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### **TBA TRUST BILL PASSES**

TBA's legislation (SB 3045 by Overbey / HB 3862 by Coleman and others) passed unanimously in the Senate on Wednesday, and is on the House Judiciary Committee's calendar for Tuesday, February 23. The legislation addresses the current lack of federal estate and gift taxes, and provides that wills or trusts of decedents who die between January 1 and December 31, 2010, that reference current federal estate tax law shall be construed as referring to such law as of December 31, 2009.

On a related note, TBA's legislation (SB 3522 by Overbey / HB 3861 by Coleman and others) that makes updates and technical corrections to Tennessee's trust laws was deferred yesterday in the Senate until Monday, February 21. TBA expects the bill to pass on Monday. HB 3861 is on the House Civil Practice Subcommittee's calendar for March 3.

TBA's third trust bill (SB 3529 by Overbey / HB 3863 by Coleman and others), which authorizes married couples to transfer property to community property trusts, is on the House Judiciary Committee's calendar for Tuesday, February 23. The Senate bill, in the Commerce, Labor, and Agriculture Committee, has not been set on calendar yet.

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### **CONTRACTORS' BILL REMAINS AN ISSUE**

Also up this week in the Senate Commerce, Labor, and Agriculture Committee was SB 3604 / HB 3159, which was rolled until March 9. This legislation would delete language that exempts banks from complying with the Prompt Pay Act, including provisions related to retainage being withheld from contractors. The removal of the exemption would put lenders in the shoes of contractors and make them liable for obligations of contractors. TBA plans to meet with the

contractors next week to discuss whether a more-appropriate, feasible remedy for non-payment to subcontractors is possible. TBA is opposed to this bill as currently written, and bankers are encouraged to contact members of the Senate Commerce Committee to express their opposition to the bill. Committee members are Chairman Jack Johnson, Vice Chairman Dewayne Bunch, Secretary Charlotte Burks, Mae Beavers, Tim Burchett, Bill Ketron, Steve Southerland, Eric Stewart, and Reginald Tate.

### **SILVERTON PARTICIPANTS SEEK ALTERNATIVES**

TBA is continuing to hear from banks that have participation with Silverton Bank, in particular the specialty finance group's participation loans. These are currently under the control of the FDIC, which has indicated its intent to sell these participations, along with servicing rights, into the marketplace. These interests could be purchased either by banks or non-banks. Once the controlling interests and servicing are controlled by these other entities, those banks currently participating could be at additional risk for subsequent sales or markdowns by the controlling entity.

Among alternatives being discussed is one to encourage the FDIC to sell the participations and servicing rights only to financial institutions or currently participating banks. Another alternative is for participating banks to form a limited liability company which would bid on and purchase the interest and servicing rights from the FDIC.

If your bank is a current owner of a participation in one of the Silverton loans and you would like to be included on a distribution list for additional information as it becomes available, please forward your name and contact information to Penny Powlas at the TBA office.

### **CORKER AGAINST CFPA AND NEW RESOLUTION REGIME**

Sen. Bob Corker (R-Tenn.), who is working with Senate Banking Committee Chairman Christopher Dodd (D-Conn.) to craft a bipartisan financial regulatory reform bill, told *Bloomberg* he supports stripping the Federal Reserve of its bank-supervision authority and opposes an independent Consumer Financial Protection Agency (CFPA). Corker indicated he would not support Volcker-rule limits on banks' size and trading activities. He also suggested he was nearing an agreement with Dodd on using bankruptcy laws to wind down too-big-to-fail financial firms, rather than implementing a new resolution process. The banking-panel member said negotiating with Dodd after Dodd's talks with the committee's ranking member, Sen. Richard Shelby (R-Ala.), stalled is "awkward."

### **OVER 4,000 PARTICIPATE IN ABA'S BRIEFINGS ON REG REFORM**

On Wednesday, more than 4,000 bankers nationwide (50 from Tennessee) participated in a series of half-hour regional telephone briefings on the financial regulatory reform bill. ABA Chairman-Elect Steve Wilson (chairman and CEO of LCNB National Bank, Lebanon, Ohio) and ABA President and CEO Ed Yingling explained that ABA's approach to the reg reform legislation for more than a year has involved four keys: a consistent message on reform issues; close

coordination with the state associations; tremendous bankers' grassroots support; and the differentiation of traditional banks from Wall Street banks.

The consistent message on reg reform issues, for example, has constantly stressed the need for a strong resolution mechanism that would end "too-big-to-fail," and ABA's strenuous opposition to the CFPA, Yingling said. "I truly think [the CFPA] would be the most powerful agency ever created. It literally could regulate our products, mandate product design [and] regulate how products are sold," he said.

Yingling also noted that even under the CFPA examination and enforcement exemption for community banks under \$10 billion in assets in the reg reform bill passed by the House, the CFPA would still write the consumer rules for all banks, and it would still have the authority to examine institutions under \$10 billion if the agency deems it necessary.

Yingling emphasized that banker grassroots is perhaps the most important factors, as bankers have sent over 300,000 letters to Congress in the past year. He thanked bankers for their overwhelming support, and said that a high-ranking Treasury official told him a couple of months ago that "We are amazed at the grassroots output poring forth from around the country on [opposing] the CFPA."

An audio file of the telephone briefing is expected to be available later today at [www.aba.com](http://www.aba.com).

### **FDIC REITERATES STATEMENT ON OVERZEALOUS EXAMINERS**

Last Friday, the FDIC in a letter reiterated the February 5 statement from regulatory agencies and the Conference of State Bank Supervisors that emphasized financial institutions making prudent small-business loans after comprehensively reviewing a borrower's financial condition will not receive supervisory criticism. The regulators said in their statement they expect institutions to effectively monitor and manage credit concentrations, though they should not automatically refuse credit to sound borrowers because of a borrower's particular industry or geographic location.

The statement shows that ABA and ICBA's messages about overzealous examiners is resonating with the regulators. Both groups have stressed in congressional testimony and in talks with administration officials and regulators that examiners have been discouraging banks from making solid loans. ABA is encouraging bankers to reference the statement as needed during exams. Click here to read the statement: <http://www.fdic.gov/news/news/financial/2010/fil10005.html>.

### **FEDERAL RESERVE RAISES DISCOUNT BORROWING RATE**

In a late afternoon announcement yesterday, the Fed increased the discount window borrowing rate from 0.5 percent to 0.75 percent. Traditionally, the discount window is 50 bps above the Fed Funds rate, so this move restores the spread back to its traditional size.

In addition, the Board announced that, effective on March 18, the typical maximum maturity for primary credit loans will be shortened to overnight.

The Board also announced that it raised the minimum bid rate for the Term Auction Facility (TAF) by 0.25 percentage point to 0.5 percent. The final TAF auction will be on March 8, 2010. This move suggests the Fed is returning to a non-crisis operating mentality stating, “these changes are intended as a further normalization of the Federal Reserve’s lending facilities.”

### **ABA GOVERNMENT RELATIONS SUMMIT**

On March 16-18, 2010, ABA will host its Government Relations Summit in Washington. Last year, over 800 bankers from across the country attended. This year, top officials from each of the bank regulatory agencies will meet with bankers to answer questions about regulatory policy and examination issues during informal breakout sessions. During the summit’s general sessions, bankers will hear from key policymakers, including Small Business Administration Administrator Karen Mills; a panel of Federal Reserve Bank presidents; FDIC Chairman Sheila Bair; Senate Banking Committee ranking Republican Richard Shelby (R-Ala.); House Minority Leader John Boehner (R-Ohio); Comptroller of the Currency John Dugan; and Office of Thrift Supervision Acting Director John Bowman. Attendees will also hear a panel of journalists discussing media coverage of the banking industry.

Bankers are strongly encouraged to attend this free event, and to bring other bankers, employees, or directors with them to help advocate for the industry. To register and for more information, go to [www.aba.com](http://www.aba.com).

### **ICBA NATIONAL CONVENTION**

ICBA is hosting its 2010 National Convention & Techworld March 17-21, 2010, at the Gaylord Palms Resort and Convention Center in Orlando, Florida. ICBA has extended its \$100 early-bird discount until Tuesday, February 23. Visit <http://www.icba.org/convention/> to register and for updates on speakers and the agenda.

### **TBA HOSTING CONFERENCE CALLS DURING LEGISLATIVE SESSION**

In an effort to keep TBA members updated on legislative developments during the 2010 legislative session, TBA is hosting bi-weekly conference calls. During these calls, we will provide an in-depth discussion of state legislation as well as information on legislative and regulatory issues arising on the federal level. The calls will take place every other Friday through the end of session. The next call is scheduled for this afternoon at 1:30 (CST). If you are interested in participating, please email Amy Smith ([asmith@tnbankers.org](mailto:asmith@tnbankers.org)) for more information.

## **YOUNG BANKERS DAY ON THE HILL SCHEDULED FOR MARCH 24**

TBA's Young Bankers Day on the Hill program, sponsored by the Young Bankers Division, is scheduled for Wednesday, March 24, 2010. This annual gathering will provide an opportunity for future leaders from banks across the state to explore the inner workings of the Tennessee legislative process. Bank CEOs are encouraged to recommend future leaders within their banks to attend.

The program will feature a variety of speakers highlighting the various participants and their roles in the legislative process. Bankers will receive briefings on the legislative issues pertinent to the financial services industry in Tennessee and on the importance of TBA's government relations program. Program participants will also have an opportunity to visit with their legislators and watch committee meetings and floor sessions of the Senate and House.

The \$35.00 registration fee for this one-day program includes informational materials, with lunch being sponsored by the law firm of Bone McAllester Norton PLLC. Registration will begin at 8:00 a.m. (CST) in Legislative Plaza, and the program will conclude at approximately 4:00 p.m. For those driving in the night before, rooms are being held at the Doubletree Hotel at a rate of \$129 per night. To make reservations, call 1-800-222-8733 and advise reservations personnel that you are with the Tennessee Bankers Association. Space is limited for this program, so please register your young bankers today! For more information, please contact Penny Powlas ([ppowlas@tnbankers.org](mailto:ppowlas@tnbankers.org)) or visit TBA's website at [www.tnbankers.org](http://www.tnbankers.org).