Federal Legislative Priorities – Spring 2019

The Independent Bankers Association of Texas (IBAT) is extremely gratified by the passage of S. 2155, the "Economic Growth, Regulatory Relief and Consumer Protection Act" in the last Congress. Those in the community banking industry have been working toward and waiting for these provisions for years, and the passage of this bill into law is having a significant and positive impact on the survival of our sector of the industry, and the economic well-being of the small businesses and families we serve.

We very much appreciate the many who worked so hard to maneuver this common-sense legislation through a difficult process, and we sincerely thank all of those members on both sides of the aisle who voted in the affirmative for community banking and Main Street America. Among the other priority issues facing the community banking sector in the 116th Congress are:

Tailored/Right-Sized/Bifurcated Regulation

The business models of community banks and the global financial giants could not be more divergent. While there is clearly 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. Further, while simpler to do so, rather than setting arbitrary asset thresholds we encourage Congress to focus on business activities and risk profiles when determining appropriate regulatory treatment of various categories of banks.

Consumer Protection

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 indeed 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 tremendously difficult environment for smaller banks. Many community banks simply do not have the resources to comply with the regulatory expectations 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.** A much more robust level of regulatory scrutiny is apparent regarding fair lending. Sadly, the result in many circumstances has been that many banks have 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 has further limited opportunities for those seeking short-term credit. **We are particularly concerned that proposed data collection on small business loans mandated by Section 1071 of the Dodd-Frank Act will potentially have a similar effect on small business lending and should be repealed.** Community banks control a shrinking percentage of the overall banking assets in this country (roughly 10%), yet make almost half of the small business loans under $1 million. These loans do not "fit in a box," and each is unique in its own way. In addition to the extra burden to comply with these requirements, comparisons will simply not be possible. "Balance" would appear to be key as these areas are addressed, with a focus on cost/benefit and minimizing unintended consequences.

Separation of Banking and Commerce

IBAT has consistently opposed the mixing of banking and commerce. Recent applications for FDIC insurance through the chartering of an industrial loan corporation (ILC) by several fintech companies with a diverse array of other business lines are troubling. Further, it is no secret that several retail giants, including Walmart, are seeking opportunities to enter the banking business. In addition to further tilting an already unlevel playing field to the detriment of community banks and the small business and individual customers we serve, such an arrangement through an ILC charter or similar vehicle 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.**

Other Issues of Importance

- 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.**
- BSA/AML compliance continues to be a costly and aggravating burden for community banks. **The recent "Beneficial Ownership" rule promulgated by FinCEN has been especially onerous, and puts the financial institution in a "detective" role.** The information is required to be collected by the bank, is not required to be verified—and in many cases can't be verified—and can't easily be shared, thereby making it an exercise in futility. While our sector of the industry wants to cooperate with law enforcement in their important duties, this responsibility clearly rests elsewhere.
- **We are in strong opposition to the creation of a "post office bank,"** and believe that to be a bad idea on any number of levels. Recent attention by the federal regulatory authorities on impediments to banks in the small loan space are encouraging, and we are hopeful that meaningful changes can be made to again allow community banks to make smaller loans.
- 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.**
- 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.**
- **We continue to strongly oppose efforts by some in the credit union industry to expand field of membership, business lending authority and raising capital from outside sources** whether by legislation or regulatory fiat. 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 of this ever-expanding industry.
- Lenders under the Farm Credit System umbrella are also competing directly with our banks in a number of markets, and are straying from their purpose as well 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.