INDEPENDENT COMMUNITY
BANKERS of AMERICA®

September 10, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

On behalf of community banks across the country, with more than 52,000 locations, I write to urge swift passage of comprehensive legislation to avoid the painful economic fallout of the ongoing pandemic. As lawmakers return to Washington and the 116th Congress comes rapidly to a close, the nation's families and small businesses are counting on Congress to pass the critical relief they need to sustain businesses, paychecks, and livelihoods. We urge you to work expeditiously.

This comprehensive legislation should include solutions developed by community bankers from across the country, drawing on their unique insight into local economic conditions. Community bankers know what works best to support small businesses and jobs in the rural, suburban, and urban communities they serve. Please consider the following recommendations which are summarized here and explained in more detail in the attachment to this letter.

Reforms to Paycheck Protection Program

- Simplified forms and procedures for Paycheck Protection Program loan forgiveness including a presumption of compliance for all loans with an original balance of $150,000 or less (S. 4117, Cramer and Menendez and H.R. 7777, Houlahan and Upton) and an online PPP loan forgiveness calculator (S. 4171, King and H.R. 7413, Wagner and Clay).
- SBA purchase of PPP loans at par (after netting forgiveness amount).
- Preserve business expense deduction for PPP borrowers (S. 3612, Cornyn and H.R. 6821, Holding).

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- Exclude PPP loans from regulatory asset threshold calculations.

Bank Capital and Accounting Relief

- Extend Troubled Debt Restructuring (TDR) provisions of the CARES Act through December 31, 2021 and suspend impairments of COVID-19-related assets for a period of two years.
- Allow banks to amortize COVID-19-related loan losses over a 7- or 12-year period depending on the type of collateral backing the loan.
- Ensure that the origination and/or holding of PPP loans would have no impact on a community bank's risk-based capital and leverage ratios.
- Suspend FASB's Current Expected Credit Losses (CECL) implementation until 2025.
- Make 8% Community Bank Leverage Ratio (CBLR) permanent for institutions of $10 billion or less in assets.

Liability Protection

- Create liability safe harbor for businesses from COVID-19-related suits.

Tax Proposals

- Expand employee retention tax credit as provided for by the Jobs Credit Act of 2020 (H.R. 6776, Murphy).
- Preserve net operating loss provisions of the CARES Act.

Mortgage Proposals

- Extend the government sponsored enterprises' qualified mortgage patch to January 2022. Extending the patch would help avoid additional disruption as the economy and housing market recover from the current crisis.
- Provide aid to state and local Housing Finance Agencies for helping borrowers with mortgage payments, forbearance, and loan modifications.
- Establish a liquidity facility for all mortgage servicers.

Support for Local Regions

- Raise current bank-qualified municipal bond annual issuance limit to $50 million from $10 million to expedite low-cost funding for local projects.

Support Agricultural Lending

- Allow interest on loans secured by agricultural real estate or primary residences in rural communities to be tax-exempt as provided for in the Enhancing Credit Opportunities in Rural America (ECORA Act, S. 1641, Roberts and H.R. 1872, Watkins).

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Financial Assistance to the Farm Sector

- Provide additional direct financial assistance to farmers, ranchers and others involved in the food sector.

Enhance USDA Guaranteed Lending Programs

- Increase funding for USDA direct and guaranteed loan programs.
- Increase loan limits for USDA guaranteed farm loans to $2.5 million to assist a broader segment of family farmers and ranchers.
- Allow the Farm Services Agency to reimburse borrowers for guaranteed loan fees through 2021.
- Temporarily suspend term limits on FSA direct operating loans through 2021.
- Provide lenders and borrowers the choice of which county office to access for approval of guaranteed loan applications to speed up loan application approvals and reduce backlogs.

Forbearance for Banks and Bank Customers.

- Ensure regulators do not classify agricultural loans as substandard.
- Allow additional time for borrowers to work out farm loan repayments.

Thank you for your consideration. We look forward to continuing to work with you to sustain the American economy as this crisis evolves.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

CC: Treasury Secretary Steven Mnuchin
Small Business Administration Administrator Jovita Carranza
Members of the U.S. House of Representatives
Members of the United States Senate

Attachment: Complete description of ICBA recommendations for pandemic relief legislation

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Recommendations for Pandemic Relief

Simplified Forms and Procedures for Paycheck Protection Program Loan Forgiveness

Presumption of Compliance for Small Loans

- For all loans with an original balance of $150,000 or less, allow a presumption of compliance based on the borrower's certification that the funds were used in accordance with the terms of the program. S. 4117, introduced by Senators Kevin Cramer and Robert Menendez, would create a presumption of compliance for these loans. A House companion bill, H.R. 7777, was introduced by Reps. Chrissy Houlahan and Fred Upton. These bills have broad bipartisan support.

Reason for Change

- A presumption of compliance for these borrowers will allow business owners to focus on their businesses and the safety of their employees and customers. Protections against fraud and misrepresentation will still apply.

Simplified Forms and Procedures

- Require Treasury and the Small Business Administration (SBA) to promptly provide a straightforward, easy-to-apply approach to loan forgiveness. This should include an online PPP loan forgiveness calculator to allow the borrower and lender to easily determine the forgiven amount. ICBA supports the Calculate PPP Forgiveness Act (H.R. 7413/S. 4171).

Reason for Change

- The certainty provided by a calculator from the agencies administrating the PPP program would allow borrowers to focus on sustaining the viability of their businesses. Complex calculations are an unnecessary distraction in a challenging environment. Overly detailed paperwork and review of each loan is simply not practical for borrowers or lenders.
- Borrowers should not have to hire accountants and absorb additional, costly fees to assist with loan forgiveness.
- Borrowers whose first language is not English are struggling with the forgiveness forms and procedures.

SBA Should Buy Residual PPP Loans at Par

- After the forgiveness amount of a PPP loan has been determined, the SBA should purchase remaining loan at par from originating institutions.

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Reason for Change

- SBA loan purchases would create greater bank balance sheet capacity to spur additional lending. The high volume of PPP lending done by community banks to meet the urgent demands of the crisis is absorbing their balance sheets. To ensure a robust recovery, banks must have ample balance sheet capacity to support small businesses in their markets. SBA purchase of PPP loans at par would address this need.

Preserve Expense Deduction for PPP Borrowers

- Allow PPP borrowers that also obtain loan forgiveness to deduct payroll and other business expenses. (Small Business Expense Protection Act of 2020, S. 3612 and H.R. 6821)

Reason for Change

- The inability to deduct normal business operating expenses effectively reduces the value of loan forgiveness for struggling businesses and adds unnecessary complexity to tax preparation. We do not believe this was the intention of Congress in creating the PPP.

Exclude PPP Loans from Regulatory Asset Thresholds

- Congress should direct the federal banking regulators to exclude PPP loans from bank and bank holding company asset threshold calculations.

Reason for Change

- Many community banks will incur costly and burdensome new requirements as an unintended consequence if their PPP lending causes their assets to exceed certain thresholds that trigger additional regulation and supervision. These banks should not be punished for providing a lifeline to the small businesses and non-profit organizations that sustain their communities and local jobs. Bank regulation must be flexible enough to account for these exceptional circumstances.

Bank Capital and Accounting Relief

- Extend Troubled Debt Restructuring (TDR) provisions of the CARES Act through December 31, 2021 and suspend impairments of COVID-19-related assets for a period of two years.
- Allow banks to amortize COVID-19-related loan losses over a 7- or 12-year period depending on the type of collateral backing the loan.
- Ensure that the origination and/or holding of PPP loans would have no impact on a community bank's risk-based capital and leverage ratios.
- Suspend FASB's Current Expected Credit Losses (CECL) implementation until 2025.
- Make 8% Community Bank Leverage Ratio (CBLR) permanent for institutions of $10 billion or less in assets.

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Reason for Change

- These measures are necessary to support borrowers and lenders facing historically challenging circumstances.
- Banks' strong capitalization at the beginning of the crisis means that the recommendations noted above could be implemented without compromising safety and soundness.

Liability Protection

- Create liability safe harbor for businesses from COVID-19-related suits.

Reason for Change

- Community banks and small businesses have every incentive to ensure the safety of their employees and customers.
- Fear of opportunistic class actions or other suits will inhibit the restoration of economic activity and potentially transfer wealth from employers to trial lawyers. In particular, states that enacted reasonable liability protection should not be preempted by a weaker federal standard.

Tax Proposals

Expand Employee Retention Tax Credit

- ICBA supports the Jobs Credit Act of 2020 (H.R. 6776), which would expand the Employee Retention Tax Credit (ERTC) created by the CARES Act. H.R. 6776 would increase both the wage base and the percentage of wages eligible for the credit and allow more businesses to qualify, including businesses that have received a PPP loan. ICBA recommends that the ERTC also be available to businesses that have been deemed essential, such as banks. Community banks closed their lobbies to comply with social distancing orders and should be eligible for the ERTC.

Reason for Change

- The ERTC has helped businesses sustain employment in the early phases of the pandemic. However, many regions of the country have not fully reopened, and all regions continue to experience reduced consumer spending, more businesses need more a more generous tax credit to keep employees on payroll.
- Though banks are essential business, they closed their lobbies or significantly restricted branch hours to comply with social distancing orders and have continued to pay idled branch employees. Wages paid to these employees should be eligible for the credit and would support the provision of critical banking services in our communities.

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Preserve Net Operating Loss Provisions of the CARES Act

- The CARES Act created a 5-year NOL carryback for losses incurred in 2018, 2019, and 2020 and allows losses incurred in these years to fully offset taxable income (as opposed to 80 percent of this income). For non-corporate taxpayers, the CARES Act suspended limitations on excess business losses incurred in these same years. ICBA opposes any efforts to curb these benefits by limiting the carryback period, limiting eligible taxpayers, reinstating limitations on excess business losses, or other adverse changes.

Reason for Preserving NOL Carryback and Excess Business Loss Provisions

- The CARES Act NOL and excess business loss provisions are an appropriate response to an historically adverse economic environment. They create a new source of funding to support struggling businesses and will support employment. We fully expect these provisions will be as beneficial today as they were during the financial crisis of 2008-2009.

Mortgage Proposals

- Extend the government sponsored enterprises' qualified mortgage patch to January 2022. Extending the patch would help avoid additional disruption as the economy and housing market recover from the current crisis.
- Provide aid to state and local Housing Finance Agencies for helping borrowers with mortgage payments, forbearance, and loan modifications.
- Establish a liquidity facility for all mortgage servicers.

Reason for Change

- These provisions will support the health of the mortgage sector which plays a critical role in the overall economy.

Support for Local Regions

- Raise current bank-qualified municipal bond annual issuance limit to $50 million from $10 million to expedite low-cost funding for local projects.

Reason for Change

- This was a successful provision of the 2009 American Recovery and Reinvestment Act. It would help finance needed municipal projects to support health, infrastructure and jobs as municipalities struggle as a result of lower tax revenues.

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ECORA Act

- Allow interest on loans secured by agricultural real estate or primary residences in rural communities to be tax-exempt as provided for in the Enhancing Credit Opportunities in Rural America (ECORA Act, H.R. 1872/S. 1641).

Reason for Change

- These provisions would support a higher volume of community bank credit at lower interest rates to support a farm economy facing a historic crisis.

Financial Assistance to the Farm Sector

- Provide additional direct financial assistance to farmers, ranchers and others involved in the food sector.

Enhance USDA Guaranteed Lending Programs

- Increase funding for USDA direct and guaranteed loan programs.
- Increase loan limits for USDA guaranteed farm loans to $2.5 million to assist a broader segment of family farmers and ranchers.
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