2015 Key Banking Issues
How Congress Can Help America’s Hometown Banks
About the American Bankers Association

The American Bankers Association is the voice of the nation’s $15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans.

Banks have branches and offices in every congressional district in every state in the nation and offer services that range from a child’s first savings account to a retiree’s annuity. Banks are job creators, providing the credit small and large businesses alike need to grow.

This guide reviews key legislative issues important to banks, explains how those issues affect the people and communities banks serve and gives specific examples of how Congress can help America’s Hometown Banks.
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America’s Hometown Banks

Banks are the pillars of our economy. The business of banking helps fuel our economic system and has a direct impact on job creation, economic growth and prosperity. Banks also are the foundation of the credit cycle. Understanding the business operations of banks and their involvement in this cycle is critical for policymakers.

The credit cycle is simple: customer deposits provide funding to make loans. These loans allow customers of all kinds—businesses, individuals, governments and non-profits—to invest in their hometown and across the globe. The profits generated by this investment flow back into banks as deposits and the cycle repeats—creating wealth for individuals and capital to expand businesses. Bank loans and services can also significantly increase consumers’ purchasing power and improve their quality of life, helping Americans attain their goals and realize their dreams.

The credit cycle does not exist in a vacuum. Regulation shapes the way banks do business and can help or hinder the smooth function of the credit cycle. Bank regulatory changes—through each and every law and regulation, court case and legal settlement—directly affect the cost of providing banking products and services to customers. Even small changes can have a big impact on bank customers by reducing credit availability, raising costs and driving consolidation in the industry. Everyone who uses banking products or services is touched by changes in bank regulation.

Nonbank and tax subsidized competitors to banks add additional complexities and risks to the financial system. These entities can ultimately take business away from banks and constrain the industry’s ability to function as the primary conduit for money to flow through the economy.
It is imperative that Congress take steps to ensure and enhance the banking industry's ability to facilitate job creation and economic growth through the credit cycle. Laws have unintended consequences that can unnecessarily constrict the cycle of credit, job growth and economic expansion. Besides the real, hard dollar costs, there are also important opportunity costs felt by bank customers.

For example, 58 percent of banks have held off or canceled the launch of new products—designed to meet customer demand—due to expected increases in regulatory costs or risks. Additionally, 44 percent of banks have been forced to reduce existing consumer products or services due to compliance or regulatory burden.

The members of the American Bankers Association, representing banks in communities all across the country, know and understand the need for careful oversight and supervision of the business of banking because of its importance to the local, national and global economies. Action is needed in many different areas to reverse the unintended consequences of new laws and regulations restricting the cycle of credit and constraining job growth and economic expansion, and to allow banks to focus on the business of banking.
Rules and requirements surround every bank activity. When it works well, bank regulation helps ensure the safety and soundness of the overall banking system. When it does not, it constricts the natural cycle of facilitating credit, job growth and economic expansion. Finding the right balance is key to encouraging growth and prosperity as unnecessary regulatory requirements lead to higher expenses, reducing resources devoted to lending.

Banks in the U.S. are resilient and fully dedicated to serving their communities. However, during the last decade the cumulative regulatory burden for banks has multiplied tenfold—constricting the natural cycle of facilitating credit. If left unchecked, the weight of this cumulative burden could threaten the model of community banking that is so important to strong communities.

The avalanche of new regulations is already having an impact. Today, it is not unusual to hear bankers—from strong, healthy banks—say they are ready to sell because the regulatory burden has become too much to manage. These are good banks that for decades have been contributing to the economic growth and vitality of their towns but whose ability to continue to do so is being undermined by excessive regulation and government micromanagement. Each bank that disappears from the community makes for fewer opportunities for that community to prosper.

Congress should take a comprehensive review of regulations to ensure that the depth of imposed regulations appropriately fit the diverse business models of our country’s vast banking industry. By eliminating unnecessary impediments to the natural credit cycle, Congress can help stem the tide of community bank consolidation, which negatively impacts every community across the United States.
WHAT CONGRESS CAN DO

**Reduce Unnecessary and Redundant Paperwork Requirements**

Congress should support efforts to reduce excessive paperwork requirements, which have impeded the banking industry’s ability to serve their communities. For example:

- Eliminate Unnecessary Currency Transaction Report Filings
- Provide Greater Accountability for Law Enforcement’s Use of Bank Secrecy Act Data
- Solve Problems with the Integration of Mortgage Disclosure Requirements
- Eliminate Redundant Annual Privacy Policy Notices

**Create a More Balanced, Transparent Approach to Bank Examination and Regulation**

For example:

- Provide an Independent Appeal Process for Bank Examination Decisions
- Require the Securities and Exchange Commission and the Bank Regulators to Perform Cost-Benefit Analyses Before Issuing New Rules
- Revise the Cost-Benefit Test for Rules Proposed by the Commodity Futures Trading Commission

**Limit Burdensome Trickle-Down of Complex Bank Regulations**

Congress should support legislation that prevents the “trickle-down” of complex bank regulation onto midsized and smaller banks and should support bills that would stem the tide of community bank consolidation. For example:

- Eliminate Unnecessary Stress Test Disclosures for Midsized Banks
- Require Targeted Rulemaking by Regulators
- Remove Arbitrary Regulatory Thresholds Not Corresponding to a Bank’s Risk and Business Model
- Exempt Non-Major Swap Dealers and Participants from Inter-Affiliated Swaps Restrictions
- Exempt Small Banks from Commodity Futures Trading Commission Clearing Requirements
- Ensure Capital Rules Designed for Systemically Important Financial Institutions Are Applied Only to Banks that Are Truly SIFIs
The banking industry’s ability to serve customers is affected by many forces, including nonbank competition and unreasonable legal risks. These forces restrain the credit cycle, add risk and distortions, and impede the banking industry’s ability to encourage growth and prosperity within communities.

Nonbank financial institutions offer identical products and services but do so without the same regulatory oversight, consumer compliance or tax treatment. As bank regulations become increasingly restrictive, products and services migrate from the safety and soundness of the banking system to the under-regulated or unregulated market. This magnifies risk for all who use financial services.

Furthermore, some nonbanks benefit from special tax privileges which have created economic distortions that shift resources and banking activity from taxpaying banks to the tax-privileged sectors. Credit unions and the Farm Credit System are prime examples. Such marketplace tax distortions are neither good public policy nor fiscally responsible.

In addition, unreasonable legal risks faced by banks have restrained the credit cycle. For example, uncertainties surrounding the interpretation of fair lending rules have raised the risks of costly litigation and forced financial institutions to limit mortgage lending operations. Similarly, unjustified and abusive patent litigation and licensing fee demands have drained funds available for lending. These legal risks create no benefit for local communities. Congress should eliminate unreasonable legal risks so that the banking industry can return to the business of banking.

Another potential and serious distortion involves innovations within the payment system by nonbanks. Banks have always protected the integrity of the payments system. As new innovations come forward it is critical that they are within a secure regulatory system that promotes consumer protection and system integrity. Equal access and equivalent regulation are key principles to ensure this.
WHAT CONGRESS CAN DO

Provide Equal Tax and Regulatory Treatment for All Market Participants

Congress should support legislation that eliminates government distortions in the private market, which have imposed higher prices and otherwise harmed consumers. For example:

- Eliminate the Credit Union Industry’s Special Tax Treatment
- End the Farm Credit System’s Unjustified Tax Privileges
- Ensure Agencies Do Not Impose Price Controls, Directly or Indirectly
- Provide Relief for Overly Restrictive Capital Treatment of Mortgage Servicing Rights

Eliminate Unreasonable Legal Risks and Impediments

Congress should support legislation to:

- Reduce the Threat of Abuse Through Patent Troll Reform
- Remove Uncertainties in Fair Lending Rules, Such as Penalties Where There is No Intent to Engage in Unlawful Discrimination

Support Taxpaying Bank Charters

For example:

- Conform Savings and Loan Holding Company Thresholds and Registration Rules with Those of Banks
- Support Charter Flexibility for Mutual Banks
- Encourage Regulators to Charter New Banks

Protect the Payment System

Banks have been responsible stewards of the payment system with a regulatory environment that promotes innovation, consumer protection and payment system integrity. Congress should support legislation to:

- Ensure that All Participants—Banks and Nonbanks—are Subject to Consistent Rules and Oversight
- Protect Consumers and Discourage Systemic Risk
- Avoid Technology Mandates
78% of banks have said they will or may need to change their nature, mix and volume of mortgage products in response to regulatory changes.
Source: ABA 2013 Bank Compliance Officer Survey

**Improve Access to Home Loans**

The mortgage market touches the lives of nearly every American household. Banks help individual consumers achieve lifelong goals of homeownership by giving them access to the funding they need. Without home loans most Americans would not be able to purchase a home.

Banks are a major source of mortgage loans—holding more than $2 trillion in one-to-four family home loans. In addition, banks support the housing industry with construction and development loans, and homeowners with home equity lines of credit. Housing construction and development, as well as the transactional activities of buying, selling and furnishing homes, generate both direct and indirect benefits for the economy. This results in more income and jobs in communities, along with a larger tax base for local governments. According to the National Association of Home Builders, the construction of 100 single-family homes will result in $21.1 million in income, $2.2 million in taxes and other revenue to local governments, and 324 local jobs.

It is painfully clear that new regulatory requirements have restrained mortgage lending and have made it particularly difficult for first-time homebuyers to obtain a home loan. The complex and liability-laden maze of compliance has made home loan origination more difficult, especially for borrowers with little or weak credit history. Over-regulation of the mortgage market has reduced credit available to bank customers, raised the cost of services and limited bank products.

Congress can help reduce needless impediments to mortgage lending that have constrained the banking industry’s ability to help first-time homebuyers reach their dreams of homeownership and dampened the growth of prosperity across the nation’s communities.
WHAT CONGRESS CAN DO

Remove Impediments to Mortgage Lending
Congress should support legislation that encourages mortgage lending and help bankers originate home loans for first-time buyers. For example:

- Allow Mortgage Loans Held in Portfolio to Be Automatically Considered Qualified Mortgages
- Provide Flexibility in the Definition of “Rural” for Qualified Mortgage Designation Purposes
- Clarify the Qualified Mortgage Points and Fees Test
- Provide Escrow Relief for Small Banks
- Expand the Small Loan Servicer Exemption

Limit Governments’ Role in Mortgage Market
Congress should reduce the role of the federal government in housing finance to a well-defined, explicit and fully priced guarantee of loans targeted to low- and moderate-income creditworthy borrowers. For example:

- Reduce the Role of Government-Sponsored Enterprises Fannie Mae and Freddie Mac Through Housing Reform
- Foster Private Enterprises in the Secondary Mortgage Market
- Improve the National Flood Insurance Program
- Encourage a Private Market for Flood Insurance
Facilitate Growth of Loans, Jobs and the Economy

The United States must have a banking system large enough, diverse enough and integrated enough to meet the broad array of financial needs of local, regional and global customers. This diversity facilitates access to convenient, reliable and affordable services, including innovative credit programs for businesses and services that help businesses manage and hedge everyday risks.

The banking system has built a safe and secure payments system which is essential to the success of our economy. Cyber criminals are constantly looking to steal customers’ money and personal information from whomever holds it—including banks, retailers and schools. Banks employ high standards of cybersecurity to protect their customers, but other parties that experience breaches often lack these standards and have imposed enormous costs on banks. All parties must be subject to consistent standards and accountability for protecting customer data and notifying the public after a breach.

Banks also serve as intermediaries in the capital formation process for our economy—mobilizing funds to be invested in new ideas and expanding business operations. Increasingly, new regulations have threatened the banking industry’s ability to participate in capital formation, which will limit opportunities for our businesses and the economy to grow.

In addition, arbitrarily high capital requirements limit the amount of loans banks can extend to customers. To meet rising capital requirements, banks must either secure additional capital from outside the institution or shrink their business—for example, by providing fewer loans. The impact of requiring banks to shrink is felt by the whole community, hurting job creation and economic growth.

Congress should evaluate overly restrictive capital rules so that the banking industry can provide greater resources for lending and continue to serve businesses—large and small—and individuals who rely on bank services in order to expand, prosper and reach new goals.
WHAT CONGRESS CAN DO

Empower Public/Private Cybersecurity and Data Breach Protection Efforts
For example:

- Expand Information-Sharing Between Public and Private Entities to Fight Threats
- Ensure All Parties Have Consistent Accountability to Customers Before and After Breaches
- Hold Breached Parties Responsible for Costs of Breaches

Provide Relief from Overly Restrictive Capital Requirements
Congress should support legislation that would allow the banking industry to use its funds to invest in local economies—supporting the credit cycle, job creation and economic growth—by granting regulatory relief from restrictive, arbitrary capital requirements. For example:

- Provide Relief from Overly Restrictive Provisions of Basel III
- Ensure S Corporations Are Treated Fairly Under Basel III
- Remove Reciprocal Deposits from the Brokered Deposit Definition
- Broaden the Definition of High-Quality Liquid Assets to Include High-Grade Municipal Securities

Encourage and Facilitate Participation in Capital Formation
Congress should support legislation that encourages the banking industry’s role in the capital formation process—lending to local businesses, driving economic growth and prosperity. For example:

- Exempt End Users of Derivatives from Margin Requirements
- Focus Volcker Rule Restrictions on Fund Divestments to Genuine Hedge Funds
The financial system is subject to a complex web of laws and regulations that are overseen and enforced by an almost equally complex matrix of federal and state regulatory agencies. Federal regulatory agencies addressed in this piece include the following:

**Board of Governors of the Federal Reserve System (Fed)**
Supervises bank holding companies and state-chartered banks that are members of the Fed.

**Commodity Futures Trading Commission (CFTC)**
Regulates the commodities and swaps markets and participants providing services in the commodities and swaps markets, such as futures commission merchants and commodity trading advisers.

**Consumer Financial Protection Bureau (CFPB)**
Oversees and enforces consumer financial protection laws for banks and nonbanks.

**Farm Credit Administration (FCA)**
Oversees the Farm Credit System and the Federal Agricultural Mortgage Corporation (Farmer Mac).

**Federal Deposit Insurance Corporation (FDIC)**
Supervises state-chartered banks that are not members of the Federal Reserve and state-chartered savings institutions.

**Municipal Securities Rulemaking Board (MSRB)**
Oversees rules related to municipal securities activities.

**National Credit Union Administration (NCUA)**
Regulates federally chartered and federally insured credit unions.

**Office of the Comptroller of the Currency (OCC)**
Charters and supervises national banks and thrift institutions.

**Securities and Exchange Commission (SEC)**
Regulates the securities markets and participants providing services in the securities markets, such as broker-dealers and investment advisers.

**State Financial Services Regulators**
Supervises state-chartered banks for safety and soundness and compliance with consumer financial protection laws and regulations.
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