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Interview with a Community Banking Advocate



**Congresswoman
Shelley Moore Capito**
U.S. House of
Representatives
Chair, House
Subcommittee on
Financial Institutions and
Consumer Credit

On August 30, 2013, Spilman's own [Amy King Condaras](#) had the pleasure of interviewing West Virginia Congresswoman Shelley Moore Capito. Congresswoman Capito serves on the House Financial Services Committee and is the Chairman of the Subcommittee on Financial Institutions and Consumer Credit. She also serves on the House Committee on Transportation and Infrastructure. Congresswoman Capito will be the keynote speaker at Spilman's Symposium on Community Banking on October 21. Ms. Condaras and Congresswoman Capito had an extensive conversation about the current state (and the future) of community banking.

Q: Community bankers continue to see costs rise associated with regulatory compliance and identify risks associated with regulatory compliance as their biggest concern in today's banking environment. Do you anticipate any relief on the horizon for community banks?

THE DRIVE-THRU

Of all U.S. banks, more than 90 percent have assets under \$1 billion, and 31.2 percent have assets under \$100 million.

*As reported by the Independent
Community Bankers Association*

Lenders Versus Mechanics' Liens in West Virginia:

A Question of Priorities
by [Travis H. Eckley](#)

Finally! After days, weeks, sometimes even months of waiting, you as the lending officer received approval from corporate that underwriting has just approved your borrower and you can proceed with the term sheet. Time to put things on the fast track and get this transaction closed ASAP, right? "Whoa, Nellie!" as the legendary sports announcer, Keith Jackson, used to say.

A: We are going to keep trying to get some relief, particularly for the community banks. I think that the large financial institutions have the capital, the staff and the expertise to be able to handle the burdens put onto them by the regulations because they are so enormous they can absorb it better. But, community banks in West Virginia are really feeling the weight of compliance reform and having to hire new people for compliance, rather than expanding their business platform and doing more lending, which would grow the economy. We are aware of the impact of exam procedures, Basel III, the Qualified Mortgage ("QM") restrictions, etc. are having on the community banks. These are all areas we are continuing to look to for relief for community banks.

Q: The QM reference leads into my next question. How can community banks effectively manage costs and risks associated with the sheer volume of regulations, as well as what appears to be some contradiction within the regulations, for example, the definition of QMs versus QRMs?

A: Well, it is confusing and the regulations are lengthy. When community banks begin to try to see if their systems match this, if their staff can be trained in time for full implementation, if realtors and appraisers and others who are part of the mortgage process are on the same page, which at this point I would say no they are not, we will see the effects of the weight of the regulations. My concern is that if we go into a full implementation, we are going to have a lock-up in lending, which will make borrowing more difficult, more time-consuming and more expensive for borrowers. So, what do community banks do? They start looking at either getting out of the businesses or just the relationship-based side of banking and they lose their flexibility.

Q: What impact does that have on your constituent community banks that are very relationship-based?

A: The beauty, I think, of community banking is that there is a relationship built through generations in our rural communities. West Virginia is basically an entirely rural state, and over the years that has afforded a very successful partnership between the lender and the borrower and did not lead to the problems that occurred in 2008 with subprime mortgages. Community banking business practices are not a part of that problem, but community banks are getting swept into this regulatory regime. For instance, a farmer out in Pendleton County may have a bad year, which happens a lot in agriculture. So he doesn't have the income, and when it comes time for them to purchase a home, or redo his family's mortgages, he misses one of the parameters because of the nature of his business. If you're just looking at it on paper, he wouldn't match the qualifications. A community banker would know his history, his family's history and that this family has always done well, and that this is a good, safe risk for his bank. But, the bank's not going to want to take that risk if the regulators are going to look at it as overly risky because of the way it appears on paper.

Q: What are your thoughts on the CFPB, and how do you see that agency and its regulatory regime playing out?

A: Well, obviously, it has enormous responsibility and I feel that some of the structure of the CFPB was a risk. A singular executive director as opposed to a committee is something that we've been fighting. Also, the overreach of the regulations that they've put forward, they are supposed to be aimed at institutions with certain capital thresholds, but in reality it goes all the way through every financial institution. I think that is

The borrower has already broken ground on the site, or even just cleared brush, and now your closing attorney, title insurance agent and/or in-house counsel are calling this a "pre-start construction." This common scenario plays out again and again for new construction projects. The bottom line in many states, including West Virginia, is that with a pre-start construction you've got a mechanic's lien problem that threatens the very basis of your lending arrangement.

[Read the full article on our website.](#)

Bankruptcy Reaffirmation Agreements

by [Casey H. Howard](#)

As consumer bankruptcy filings remain an all-too-common occurrence, many lenders continue to find themselves in the often murky world of bankruptcy. As a result, on top of ensuring adherence to the numerous confusing regulations applicable to commercial loan transactions, lenders must navigate the federal bankruptcy laws. This article sheds some light on one bankruptcy process lenders are often faced with: reaffirmation agreements.

In a chapter 7 bankruptcy, the debtor's secured personal property can be treated in one of three ways: the debtor can keep the property through a process called reaffirmation, surrender the property to the secured creditor, or keep the property by paying the secured lender for the property in one lump sum through a process called redemption. Chapter 7 debtors most commonly choose to reaffirm or surrender their property.

[Read the full article on our website.](#)

ECOA Gets More Teeth in N.C.

by [Timothy R. Moore](#)

In one of my prior "Drive Thrus" in this newsletter, I reminded everyone that lenders can never require a spousal

problematic. Community banks are supposed to be, in some cases, exempted from a lot of this. But, in reality, that's not what's happening. There needs to be more accountability. The agency's budget is not accountable to Congress; it is funded through the Federal Reserve. The strength of Congressional oversight is in the budgetary process. If an agency is not moving in the direction that, collectively as members of Congress, we think is the right direction to go, we can pull it back by rearranging their budget. We can't do that with the CFPB. I also think that the number of regulations that are coming out of CFPB is problematic because I don't have full confidence that they are working with consumers and institutions to look at the ramifications and costs of a lot of the regulations.

Q: You said that the community banks were supposed to be exempted from many of these regulations, but we're not seeing that happening. Has there been consideration for a tiered regulatory scheme that would decrease or loosen regulation depending on the size of the bank?

A: Yes. There's a big push for tiered regulations, both from community banks and all through the regional banks. I think that's something that we're going to look at. We want to keep exempting community banks from all the onerous regulatory procedures.

Q: Let's talk about the PATH Act (Protecting American Taxpayers and Homeowners Act).

A: We passed the PATH Act as a reform effort on Fannie [Mae] and Freddie [Mac]. The tax payers were responsible for \$180 billion dollars of debt for Fannie and Freddie. I believe that we need to create a system where the product is supported by the market and we don't have taxpayers on the hook. I think it would be better for taxpayers and homeowners. The PATH Act reforms FHA and it returns FHA to its primary mission to serve low to middle income borrowers, rather than the huge parts of the market that they are serving right now. It has some regulatory relief in the bill as well on the mortgage side. For example, if a bank holds these loans in its portfolio, they will not be subject to the QM regulations. We also recognized the need for a secondary market for community banks, and the PATH Act empowers the Federal Home Loan Banks to be sort of an aggregator, and I think that would be very helpful for community banks. It has been passed out of committee, and hopefully we will see it pass the House soon.

Q: Where do you see the community banking industry, as a whole, five or ten years from now?

A: If we do not work hard to preserve the model of relationship banking that community banks have, I'm concerned about the future of community banking because of the legal and regulatory burden that they would be asked to bear. We will see more mergers and more acquisitions, so the community banks will get larger, but we will lose that closer-to-home banking relationship that I think is vital for a lot of individuals and small businesses. I think this is a pivotal time to work towards preserving that, and we can do it, because I think we're aware and the community banks have done a good job in educating us as to what the full effects of this have been and could be.

guaranty, but can request one. The North Carolina Court of Appeals brought that fact home recently in *RL Regi North Carolina, LLC v. Lighthouse Cove, LLC,....and Connie S. Yow* (COA12-1279), decided on August 20, 2013. The Court upheld a Superior Court decision concluding that Regions Bank had violated ECOA by requiring Connie S. Yow to sign a spousal guaranty. The result was she could use that violation as an affirmative defense precluding the enforcement of her guaranty. It is an expensive lesson, from which we all should learn.

[Read the full article on our website.](#)

EXECUTIVE RESOURCE: *Symposium on West Virginia Community Banking*

We invite readers of Community Banking Excellence to attend our upcoming event, [Executive Resource: Symposium on West Virginia Community Banking](#), on Monday, October 21 at the Marriott Town Center in Charleston, West Virginia.

A highlight will be West Virginia Congresswoman Shelley Moore Capito's keynote presentation. Capito serves as chair of the House Subcommittee on Financial Institutions and Consumer Credit.

Community banks have long been integral to the fabric and success of our communities, yet these institutions are facing the unprecedented challenges of regulatory pressures, competition from nonbanks and new technologies resulting in changing consumer preferences. This complimentary, full-day symposium will address these fundamental concerns via presentations by industry leaders and conversation among banking professionals. Presentations and panel discussions will focus on best (and worst) practices for managing a successful community bank and will touch upon cybercrime, payment systems, board representation, innovative business strategies and management issues.



Spilman Thomas & Battle, PLLC offers this event free of charge to C-level executives, bank presidents, board members and other high-level banking professionals who would like guidance on fundamental industry concerns. CPE credits will be available as an additional benefit of attendance. Click [here](#) to read the full agenda and register to attend.

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