

## **H.R. 1697, the Communities First Act**

ABA and community bankers throughout the country support real and meaningful regulatory relief for community banks. To accomplish this goal the industry must work together to craft focused legislation that has bipartisan support and can move through Congress.

The Communities First Act (H.R. 1697) introduced by Congressman Blaine Luetkemeyer (R-MO) on May 3, 2011, is legislation that raises a number of important issues faced by community banks. The legislation, which has been introduced in various forms since 2005, has never received serious consideration from lawmakers because the legislation is very broad and reaches into the jurisdiction of several Congressional committees, including the House Financial Services, Agriculture, and Ways & Means Committees. ABA has never been consulted during the development of any versions of this legislation.

ABA believes that serious attempts to move any legislation through Congress must be done in a constructive fashion, working in a bipartisan manner with Congressional and committee leadership and ABA will continue to work in that manner to achieve legislative victories that make meaningful changes for banks.

The Communities First bill largely consists of a list of bills and amendments from prior versions of similar legislation, now updated with provisions targeted at various aspects of the Dodd-Frank Act (DFA) enacted in 2010. ABA supported some of these provisions when they were in stand-alone bills in the past and will continue to work for their enactment. While the entire bill is very unlikely to pass Congress because of jurisdictional issues, ABA is providing thoughts on aspects of H.R. 1697 which could be helpful for community banks.

### **Title I – Targeted Relief for Community Banks**

**Sec. 102** – Section 102 would exempt banks with total consolidated assets of \$1 billion or less from the annual management assessment of internal controls requirements of Sec. 404 of the Sarbanes-Oxley Act. The DFA exempted banks with a market value of less than \$75 million from this requirement.

*There is widespread support throughout the industry for relief from Section 404 of the Sarbanes-Oxley Act, and ABA supports such relief. H.R. 1697 limits the threshold to \$1 billion. Greater relief would be available if the \$1 billion threshold were raised.*

**Sec. 106** – This provision increases the shareholder registration threshold to 2,000 persons or more from the current 500 shareholder level.

*ABA has supported this provision since 2005 and supported legislation (H.R. 1965) that was approved by the House of Representatives on November 2, 2011, on a bipartisan vote of 420-2, to increase the shareholder threshold to 2,000 and increase the deregistration threshold from 300 to 1,200. Identical legislation (S. 556) is pending in the Senate.*

## **Title II – Regulatory Relief for Community Banks and their Customers**

**Sec. 201** – This section removes language in the DFA that allows the Federal Reserve Board, at its discretion, to exempt banks from DFA provisions that mandate the establishment of escrow accounts. Sec. 201 would require the Board to exempt all banks with assets of \$10 billion or less.

*The proposed language would be of benefit to many banks, especially those that operate in rural areas and ABA supports exempting these institutions. Existing law and proposed Board regulations would only exempt a minute number of small banks.*

**Sec. 208** – This section exempts banks and other covered entities with \$1 billion or less in assets from the DFA’s small business loan data collection requirements.

*This provision is helpful. ABA has testified against these requirements in the past. The asset level of this section should be increased.*

## **Title III – Tax Relief for Bank Depositors and Others**

**Sec. 302** – Section 302 would permit qualified agricultural lenders insured under the Federal Deposit Insurance Act to exclude from gross income the interest on loans secured by agricultural real property.

*ABA strongly supports excluding from income the interest earned on farm real estate loans. This section would help level the playing field between banks and the government sponsored, tax-advantaged Farm Credit System. Section 302 is based on stand-alone legislation that ABA championed for many years, including legislation originally developed by the Nebraska Bankers Association and authored by former Senator Chuck Hagel. ABA has worked with several lawmakers over the years who have carried the original Hagel legislation in subsequent Congresses.*

**Sec. 303** – This section changes the ceiling on bank qualified small-issue tax-exempt bonds from \$10 million annually back to the \$30 million that was the temporary ceiling in 2009 and 2010. The ceiling also would be adjusted annually for inflation.

*ABA has been a long-time supporter of this provision. We supported stand-alone legislation on this subject in the 110<sup>th</sup> Congress (HR 6333). As a result of ABA’s lobbying, a similar provision was included in the American Reinvestment and Recovery Act of 2009 (Stimulus Act), which was signed into law.*

## **Title IV – Tax Relief for Community Banks and Holding Companies**

**Sec. 403** – Section 403 would extend the net operating loss (NOL) carryback period for banks with less than \$15 billion in total assets from two to five years for losses incurred in 2010 and 2011.

*ABA was one of the first and lead organizations in a broad-based coalition to push for an extended NOL period for ALL banks in late 2008 and 2009, and an extended NOL window was signed into law in 2009.*

## **Title V – Small Business Subchapter S Reforms**

**Sec. 501** – This provision would increase the Subchapter S shareholder limit from 100 to 200.

*ABA supports such an increase. ABA has consistently supported Congressional efforts to broaden and extend the abilities of Sub S banks. ABA was instrumental in the effort that authorized banks to become Sub S corporations and in crafting provisions that allow Sub S banks of up to 100 shareholders to count multi-generations of the same family as one shareholder.*

**Sec. 502** – This section would allow S corporations to issue preferred stock.

*ABA supports this provision. From the time that banks were allowed to make the Sub S election, ABA has advocated the position that the government should permit S corporation banks to issue stock other than common stock because it directly impacts the ability of the bank to raise much-needed capital.*

### **Areas of Concern**

There are other provisions in H.R. 1697 that raise policy issues and concern for ABA and community bankers. For example, Section 206 of the bill would permit an insured depository institution to average, over a five-year period, the appraised value of any real estate securing a loan by the institution. Section 205 of the legislation would allow institutions with less than \$10 billion to amortize losses over 10 years on loans secured by real estate and other real estate owned assets. This would effectively permit Congress to legislate accounting rules and further allow certain banks to mask actual losses incurred, which may be a disadvantage to banks overall.

These provisions may address short term concerns for some banks, but would likely cause long term harm to the industry and to investors that rely on the accuracy of banks' financial statements.