2015 Federal Legislative and Regulatory Issues

GBA Regulatory and Legislative Priorities

- To promote the general welfare and usefulness of banking and the preservation of a sound banking system.
- Support policy and regulatory actions that enable lending and foster job creation.
- Remove excessive regulation and other barriers to serving families, businesses and our hometowns.
- Advocate for regulatory structures that are tailored to varied bank business models and risk profiles.
- Advocate for continued charter choice and a level playing field with nonbank financial services providers.

Regulatory Relief for Banks

The American Jobs and Community Revitalization Act (H.R. 1389) introduced in March by Rep. Andy Barr (R-Ky.) is a package of regulatory relief measures for banks GBA supports. It includes a provision to allow loans held in portfolio to be Qualified Mortgages (QMs), a process for banks to apply to the CFPB for being in rural or underserved areas and an extended 18-month exam cycle for highly rated community banks. Also included is a provision that would allow dividends to be paid for tax purposes, thus eliminating disadvantages in Basel III for the 56 Georgia-based banks organized as S corporations. Several of the bills have also been introduced by Barr and others as separate pieces of legislation. Look for more details about the portfolio loans as QMs and subchapter S issues below.

GBA is part of a Regulatory Relief Task Force with other state bankers associations and the ABA, and Barr’s package of bills includes provisions recommended by that group. Here are summaries of other pending regulatory relief bills GBA supports.

- Community Lending Enhancement and Regulatory Relief Act (H.R. 1233)
  Rep. Blaine Luetkemeyer (R-Mo.) March 4 reintroduced the Community Lending Enhancement and Regulatory Relief Act (H.R. 1233). The CLEARR Act would lift or modify many requirements in ways that make it easier for community banks to meet their customers’ needs. The CLEARR Act includes measures that would streamline banks’ privacy notice requirements, space out the exam cycle, reduce the burden of filing Call Reports, increase the small servicer exemption in the Consumer Financial Protection Bureau’s mortgage rules and expand the number of loans that can be designated as Qualified Mortgages, among others.

- System Risk Designation Improvement Act (H.R. 1309)
  This bill by Rep. Blaine Luetkemeyer (R-Mo.), introduced March 4, would eliminate the automatic designation of banks as systemically important based solely on asset size, recognizing that regulators should consider many different components of risk.

  Georgia Rep. Lynn Westmoreland (R-GA 3) signed on as a co-sponsor of this bill introduced by Rep. Randy Neugebauer (R-Texas) that would replace the Director of the CFPB with a bipartisan, five-member commission, similar to other financial regulatory agencies.

Portfolio Loans as Qualified Mortgages

GBA supports legislation that would deem all loans held in portfolio for the life of the loan as Qualified Mortgages. These exemptions for loans held in a bank’s portfolio make common sense because any loan that is originated and retained by a bank or credit union must necessarily be based on the lender’s careful analysis of the fundamentals of lending that have been incorporated into the “Ability-to-Repay” rule. This is what professional bankers have done for
decades, and it involves a thorough examination of resources, existing debt obligations, verification of the information presented (tax returns, for example) and an analysis of the customer’s unique individual circumstances.

**Dodd-Frank Escrow Adjustments**

Another bill GBA and the Regulatory Relief Task Force recommends would exempt lenders with less than $10 billion in assets from the Dodd-Frank Act’s escrow requirements and servicers handling fewer than 20,000 loans from the servicing rule. This escrow exemption would allow banks with a small volume of mortgage loans to make those loans without needing to comply with the costly, burdensome escrow rules.

**Subchapter S Institutions**

There are 56 banks in Georgia chartered as Subchapter S (Sub-S) organizations. The issue addressed by the American Jobs and Community Revitalization Act (H.R. 1389) relates to the Basel III capital conservation buffer rules. Under this application, Sub-S banks would have to comply with new dividend restrictions that would, in some instances, prevent them from distributing proceeds to shareholders for purposes of paying income taxes. This puts Sub-S banks in a grossly unfair position and at a distinct disadvantage from C-Corp. banks that can still pay their income taxes before any dividend restrictions come into play. The simple solution would be to make the rules for Sub-S banks similar to those for C-Corp banks in regard to the Basel III Capital Conservation Buffer dividend restrictions. While the FDIC has made some effort at mitigating this situation, it is far from perfect and GBA has encouraged FDIC as well as the OCC and the Federal Reserve to reexamine their position.

In addition, as Congress considers tax reform, for these entities, we encourage the adoption of the following provisions:

- Increase the maximum shareholders for Subchapter S corporations to 200.
- Allow Subchapter S companies to issue preferred shares.
- Allow common and preferred shares of Subchapter S corporations to be held in individual retirement accounts (IRAs).
- With regard to the net loss carry forward provision, we encourage Congress to extend that provision from five years to at least through the 2014 tax year and possibly longer. With the length and depth of the recent recession, many banks are just now returning to profitability. Without extending the period, the important public policy reasons for the provision will be lost.

**Data Protection and Consumer Notification**

Cybersecurity and protecting consumer data is a priority for Georgia’s banks. Overall, banks have a strong track record of protecting customer data and accounts.

- $11.4 billion in fraud was prevented in the past four years through increased information sharing with law enforcement nationally.
- Banks pay more than 60% of fraud losses from data breaches yet account for less than 8% of breaches since 2005, according to the ABA and Identity Theft Resource Center.¹
- Banks notify customers of breaches and comply with federal data protection requirements.
- Merchants are not subject to comparable federal requirements.
- We encourage the Georgia Congressional Delegation to support legislation for a national standard for data security and breach notification.

¹ http://www.aba.com/Press/Pages/020314ABATestifiesonDataBreach.aspx
Targeted Capital Issues for Regulators
There are three targeted capital issues within the regulatory agencies we’re also pursuing in partnership with the task force of other state bankers associations and the American Bankers Association. These reforms can be done by the agencies without needing any statutory changes. In general, these are initial objectives for changes that should be made by regulators:

- **Simplification** – Simplified capital analysis for highly capitalized banks to spare those banks the tedium of the burdensome Basel III analysis, when the banks clearly are well capitalized.

- **Allowance for Loan and Lease Losses (ALLL)** – Ensure that nearly all of a bank’s ALLL counts as capital. Replace the arbitrary 1.25% limit with all ALLL counted as capital except that allowance for loans classified as “loss.”

- **Mortgage servicing** – Grandfather existing mortgage servicing assets so banks that emphasized mortgage servicing aren’t punished (more about this in the next section).

Allow Banks to Continue to Service Customers' Mortgages
Many banks that originate mortgage loans also engage in servicing loans. Banking regulators should not apply Basel III requirements to mortgage servicing assets (MSAs). These new rules will force banks to sell their MSA portfolios to non-bank entities that have no focus on customer relationships and are outside the purview of bank regulation. We encourage the Georgia Congressional Delegation to support legislation to delay the implementation of bank capital requirements on MSAs until the effects on consumers can be studied by the regulators.

Equalize Credit Unions’ Tax Treatment with Banks
Credit unions were never intended to be tax-free banks, but that’s what they’ve become. There are now 237 credit unions over $1 billion in assets, compared to only 13 in 1994. Each one of these huge credit unions is larger than 90 percent of taxpaying banks.

- Georgia’s largest credit union, Delta Community Credit Union, has $4.7 billion in assets and is larger than all but three of Georgia-headquartered banks.
- Georgia banks paid $794.9 million in federal, state and local income taxes in 2014. Credit unions paid zero.
- The tax exemption gives credit unions a big advantage over taxpaying community banks.
- Credit unions’ tax exemption currently costs the U.S. Treasury $2 billion annually.
- Congress should eliminate the credit union tax exemption.
- Congress should also not approve California Rep. Edward Royce’s (R-CA-39) bill to raise the credit union member business lending cap from 12.25 percent to 27.5 percent of total assets for certain credit unions. Expanded business lending simply is beyond the primary mission of credit unions to provide financial services to people of modest means. If credit unions want to be commercial banks and make loans to businesses on a broad scale, they should pay taxes like commercial banks and their shareholders.

End the Farm Credit System’s Tax Subsidy and Providing Oversight of the Farm Credit System
The Farm Credit System (FCS) is a $266 billion Government Sponsored Enterprise that competes directly with community banks.

- The FCS has no specific statutory mission and the lending it provides often goes to farmers who least need subsidized credit. The lending often goes to non-farm borrowers.
- There have been no congressional oversight hearings in more than 10 years, despite FCS’s enormous size, GSE status, and rapid growth.
- Congress should hold oversight hearings to examine the FCS and abolish the FCS tax subsidy, which is no longer needed.
- See http://reformfarmcredit.org/facts/ for more details.