



**Community Bankers Association of Illinois**  
*Department of Governmental Relations*

***NEWS FROM THE FRONT- 3/31/10***

**STATE ISSUES**

**General Assembly Leaves for Spring Break**

The House of Representatives wrapped-up work late Friday afternoon before legislators began a two-week break from the spring legislative session. Hundreds of bills passed in both the House and the Senate in the past two weeks due to the Third Reading deadline in both chambers. This deadline is the final chance for non-appropriation bills to pass the chamber of origin before going over to the second chamber for consideration. However, many issues will be kept alive through deadline extensions or amendments to “shell” bills.

Legislators are scheduled to return to Springfield on April 13 and will be in session every week until the General Assembly adjourns in May. The scheduled adjournment date is May 7, but legislators have until May 31 to pass a budget with a simple majority. After May 31, a three-fifths majority is needed to pass any legislation effective before June of the following calendar year.

**General Assembly Passes Pension Reform**

Under pressure from bond houses that threatened a double bond rating decrease, Illinois lawmakers approved landmark pension reform legislation in a matter of hours last week. This legislation begins reforming the state’s five underfunded pension systems and, according to the Governor’s office, will save an estimated \$100 billion between now and 2045 and an estimated \$300 million in the coming fiscal year.

**SB 1946**, sponsored by Speaker Michael J. Madigan (D-Chicago) and Senate President John Cullerton (D-Chicago), increases the retirement age for new state employees, teachers, and university employees to 67 years in order to receive full pension benefits. Employees will be able to retire at age 62 with reduced benefits. Currently, the state law allows a worker to retire at the age of 55 years if they have worked for at least 30 years.

The legislation further prohibits state employees from "double dipping" which means that they will be unable to earn a pension in one system, retire, and then get hired by another agency to begin earning a second pension. It provides an annual cost of living adjustment (COLA) of three percent (3%) or half of the CPI, whichever is less. More importantly, this COLA does not compound which represents a significant cost savings for the pension systems. SB 1946 will set a maximum salary (\$106,800) on which pensions may be calculated. Current state law does not place a cap on an employee’s salary when determining pension benefits. The legislation

eliminates enhanced benefits for some state workers like prison teachers and highway maintainers while employees in high-risk jobs like state police, firefighters, and prison guards will continue to maintain these benefits. Finally, the pension changes will only apply to prospective state employees and cannot apply to existing employees due to Article XIII Section 5 of the Illinois Constitution which guarantees the pension benefits for existing members of state and local government retirement and pension systems.

SB 1946 passed the House of Representatives by a vote of 92-17-7 and hours later was approved by the Senate 48-6-3. The bill was supported by business groups and opposed by every major union in the state. The Governor has already indicated that he will sign the bill soon.

### **New Foreclosure Fee Legislation Blocked in Committee**

**HB 6215 (Thapedi)**, as amended, would establish a new section in the Code of Civil Procedure addressing health and safety assistance with respect to residential real estate foreclosures. Under this proposal, a plaintiff would be required to pay a fee for deposit into a new special “Foreclosure Relief Fund” at the time of filing the foreclosure complaint at the rate of \$2.50 for each \$500 sought by the plaintiff. The special fund would be used solely for the purpose of providing grants to units of local government and not-for-profit organizations, including not-for-profit housing authorities and community organizations, to clean up, acquire or demolish residential real estate that is abandoned, neglected or otherwise in need of additional care following foreclosure.

This legislation affords no benefit to the consumer in the foreclosure proceeding, and simply punishes the lender that implements the loan loss recovery process mandated by its regulatory agency. CBAI adamantly opposed this bill. After multiple attempts at passing the bill out of the House Judiciary Civil Committee, and failing, the sponsor held the bill. The bill remains in committee.

**HB 1545 (Thapedi)** was introduced last year with an amendment that would have removed a lenders exemption from the real estate transfer tax for deeds acquired pursuant to foreclosure. This amendment was revived this year and posted to the House Judiciary Committee. CBAI opposed this bill, and the amendment was never called in committee. HB 1545 has now been re-referred to Rules Committee. CBAI will continue to monitor this issue.

### **365/360 Calculation of Interest Legislation Passes Senate**

**SB 1118 (Harmon/Bradley)** clarifies as existing law the use of the 365/360 calculation of interest for commercial loans. CBAI supported this legislation which was amended onto a shell bill this week by Senator Harmon at the request of the IBA. The Illinois Trial Lawyers Association went neutral on the bill in the Senate with the agreement in the Senate record that the legislation: “...will not affect any pending litigation. That will be up to the individual courts to decide.” The bill passed the Senate unanimously and now heads to the House for consideration.

### **Legislation Allows Community Colleges to Establish Line of Credit**

**SB 2615 (Forby/Bradley)** allows community colleges to establish a line of credit with a bank or other financial institution in an amount not to exceed (1) if anticipating State revenues due in the

current fiscal year, 85% of the amount or amounts of the revenues due in the current fiscal year; and (2) if anticipating State revenues expected to be due in the next subsequent fiscal year, 50% of the amount or amounts of the revenues due in the current fiscal year. All moneys borrowed would be required to be repaid exclusively from the anticipated revenues within 60 days after the revenues have been received. This legislation passed the Senate 50-4, and has been assigned to the House Higher Education Committee.

### **Making Home Affordable Program Legislation Passes the House**

Legislation pertaining to loss mitigation passed the House last week. **HB 5735 (Riley)**, as amended, allows a court to set aside a judicial sale, upon motion of the mortgagor prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (1) the mortgagor has applied for assistance under the Making Home Affordable Program, and (2) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale. This new provision, if it becomes law, will expire January 1, 2013 for borrowers who have not applied for assistance by December 31, 2012.

CBAI, along with the other financial institution associations, initially opposed the bill and worked with the sponsor and proponents to finely narrow the scope of this legislation. As a result, CBAI is neutral on measure, as amended. The original bill would have:

- Included any loss mitigation program and defined "loss mitigation" as a program or mechanism designed to maximize the opportunity for a mortgagor to retain ownership of the mortgaged real estate and cure delinquencies on his or her mortgage or for a mortgagor and mortgagee to mitigate losses that would result from foreclosure by using alternatives to foreclosure.
- Provided that a foreclosure complaint shall include a statement as to loss mitigation.
- Provided that a judgment of foreclosure shall include a finding by the court that the mortgagee has complied with applicable loss mitigation requirements or there are no applicable loss mitigation requirements.
- Provided that if the court finds that the mortgagee has not complied with applicable loss mitigation requirements, the court shall stay the matter until the court determines that the mortgagee has complied with those requirements.
- Added failure by the mortgagee to fulfill applicable loss mitigation requirements as a condition under which the court shall not enter an order confirming a judicial sale.
- Did not include an expiration date.

HB 5735, as amended, passed the House and will be sent to the Senate for their consideration.

### **Title Insurance Act Changes Move Forward**

**HB 5409 (Thapedi) and SB 2985 (Martinez)** are both the subject of negotiations between the Illinois Land Title Association, the Illinois Department of Financial and Professional Regulation, CBAI and other financial institution trade associations. The bill would clarify when a title insurance agent is authorized to act as an escrow agent on behalf of the title insurance company in nonresidential real property transactions involving at least \$2,000,000 or in any residential real property transaction. CBAI and other financial institution trade associations objected to language that would have embedded limits in the Title Insurance Act on the liability exposure of a title insurance company that issues a "closing protection letter" for the benefit of the parties

(including the lender) to the transaction. CBAI insisted that the closing protection letter, and the coverage and liability of the title insurer specified in the closing protection letter, should be the subject of contractual agreement between the title insurer and the lender rather than a matter limited by statute. The language that CBAI opposed was deleted from the most recent version of the bill, and at this time we have removed our opposition to HB5409. SB 2985 has been held in the Senate, but HB 5409 passed the House unanimously with the agreed language.

**Cook County Sheriff Tom Dart's Foreclosed Home Receiver Bill Still under Discussion HB 6113 (Lyons)**, initiated by Cook County Sheriff Tom Dart, would require the Illinois Department of Financial and Professional Regulation to license and regulate persons or entities involved in the foreclosure home receiver business. The legislation would provide an exemption for full or part-time employees of a bank or trust who acts as a receiver of homes foreclosed on by that bank or trust. However, there are some exceptions to the exemption. For instance, the legislation would require banks to hold onto and preserve all remaining property of the mortgagor or former occupant for at least 30 days or until the mortgagor or occupant releases his or her claims to his or her property in writing. Additionally, banks must post a public notice at the entrance of the home to notify the mortgagor that the home is in foreclosure and that they have the right to their personal property for at least 30 days. CBAI has several serious concerns with the legislation as it is written and remains opposed to the bill. Governmental relations staff has been in contact with the sponsor and Sheriff Dart's office to address these problems and plan to continue discussions on alternative language.

HB 6113 passed out of the House with a vote of 61-41, with the agreement from the sponsor to work on the bill in the Senate and to continue discussions with the opposition. There is also a similar bill, **SB 3811 (Munoz)**, which remains in the Senate with a deadline extension to April 15.

### **Elderly Abuse Reporting Legislation Clears the Senate**

Legislation that would have included financial institutions employees as mandated reporters of elderly abuse was amended this week. While the bill no longer requires the mandated reporting of elderly abuse by financial institution employees, CBAI continues to oppose this legislation.

**SB 3267 (Hunter)** and **HB 5869 (Dugan)**, as amended, does the following:

- Require the Department on Aging to provide financial institutions with training materials and information concerning financial exploitation of the elderly and related financial fraud or abuse to be used by a financial institution for its personnel with direct customer contact and to be made available to the general public.
- Provides that such information shall include signage or other written materials and shall contain relevant toll-free telephone numbers for reporting such fraud or abuse
- Requires the Department to develop and make available an online training program for use by financial institution employees with direct customer contact; and that such online training shall be utilized by financial institutions unless such financial institutions utilize training programs which must minimally include the elements contained in the Department on Aging Program.

SB 3267 passed out of the Senate with a vote of 33-14-1, and was sent to the House. HB 5869 passed out of the House Aging Committee but was never called for a vote in the House because the House sponsor agreed with the lending community and refused to call the bill on the House floor.

#### **Mortgage Escrow Language Introduced in the House**

**HB 6411 (McGuire)** amends the Mortgage Escrow Account Act to provide that a mortgage lender who acquires an escrow account through assignment, sale, or transfer shall notify the borrower of any such assignment, sale, or transfer, unless the mortgage lender who makes the loan provides to the borrower, at settlement, written notice of the assignment, sale, or transfer.

CBAI opposes this legislation as duplicative of RESPA. The bill was an initiative of the County Treasurers Association, but was held in committee by the sponsor pending further discussions.

#### **Credit Card Compliance Bill Passes the House**

For purposes of providing consistency with the federal Credit Card Accountability and Disclosure Act of 2009, **HB 6412 (Lyons)** provides that compliance with the federal Truth in Lending Act and regulations constitutes compliance with Illinois law regarding credit card accounts. HB 6412 was introduced on behalf of the Illinois Credit Union League and is supported by CBAI. HB 6412 passed out of the House unanimously and will be sent to the Senate for consideration.

#### **State-owned Community Bank of Illinois Bill Held in the House**

**HB 5476 (Flowers)** which would create a state-owned Community Bank of Illinois was held in the House this week. The bank would be operated by the Department of Financial and Professional Regulation, and would be exempt from all taxation with deposits guaranteed by the State. Despite opposition from CBAI and several other groups in the House Consumer Protection committee, the bill passed out on an 8-5 partisan vote due to an agreement by the sponsor to hold the bill on 2nd reading for further discussion. Although the bill was not called for a vote on the House floor, the deadline for passage of this bill has been extended to the end of April. CBAI will continue to monitor and oppose this bill.

#### **Notice to Insurer after Foreclosure Action Legislation Passes House**

**HB 5630 (Brady)**, as amended, requires a mortgagee, judgment creditor or other lien holder to notify the last-known insurer of a residential building in writing by first-class mail or electronically within 10 business days after the mortgagee, judgment creditor, or lien holder becomes the mortgagee-in-possession. CBAI opposes the bill, but because of the Third Reading deadline and the fact that the Sponsor has agreed to hold any bill that is not an agreed bill, CBAI and the other opponents allowed the bill to pass out of the House to continue discussions in the Senate.

#### **Appraisal Management Companies Licensure Bill Sent to the Senate**

**HB 5868 (Saviano)**, initiated by the appraisal industry, would require the licensure of appraisal management companies (AMC's) to be regulated by the Illinois Department of Financial and Professional Regulation. CBAI does not oppose the concept of licensing AMC's but initially opposed the new licensure due to several concerns with the proposed language. After several

meetings with the sponsor, the appraisal industry, and other trade groups, the appraisal industry agreed to remove the provisions opposed by CBAI with the understanding that CBAI would remove its opposition and be neutral. The sponsor indicated that this bill would be amended in the Senate in an attempt to reach an agreement with opponents which include Wells Fargo and the Illinois Bankers Association. CBAI will closely monitor this bill and any new amendatory language.

HB 5868 passed the House 79-23 and will be sent to the Senate.

## **FEDERAL ISSUES**

### **CBAI Supports TAG Program Extension**

CBAI joined with 32 other community bankers associations throughout the county to send a joint [letter](#) to FDIC Chairman Sheila Bair to support a twelve month extension of the Transaction Account Guarantee (TAG) Program. Nearly 6,900 banks and thrifts had opted into this program as of the end of 2009. The TAG Program is important to community banks as it helps level the competitive playing field between community banks and the too-big-to-fail banks that enjoy a “defacto unlimited guarantee” of their deposits courtesy of the federal government.

Chairman Bair addressed this issue at the recently concluded ICBA convention in Orlando. Bair said that the large banks and nonbanks have implicit government support to the distinct disadvantage of community banks and that this competitive disadvantage has led to calls by community banks to extend the TAG Program. Bair said that the FDIC is evaluating how the termination of this program could affect community bank funding and liquidity needs, and an analysis will be provided to the FDIC board of directors so that they may consider whether or not an extension is warranted. CBAI urges community banks utilizing the TAG Program to continue to contact the FDIC to and urge the extension of this important program.

### **Court Victory for Subchapter S Banks**

On March 17, 2010, the United States Court of Appeals for the Seventh Circuit ruled in favor of Forest Park National Bank & Trust Co. in the Vainisi v. Commissioner of Internal Revenue case. CBAI, along with community banking organizations in Wisconsin and Texas, strongly supported the long battle against the IRS on a proposed rule that would have increased taxes on many Subchapter S corporation banks. CBAI’s Board of Directors authorized financial support to help offset legal expenses on behalf of the bank, a long-time CBAI member. [Click here](#) to read the decision. [See CBAI congratulatory letter](#) to Forest Park National Bank & Trust Co.

**Don't forget to register for the 2010 Washington  
Visitation.**

**Registration Deadline is Sunday April 4, 2010**

**[Click here for the registration form.](#)**

If you have any questions regarding these results, please contact Kraig Lounsberry, [kraigl@cbai.com](mailto:kraigl@cbai.com), or Megan Stieren [megans@cbai.com](mailto:megans@cbai.com), or call Kraig or Megan at 1 (800) 736-2224.