helps community banks redirect their capital back into their communities.

Title V

Small Business Subchapter S Reforms

Section 501. Shareholder Limit: Increase shareholder limit for S Corporations to 200 from 100.

Section 502. Preferred Stock: Allows the use of preferred stock for S Corporation banks.

Section 503. IRA Shareholders: Allow IRA shareholders to invest in S Corporation banks.

*Underlined sections indicate new provisions not found in the CFA legislation introduced in 2007 during the 110th Congress.