2015 Federal Legislative and Regulatory Issues

Regulatory Relief for Banks
In the final days of the 113th Congress (ending in December of 2014), some regulatory relief was achieved through legislation that increased the Federal Reserve’s small bank holding company threshold from $500 million to $1 billion and included S&L holding companies.

Looking forward to the 114th Congress, we will build on previous efforts to provide additional areas of relief including ways to enhance mortgage availability. Reforms stemming from the Dodd-Frank Act have fundamentally changed every aspect of the mortgage business. The new rules took effect Jan. 10, 2014. All loans must meet the new Ability-to-Repay standards. Loans that meet Ability-to-Repay standards AND additional standards that define Qualified Mortgages (QM) receive safe harbor protections from certain types of lawsuits. Even though some temporary exemptions apply, our members have explained that the result is that in many cases, regulatory risk outweighs credit risk for banks to make these loans. Customers are “protected” to the point of losing access to credit because under the new rules it is harder for certain qualified customer groups to find the loans they need. The U.S. House Financial Services Committee approved two important regulatory relief bills that are priorities for a joint Regulatory Relief Task Force GBA is a part of with other state bankers associations and the ABA. We encourage the committee to do so again in the new Congress and the Georgia delegation to vote for the legislation.

• The first bill we expect to be reintroduced 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.

• The second bill 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.

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 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.

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.

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 209 credit unions over $1 billion. 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 $4.4 billion in assets and is larger than 99% of all Georgia-headquartered banks.
- 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. By contrast, the 6,000-plus community banks that compete with them contribute $4 billion annually in taxes that support our nation and those communities.
- Congress should eliminate the credit union tax exemption.

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.

¹ http://www.aba.com/Press/Pages/020314ABATestifiesonDataBreach.aspx
Subchapter S Institutions
There are 59 banks in Georgia chartered as Subchapter S (Sub-S) organizations. A crucial issue has arisen recently with regard to new 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.

Systemic Risk Designation Improvement Act
Legislation was introduced in the last Congress that would have changed the method by which Bank Holding Companies are designated for enhanced supervisory and prudential standards by the Dodd-Frank Act (DFA). The legislation would have replaced the arbitrary $50 billion asset threshold used in Title-1 of the DFA with five activity-based standards that track the method used by the Federal Reserve Board for evaluating domestic bank mergers and by the international Basel Committee on Banking Supervision when it determines the list of globally systemic banks.

- We encourage the Georgia Congressional Delegation to support similar legislation expected to be introduced in the new Congress as the proposed standards better measure the risk of a bank holding company because they reflect business activity, not size.