



R. SCOTT HEITKAMP
Chairman

TIMOTHY K. ZIMMERMAN
Chairman-Elect

PRESTON L. KENNEDY
Vice Chairman

DEREK B. WILLIAMS
Treasurer

CHRISTOPHER JORDAN
Secretary

REBECA ROMERO RAINEY
Immediate Past Chairman

CAMDEN R. FINE
President and CEO

December 7, 2017

The Honorable Kevin P. Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
U.S. Senate
Washington, D.C. 20510

Dear Chairman Brady and Chairman Hatch:

On behalf of the more than 5,700 community banks represented by ICBA, I write to set forth our views on the reconciliation of the House and Senate-passed versions of H.R. 1, the Tax Cuts and Jobs Act. We are encouraged by many provisions of the House and Senate bills, including the permanent 20 percent corporate rate, estate tax relief, full and immediate expensing for business investments, among others. We urge your consideration of the serious, outstanding concerns described below.

Deduction for Business Interest Expense

Community bank credit is a critical source of capital for small businesses, which typically have very limited or no access to equity capital, especially in the early stages of their development. Increasing the after-tax cost of debt financing by altering the interest deduction would strand new investment opportunities and the economic growth potential they carry.

ICBA appreciates your efforts to create a safe harbor that will allow small business to continue to deduct their net interest expense. We strongly prefer the safe harbor of the House-passed bill which uses EBITDA as a base of earnings for the purpose of determining the 30 percent limitation on the net interest deduction and fully exempts businesses with gross receipts of less than \$25 million annually. This is a workable safe harbor that will allow continued small business borrowing and economic growth. We further recommend indexing the gross receipts threshold so that its value is not eroded over time.

Limits on FDIC Premium Deductibility

The House and Senate versions of H.R. 1 would remove the deduction for FDIC premiums paid banks over \$50 billion in assets and phase out the deduction for banks between \$10 and \$50 billion. FDIC premiums are clearly a business expense as is any other form of insurance premium. No sufficient rationale has been offered for limiting their deductibility. ICBA opposes

this assault on FDIC insurance. At a minimum, we urge the conferees to index these thresholds as inflation and industry consolidation will cause an increasing number of banks to lose their deduction for FDIC premiums.

Taxation of Pass Through Income

Nearly 2,000 community banks in the United States, one third of the total number, have elected S corporation status and are taxed as pass-through entities. S corporation community banks are closely-held businesses dedicated to creating prosperity in their communities through the provision of customized loans and other financial services. ICBA is very pleased that community banking would not be classified as a “specified service activity,” in either the House or the Senate bill.

We strongly support the changes made to the Senate bill to raise the deduction from qualified business income from 17.4 percent to 23 percent. As the conference proceeds, we urge you to continue to work toward parity between the thousands of American small business organized as pass-through entities and C corporations, as promised by the United Framework. This effective rate differential is larger for pass-through entities located in high tax states because they would be denied the state and local tax deduction, which would continue to be available to C corporations.

In addition, we ask your support for Senator Inhofe’s Amendment 1736 which would make the deduction in the Senate bill available to shares held in trusts. Many Subchapter S community banks are close, family-held businesses and utilize trusts for estate planning purposes. Senator Inhofe’s amendment would help family-held community banks survive from one generation to the next and allow them to continue to play a critical role in financing the needs of local families and Main Street small businesses.

Taxation of Credit Card Fee Income

The Senate version of H.R. 1 would require upfront taxation of credit card fee income. This change will increase rates and fees paid by consumers and potentially dampen consumer spending. In addition, upfront taxation may lead community banks to exit the credit card business and promote consolidation. Reduced competition among card issuers will consumers. We urge you to reject this provision of the Senate bill in conference.

Tax-exempt Credit Unions and Farm Credit System Lenders Must Share the Sacrifice

ICBA and community banks across the nation are disappointed that the tax reform process has, thus far, ignored the significant and increasing base erosion caused by the burgeoning tax-exempt credit union industry and tax-advantaged Farm Credit System. This is glaring omission. Every American taxpaying industry, and many tax-exempt organizations, is subject to new revenue raisers for the sake of rate relief and simplification. This is expected and reasonable – as long as the process is carried out fairly. No industry should be immune.

Today, there are multibillion dollar credit unions in every major market across the country, the largest of which has assets of more than \$70 billion. These credit unions have nearly all the powers of commercial banks, offering the same products and services and serving the same customer base, both individuals and commercial borrowers. They compete directly with taxpaying community banks for loans and for customers. Increasingly, they even purchase community banks outright, shrinking the U.S. tax base and exacerbating the national budget deficit and debt at the federal, state, and local level. The same is true of the Farm Credit System.

We know that tax reform has involved tough choices and tradeoffs. But we respectfully suggest that you have passed over an obvious source of more than \$25 billion in revenue, according to the Office of Management and Budget. Absent reform, this revenue shortfall will grow sharply in the coming years. Short of repeal of the credit union and Farm Credit System tax subsidies, there are numerous options for curtailing them based on asset size, activities, or some combination.

The tax reform process is not done. Important decisions lie ahead. Before the conference committee concludes its work, we urge you to put the expensive tax subsidies of credit unions and the Farm Credit System on the table. It is time for these institutions to contribute to our shared national expenses.

Summary of Recommended Changes to H.R. 1

ICBA and community bankers strongly recommend the conference committee make the following changes to H.R. 1:

- Support the House safe harbor to preserve the deduction of interest on business debt. The House bill uses EBITDA as the earnings base for the calculation of the 30 percent interest limitation and fully exempts businesses with annual gross receipts of \$25 million or less.
- Remove the unwarranted taxation of FDIC premiums, an ordinary business expense.
- Move the taxation of pass-through income closer to parity with C corporation income by increasing the deduction and restoring the deduction for state and local taxes.
- Include Senator Inhofe's Amendment 1736, which would make the pass-through deduction available to shares held in trusts to support the intergenerational transfer of family-held S corporation community banks.
- Remove Section 13221 of the Senate bill, which would require upfront taxation of credit card fee income and harm consumers.
- Include credit unions and the Farm Credit System in the U.S. tax base to raise revenues and create a more equitable system.

Thank you for your consideration and for undertaking the critical and ambitious policy challenge of comprehensive tax reform. ICBA and community banks strongly support your efforts to craft pro-growth tax reform.

Sincerely,

/s/

Camden R. Fine
President & CEO

CC: Members of the Tax Cuts and Jobs Act Conference Committee