ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

September 28, 2022

Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

On behalf of the Independent Community Bankers of America ("ICBA")[1] I wanted to thank you for meeting recently with our Agriculture-Rural America committee, members of our executive committee and ICBA staff. We appreciated the opportunity to meet with you and your staff to discuss CFPB's new initiative exploring credit access in rural America. We wanted to follow up on several of the issues discussed in our meeting.

Use Sec. 1022 to Partially Exempt Community Banks from Sec. 1071: Section 1022 of the Dodd-Frank Act provides CFPB with unambiguous authority to exempt community banks and others from CFPB rulemaking. This section states:

> *The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title . . . .* [2]

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[2] 12U.S.C. § 5512(b)(3)(a).

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ICBA proposed exempting community banks under $1.32 billion from section 1071 disclosures related to small business data collection as doing so would be consistent with provisions of the Community Reinvestment Act (CRA) and HMDA parameters. Both credit unions and non-bank lenders are not required to comply with CRA and would be a more appropriate target for the CFPB's 1071 regulatory requirements.

Additionally, the regulatory burden of section 1071 will cause the further consolidation of community banks while diminishing the relationship banking model that rural citizens utilize for their unique credit needs. We appreciate your understanding of the value to rural consumers that relationship banking offers over the large-bank algorithmic model which often treats consumers as data points rather than human beings. Your strong support of the relationship banking model would be strongly supported by utilizing section 1022 authority to exclude community banks under $1.32 billion as recommended in ICBA's January 6 letter to CFPB on section 1071.

We believe these exemptions still allow CFPB to meet the law's objectives since they allow collection of data on 90 percent or more of small business loans while mitigating adverse effects both in terms of compliance costs and the potential for small businesses to leave community banks in search of bigger portfolios of larger banks to shield their borrowing activities from competitors. The proposal exempting banks with less than 25 business loans is simply too small.

Farm Credit System's Efforts to Gain Exemption from Sec. 1071. Regarding the unfair competition provided by the Farm Credit System (FCS), we stress that the FCS, as a government sponsored enterprise (GSE) has engaged in ongoing predatory pricing of loan rates to steal the very best loan customers from community banks. The FCS's loan volume to small farmers and ranchers, for loans less than $250,000, represents less than ten percent of the FCS's overall dollar volume of loans. Furthermore, between 2015 to 2021 the FCS increased their farmland loans, on which they receive tax-exempt income, by approximately fifty percent or a gain of nearly $70 billion. By contrast, community ag banks' growth in farmland loans during that time rose only $21.6 billion despite rapid escalation in ag real estate values. The FCS is seeking to use their GSE tax and funding advantages to dominate rural credit markets by primarily seeking the most financially viable customers.

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With $450 billion in total assets and $357 billion in total loans, the FCS would be considered the ninth largest U.S. banking institution if they were labeled as a bank. An institution of this size should not receive an exemption from the CFPB's section 1071 regulation as doing so would distort an accurate look at rural lending markets while undermining CFPB's goals for this regulation. Attached is the Senate version of a letter ICBA sent opposing an FCS exemption.

Banking Industry Consolidation. We appreciate the CFPB's recognition of the challenges that often face rural communities if they lose their community bank due to a merger with a larger bank. The thousands of community banks located in rural areas are key credit providers to small businesses, farmers and ranchers, and individuals, helping to support jobs and economic activity in rural America. Therefore, it is extremely important to ensure the economic viability of community banks going forward. The CFPB can underscore the importance of the community banking sector by highlighting the need to minimize and significantly reduce regulatory burdens which are a driver of banking consolidation by driving up costs for small lenders.

The challenges with job creation, rural housing, education and other important community needs would be much worse if not for the vital role that community banks play. Typically, if a rural town doesn't have a bank and a school, the community's survival becomes nearly impossible. Reports indicate community banks are three times more likely to locate in a rural area than non-bank lenders, and that community banks are the only lender with a physical presence in approximately six hundred counties in the U.S. – one third of all counties.

We also discussed our concerns with credit unions leveraging their tax-exempt status to purchase community banks. The total of these purchases exceeds 100 banks bought by credit unions. This is also a cause of consolidation within the banking industry. When a community bank is purchased by a large outside credit union, the result is often a significant lessening of credit to a community in addition to a reduced tax base to sustain the community's services.

Mergers Between Community Banks. CFPB could also highlight the need to replace the antiquated requirements on community banks imposed by the Department of Justice and the Federal Reserve which typically prevent community banks from merging with other local community banks due to a formulaic approach that considers local mergers to be industry consolidation. Ironically, the local bank is forced to merge with a larger bank that can sell distant

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bank branches to qualify for the merger. This reduces the availability of local banks and relationship banking for rural consumers.

Mergers between local community banks, while they may quantitatively appear anticompetitive, according to DOJ regulations, often result in stronger financial institutions that are better able to meet their compliance burdens and meet local consumer and small business needs. Making it easier for local community banks to pursue a merger also helps the resulting community bank to better meet agricultural credit needs, which may not be the case when large banks purchase community banks. The resulting community bank will be a stronger financial institution that will serve the community for decades to come. By contrast, large banks tend to siphon deposits out of rural communities. This issue could be emphasized in one of CFPB's reports.

Banking Deserts. Regarding the term 'banking deserts', we wonder if there could be a more accurate term developed to reflect the geographical nature of rural credit markets. Due to geography, defining a banking desert as a location lacking a financial institution within a ten-mile radius, can ignore the distances that rural citizens typically travel for regular services in many areas or the large geographical areas that may be scarcely inhabited.

Conclusion. Thank you again for your interest in addressing credit needs and imbalances in rural America. Community banks are eager to make loans to all credit worthy borrowers regardless of race, religion or gender. Reducing regulatory burdens and equalizing tax treatment with tax-exempt lenders would play a tremendous role in sustaining the economic viability of community banks and thousands of communities they serve. We look forward to continuing this dialogue in the future. Thank you again for meeting with us.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

Attachment

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INDEPENDENT COMMUNITY BANKERS of AMERICA®

June 23, 2022

The Honorable Debbie Stabenow
Chairman
Senate Agriculture Committee
328A Russell Senate Office Building
Washington, D.C. 20510

The Honorable John Boozman
Ranking Member
Senate Agriculture Committee
328A Russell Senate Office Building
Washington, D.C. 2051

The Honorable Sherrod Brown
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Toomey
Ranking Member
U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairs Stabenow and Brown and Ranking Members Boozman and Toomey:

On behalf of the Independent Community Bankers of America (ICBA)[1] we write to express our fervent opposition to HR 7768, the *Farm Credit Administration Independent Authority Act*. This bill received joint referral to the House Agriculture and Financial Services committees. We would oppose a Senate companion to this bill if one were introduced as it would exempt the tax-advantaged Farm Credit System (FCS) from any regulation the Consumer Financial Protection Bureau (CFPB) issues, implements, or puts into effect if issued after January 1, 2021. The bill also exempts the FCS from provisions of the Equal Credit Opportunity Act (ECOA).

We understand the FCS would like to escape higher regulatory burdens imposed by CFPB rulemaking. However, community banks will likely still be subject to all CFPB regulations including those related to Sec. 1071 of the Dodd-Frank Act (small business data collection) once a final rule is adopted later this year. Adopting this bill would grant FCS lenders an even greater competitive advantage over community banks. .

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It would be totally inappropriate to exempt FCS lenders from onerous regulatory burdens while subjecting smaller lenders, such as community banks, to those regulations even as both types of lenders are serving the same customer base in many instances.

This unlevel competitive playing field and the potential for individual borrowers' financial details to be publicly identified, will likely cause many rural borrowers to avoid obtaining credit from smaller lenders and choose either an FCS lender or a large national or regional bank where their loans and account details would be less easily recognized due to the larger pool of loans within these lenders' portfolios.

The FCS, with over $400 billion in assets, is one of the largest lenders in America, ranking in the top 10 of all U.S. banks if they were labeled a bank. The FCS should not receive special exemptions not also afforded to community banks as doing so would be inequitable and unjust.

The FCS is a government sponsored enterprise (GSE) with special tax and funding advantages not given to tax-paying, private-sector, community banks. The FCS has sought in recent years to expand far beyond the farm gate and into non-farm lending arenas. Instead of supporting legislation, we urge you to cosponsor and advance the *Enhancing Credit Opportunities for Rural America Act (ECORA - S 2202).* The ECORA Act will allow rural customers of community banks to receive lower interest rates on agricultural real estate and rural home mortgage loans by allowing banks the same tax exemptions as FCS currently enjoys.

We would be happy to discuss H.R. 7768 or similar bills with you and your staff at your earliest convenience, but in the interim we strongly urge that such legislation not be allowed to move forward due the harm it would impose on community banks. Please feel free to contact mark.scanlan@icba.org to discuss further and thank you for your attention to these concerns.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

cc Members of the United States Senate