AN EXAMINATION OF THE CHALLENGES FACING COMMUNITY FINANCIAL INSTITUTIONS IN WEST VIRGINIA

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

AUGUST 20, 2012

Printed for the use of the Committee on Financial Services

Serial No. 112–154

U.S. GOVERNMENT PRINTING OFFICE

76–125 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

HOUSE COMMITTEE ON FINANCIAL SERVICES

SPENCER BACHUS, Alabama, *Chairman*

JEB HENSARLING, Texas, *Vice Chairman*
PETER T. KING, New York
EDWARD R. ROYCE, California
FRANK D. LUCAS, Oklahoma
RON PAUL, Texas
DONALD A. MANZULLO, Illinois
WALTER B. JONES, North Carolina
JUDY BIGGERT, Illinois
GARY G. MILLER, California
SHELLEY MOORE CAPITO, West Virginia
SCOTT GARRETT, New Jersey
RANDY NEUGEBAUER, Texas
PATRICK T. MCHENRY, North Carolina
JOHN CAMPBELL, California
MICHELE BACHMANN, Minnesota
KEVIN McCARTHY, California
STEVAN PEARCE, New Mexico
BILL POSEY, Florida
MICHAEL G. FITZPATRICK, Pennsylvania
LYNN A. WESTMORELAND, Georgia
BLAINE LUETKEMEYER, Missouri
BILL HUIZENGA, Michigan
SEAN P. DUFFY, Wisconsin
NAN A. S. HAYWORTH, New York
JAMES B. RENACCI, Ohio
ROBERT HURT, Virginia
ROBERT J. DOLD, Illinois
DAVID SCHWEIKERT, Arizona
MICHAEL G. GRIMM, New York
FRANCISCO “QUICO” CANSECO, Texas
STEVE STIVERS, Ohio
STEPHEN LEE FINCHER, Tennessee
FRANK C. GUINTA, New Hampshire

BARNEY FRANK, Massachusetts, *Ranking Member*
MAXINE WATERS, California
CAROLYN B. MALONEY, New York
LUIS V. GUTIÉRREZ, Illinois
NYDIA M. VELÁZQUEZ, New York
MELVIN L. WATT, North Carolina
GARY L. ACKERMAN, New York
BRAD SHERMAN, California
GREGORY W. MEEKS, New York
MICHAEL E. CAPUANO, Massachusetts
RUBÉN HINOJOSA, Texas
WM. LACY CLAY, Missouri
CAROLYN McCARTHY, New York
JOE BACA, California
STEPHEN F. LYNCH, Massachusetts
BRAD MILLER, North Carolina
DAVID SCOTT, Georgia
AL GREEN, Texas
EMANUEL CLEAVER, Missouri
GWEN MOORE, Wisconsin
KEITH ELLISON, Minnesota
ED PERLMUTTER, Colorado
JOE DONNELLY, Indiana
ANDRÉ CARSON, Indiana
JAMES A. HIMES, Connecticut
GARY C. PETERS, Michigan
JOHN C. CARNEY, JR., Delaware

JAMES H. CLINGER, *Staff Director and Chief Counsel*

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

SHELLEY MOORE CAPITO, West Virginia, *Chairman*

JAMES B. RENACCI, Ohio, *Vice Chairman*
EDWARD R. ROYCE, California
DONALD A. MANZULLO, Illinois
WALTER B. JONES, North Carolina
JEB HENSARLING, Texas
PATRICK T. MCHENRY, North Carolina
KEVIN McCARTHY, California
STEVAN PEARCE, New Mexico
LYNN A. WESTMORELAND, Georgia
BLAINE LUETKEMEYER, Missouri
BILL HUIZENGA, Michigan
SEAN P. DUFFY, Wisconsin
FRANCISCO "QUICO" CANSECO, Texas
MICHAEL G. GRIMM, New York
STEPHEN LEE FINCHER, Tennessee
FRANK C. GUINTA, New Hampshire

CAROLYN B. MALONEY, New York, *Ranking Member*
LUIS V. GUTIERREZ, Illinois
MELVIN L. WATT, North Carolina
GARY L. ACKERMAN, New York
RUBÉN HINOJOSA, Texas
CAROLYN MCCARTHY, New York
JOE BACA, California
BRAD MILLER, North Carolina
DAVID SCOTT, Georgia
NYDIA M. VELÁZQUEZ, New York
GREGORY W. MEEKS, New York
STEPHEN F. LYNCH, Massachusetts
JOHN C. CARNEY, JR., Delaware

CONTENTS

AN EXAMINATION OF THE CHALLENGES FACING COMMUNITY FINANCIAL INSTITUTIONS IN WEST VIRGINIA

Monday, August 20, 2012

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11:08 a.m., at the Robert C. Byrd U.S. Courthouse, 300 Virginia Street, East, Charleston, West Virginia, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito and Renacci.

Also present: Senator Manchin.

Chairwoman CAPITO. This field hearing will come to order.

Before making opening statements, first of all, I would like to give everyone an overview of the procedure today. I will make an opening statement, followed by Senator Manchin and Congressman Renacci. I want to welcome both of them here.

Each witness will then be recognized for a 5-minute opening statement summarizing their written testimony, which they have already submitted, and which is on the table for those of you who would like to see it. We will then begin several rounds of questioning, where Members will be recognized for 5 minutes of questioning.

So, I would like to thank everyone for joining us here today. This is the Financial Institutions and Consumer Credit Subcommittee, of which I am proud to be Chair. It is a part of the Financial Services Committee in Congress. When I assumed this chairmanship in January of 2011, one of my big priorities was to get around to different communities around the country.

So far, we have been to Georgia, which, if you're unfamiliar with the numbers, Georgia has had an enormous amount of bank closures. I think they're up over 65 or 70; Wisconsin; Illinois; Texas; Nevada; and Ohio, we went to Mr. Renaccis home district in Cleveland. Each field hearing has highlighted different challenges facing small financial institutions and the communities that they serve. So I wanted to highlight some of the economic and regulatory challenges we face here in West Virginia and the effect on small institutions and clients in the communities that they serve.

As I said, I am pleased to be joined here today by the vice chairman of my subcommittee, Jim Renacci from Ohio. Before coming to

Congress, Jim spent his career as a small business owner and entrepreneur in a lot of different businesses. He understands the difficult growth environment facing small businesses and financial institutions, and has been a tremendous asset to me and to our subcommittee. I'm also extremely pleased that Senator Manchin is here with us today. We know Senator Manchin was in business well before he began his political career and has spent his political career helping small businesses and business investments.

Four years ago, this Nation experienced one of the greatest financial crises in a generation. It was a combination of increased demand for housing, very lax underwriting standards, and a demand for subprime mortgage-backed securities from Fannie Mae, Freddie Mac, and Wall Street investment bankers that brought our Nation's financial systems to a precipice.

In 2008, the U.S. Government bailed out the Nation's largest financial institutions in an attempt to stabilize the financial system. As most of you in the room know, I voted against the bailouts of the larger banks because I firmly believe firms that take on too much risk should pay the consequences for their actions. During the Dodd-Frank debate, I championed an effort to create a new code of bankruptcy to deal specifically with complex financial institutions. I lost that ballot. We now have what is called the Orderly Liquidation Authority, which will deal with unwinding these institutions but also has the ability to access the United States Treasury, and to me, that is "too-big-to-fail."

With passage of the Dodd-Frank Act, the Nation's financial regulatory system is undergoing significant restructuring. Some of the proposed rules have merit. For instance, increased capital requirements for the largest financial institutions are one way to prevent government bailouts. There are also some transparency and disclosure in there that I think is extremely important.

As the regulatory regime for the financial system undergoes this restructuring, it is important to ensure that rules and regulations are not applied in a one-size-fits-all manner, which will be the focus of our committee meeting today.

West Virginia's community banks and credit unions did not cause the financial crisis, yet in many cases they are facing the same wave of new regulations as the largest financial firms. We are here today to learn about the effect the implementation of these rules is having on small financial institutions and credit unions.

If we do not strike the appropriate balance for regulations applied to small institutions, we run the risk of further constriction of credit, and we are going to get into that today. This is especially troubling for States like West Virginia because we rely—and this is in the written testimony that you all have submitted—exclusively on small financial institutions for credit and lending.

West Virginia has already witnessed the devastating impact that poorly conceived Federal regulations can have on an industry. We must make sure that as financial regulations are being created, they are appropriately tailored to the scope and the size of the institutions to which they are applied. Small financial institutions are crucial to provide the capital necessary for small businesses to grow. If they are hamstrung by uncertainty and a one-size-fits-all regulation, they will not be able to get our economy back on track and help small businesses grow and create jobs.

I would like to thank our panelists for joining us this morning, and I now recognize my friend Senator Manchin for the purpose of making an opening statement.

Senator MANCHIN. Let me just say thank you, first of all, Congresswoman Capito, for having this hearing here in West Virginia so we can bring our local expertise from around our State to be able to speak to us and we can take that back to our respective bodies of the Senate and the House. I also want to thank Congressman Renacci for coming in and taking time from his family. I know how tough that can be. You don't get much time anyway, so it makes it very special for him to do that.

The concerns I have, being a first-term Senator, and with the collapse that we had, being a Governor at the time, watching what had happened, seeing the access to capital was probably one of the most detrimental problems that we had and can be the compounding problems that just continue to fester as far as the businesses, and having access basically, putting everybody into one blanket, if you will, when this came about with the financial fiasco, a lot of people attributed what was the last sequel, whatever you want to attribute it to, relaxing happening with the larger banks, the investment banks.

The community banks in no way, shape or form are responsible for this, but yet they got caught up in the same brush, and with that, we have been working on legislation on the Senate side, myself and Jerry Moran, a Republican from Kansas, working together in a bipartisan way trying to bring some relief and looking at really where the problems are. We have a lot of people in the Senate right now who are concerned about making any moves or taking any steps that might basically cause a problem again, and we don't want to do that. But if the community banks are not a problem, the community banks can jumpstart our small businesses, why can't we give them some relief, a whole different pathway, and I think that's what we are really trying to do. We are trying to find out how we can best go back in a bipartisan way, Democrats and Republicans, to find out how we can attempt to get this economy moving by getting capital into it.

I have introduced two pieces of legislation, I know Congresswoman Capito and myself both on one extensively, which gives relief as far as how proper they're being heard in the field process. We think it should be done in a very quick manner versus 8, 10, 12 months and you have no uncertainty. We are trying to get that expedited and also the Manchin/Moran bills, a financial institution examination fairness and reform and we think that will help immensely, so we are working very—I know you all have been very much interested in the issue, supported it, and I encourage you to be very vocal with all of your colleagues around the country, to try to help get the relief that's going to be needed at this time, and I appreciate so much the opportunity to hear from you all today, thank you.

Chairwoman CAPITO. Thank you. I would like to welcome here today, too, the State Commissioner of Banking, Sally Cline. Thank you for coming and being with us today. Now, I would like to introduce for the purpose of making an opening statement, Jim Renacci from Ohio, my vice chairman of the subcommittee. Welcome.

Mr. RENACCI. Thank you, Madam Chairwoman. I will begin by saying it is a pleasure to be here with my neighbors in West Virginia. It's not a long trip down here from Ohio. In fact, I'm happy to see some of my friends representing credit unions here today as well. Madam Chairwoman, I want to thank you for your diligent leadership during the committee's efforts to shine a light on burdensome regulations that are stifling our economic recovery.

I believe this hearing is the last in a series of field hearings where we have the pleasure of hearing from small business community banks from across the country. I want to applaud you for taking these hearings to the people.

I believe a large part of our Nation's problem is that many of those writing the rules in Washington have never actually had to live under those rules. I believe many of those in Washington have no idea what it takes to run a business and have no idea how difficult Washington has made the lives of our small business owners. While in D.C., we hear from a lot of academics, trade groups, special interests and, of course, plenty of regulators. We seldom have the opportunity to hear from witnesses like we have here today.

Let's face it, I'm sure all of you would much rather be spending your time running your businesses, than coming to Washington to talk about onerous regulations. That's why I believe these hearings are so important. It is imperative that we can share real-life stories while the partisan bickering, gridlock, and uncertainly have a hand in government intervention in preventing entrepreneurs from righting our economic ship.

I had the pleasure of hosting a similar field hearing in Cleveland earlier this summer. I am proud to say that Ohio is home to some of the finest financial institutions in the country, and I have no doubt these institutions are committed to getting our economy and our country back on track. Unfortunately, the same frustrations we heard in Cleveland are the same we have heard across the country from Nevada to Texas and all the way to Wisconsin. We constantly hear from frustrated small business owners who are eager to expand their business but are prevented from doing so because they cannot access the necessary capital.

At the same time, we have heard from financial institutions that are ready to extend capital to these small businesses and have capital to do so, but are unable to do so because of overzealous, inconsistent, and ever-changing regulations. As I expect will be the case here today, the number one concern we have heard by all is the Dodd-Frank Act. The intentions were noble, to prevent another financial crisis, improve transparency, stop banks from taking excessive risks, prevent use of financial practices, and end too-big-to-fail.

Unfortunately, instead of sound regulations aimed at reining in the fraudulent and reckless behavior of Wall Street, we ended up with thousands of pages of regulations which are crippling institutions and have nothing to do with the crises and the very institutions we must rely on to rebuild our economy. Instead of sound regulations, we have left many of the financial institutions standing on the sideline, unwilling and unable to provide liquidity on arguments because they are unsure what the rules are and when they might be unilaterally changed again.

The uncertainty and the cost of new regulations is having an especially profound impact on our smaller institutions. Without a large compliance staff and back office legal teams, our smaller institutions are forced to divert precious capital to keep up with new regulations, capital that would be better put to the hands of its customers.

I would like to end by saying that I understand what it's like to live under these rules coming out of Washington. As a businessman for almost 30 years, I can sympathize with your struggles and I understand that in order to turn this country around, we must get Washington out of the way. We must let all of you run your own business the way you know best. I want to thank you for being here today, and I look forward to your testimony.

Chairwoman CAPITO. Thank you. So with that, we will begin to hear from our witnesses. Our first witness is Mr. Charles Hageboeck, but I know him as Skip, president and chief executive officer of City National Bank, on behalf of the West Virginia Bank Association. Welcome.

STATEMENT OF CHARLES HAGEBOECK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CITY NATIONAL BANK

Mr. HAGEBOECK. Thank you. Chairwoman Capito and members of the subcommittee, my name is Skip Hageboeck, and I am president and CEO of City National Bank headquartered here in Charleston. City National has $2.8 billion in assets, 73 branches located mostly in West Virginia, and over 800 employees.

I appreciate that the committee is taking time to look at how banks which play a critical role in helping our economy grow are being impacted by the furious pace of new regulation in our industry and in particular the unintended consequences of such regulation. I'm thankful for the opportunity to present my views on the challenges facing community banks and particularly how regulatory impediments are making it increasingly difficult for banks like City National to help businesses and consumers borrow money to purchase homes, expand businesses, and efficiently transact their depository needs.

The banking system is made up of a few large banks which control the majority of the banking assets, and a large number of community banks. Community banks like City National generally operate pretty simple organizations. We make small loans to consumers and businesses and we accept deposits. And while our business model is pretty simple, in general the products and services that we provide meet all the banking needs for our consumers and small business clients. As compared to large banks, we know our employees, our customers, our communities, and what's going on in our banks.

West Virginia is a small State, but it is home to 68 separate community-based banking charters. Community banks operate in small cities and towns that large banks avoid. We focus on smaller businesses and consumers. Our presence increases competition and makes credit available on better terms and with better service and they're more involved in supporting the community with both dollars and with our time.

The bottom line is for many small cities and towns, the community bank is an important part of the economic fabric, and these towns would be worse off in the absence of community banks. But the viability of the community bank model is under attack. Earnings are under pressure as a result of the recession. At the same time, the burden of complying with regulation is more onerous than it has ever been before.

The most important problem facing the banking industry today is the weak economy. Our customers will borrow and create jobs only when they believe that the economy can support higher sales. For City National, I can tell you that loan requests from customers who are growing their businesses have been slowing rather than increasing since the beginning of the year, signaling that the economy is now decelerating rather than expanding. It's a tough time to be a community bank. Loan demand is weak, interest rates are low, and sources of income are decreased.

For many community banks, loan losses during recession reduce their capital levels, and while big banks were able to go out and recapitalize by issuing new common stock, small community banks that need new capital can't get it, which restricts their ability to lend. Within capital limits, many community banks find their ability to lend within their communities to be compromised.

New regulation to make community banks subject to depository capital requirements is a significant threat for community banks that have large residential mortgage loan portfolios. So again, actually, it's a great example, because we hold a large number of mortgage loans, we think the implementation of Basel III will reduce our capital ratios and reduce our ability to lend to consumer and small business customers.

I encourage Congress to delay implementation of Basel III capital requirements for community banks and carefully study the consequences of implementing these requirements for community banks.

Bankers understand the need for regulations which ensure that banks remain safe and sound and that customers are adequately protected from abuse. What we don't understand is the explosive proliferation of regulation, most of which was enacted to address problems not associated with community banks, but which have nevertheless cost us tremendous amounts of money, distracted us from our core business purposes, and frequently had unintended consequences that are detrimental to our company and our customers.

In my written testimony, I have provided numerous examples of regulations that have been problematic for City National, including ATM placards; privacy notices; burdensome regulation of our foreclosure process with no apparent purpose; student lending regulations, which forced City to stop making loans to customers for student loans; the negative customer impact of flood insurance regulations; City's concern that narrowly defined qualified mortgage could undermine our successful record in making mortgages for West Virginia customers; the negative customer impact of regulations surrounding the Consumer Financial Protection Bureau's (CFPB's) attempt to improve mortgage disclosures; the negative customer impact of risk retention requirements for secondary market loans; unintended consequences of regulations for high-priced mortgages, which hurt consumers; unintended consequences of regulations on derivatives requiring our small business customers to be qualified participants, a test most customers can't pass, which will limit our ability to help our customers obtain long-term fixed rate loans; and unintended consequences of regulations of municipal advisers that will hinder our ability to provide banking services to cities and counties.

Hopefully, these examples help to highlight that well-meant regulation often comes with unexpected results, and often these results are not in the best interests of our customers, or not in our best interest, and by extension are not in the best interest of our communities either. Thanks.

[The prepared statement of Mr. Hageboeck can be found on page 39 of the appendix.]

Chairwoman CAPITO. Thank you very much. Our next witness is Mr. Tom Brewer, who is president of Peoples Federal Credit Union, on behalf of the West Virginia Credit Union League. Welcome.

STATEMENT OF TOM BREWER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PEOPLES FEDERAL CREDIT UNION

Mr. BREWER. Chairwoman Capito, Vice Chairman Renacci, Senator Manchin, thank you for the opportunity to testify at today's hearing on challenges facing financial institutions in West Virginia. My name is Tom Brewer, and I am president of Peoples Federal Credit Union in Nitro, West Virginia.

The major change I have seen in my position involves an increase in regulatory compliance and the multitude of complex regulations we must now address. These come from not only the regulator, the National Credit Union Administration, but also from the Federal Reserve and other Federal and State agencies. Now with the creation of the Consumer Financial Protection Bureau, more concerns are raised as they also begin to issue new regulations.

Regulatory compliance is a priority for credit unions and we struggle to remain fully compliant with the multitude of regulations. Peoples employs 29 full-time individuals to operate 3 locations, and one of these individuals is devoted full-time to compliance. With a small staff, having someone devoted full-time to compliance is a financial burden that was unheard of only a few years ago and diverts resources from other member services. The cost of compliance does not vary by size and is a greater burden for the smaller institutions.

If a small credit union wants to offer a new service, it has to be concerned about complying with the same rules as a large institution, but it is only able to spread those costs over a much smaller number of businesses. Today, there are 100 credit unions operating in West Virginia, with roughly half of them having less than $10 million in assets. Small credit unions consistently say their number one concern is the regulatory obstacle in maintaining services in the face of increasing regulations, and that is the key reason why some merge into larger credit unions.

Of all the challenges we face in today's difficult financial environment, coping with compliance tops the list. There is nothing in the current climate of regulations that you could consider positive for economic growth in West Virginia.

One area where improvement could be made with regard to economic growth would be the passage of legislation to increase the cap on member business lending for credit unions. By passing H.R. 1418, an additional $13 million in new capital for small business loans could be generated, creating an estimated 140,000 jobs nationally, and in West Virginia, that amounts to 31 million new business loans and 335 new jobs.

Peoples serves as a financial lifeline for many in our three county communities. In fact, we are seeing smaller loans for such items as tires, hot water heaters, or loans to have utility services restored. There's little doubt many of our members are living paycheck-to-paycheck, and we strive to assist them with a wide median of affordable financial services.

Peoples has experienced a significant increase in our deposits over the past few years as consumers seek safe and sound institutions to place their savings dollars. While we appreciate this confidence, with tight margins it does place a stress on our capital.

I also recognize the role of the regulator is to evaluate financial performance and determine how well risk is being managed. However, there are many variations among credit unions in how risk is evaluated. We have an expectation of uniformity in the examination process and that expectation at times is not being met.

For the most part, the examination process works fairly well. To strengthen the process, however, I strongly support H.R. 3461, the Financial Institutions Examination Fairness and Reform Act, as a way to ensure additional dependability in exams and to provide needed change in the appeals process.

Overall, credit unions in West Virginia have a bright future. Deposits are increasing and loans are beginning to rise slightly once again; however, the number of credit unions continues to decline. In some cases, this is due to plant closings or company downsizing; however, for others it is due to the difficulty of operating a credit union in the environment of increased and complex regulations. When mergers occur, oftentimes local ownership is lost and a once successful community-based institution is gone forever.

Thank you for the opportunity to testify before your subcommittee, and I'll be happy to respond to any questions you may have.

[The prepared statement of Mr. Brewer can be found on page 28 of the appendix.]

Chairwoman CAPITO. Thank you. Our next witness is Mr. William A. Loving, president and chief executive officer of Pendleton Community Bank, on behalf of the Community Bankers of West Virginia. Welcome. And you are also the president-elect of the Independent Community Bankers of America, correct?

Mr. LOVING. Correct.

Chairwoman CAPITO. Good luck.

STATEMENT OF WILLIAM A. LOVING, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PENDLETON COMMUNITY BANK

Mr. LOVING. Thank you. Chairwoman Capito, Vice Chairman Renacci, and Senator Manchin, my name is Bill Loving and I am president and CEO of Pendleton Community Bank, a $260 million community bank located just about 200 miles from here in a small town of 781 people, Franklin, West Virginia. Thank you for inviting me here today to share with you my thoughts on the shape and the future of community banking in our great State. I'm also proud to be here representing all of the community bank members of the Community Bankers of West Virginia.

The government's role in the day-to-day operation of the community bank has grown dramatically over the last decade, and I see that trend continuing at an alarming rate. I honestly cannot think of one aspect of my bank that is not heavily influenced by Federal regulation. My staff and I spend exponentially more time today working to ensure we are in compliance with Federal regulations than we did before the banking crisis of 2008. I can assure you that Pendleton played no part in causing Wall Street's financial mess, yet we are saddled with most of the same burdens as the too-big-to-fail banks.

The most important point I can make to you is this: For community banks, every dollar spent on compliance is a dollar less that we have to invest and lend in the communities we serve. Every hour I spend on compliance is an hour I could be spending with customers and potential customers acquiring new deposits and making new loans.

I could spend most of the day talking to you about overly burdensome regulations, but since my time is limited, let me highlight a few issues that are particularly concerning to community banks. First, the proposed rules to implement Basel III are quite possibly the most serious regulatory threat facing community banks today. If these rules are not changed or if community banks are not provided some relief, these rules could have potential to make community banking itself a losing proposition and trigger further industry consolidation.

It's important to remember that Basel III was meant to apply to the largest interconnected internationally active banks. Applying international standards in a one-size-fits-all fashion demonstrates a failure to appreciate the differences between a bank like mine and the largest banks.

Let me give you some idea of what these regulations would mean to my bank. Please understand that the calculations we made are based upon a series of assumptions, because neither our systems nor any provided by the regulators allow us to adequately delineate the components of this proposal.

With that said, based upon our numbers, Pendleton will see an increase in our risk-weighted assets from $180 million to $208 million. That's a 15.5 percent capital charge we will have to absorb. Chairwoman Capito, that is $28 million that I will not be able to lend and invest in West Virginia.

Next, new CFPB rules are a significant source of risk. In particular, the proposed ability to repay determination in mortgage underwriting has the potential to expose lenders to significant legal liability in the event of a default. We have urged the CFPB to provide a safe harbor legal protection standard. Without a safe harbor, many community banks will withdraw from the market, making it less competitive and more costly for borrowers in rural areas like mine and small communities throughout West Virginia.

We are also very grateful to you, Chairwoman Capito, for introducing the Financial Institutions Fairness and Reform Act. This bill will go a long way toward improving the difficult examination environment faced by many community bankers across the country.

I would also like to note that another concern for community bankers is a new municipal advisor registration requirement. We are very concerned that a provision of the Dodd-Frank Act could be interpreted broadly by the SEC, forcing thousands of small banks to register as municipal advisors and be examined by the SEC for something that's simply discussing current CD rates with the town treasurer over the phone. We're glad the committee passed H.R. 2827, introduced by Congressman Dold, which would exempt banks and our employees from this requirement.

I would also urge this committee to consider a topic of equivalent interest to community banks, the need for a temporary extension of the FDIC's TAG Program. Extending TAG for an additional 5 years would serve the same goals I have stressed in this testimony: preserving community bank viability; supporting small business credit; and deterring further and future consolidation, all by keeping local deposits locally invested.

Thank you for the opportunity to be here today, and I look forward to your questions.

[The prepared statement of Mr. Loving can be found on page 59 of the appendix.]

Chairwoman CAPITO. Thank you. I would like to ask, with your consent, to insert into the record two statements: one from Ms. Kim Mack of Cyclops Industries; and the other from Senator Jay Rockefeller. Without objection, it is so ordered.

Our next witness is Mr. John Wohlever of Mountaineer Mobile Homes in Martinsburg. Welcome.

STATEMENT OF JW WOHLEVER, OWNER, MOUNTAINEER MOBILE HOMES, LLC

Mr. WOHLEVER. Thank you. Thank you, Chairwoman Capito, Vice Chairman Renacci, and Senator Manchin for the invitation and the opportunity to be here today.

My name is J.W. Wohlever, and I own Mountaineer Mobile Homes. We help individuals purchase and sell used mobile homes, and I would like to talk a little bit about the trouble that we have and our clients have just due to a lack of funding from community banks.

We measure our business from three metrics, the metrics being the average price for one of our transactions per year, which is, applying over the last 3 years, of about $45,000 a transaction to right now at about $22,000. The second metric is the number of transactions we do per year, which has declined from 24 down to about 16. And the biggest metric is that Mountaineer Homes used to finance 60 to 40 percent, and we're down to about 10 percent a year, so virtually it's an all cash business.

Anybody who has a home that's valued at $30,000 or more has insurmountable odds that we're going to find a cash buyer to get that transaction done. Two years ago, or 3 years ago, we really were dealing with about 6 community banks and one national bank, and of all those banks right now, we have one community bank that's still doing chattel loans, where you have a mobile home on rented land or a mobile home park. We only have one source in Martinsburg that will make that loan.

I believe the reason that these community banks have gotten out of that is the Dodd-Frank Act. I believe that one of those provisions in there that if they make bad loans or they don't run their business properly, the Federal regulators can take over that bank, just scares them to death, so they have just contracted their lending practices to the point where they want to really stick to more traditional single-family homes and have gotten away from these chattel loans. And that really has left my company with limited options and a lot of mobile homeowners with limited options.

I think the statistic is about 8 percent of all the homes in the United States are mobile homes. That's about 11 million homes. There are a lot of folks out there who could use that, and they have become part of that cycle of getting out of the rentals, moving into homes, stepping up into single-family homes. There's a lot of that.

So we even looked at the prospect of saying, okay, let's just raise private capital and maybe we could become an active lender ourselves. And when we looked at the SAFE Act combined with the RED Laws, both regulations are just prohibitive. There's just no way we can deal with it, and my opinion is that only the big banks would have the ability to comply with those two regulations, so, therefore, it wasn't an option.

And while there's a little bit better options for new mobile homes, I think last year in 2011 they built 50,000 new mobile homes, and 50,000 compared to 11 million really leaves a lot of mobile homes out there that make it tough. So that's—what I would like to let the committee know is I think the Dodd-Frank Act has really scared these small and medium-sized banks which make up the majority of the community banks. I think it has just scared them to death away from mobile home lending. Thank you very much.

[The prepared statement of Mr. Wohlever can be found on page 68 of the appendix.]

Chairwoman CAPITO. Thank you. And our final witness is Ms. Sarah K. Brown, attorney for Mountain State Justice, Incorporated. Thanks for coming.

STATEMENT OF SARAH K. BROWN, ATTORNEY, MOUNTAIN STATE JUSTICE, INC.

Ms. BROWN. Thank you, Chairwoman Capito, Vice Chairman Renacci, and Senator Manchin for inviting Mountain State Justice to testify before you today on behalf of the low-income West Virginians we represent.

To give you a bit of background, Mountain State Justice is a nonprofit law firm that represents hundreds of consumers in active litigation stemming from predatory mortgage lending. While our seven attorneys stay very busy, they're simply unable to represent each West Virginian facing foreclosure, and therefore we rely on changes in the law that alter the practices of the mortgage lending market to protect consumers.

In particular, the Dodd-Frank Act prohibits practices that became standard in the mortgage market in the late 1990s that we see regularly in our practice. This reform is not only necessary to protect West Virginia consumers, but in our opinion, it's also necessary to level the playing field and to enable community financial institutions to keep up with national mortgage lenders.

I would like to offer three real life examples of the hundreds of homeowners Mountain State Justice has seen suffer from similar problems. First, Jay and Annette Adame of Cool Ridge, West Virginia, were solicited by a broker to refinance their mortgage. At the time they were solicited, Mr. and Mrs. Adame were current on payments for their fixed-rate loan, and therefore initially refused offers to refinance. After repeated and aggressive telephone calls, Mrs. Adame ultimately agreed to refinance her home loan, relying on the broker's promise of a reduced monthly payment.

As it turned out, unbeknownst to the Adames, their mortgage broker achieved the appearance of a lower monthly payment by originating a Pay Option Adjustable Rate Mortgage (ARM). In a Pay Option ARM, the initial monthly payment set by the note does not cover the amount of interest due, resulting in negative amortization. If the Adames make the initial monthly payment amount set by the note, which is the reduced monthly payment they were promised, the principal balance on their loan will rise.

After the unpaid principal balance reaches 115 percent of their original principal balance, the monthly payment option is reset and results in a new minimum monthly payment well in excess of the obligation under their prior financing. Not only are these payments unaffordable to the Adames, they are now unable to refinance, as their principal balance exceeds the value of their home. Without resorting to litigation, Mr. and Mrs. Adame would have been foreclosed upon simply because they trusted their mortgage broker and lender.

While our reputable community lenders have always considered the borrower's ability to repay, the requirements of Dodd-Frank are necessary to hold national lenders to that same standard.

Next, Luke and Keveney Bair live in Sinks Grove, West Virginia, in the home that Luke built on land adjacent to his parents' farm. A mortgage broker and lender obtained an appraisal valuing their property at $160,000 when in fact it was only worth $99,000. The broker then induced the Bairs to consolidate unsecured debt into an adjustable rate loan by promising to refinance them into a lower fixed rate after one year.

In exchange for directing the Bairs to this loan product, their broker received a fee of nearly $4,000 and an additional yield spread premium of about $2,400. The broker failed to refinance the Bairs after the promised one year and the Bairs are unable to refinance because their mortgage loan is in excess of the value of their home.

Not only does Dodd-Frank require that appraisers and lenders ensure appraisals are performed fairly and accurately, it prohibits the extra kickbacks to mortgage brokers that is the yield spread premium. Without the incentive to originate certain high-cost loans for particular lenders, community institutions will be better able to compete for a larger share of the mortgage lending market.

Finally, Virginia Richards is an 83 year old widow residing in Mammoth, West Virginia. She received a solicitation in the mail informing her that she had been pre-selected to refinance her mobile home loan to receive a lower monthly payment. Rather than complete a valuation of her property, the lender used the National Automobile Dealers Association book value for her make and model and then increased that amount well above book value without considering the specific features of her home. The lender also added hundreds of dollars to Mrs. Richards' actual fixed income in order to qualify her for the loan.

The protections in Dodd-Frank requiring proper valuation and assessment of ability to pay are clearly just as important in the mobile home industry. The Dodd-Frank Act works to remedy the mortgage foreclosure practice resulting from a failure of regulation in allowing mortgage loans that were not affordable, not legitimately underwritten, and premised on fraudulent representations of value, rates, and promises to refinance.

By eliminating predatory loans like Pay Option ARM and yield spread premiums as well as strengthening requirements for valuation and determination of ability to pay, the Dodd-Frank Act provides essential consumer protection and further benefits community financial institutions. Thank you.

Chairwoman CAPITO. Thank you. We will now have a round of questioning, actually, probably a couple of rounds of questioning. I'm going to go ahead and start with my 5 minutes. Aaron has been keeping track of my time, so he'll make sure we stay in line.

Let's talk about mortgages, because obviously that influences a lot of people, and influences all institutions. Mr. Brewer, do you do mortgages at Peoples?

Mr. BREWER. We do mortgages, but currently most of our mortgages are being sold on the secondary market. The mortgages we currently keep are those that, for instance, maybe we're doing a workout for someone or helping someone, but any new purchases go to the secondary market.

Chairwoman CAPITO. And, Mr. Loving, you do mortgages, and Mr. Hageboeck, in your testimony you mentioned that you do, also. Let's go to the ability to repay, because I think that's—we had testimony in front of our committee in Congress from the CFPB which is going to set the parameters for the ability to repay.

Mr. Hageboeck, in terms of your institution, if the standard is not set properly, what would that do to your ability, what are you going to do, how are you going to react if you're worried about lawsuits pending? What is your reaction going to be and what would the resulting action be for people seeking a mortgage at your institution?

Mr. HAGEBOECK. The ability to pay—in theory, our bank, and I think every bank in the country understands that we don't want to make loans to people who can't pay them back. When we make a loan, we're looking at the ability to pay interest and principal and to pay the principal down over 15 to 30 years pending. So the concept that we need someone to tell us that we have to determine whether a customer has the ability to repay seems silly to us. We have done that for 100 years as a bank.

The key to that requirement, because in and of itself the ability to repay isn't going to cause us any harm because we try to do that anyway, is that we can be sued, as I understand it, for the life of the loan if something goes wrong. If we judge at the time the loan is made that the customer has the ability to repay it, and 22 years later something happens, and in retrospect it looks like maybe they didn't have the ability, all of a sudden, we have a problem. So we're going to become very, very tight with our lending subject to that kind of legal risk.

And so, Dodd-Frank assumes that there will be something called a qualified mortgage, that if you meet certain parameters, then the mortgage will be exempt from that legal risk. The concern that we have is that the definition of qualified mortgage is going to be too narrowly drawn, that many of the loans we make here in West Virginia which we deem to be very safe, that we—in our experience we have had very few foreclosures through this most difficult of economic times, so our experience will tell us we know what we're doing in underwriting a customer's ability to repay.

But we can envision a rule that defines a qualified mortgage in such a way that we are unable to make a lot of mortgages that we make today and we would cut back our mortgage lending to whatever is deemed to be qualified mortgages. I don't see us taking a legal risk, particularly based here in West Virginia, of making loans that would subject us to significant litigation.

Chairwoman CAPITO. I think just going back to your comment, one of the things that came out in testimony that we had in Washington a month ago was that most financial institutions believe that if they can't write a mortgage within the qualified mortgage definition, they're not going to go outside that definition because of the risk, and that's what you're saying?

Mr. HAGEBOECK. Exactly.

Chairwoman CAPITO. Mr. Loving, do you have a comment on that?

Mr. LOVING. Yes. I would agree that having a concern that the regulations as crafted, that they will be too narrow and it will force a lot of lenders, lenders such as us, out of the marketplace, because we have borrowers every day who may meet that qualified residential mortgage definition, and with the assumption that is proposed, that revocable assumption that is there, I would much rather have an absolute exclusion rather than as Mr. Hageboeck said, 22 years later be sitting in a room much like this trying to determine what revocable assumption is. I would like to have it confined, because there are borrowers who are good borrowers who do not, and I'm afraid will not meet the regulations as they will be crafted.

Chairwoman CAPITO. Thanks. Senator Manchin?

Senator MANCHIN. Ms. Brown, the examples you gave, were any of those loans made by community banks?

Ms. BROWN. These three were not, Senator. We do have a few cases against community banks but it is a fraction of our practice.

Senator MANCHIN. So the problems you have seen are with the large investment banks?

Ms. BROWN. That's primarily what we see, and I do think the issue of underwriting—community banks have a relationship with their customers, they hold loans on their books, they have the proper incentive to properly underwrite a loan, where national lenders, at this point, do not.

Senator MANCHIN. And I would also like to say with Commissioner Cline being here, with West Virginia's laws, we get very few foreclosures from very few bank lenders, so there's something we're doing right.

Mr. Wohlever, you said that your business has been harmed severely because of that crash?

Mr. WOHLEVER. Yes, sir.

Senator MANCHIN. Strictly because of that, the way the banking laws have been changed since the market crash—

Mr. WOHLEVER. It's because so many banks have stopped making the mobile home loans.

Senator MANCHIN. And to our three bankers here, when did you all have an inkling something was wrong? You all had to see it before, because you're in that market every day, when you knew that the large investment banks were way outside of the comfort zone. And I think, Mr. Brewer, you just mentioned that you're still selling your mortgages?

Mr. BREWER. That's correct.

Senator MANCHIN. To me, if you were keeping those mortgages in-house, it would be much more advantageous for me as a borrower from you to have that relationship and you to have that relationship with me, knowing me well enough to want me to succeed.

Mr. BREWER. And we were up until approximately 2008.

Senator MANCHIN. So then, the crash basically changed your business model for community banks?

Mr. BREWER. That's correct, mainly because of the rate environment, and we could not afford to take the interest rate risk, being a small institution, to place those homes on a 30-year note on our books.

Senator MANCHIN. To compete with the larger investment banks?

Mr. BREWER. That's correct.

Senator MANCHIN. And what we're seeing and what we're reading and what we have been looking at as far as incentive, we're seeing that a lot of the large investment banks are still out there, and they're still making very risky investments. We haven't seen that being reeled in the way that I think we intended for it to be. You guys were harmed invariably from the get-go. That's the hardest thing I'm having to understand right now. How come it didn't protect what we wanted to protect and what we came after—I wasn't there at the time the bill was passed, but yet it changed your whole—Skip, I don't know how it would affect it so quickly in your situation, almost overnight as Mr. Wohlever said, in 2008 his whole business changed because he couldnt get capital. Is it something, Bill—

Mr. LOVING. I would say that, if we're talking in particular about mobile homes and modular homes, there were significant changes in the underwriting guidelines for mortgages such that in many cases, they will not qualify. We are a lender for mobile homes. We'll do mobile home loans both on rented or owned land, single-wide or double-wide, but many of the customers, as Mr. Brewer indicated, are looking for long-term fixed-rate mortgages.

At the attractive rates that we're seeing today, many of the products that they're purchasing will not qualify, and so as a result of that, the solution is in-house financing, which we love to do, but we have a problem, as Mr. Brewer indicated, with an asset liability perspective. We cannot do a 6-month CD and a 30-year mortgage and offset the two. It just wouldn't work. And so, we have to look at asset liability and customer needs and whether the unit itself will qualify.

Senator MANCHIN. Back to the first question I asked you, I have given you a chance to think about that. Did any of you see this coming? Did you feel that something was wrong in the banking world before we crashed, after Glass-Steagall was done away with in 1998–1999?

Mr. HAGEBOECK. I don't think I saw things coming any sooner than the 2008 as the rest of us watched Barry, Stern and Lehmann go under and a variety of large banks.

Senator MANCHIN. Did you anticipate there would be a problem if Glass-Steagall was done when it was repealed back in, what was it, 1998–1999? Did you all, and being in your profession, would you have anticipated now that's going to turn the faucet loose on them now?

Mr. HAGEBOECK. No, I don't think so. That was a fair time ago. I think Glass-Steagall allowed, as I recall, commercial banking to combine with investment banking, to combine with insurance, and I'm not so sure that Glass-Steagall in and of itself was the problem.

I think the problem was that large banks became larger, and then larger yet again, and then larger yet again to the point where they run organizations that are so complex that no one sitting at the top of that organization can possibly know everything that they do, every product they sell, every risk they take, and they try really hard to have risk committees and risk teams and they still miss stuff, as we have seen recently with JPMorgan Chase, a significant loss from something that they didn't really understand they were doing. In community banks, CEOs know what's going on in their organization because we're just a lot closer to it.

Senator MANCHIN. Thank you. I'll save some more for the second round.

Chairwoman CAPITO. Mr. Renacci?

Mr. RENACCI. Thank you, Madam Chairwoman, and thank you all for your testimony. It's interesting—I was a business person for 28 years and if you went back over the history of the loans that I took out to grow my business and looked at some of those loans, you probably today would not be able to do them, and I probably would have criticized loans over 28 years, yet I was able to create over 1,500 jobs and employ over 3,000 people starting a business at the age of 23. So I look at that and say it's interesting that the only jobs that are really being created today appear to be through Dodd-Frank. It's the regulators and it's your compliance staff at your banks. So I guess I would really like to hear from the three of you. If your compliance staff is growing, what are some of the costs to the customer? I'm trying to get specifics. We hear this so much in financial services that we're throwing compliance at them, it's hurting their ability to provide, and I would like to hear why is it hurting their ability to provide? Please give me some specifics. What is that compliance staff causing your specific banks to not be able to do?

Mr. HAGEBOECK. In our case, we organize compliance thankfully a little differently than most institutions do. Most institutions have a compliance staff that really handles all aspects of compliance from the very beginning to the very end. We decided years ago not to do that and we have 2 people in our organization of 800 who are fully devoted to compliance. Their only responsibility is to become aware of the laws as they are passed and interpret them and then take them to people who work in our organization and communicate with them about what's expected of them and then to help them come into compliance. But we expect our line divisional management to take responsibility and ownership of compliance.

Mr. RENACCI. What would those two people be doing if they weren't doing compliance?

Mr. HAGEBOECK. What would those people be doing?

Mr. RENACCI. Would you have two new people working on loans, meeting with customers? I guess what I'm asking is, has there been a diversion of two people away from that?

Mr. HAGEBOECK. That's a really complicated question. More important than those 2 people are the 20 people I have in the organization who spend some significant part of their day on compliance. The head of my mortgage lending division, the head of my consumer lending division; I don't think they do anything other than compliance today.

These are senior level folks who spend 8 hours a day doing nothing other than implementing regulations, which means they're not focused on how can we make more mortgage loans, how can we be more creative in bringing product to the market that will provide customers with an opportunity to work with us on the consumer side, how can we do a better job with auto lending and home equity lending? But those two folks do nothing other than compliance. That's a huge distraction.

Mr. RENACCI. Mr. Brewer?

Mr. BREWER. With us, we have 29 full-time employees. We had to take one person, one of our officers and put them over compliance where approximately 70 percent of their day has nothing to do but with compliance-related issues, whether it's through regulation interpretation or training employees on the proper way to interpret the regulation or to implement the regulation. This means that person's previous job has to be divided among others or that cost that we put into that person is something that we could be putting into other services. That was that person's, part of that individual's job previously was to investigate and to research new products and services that we may offer our members. Now we're not even looking at new services. Not only do we have not anyone to look in that direction but the amount of regulation or proposed regulation, you don't know what the effect would be and what the true cost may be to you for a service like that.

Mr. RENACCI. Mr. Loving?

Mr. LOVING. In our institution, we have 78 employees. We have one full-time compliance officer, and we just recently went to a compliance committee. And the purpose for that is to have more people involved in the compliance process, particularly as we see Dodd-Frank and some of the other new regulations starting to unfold. We need to make sure there's more than one person involved in adhering to the compliance or the new compliance rules that are coming out.

A small issue, you asked about the specific cost, as I said in my testimony, every dollar we spend in compliance in any way is a dollar that we are not investing in our community. But each year, as part of DSA and other regulations, we have a separate audit that is performed by an outside auditor that we pay for. We just recently had to have a RESPA audit done that was $5,000. And so it's a dollar here and a dollar there and it does add up to a considerable investment in compliance over the long haul.

Mr. RENACCI. Thank you. My time is up.

Chairwoman CAPITO. I'm going to start again. Ms. Brown, on the three examples that you mentioned, I think the SAFE Act that we passed in a bipartisan way would help a lot with the licensing requirements and that's why we have seen a lot of these kind of fly-by-night brokers that vaporized on the national scene. Would you agree that has helped that situation, to your knowledge?

Ms. BROWN. I'm sure that has helped. I think that elimination of the yield spread premium is also key in changing incentives.

Chairwoman CAPITO. There's a big push back on that and so I think that is yet to be determined on how that's going to push back on the industry absent—not necessarily Members of Congress. The other thing I think that I want people to know that we addressed is this appraisal issue. As you looked across the country, you saw it, and I'm sure the three of you sitting there cannot imagine that you would go back to your appraiser and say, I need another $150,000 on this property, and $50,000 on this property in order for me to make this loan, and that's occurring particularly on the coast, most notably in California, Nevada, and led to some real terrible abuse of people, and people were throwing in cars and all other kinds of debt that they had to try to meet these challenges.

So I hope that not only some of the SAFE Act has covered that, that we passed previously. And so I think some of the samples like Sarah mentioned, pointed out that community bankers are not the ones making these phone calls in the middle of the night or in the middle of the day to vulnerable consumers.

I want to ask Mr. Hageboeck, you mentioned derivatives. This is a complicated topic, but I want to get it on the record again, because as you know, there is legislation out there that is being complicated not only by the influence of financial institutions but also agri-business, the power industry who try to hedge their investments when they're trying to figure out how to afford whatever fuel they're using. You mentioned in your testimony that you use derivatives in a small way to hedge and you don't believe that the new legislation is going to disallow that. What kind of influence is that going to have? How many customers do you really do this for? Is it a lot? I just have no idea.

Mr. HAGEBOECK. Sure. It actually is a fair number. The problem for us is the same one Bill talked about, that our deposits are all fairly short term, so we need to match them up against loans that are fairly short term. With interest rates being as low as they are, most customers quite wisely would like to lock in a very long-term fixed-rate level, which we can't do, and I'm talking mainly about commercial customers rather than mortgages, which can be sold in the secondary market.

So what we're able to do is add a derivative on top of that fixed-rate loan for the customer that converts it into a short-term or variable rate loan to us. So we get what we need, variable rate loans to match up against our variable rate deposits. They get what they need, which is a long-term fixed-rate loan. It's a wonderful solution to the problem, but now that customer, our small business that maybe is borrowing $3 million to finance their building and they want it for 20 years, they need to pass, or we think they're going to need to pass a test to be a qualified participant, I think was the phrase, and they're not going to qualify, because the law was designed not to deal with this customer but to deal with much more sophisticated folks but they're going to come under it and they're not going to qualify, and so they're not going to be able to get that product from us.

So it's going to change the landscape for them so they're either going to get it from somebody who ignores the regulation and goes ahead and makes it anyway, or they're going to get it from a large bank that has capital markets operation that can affect the same transaction through their own huge balance sheet.

Chairwoman CAPITO. So again, we're pushing business out of the community bank into the big four, I think you both mentioned in your testimony that the big four has what, like 43 percent of the business—

Mr. HAGEBOECK. The top 10 has 72 percent of the banking.

Chairwoman CAPITO. The top 10 has 72 percent of the banking, but in a State like West Virginia, I think it could be really devastating.

Mr. HAGEBOECK. Absolutely.

Chairwoman CAPITO. I appreciate that, because that really shows again that a one-size-fits-all regulation is not appropriate in this arena, and then I'll give you a chance to talk again about Basel III because—oh, I know what I wanted to ask you. Who regulates you on that derivative portion? Is that the FDIC that oversees that or is it just—the FDIC is your primary regulator, correct?

Mr. HAGEBOECK. The OCC for City National Bank.

Chairwoman CAPITO. The OCC. Okay. So the OCC would oversee your derivatives and your—whether that person is qualified to be a participant or not as part of the overall examination?

Mr. HAGEBOECK. I'm not sure whether or not there would be a regulator for that.

Chairwoman CAPITO. I think that's the question, because you have all sorts of regulatory participation in a lot of different ways. What other regulators do you have in your bank? Do you have any SEC?

Mr. HAGEBOECK. The SEC would regulate the holding company. The Federal Reserve would regulate the holding company. Of course, the FDIC is interested in every bank that they insure but we don't see them very often. We hear from them on the phone once in a while.

Chairwoman CAPITO. Have you ever had the CFPB in your office in your bank?

Mr. HAGEBOECK. No, we have not.

Chairwoman CAPITO. Have you?

Mr. LOVING. We have not.

Chairwoman CAPITO. Have you?

Mr. BREWER. No.

Chairwoman CAPITO. Okay. Senator Manchin?

Senator MANCHIN. Ms. Brown, back to you again. Do you believe that relief is needed as you're hearing from the businesses and also from community bankers, help is needed for community banks?

Ms. BROWN. In terms of their regulation?

Senator MANCHIN. Yes.

Ms. BROWN. I wouldn't feel comfortable speaking to that. I certainly respect their testimony here today and understand their concerns, but—

Senator MANCHIN. A group like yourself, that is working with the nonprofits and this and that, it carries a lot of weight and it's very helpful if we're all moving in the same direction. I understand that we basically stymied the small community banks, the investments and the capital that we need to grow, so I'm hoping that you all will take a position on that.

Ms. BROWN. From our perspective, we prefer our local West Virginians to be able to work with these community lenders who do understand their specific needs, who are invested in their long-term well-being and commitment to homeownership. We do see a lot of what happened in the national mortgage market as a real threat and in a sense competition to our community banks and feel that along with the protection, Dodd-Frank does level the playing field and take away a lot of the incentive and misrepresentation that West Virginians really experienced from some of these national lenders. With those incentives taken away and the protections for national lenders almost, I think community banks would be better able to compete for the mortgage market for West Virginians.

Senator MANCHIN. Thank you. Bill, if I could start with you, what do you think would be the thing that we could do that would help the most? If there's going to be one thing we can come together on in Washington, which I still think it is possible we can, what do you think that should be?

Mr. LOVING. I think for the regulation, we cannot have a one-size-fits-all regulation. I think we have to understand the community bank and credit union model, I'll include them in this, is different than the too-big-to-fail model, and we have to have regulation that allows us to compete, provide products that our customers want and need and is vital to our communities, and we continue to do so in the same fashion that we have done for many, many years, and that's having our interest and our customers' interest and our community's interest at heart. That's what community bankers are.

Senator MANCHIN. Tom, we skipped you, I think.

Mr. BREWER. I agree. I think we can't let some unscrupulous lenders brought on Dodd-Frank and now placed us in a position that we're looked at the same as these large financial institutions and we can't compete in that environment.

Senator MANCHIN. Is there one thing that's really strangling you right now, is what I'm looking for. We're introducing legislation in a bipartisan manner here, trying to find the relief that you need and we're trying to get everybody to buy into this, but we need to have that.

Mr. HAGEBOECK. If it were Christmas in August, the big present I would ask for, which is probably undoable, is to do away with Dodd-Frank entirely. From my perspective, it serves no useful purpose, although I can understand that for some large mortgage brokers, there were a lot of problems going on.

Senator MANCHIN. From the investment bank, you think just go back to where we were?

Mr. HAGEBOECK. From my perspective, Dodd-Frank is a harm and not a help. That would be my—if I had to narrow it down to something smaller and more doable—

Senator MANCHIN. Sure.

Mr. HAGEBOECK. —it would be the Basel III capital, which has not yet been promoted against us, which I think is going to be terribly detrimental.

Senator MANCHIN. Which one is that?

Mr. HAGEBOECK. Basel III capital growth. I think if we narrowed it down to one specific piece that would be the most potentially damaging—

Senator MANCHIN. You consider that a football that could cause you more real problems than you have right now?

Mr. HAGEBOECK. Yes.

Senator MANCHIN. Mr. Wohlever, how long can businesses like you—I don't know who's suffering the most. I know that your type of business seems to be suffering. You got the brunt of it, right, from the get-go?

Mr. WOHLEVER. I believe so, Senator.

Senator MANCHIN. Okay. And are there other businesses, did any other businesses prosper at all through this whole Dodd-Frank fiasco, if you will? Are there any of them, if you know of anybody who has been able to find capital in other types of businesses? I'm sure you're looking around a little bit trying to figure out which direction to go.

Mr. WOHLEVER. Yes, I'm pretty well-connected in Martinsburg and most of the owners in Rotary are all kind of in the same boat.

Senator MANCHIN. Everybody's hurting.

Mr. LOVING. The one thing I would say is I would agree with Mr. Hageboeck about Basel III, but I would like to keep in mind if we look into Dodd-Frank, there are some good components of Dodd-Frank for community banks, primarily the increase in the $250,000 coverage for community banks, allowing us to compete against the too-big-to-fail and believe me back in 2008 and 2009, that was significant if that additional coverage was important. So we need to keep that in mind, and we also need to keep in mind that coverage is now paid fairly and has saved our institution about $130,000 a year of FDIC insurance because of the change in the assessment base. So there are some good things that are included in there that are a benefit to community banks, I'm sure.

Senator MANCHIN. Thank you.

Mr. RENACCI. Ms. Brown, I was reading your testimony here and you say that I urge members of the subcommittee not to support repeal of any aspect of the Dodd-Frank Act and its consumer protections. So you're putting a broad brush on that, saying anything at all should not be repealed?

Ms. BROWN. I am, but I would first like to say the experience of my practice is I do all litigation and I have consumers in my office who have mortgage loans primarily that were originated before 2009. By the time they reach my office and we're engaging in litigation, I'm not seeing mortgage loans that have been originated after Dodd-Frank. Certainly, many of its provisions have not been enacted. So I don't want to speak too broadly, but I am anxious for a chance to see the implication of Dodd-Frank on the mortgage market the way the expenses are shifted and what impact that will have on mortgage lending.

Mr. RENACCI. Do you believe in any way that if we had better oversight from the standpoint if the regulators really had done all their job, that maybe some of these things would not have occurred in some instances you brought up?

Ms. BROWN. I think the problem arose from a lack of enforcement of regulation and also lack of existence of certain regulation. I think Dodd-Frank has for the first time brought to the regulatory arena protections that were not previously available.

Mr. RENACCI. So like the Senator was trying to bring up here, and you just said it again, there are some enforcement actions that weren't done and then there are some good things with Dodd-Frank. The problem is the broad brush of all Dodd-Frank I think is causing some problems, which is a little what we're hearing over on this side. One of the other comments you made was an inference in your statement that Dodd-Frank might actually help level the playing field for community institutions. I would like to hear your thoughts. Do you believe Dodd-Frank will benefit your institutions?

Mr. BREWER. I think there are aspects of it that could possibly, yes, but I think it places us in a position of operating our institutions to please the regulator versus to return to our member services and products. In that respect, there are just some issues with part of the bill.

Mr. LOVING. I would agree there are some issues that would level the playing field, but many create much concern. You mentioned CFPB and the process that—I guess in order now for them to write rules and regulation, and I think if I'm not correct, they are the only agency that has one director of a board and so you have literally one person writing consumer financial protection legislation that albeit well-intended, I think there are a lot of unintended consequences that will happen such as with the qualified mortgage and there's—they did make a change just recently in proposed legislation that I think will be beneficial, but there are a lot of unknowns out there for the CFPB that concerns me as well as some of the other regulations. I don't think that in itself will level the playing field. I think there will be a detriment to the small community banks.

Mr. HAGEBOECK. There were some bad actors out there doing things they shouldn't have been doing, but by removing them, does that improve the playing field for us? I don't think so, because we weren't playing with those customers anyway. The three examples we heard were all cases where the customer didn't really need the services of the bank. They had something pressed upon them, so there was nothing there that we would have been a participant in, so I don't— getting rid of the bad actors, that's desirable but it doesn't help us.

Mr. RENACCI. Let's talk a little bit about jobs and job creation, because I think that's really the key to getting our country moving, getting our economy moving again. Do you have any thoughts on how Dodd-Frank and the overregulation are hurting the job creators? Can you give me some examples of job creators who come to your institutions? That's really where the job creations come from, those entrepreneurs out there who are walking in your door and saying, I need capital. Mr. Brewer, you said that there were actually some—demand was up. Mr. Hageboeck, you said demand was down. So what's the truth, and also I would kind of like to bring it together in one conclusion.

Mr. BREWER. Our demand is up for the automobile or small dollar loans, not mortgage lending, and we are not a commercial lender, so any commercial line we would do would be less than $50,000. That's all we, through regulation, are allowed to perform. Now, something that could help small business would be the passage of H.R. 1418, which would help just raise the business cap on credit unions.

Mr. RENACCI. If demand is down, I'm not sure if raising the cap—

Mr. BREWER. We have some credit unions that do the commercial lending in West Virginia that are at their cap and cannot take on more business lending.

Mr. RENACCI. Is demand up or demand down? I always like to hear that when I go to a new State.

Mr. LOVING. In our case, demand is down. Our loan demand across-the-board is down. We have four offices in West Virginia, rural communities, one in Virginia, and in all offices demand is down, both from a commercial perspective as well as a residential perspective.

Mr. HAGEBOECK. When I said demand was down, I was specifically talking about 2012, but we have seen the demand for credit decelerating since the beginning of the year. Credit is stronger certainly than it was at the debt recession in late 2008, 2009, but the trends I think are negative and I particularly focus on commercial and residential mortgage.

Chairwoman CAPITO. Any other questions? With that, I think I will thank our witnesses. We have gotten a lot of really good information, bringing it down to the street in West Virginia, so to speak. There are other issues that we're hearing about quite a bit—acquisitions and mergers, banks are saying we're going to have to be acquired because we can't survive in this environment. We're going to have more consolidation, and is that a good thing?

Personally, I don't believe it is a good thing, and I'm worried about that for our customers, for our consumers and for the folks that you represent. I also worry about the folks that you're representing because I worry if we do something like really squeeze down on the definition of a qualified mortgage where City National is hard pressed to write their mortgage outside of the parameters of that, that's going to hurt the customer that you serve the most, the lower-income folks or the lower and middle income, who are on the edge a lot of times anyway and they need to have the flexibility that they have been able to offer and Mr. Wohlever needs some flexibility when people are looking at the definition of what he's trying to do in his business. I don't want to wake up 4 years from now and find out that we have disenfranchised the folks that we have been most trying to protect, and this concerns me. We certainly are trying to protect the general public from the unscrupulous behavior that we saw and that you documented and that we know was going on, but we certainly don't want to cause those families who are trying so hard to get a little bit ahead to not be able to get that one peg in the wall that's going to pull them up a little bit further in terms of financing or risk-taking. Senator Manchin, did you have a comment?

Senator MANCHIN. I just thought of something. I would like to get very quickly your opinions on this, but knowing that the financial cliff, and it's not just a saying, it's for real, that we're facing and we're all going to have to be facing here after the November 6th election, because I truly don't believe anything will happen before that, but with that election coming, we're facing the tax changes as far as the Bush tax credits going off, we're facing also the sequestering, which was the mandatory cuts, and the uncertainty. We hear so much money being still on the sidelines. How much would you attribute with the uncertainty or the lack of confidence that we can fix the large financial problems that are causing the problem for the market for the downturn. Just very quickly from all aspects.

Mr. HAGEBOECK. Senator Manchin, I think that's 100 percent of the problem. As you know, I'm a trained economist. I have a Ph.D. in economics from Indiana University in economics and psychology, and the business—

Senator MANCHIN. You hear from your customers?

Mr. HAGEBOECK. —just don't know about all those things that they mention. They're not going to go out and borrow money even though they may think there's an opportunity because there just is too much risk around investment today, and they're not going to borrow the money until they feel more certainty.

Senator MANCHIN. Tom?

Mr. BREWER. I agree. We hear our members talking about the uncertainty, not only here in the United States. They're concerned because of the global effect you hear of the markets in Europe and then locally layoffs and downsizing. So yes, the uncertainty is the big issue.

Senator MANCHIN. You have a lot of customers. Are they talking about, are they concerned about the financial condition of this Nation right now?

Mr. BREWER. Yes.

Senator MANCHIN. So you all hear it. Bill?

Mr. LOVING. Yes, I would agree. I think uncertainty is a significant element in our economy today. No one can predict, can make an investment without knowing what the impact is going to be next year. So I think yes, it's a big issue.

Senator MANCHIN. If people have money, they're sitting on it, right?

Mr. LOVING. They're sitting on it, they're not investing, yes.

Senator MANCHIN. And they're not coming to you all trying to leverage their own money by borrowing money or anything, so that interest is down for that reason?

Mr. LOVING. Correct.

Mr. WOHLEVER. Senator Manchin, I think that's an excellent observation. While that is kind of a simple question, it's very complex. There's so many elements that go into it and when you add up all these different areas of uncertainty, I do think we have just an enormous amount of people who are just waiting to see what's going to happen.

Ms. BROWN. Again, in my practice, I see homeowners currently in a mortgage and facing a lot of economic uncertainty in terms of how they're going to make each month's bills meet, so there's quite a bit of concern about the economic impact and the impact on their family monthly budget, and certainly there's some concern about the national budget as well. But in terms of whether they're going out to refinance or get other loans, at this point I see homeowners again trying to figure out this month's bills.

Chairwoman CAPITO. I think that I will call the meeting to a close.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

With that, this hearing is adjourned. I would like to thank everyone for your participation. I think we have gotten a lot of very valuable information.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

A P P E N D I X

August 20, 2012

TESTIMONY OF

TOM BREWER

PRESIDENT AND CEO OF PEOPLES FEDERAL CREDIT UNION

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

AND

CONSUMER CREDIT

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

AN EXAMINATION OF THE CHALLENGES FACING COMMUNITY FINANCIAL INSTITUTIONS IN WEST VIRGINIA

ROBERT C. BYRD COURTHOUSE – CHARLESTON, WV

AUGUST 20, 2012

Chairman Capito and members of the Subcommittee:

Thank you very much for the opportunity to testify at today's hearing on challenges facing community financial institutions in West Virginia. My name is Tom Brewer and I am President and CEO of Peoples Federal Credit Union in Nitro, WV. My credit union has been in operation for almost 50 years and we have $95 million in assets and serve approximately 11,000 member/owners. I first became involved with the credit union when I worked for Union Carbide at the Institute plant. I was elected by the membership to serve on the credit union's board of directors in 1985 and I did so as a volunteer for 12 years. In 1997 I became CEO of the credit union and I have served in that capacity for the past 15 years.

Peoples Federal Credit Union was originally chartered to serve the employees of the Union Carbide Plant at Institute. Over the years the plant changed hands several times and the employment base has been drastically reduced. In the mid 1990's our credit union converted from a single sponsor charter to a community charter and we now serve residents of Kanawha, Putnam, and Mason counties. Throughout our history our mission has remained the same: to provide affordable saving and lending services to our members.

The burden faced by community financial institutions in dealing with the increased volume and compliance costs of federal financial regulations.

One of the most significant changes I have seen during my 27 years with the credit union involves regulatory burden and compliance with the multitude of complex regulations we must now address. Credit unions are one of the most heavily regulated businesses today and the volume of regulations seems to increase every year. (See attachment 1) These come from not only our regulator, the National Credit Union Administration (NCUA), but also from the Federal Reserve and numerous other federal and state agencies. The creation of the Consumer Financial Protection Bureau (CFPB) poses yet another concern as they begin to issue new regulations for the financial services industry.

Regulatory compliance is a top priority at our credit union and we strive to remain fully compliant with these multitude of regulations. We employ 29 full-time individuals to operate the credit union and one of these is devoted full-time in the area of compliance. With a relatively small staff, having someone devoted full-time to compliance is a considerable financial burden and was unheard of only a few years ago. It diverts resources from direct member service, such as from the teller line or from the loan department or from financial counseling. With budgets already very tight, this added expense impacts what we can pay members on their savings and what they have to pay on their loans. For every dollar spent on compliance, it is a dollar less we can provide in direct member service.

Most of the costs of compliance do not vary by size and, therefore, are proportionately a much greater burden for smaller institutions. If a smaller credit union offers a particular service, it has to be concerned about complying with most of the same rules as a larger institution, but can only spread those costs over a much smaller volume of business. Today there are 100 credit unions operating in West Virginia with roughly 50% of them having less than $10 million in assets. Many of these have only one or two full-time employees who manage all aspects of the operation with guidance from their volunteer board. Not surprisingly, smaller credit unions consistently say that their number one concern is regulatory burden. Difficulties in maintaining high levels of member service in the face of increasing regulations is a key reason that some credit unions have merged into larger credit unions in recent years.

Of all the challenges we face in today's very difficult financial environment, coping with compliance is at the top of the list.

The effect of these regulations on promoting or reducing economic growth in West Virginia for financial institutions and their small businesses and consumers.

There is nothing about the current climate of over-regulation that could be considered positive for economic growth in West Virginia. Some of the regulations are repetitive and simply confuse consumers. Many of our members feel the disclosures we have to provide them for both deposit accounts as well as for loans are excessive. Also, while we understand the importance of complying with the Patriot Act, the many facets it entails when opening an account often frustrates our members.

One area where a great deal of good could be done with regard to economic growth in West Virginia would be passage of legislation to increase the cap on member business loans for credit unions. By passing H. R. 1418 an additional $13 billion in new capital for small business loans could be generated, creating an estimated 140,000 jobs nationally. In West Virginia, that amounts to $ 31 million in new business loans and 335 new jobs.

An overview of the role community financial institutions play in West Virginia.

Because of our ownership structure, Peoples FCU is truly a part of the communities we serve. Our board is elected by our "community" of members and is representative of them all.

We serve as a financial lifeline for many in our three county area. We are seeing more and more small dollar loans and emergency loans for such items as tires, hot water heaters, and payments to get utilities turned back on. We make loans for as little as $250 and we have specially trained financial counselors to assist members in dealing with their financial difficulties. There is little doubt that many of our members are living paycheck-to-paycheck and we strive to assist them with a wide array of affordable financial services. (See attachments 2 & 3 for further examples.)

Other members are experiencing more prosperous economic times and are borrowing for such items as automobiles, campers, and college tuition. We have experienced a significant increase in our deposit base over the past few years as our members seek a safe and secure institution to place their hard-earned savings. That increase has placed a strain on our capital since earnings are so tight, but we appreciate the confidence our members place in us.

The effect inconsistencies in the application of examination standards and guidance has on community financial institutions.

I recognize that one of the primary responsibilities of our regulator is to evaluate our financial performance and determine how well our credit union manages risk. However, there are many inconsistencies among credit unions in how that level of risk is evaluated. There is an expectation of uniformity in the examination process and that expectation, at times, is not being met.

For the most part, the examination process works reasonably well. However, I strongly support H. R. 3461, the Examination Fairness and Reform Act, as a way to ensure more consistency in exams and to provide much needed changes in the appeals process.

The future landscape for community financial institutions including the costs and benefits of consolidation in the industry.

Through the years, credit unions have grown considerably and now play a vital role in the local community. The Credit Union National Association (CUNA) estimates that West Virginia credit unions provided $15,584,368 in direct financial benefit to the state's 389,500 members during the twelve months ending June 2011. These benefits are equivalent to $41 per member and $77 per member household.

Overall, credit unions in West Virginia have a very bright future. Deposits are setting records and loans are beginning to increase once again. However, the number of credit unions continues to decline. In some cases, this is due to a plant closing or a company downsizing. However, for others it is due to the difficulty of operating a small credit union in light of the increasing number and complexity of regulations. When mergers occur, often times local ownership is lost and a once-flourishing community based institution is gone forever.

My credit union, as all other credit unions, exists to serve the financial needs of our members. We understand their needs and have a strong desire to fulfill those needs. In the coming years, however, it will be more difficult to do so due to over-burdensome regulations.

Thank you for the opportunity to testify before your subcommittee and I would be happy to answer any questions you may have.

Attachment 1
Finalized Federal Regulatory Changes Applicable to Credit Unions (Since January 1, 2008)

Regulatory Change	Effective Date	Agency
	1/1/2008	FEMA
1. FEMA Flood Map Changes		
	1/1/2008	IRS
2. Annual Electronic Filing Requirement For Small Tax Exempt Organizations – Form 990-N		
	1/1/2008	IRS
3. IRS Form 990 Instructions - New Reporting Form		
	1/1/2008	IRS
4. IRS Redesign Form 990		
	2/25/2008	NACHA
5. Final Rules On Transaction Origin Identification		
	5/29/2008	NCUA
6. Disclosures for Subprime Mortgage Loans		
	7/7/2008	FTC
7. CAN-SPAM Act Rules		
	10/1/2008	FHA
8. Hope for Homeowners Program for Subordinate Lienholders		
	10/10/2008	FASB
9. Use of Fair Value in an Inactive Market		
	10/22/2008	NCUA

10. Share Insurance Signs to Reflect Increased Limits		
	10/31/2008	NCUA
11. Official Advertising Statement		
	11/21/2008	NCUA
12. Incidental Powers		
	11/21/2008	NCUA
13. Share Insurance Signs for Shared Branching		
	12/15/2008	FASB
14. Amendments to the Impairment Guidance of EITF Issue No. 99-20		
	12/31/2008	NCUA
15. PCA: Amended Definition of Post-Merger Net Worth		
	1/2/2009	NCUA
16. Criteria to Approve Service to Underserved Areas		
	1/7/2009	FHA
17. Interim Final Rule on Hope for Homeowners Program		
	1/16/2009	HUD
18. Final RESPA Rule		
	1/19/2009	FED
19. Unlawful Internet Gambling		
	4/1/2009	NCUA
20. Share Insurance Signs for		

Shared Branching		
	4/27/2009	NCUA
21. RegFlex Changes for Unimproved Land		
	5/14/2009	NCUA
22. Technical Changes to the FACT Act "Red Flags"		
	6/15/2009	FASB
23. Fair Value: Decrease in Market Activity/Transactions That Are Not Orderly		
	6/15/2009	FASB
24. Recognition and Presentation of Other-Than-Temporary Impairments		
	6/20/2009	FED
25. Restructuring of Federal Reserve's Check Processing Operation: Districts 10, 11, and 12		
	7/2/2009	FED
26. Fed Rule Authorizing Excess Balance Accounts and Earnings on Balances		
	7/2/2009	FED
27. Fed Rule Authorizing Pass-through Accounts and Adjusting the Limitation on Savings Account Transfers		
	7/19/2009	FED
28. Restructuring of Federal Reserve's Check Processing Operation: Districts 6 and 8		

Across The Nation

In an effort to capture the depth and breadth of existing financial capability programs, the National Credit Union Foundation (NCUF) and its REAL Solutions™ program conducted a comprehensive national study of credit-union provided member and consumer financial education and counseling. The data derived from this study quantifies the extent to which credit unions are providing opportunities for consumers to advance their financial knowledge and decision-making skills.

The data on which this report is based was collected through an online survey of U.S. credit unions. *Credit Unions: Focused on Financial Capability Across the Nation* features an analysis of information submitted by 576 credit unions of all sizes from 45 states. These credit unions represent 8% of all U.S. credit unions, and 27% of all U.S. credit union memberships as of December 2010.

In 2010, credit unions invested millions of dollars to provide financial education and counseling programs that touched millions of lives:

- **1.6 million** consumers received financial counseling and/or advice through a credit union.
- Credit union representatives presented more than **24,000** educational sessions to over **600,000** students in classrooms across the nation.
- **111,500** student members had **$34 million** on deposit at **1,400** in-school credit union branches that encourage savings and connect financial education with financial access.
- **1.2 million** members visited or used a credit union online educational tool, resource and/or course and generated tens of millions of page views.
- **85,000** teens and young adults participated in **1,200** experiential learning events organized or provided by credit unions. Experiential learning provides participants with a taste of the real financial world in a safe and controlled environment.
- Between **19 and 24 million** credit union members have access to education and/or counseling that deals with the five individual Financial Literacy and Education Commission (FLEC) core concept categories. Credit union financial education/counseling content is designed to develop proficiencies regarding spending, saving/investing, borrowing, protecting, and earning/income.
- Credit unions invested **$140 million** during 2010 toward improving the financial capability of members and consumers in general. Whether it be through grants, human resources or budgeted financial resources, credit unions invest heavily in member and consumer financial education/counseling.

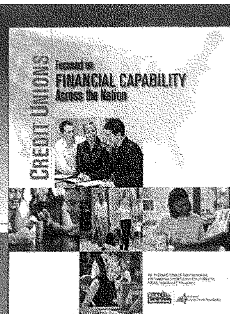
The National Credit Union Foundation believes that access to financial products and services should always be accompanied by educational opportunities. In particular, NCUF encourages behavior change through experiential learning and one-on-one counseling/advice. This link between education and impending opportunities to make financial decisions enables people to take action based on newly gained knowledge, resulting in more financially capable and secure consumers.

Credit Unions: Focused on Financial Capability Across the Nation represents one of several ongoing projects to assist credit unions with educational program development, measurement, and implementation. In the coming years, NCUF and REAL Solutions™ will continue to gather and publish data about credit union provision of financial education/counseling.

To learn more about the **National Credit Union Foundation** and REAL Solutions™, please visit www.ncuf.coop. A copy of the full report, and individual state supplements can be found at the **REAL Solutions™ Impact Center** at www.realsolutions.coop.

National Credit Union Foundation

REAL Solutions National Credit Union Foundation Program



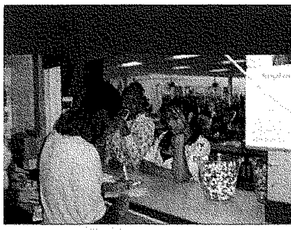
About Credit Unions

- Credit unions are not-for-profit financial institutions that adhere to cooperative principles.
- As of December 2010, 92.6 million U.S. consumers were member owners of 7,605 credit unions across the country.
- Earnings are returned to members in the form of lower loan rates, higher interest on deposits, and lower fees.
- Credit unions serve members who have a common bond such as employment, association membership, or residence in a particular geographic area.
- Every credit union is governed by a board of directors, elected by and from the credit union's membership. Board members serve voluntarily.
- Congress exempts credit unions from federal income taxes but credit unions are subject to payroll, sales and property taxes.
- Credit unions are democratically owned and controlled institutions with a "people helping people" philosophy. Each credit union member has equal ownership and one vote.
- Credit unions assist members in becoming better-educated consumers of financial services.
- Credit unions are a small but significant presence in the financial services industry. Credit unions hold approximately 6.7% of household financial assets.

Source: Credit Union National Association, Inc.

For more information, contact:
Lois Kitsch, CUDE & National Program Director
National Credit Union Foundation
5710 Mineral Point Road
Madison, WI 53705
Phone: 407.616.2409
lkitsch@ncuf.coop

January 2012



Credit Unions: Focused on Financial Capability Across the Nation

WEST VIRGINIA

Credit unions in West Virginia are working to help members through these difficult economic times and to help students prepare for futures as responsible and money-savvy adults. The following are three examples of how credit unions are accomplishing these actions.

Eastern Panhandle Credit Union is a $14 million credit union serving a tri-county area in eastern West Virginia. Charlene Gaither, CEO, was inspired by other credit unions with high school branches and wanted to help her own student community. In 2007, the credit union opened a branch in Hedgesville High School. The branch is located in the school's cafeteria and is open two mornings a week and during lunch hours twice a week.

Student tellers, under the supervision of Tina Sheppard, Member Services Manager, open accounts, take deposits, help with withdrawals and provide other services to their peers. As a result of the on-site branch, over 200 students have opened 350 different accounts and hold over $12,000 in deposits. A slightly higher interest rate is paid to students for savings and CD accounts. "It's a learning experience for all of us," says Gaither. "A teller was explaining CDs to a student, who asked if the teller was talking about some sort of music CD."

"These three credit unions are a representation of the impact our West Virginia credit unions are having in their communities to advance financial literacy."

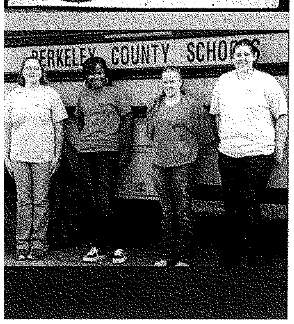
–Ken Watts, CEO of the league.

Clarksburg Area Postal Employees (CAPE) Credit Union is $11 million in assets. CEO Melinda Woodyard is a graduate of CUNA's Management School where she heard about CUNA's Mad City Money program, a budgeting simulation program for teens. "It's sort of a taste of reality, as students take on adult roles for a couple of hours and have to budget for expenses," explains Woodyard. The credit union serves only postal employees in the area, but wanted to do its part to educate youth.

This is the fourth year CAPE has been providing the simulation workshop. What started out with students from business classes in one high school has evolved to whole senior classes in four different schools. "The response to the program has been excellent," says Woodyard. "Schools hear about it from other schools and want to participate, as well. CAPE is next going to try using the simulation program to help at-risk adults learn budgeting skills.

West Virginia Central Credit Union (WVCCU) is over $90 million in assets. The credit union in conjunction with Consumer Credit Counseling Services (CCCS) offer classes twice a year to members and non-members, entitled "Credit Where Credit is Due," to help people understand credit and how to better manage it. The eight-session classes are offered every Tuesday and Thursday during the months of February and September from 5:45 pm to 8 pm, with dinner provided by WVCCU. Whereas most of the emphasis of the course is helping people understand and improve credit, a recent addition to the program is a session on budgeting.

WVCCU began offering the classes in the late 1990s. Mark Greenlees, VP of Lending took over the program in 2003 and has watched participation grow. "We generally get good participation," says Greenlees. "Sometimes as many as 40 or 50 people attend per class." The instruction books for the classes are provided free to participants by CCCS. Credit union employees and CCCS staff teach the classes. The classes are free and a test is administered by CCCS at the end of the course. People who pass the test can have their scores reported to the credit bureaus which can help raise their credit scores.



"We had one woman who had a credit score of 798," reports Greenlees. "But she wanted a score over 800, so she took the course. Another woman had several credit problems and a score in the 500s. She took the course six years ago and steadily worked her way through each credit issue. Today, she has a score over 700."

The West Virginia Credit Union League is proud of the efforts of all its credit unions to help youth and adults learn responsible money management skills.

REAL Solutions
National Credit Union Foundation Program

Testimony of

Charles Hageboeck

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

of the

United States House of Representatives

Testimony of

Charles Hageboeck

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial ServicesUnited States House of Representatives

August 20, 2012

Chairwoman Capito and members of the Subcommittee, my name is Charles Hageboeck. I am President and CEO of City National Bank in Charleston, WV. City National is a $2.8 billion bank with 73 locations throughout West Virginia, Kentucky, Virginia and Ohio and over 800 employees. By way of background, I hold a Ph.D. in Economics from Indiana University. I have spent my entire career in the banking industry working at both large and small institutions. I have worked in an executive position at a bank with 10 branches, and I have also worked in an executive position at a large regional bank with $30 billion in assets. I am thankful for the opportunity to present my views on the challenges facing community financial institutions, and particularly how regulatory impediments are making it increasingly difficult for banks like City National Bank of West Virginia to help business and consumers borrow money to purchase homes, expand businesses, and efficiently transact their depository needs.

In my testimony today, I'd like to make several key points:

- ***Community Banks, as differentiated from our nation's largest banks, have an important role in our economy.***
- ***Regulatory Pressures are Affecting Banks' Ability to Serve Small Businesses.***

  Banks are the primary lender to small businesses. As such, the presence of banks in local communities throughout our nation is critical to meeting the unique needs of new and developing companies. Regulatory pressures weigh heavily on our ability to lend to small businesses.
- ***The Cost Of Implementing New Regulations Weighs Most Heavily On Community Banks.***

Community banks generally have more limited resources compared to their larger competitors. As the volume and magnitude of regulations increase, more of these resources are dedicated to compliance rather than making loans to consumers and small businesses.

- ***Dodd-Frank Has Significantly Compounded the Problem of Regulatory Burden and May Drive Community Banks out of Lines of Business Altogether.***

  The cumulative impact of rules emanating from Dodd-Frank may be too much for some banks to bear. New rules on mortgage lending and municipal advisors are particularly problematic and must be addressed.

- ***Future Landscape of the Banking Industry***

  Particularly for small community banks, the future is bleak.

I will discuss each of these in detail in the remainder of my testimony.

I. Community Banks Have an Important Role in our Economy

The U.S. Banking industry is characterized by a few large banks which control a large portion of the banking assets in the U.S, and a large number of relatively small banks which collectively hold only a small portion of U.S. banking assets. There are only 70 banks with over $10 billion in assets, but nearly 8,000 banks with assets under $10 billion. The largest 10 banks in the US control 72% of banking assets. At $2.9 billion in assets, and operating 73 branches, City National Bank is one of these smaller community banks. There are significant structural differences between the largest banks and smaller community banks. Community banks generally operate pretty simple organizations – we make small loans to consumers and businesses and we accept deposits. And while our business model is pretty simple, in general, the products and services that we provide meet all of the banking needs for our consumer and small business clients. Community bank management teams know their employees, know their customers, know their communities, and generally know what is going on throughout their organizations.

West Virginia is a state without any large cities. The Charleston MSA (which is a collection of distinct cities and towns each with their own unique character) has a population of only 250,000 people. Community banks are essential to small towns. Large banks generally avoid small towns – and West Virginia has a lot of small towns. Large banks make large loans. Small banks make small loans – because this is all that they can do. Large banks will make small loans as well, but in my experience their capacity for responsive customer service for small customers is generally quite limited. As I will discuss later, regulatory over-burden is significantly impacting the viability of the small community bank, and in the absence of community banks operating in our small West Virginia communities, I believe that credit would be available from larger institutions only at higher rates and with significantly less attentive service.

As a community bank, City National Bank of West Virginia is focused on building and maintaining long-term relationships with our customers. We have to have this long-term view because we plan to be here for a very long time, and that requires us to provide the financial services that will keep our communities strong and growing. We cannot be successful without such a long-term philosophy and without treating our customers fairly. Because we operate in only a limited number of communities, our success and future depends entirely upon the vibrancy and growth of these communities. For that reason, I believe that community banks like City National Bank are also more involved in supporting the community both financially and through commitment of time and energy by employees and management. In my experience, the large banks in our community are far less visible within our community's cultural and not-for-profit organizations than community banks. The absence of community banks in our West Virginia small towns would significantly undermine community support for these towns.

Community banks like mine pride themselves on being agile and quick to adapt to changing environments. In response to local demand, for instance, we were the first in our markets to introduce an innovative checking option, Bounce Back Checking, for individuals who have been denied the opportunity to open a checking account and are looking for a fresh start. In fact, some of our large bank competitors are known to quietly refer depository customers to City National Bank because their own internal policies prohibit allowing them from openning accounts which they know City National Bank will open.

Having worked at large banks, and having worked at small banks, I believe that there is an important role provided by smaller community-focused banks – particularly in the smaller cities and towns which dominate West Virginia and indeed much of the interior of our country. Community banks operate geographically where large banks would prefer not to operate; Community banks focus on smaller businesses and consumers; Community banks increase competition and make credit available on better terms and with better service than large banks characteristically provide; and, community banks are more invested in their communities. But, the viability of the community bank model is under attack. Earnings are under pressure as a result of low interest rates coupled with weak loan demand. At the same time, as I will discuss in more detail, increased regulation has both raised costs and reduced levels of non-interest income. New laws or regulations might be manageable in isolation, but wave after wave, one on top of another, may overrun many community banks, forcing consolidation of small community banks, often to the detriment of our consumers, small businesses and local communities.

II. Regulatory Pressures are Affecting Banks' Ability to Serve Small Businesses.

Banks face different types of regulation. There are regulations concerning safety and soundness which help to insure that the financial viability of the banking system, which is critical to ensuring that our economy remains strong. There are also many regulations designed to protect consumers. Both types of regulations are, in general, important and can, when appropriately designed and administered, increase economic efficiency. However, during the last decade, the regulatory burden for community banks has multiplied tenfold, with more than 50 new rules in the two years leading upt to the passage of the Dodd-Frank Act. And with the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (which was 848 pages on its own), there are more than 4,000 pages of proposed regulations and almost 4,200 pages of final regulations (as of July 12). It is frightening to consider that we are only a quarter of the way through the more than 400 rules that must be promulgated under this new law.

I appreciate that the Committee is taking time to look at the important topic of how banks, which play a critical role in helping our economy to grow, are now buried by red tape. In my opinion, the cumulative impact of the regulatory burden created over the last few years threatens to undermine the ability of small community-orientated banks to survive and prosper in the years ahead. Banks certainly appreciate the importance of regulations that are designed to protect the safety and soundness of our institutions and the interests of our customers. And we recognize that there will always be regulations that control our business because it is vital to the economy. But the reaction to the financial crisis has layered regulation upon regulation, doing little to improve safety and soundness and, instead, handicapping our ability to serve our communities. Far too often, regulations have been enacted without due consideration of the unintended consequences of such regulation. And, often, the unintended consequences are worse than the original problem.

The calculus is fairly simple: more regulation means more resources devoted to regulatory compliance. More resources devoted to regulatory compliance means fewer resources available for doing what banks do best – meeting the credit needs of our local communities. Less credit in turn means businesses can't grow and create new jobs. As a result, local economies suffer and the national economy suffers as well.

Small Businesses are Critical to Job Creation and Banks are Essential Partners

It is well-documented that small businesses are critical to the national economy. Studies produced by the Small Business Administration demonstrate that small businesses account for over half of all jobs in the U.S. and this share of total employment has been fairly stable over the past few decades. More importantly, small businesses account for as much as 65 percent of net new jobs created over the past 15 years and most new job growth during economic recoveries occurs at new and small firms. Small firms and start-ups promote innovation because they are more flexible and often more daring than larger businesses.

Banks are the primary lender to small businesses and their presence in local communities throughout our nation is critical to meeting the unique needs of new and developing companies.

At City National Bank of West Virginia, we have been helping small businesses in our communities grow for well over 100 years. Without the presence of City National Bank in these communities, I wonder how many businesses that in fact were able to grow and prosper, providing jobs and incomes for many, would never had gotten started or been able to grow? And, the regulatory over-burden is in fact threatening the financial viability of the community bank model which has been successful in our communities for over a century.

The pace of business lending is affected by many things, the most important being of course the demand for credit from borrowers. The state of the local economy – including business confidence, business failures, and unemployment levels – is the single most important factor governing our ability to lend. The national economy remains weak, and thus loan demand remains weak. Our local West Virginia economy remains relatively weak as well. While most of the communities in which we operate did not see the significant downturn in home prices beginning in 2008 that touched off the national recession, the state of West Virginia's economy is significantly correlated with the health of the coal business, and the coal business is suffering from both the slow national economy as well as challenges in getting EPA approval for permits to mine coal. Let's be clear. Banks are anxious to lend to credit worthy customers. Banks do not turn down loan applications because they do not want to lend – lending is what banks do. We lend at every opportunity to those borrowers with viable projects that we deem capable of repaying principal and interest over a reasonable period of time. But, in a slow economy, many proposed projects don't make sense for the borrower or the bank. Were economic growth to increase, some of these potential loan opportunities would once again make sense to borrower and bank alike – and we stand ready to make them.

Our still fragile economy and uncertain economic future makes borrowers less interested in adding new debt. Studies indicate that lack of sales remains the top concern for businesses. Without strong sales prospects, businesses won't hire more workers, grow production, and invest in new products. At City National we are experiencing slow demand for loans and we would characterize loan demand as lower that we would consider healthy. While economists claim the US economy is no longer in recession, if they are correct, the recovery remains far from robust. The lack of economic growth is our single biggest concern.

In the banking industry, our ability to lend to businesses and consumers is also dependent upon our capital levels. Capital levels declined significantly in our industry during the recession as banks charged-off bad loans, which reduced capital levels. The largest banks were able to recapitalize themselves through public offerings of their common stock. However, smaller community banks that experienced significant reductions in capital due to loan losses have generally not been able to increase their capital in the same manner. Coupled with regulatory expectations to maintain even higher capital levels, many of these community banks have indeed been unable to actively lend. City National Bank just announced plans to acquire Community Bank based in Staunton, Virginia. Community Bank, which was a very active lender in the years leading up to the recession, has been forced to restrain their lending practices due to their capital levels and the already high level of loans on their books. The Basel III capital regulations are currently a significant concern for community banks. These regulations were originally not supposed to apply to small community banks. As I understand it, and in their proposed form, they now will apply to community banks. This is of grave concern to community bankers across the US. In particular, banks with significant residential mortgage loans may find that while they were previously considered to be very strongly capitalized, under Basel III, their required capital levels will increase from current levels, which may cause these smaller institutions to constrain their lending activity at a time when availability of credit for business customers is going to be critical to helping the US economy get "un-stuck". A quick review of City National Bank's balance sheet suggests that our capital ratios would fall if subject to Basel III – which would impact our ability to lend to consumers and small business customers. I am told that one estimate is that perhaps half of the community banks would in fact be under-capitalized if subject to Basel III. I would encourage Congress to support delayed implementation of Basel III capital requirements for community banks by banking regulators along with significant study of the consequences to community banks of implementing these requirements.

III. The Cost of Implementing New Regulations Weighs Most Heavily on Community Banks

The burden of regulatory compliance is keenly felt by all banks. But smaller banks generally do not have as many resources as their larger brethren and endure greater difficulty in adapting to new regulations or to changes in existing regulations. Historically, the cost of regulatory compliance as a share of operating expenses is two-and-a-half times greater for small banks than for large banks. Consider that from July 9 to August 10, a 30 day period, the CFPB and other bank regulators issued over 2,500 pages of proposed rulemaking notices, all of which will profoundly change the ways banks operate. (293 pages addressing a high-cost mortgage proposal; 1,099 pages addressing mortgage disclosures; 700 pages regarding Basel III; and 428 pages regarding a mortgage servicing proposal). All in a 30 day period. I am not sure how Bank America keeps up with that, let alone community banks. Consider the plight of one of my peers, Rock Branch Community Bank, operating 1 branch with about 35 employees. Exactly how are they supposed to be make loans, serve customers well, remaining vigilant with regard to our safety and soundness, and address regulations equivalent to 5 reams of paper on a monthly basis? It is an impossible task – all the more frustrating because at our level, for the community bank, we fail to see much redeeming value to the new regulations because the banking industry was already one of the most highly regulated industries in the country.

City National Bank's direct compliance costs exceed $1 million. This includes salaries, compliance training, legal and consulting services, compliance software and IT expenses, printing expenses and privacy mailing expenses, and various record-keeping requirements. While this is a significant expense for City, the real challenge for our company has been the near total distraction for some of our senior officers as they focus on insuring that our policies and practices conform to regulation. Our Senior Vice-President in charge of residential mortgage lending and our Senior Vice-President in charge of Consumer Lending now spend most of their time on compliance – which means they spend virtually no time on figuring out how to make loans more available to consumers who need them.

Unfortunately, in my view (and repeating that I believe that an appropriate level of regulation is desirable and useful) many of the regulations our staff is focused on addressing do not in any way improve the products that we offer to our customers, or improve the manner in which those products are delivered. City National Bank has a history of successfully serving our communities for over a century. We have come through the recession extremely well. We were named the 3rd and 8th best performing bank in the US in 2010 and 2011 respectively by Bank Director Magazine. We did not participate in TARP, our asset quality has remained solid, and our stock has been one of the best performing bank stocks during my tenure at City. Our bank is successful because we make wise decisions about how much risk we are willing to take in pursuit of profit. It is not in our best interest to adopt business practices that are highly risky or that are adverse to our customers. Nor it is generally in the best interests of our peers to do so. In my view, regulatory paradigms need to begin by insuring that the operating environment for banks is such that banks will, generally, choose of their own volition to appropriately balance risk and return, and to adopt business practices that are, generally, in keeping with our customer's best interests. If the environment in which we operate is thusly established, then regulations serve as a back-stop against errors made rather than regulations needing to capture every contingency and potentiality. I believe that the environment in which banks operate today does in fact generally encourage banks to appropriately balance risk and reward, and to treat customers in appropriate ways. The recession which began in 2008 was the deepest and longest since the great depression. Because the recession had its roots in declining residential real estate prices, and because residential real estate loans are the predominant earning asset for many banks, it makes sense (although unfortunate) that the recession's impact upon the safety and soundness of the banking system was dramatic. Despite the serious economic shock that our industry experienced, relatively few banks have failed. (And it should be noted that the most troublesome of those that did fail were very large banks and not community-based banks.) That the banking industry came thru this recession pretty well, all things considered, demonstrates that the landscape in which banks operate today is generally one in which banks have incentives to "do the right things".

Likewise, with respect to regulations designed to protect customers, my perspective is that bankers recognize that it is in our own best interests to treat customers well. Customers have other options for the provision of banking services, in addition to intense competition between banking institutions. So, if we fail to treat our customers well, then they will select alternative financial service providers. Since our entire future is dependent upon building and growing our customer base in the long-term, we do not begin each day wondering how we can trick or take advantage of our customers. Regulations seem to suppose just the opposite. Again, while I agree that some level of regulation is necessary and appropriate, I believe that the crushing regulatory burden enacted, and being implemented today, begins with a false premise and that the unexpected consequences of the regulation in terms of excessive compliance costs and unanticipated changes in bank behavior exceed any benefits derived from such regulation.

Inconsistencies in Application or Regulation

The regulatory burden on community banks is far more onerous than for large banks. In the last several years, I have had the opportunity to examine the financial records of a number of community banks that were considering joining their franchise with a larger bank like City. My experience has been enlightening. I believe that regulations are not applied consistently to large banks and small banks. In some cases, I think this makes sense. Regulations designed to insure the safety and soundness of small banks and large banks are, I believe, applied differently. This makes sense. Small banks aren't systemically important. It doesn't make sense to expect small banks to comply with regulations on capital, liquidity, interest-rate risk management, operational risk management, etc. to the same extent that large banks do. To do so would be too expensive for these banks and the costs would outweigh the benefits. Regulators have understood this for many years. Regulations concerning consumer protection seem to be a different matter. It would be hard to explain why a customer of Bank America should be treated differently than the customer of a small bank operating a single branch in Charleston WV. Both customers deserve the same level of protection. And here is the rub. My experience tells me that small community banks can not, and are not, complying with all of these consumer protection regulations. The regulatory over-burden is so extensive that no small bank could possibly do so. As a result, regulators of small banks must be regulating them differently than large banks, at least now, while the regulations are in the process of being fully implemented. However, in the long-run, I suspect that the regulatory expectations will be similar for these types of regulation – and the cost and burden of complying with them for the small community bank will significantly reduce the financial viability of the small community bank model.

Considering that the median sized bank in this country has $166 million in assets and 38 employees, it is not difficult to see how the burden of absorbing increasing compliance costs is magnified for smaller institutions. And it is not just in-house staffing requirements that must be considered. Banks must also factor in the high cost of attending conferences and seminars, the many subscriptions to legal and accounting services that are necessary to ensure nothing is missed, upgrades to IT software to monitor our activities, and the additional burden of proving that we have in fact complied with the new law. On top of all this, the regulatory agencies want to see independent third-party confirmation, so besides internal audits, banks now have to have outside audits for compliance -- a significant expense.

Along with the real, hard-dollar costs are lost opportunity costs. Instead of being trained on how to expand markets or bring in new customers, employees are trained on how to comply with regulations. Money that would normally be employed making loans to consumers and small businesses is instead diverted to pay consultants, lawyers and auditors. And instead of investing capital in new products and services, banks are paying for changes to software to ensure compliance with new regulations.

One example of regulatory over-burden relates to the outdated requirement that a physical placard be affixed to ATMs notifying customers of the possibility that they may be charged a fee for using the machine, even though any actual fees are fully disclosed on the screen before any transaction is completed. Requiring disclosure of fees, and giving consumers the ability to opt-out, is sound policy. But requiring both a physical placard and on-screen notice is a vestige from the days when such information was harder to present on the computer screen. Its main contribution today is to encourage frivolous lawsuits and force banks to spend valuable time and resources scurrying around to all their ATMs to make sure that fee notification stickers – which have no real value to today's customers – haven't been peeled off or removed by vandals.

I am certain I speak for all of my colleagues when I say that I am grateful to the House of Representatives for passing legislation, H.R. 4367, that removes this unnecessary and duplicative requirement. Measures such as this can do much to help ease regulatory burdens.

Another example relates to the requirement that a bank send annual privacy notices to customers even if the bank does not share nonpublic, personal information (beyond what is permitted by regulatory exception) and the bank has not changed this practice. The continued requirement that banks send such a notice to their customers every year is costly both in terms of money and man hours. Moreover, receipt of the annual notice irritates consumers and risks desensitizing them to other important communications from their bank. Personally, I get these at my home in relation to several brokerage accounts and I admit that I haven't read one of them in probably a decade. Eliminating the annual re-notification requirement when no changes to the notice have been made would provide real and immediate regulatory relief without impacting a customer's rights or existing privacy protections. That is why I support H.R. 5817 and I urge this body to quickly move to pass this important legislation.

Another very recent example at City National Bank has been compliance with regulatory oversight regarding foreclosures. Due to the serious recession and declining home prices, many borrowers were unable to continue to make payments on their mortgages, and the homes were worth less than the outstanding mortgage balance. This resulted in a huge foreclosure wave across the U.S. As a result of a few abusive practices, bank regulators took it upon themselves to protect borrowers from these abusive practices – which were, as I understand it, generally about foreclosures on homes where the foreclosing institution had little knowledge of the loan that was made, the borrowers, and in most cases wasn't even involved when the original loan was made. Makes sense to regulate these abuses - right? I am not so sure. Our banking regulators recently completed their examination of City National Bank. An inordinate amount of their time was devoted to the issue of foreclosure practices. As a result, a tremendous amount of our staff time was devoted to preparing for the examination of our foreclosure practices, which in the case of City National Bank made no sense whatsoever. During the prior twelve months we had 45 foreclosures in our organization (and many of these involved the death of the borrower). In every case, City officers took the original application, underwrote the loan, were responsible for preparation of all paperwork relating to the loan, closed the loan, and processed payments against the loan until payments stopped. We foreclosed on loans that we made and that we knew and then only after exhausting every other available option with our customer (no bank really wants to foreclose on real estate). We did nothing wrong, and I think our regulator would agree. But, we spent countless hours complying with something that had nothing to do with our company's lending practices.

Loans to consumers to help them or their children continue their education, is another unfortunate example. We used to proudly make these loans. Following new regulations that govern how loans can be made to fund postsecondary education expense, we concluded that the cost to City National Bank to comply with the regulations was so high relative to the revenue that could be derived from these loans that we don't offer them anymore. We will make loans if customers can secure them with their home in the form of a residential mortgage or home equity loan, and customers may utilize proceeds for education. But, for customers that aren't affluent and don't own their own home, their opportunity to borrow to further their education is now more difficult because at least one bank – City National – no longer competes for those loans. Surely this wasn't the goal that was desired, but this is an excellent example of "unintended consequences". Well meaning legislation actually achieved exactly what wasn't wanted.

Flood Insurance is another interesting example. When we lend money to a customer against property that is in a flood plain, we are required to obtain flood insurance – even if the customer doesn't want it. If said property has a small structure on it, say an antiquated shed, we must insure that building. Our regulators take the position that every structure has value – so regardless of how small or antiquated – we must insure it. This is a challenge because often the appraiser refuses to place a separate value on the building (which would be very close to $0) from the land in such a situation. If we place flood insurance on the building, the customer would potentially have a claim against us for forcing them to buy flood insurance when the insurance will not pay anything (because the building isn't worth anything!). This could be interpreted a "unfair & deceptive" act. However, failure to obtain flood insurance carries with it a fine of $2,000 per occurrence – a fine that may well exceed the entire value of the structure. (And yes, this really happens!) There are ways to work with each customer on an individualized basis to address this – but why should we have to? And what does it cost? The answer is it costs a lot of time & energy that could better be devoted to making new loans. And, unfortunately, while we struggle to comply with the law in this case, there is a pretty good chance that a smaller community bank will come along, ignore the law, and make the loan.

IV. Dodd-Frank has Significantly Compounded the Problem of Regulatory Burden and May Drive Banks out of Lines of Business Altogether

As I noted earlier in my testimony, we are only a quarter of the way through the more than 400 rules that must be promulgated under Dodd-Frank. The flood of regulations emanating from Dodd-Frank is so large that bank regulators have been urging banks to add compliance officers to handle it. And despite claims that community banks like mine would be exempt from the new Consumer Financial Protection Bureau, we are not exempt. All banks – large and small – will be required to comply with the rules and regulations set by the CFPB.

The CFPB, at its sole discretion, can join the prudential regulator during compliance exams. In addition, regulators will examine banks for compliance with the CFPB's rules at least as aggressively as the CFPB would do independently. In fact, the FDIC has created a whole new division to implement the rules promulgated by the new CFPB, as well as its own prescriptive supervisory expectations for laws beyond FDIC's rule-making powers. Thus, the new legislation will result in new compliance burdens for community banks and a new regulator looking over their shoulders.

Given that the cost of compliance has a disproportionate impact on small banks as opposed to large banks, it is reasonable to expect this gap to widen even more as Dodd-Frank is fully implemented. The cumulative impact of hundreds of new or revised regulations may be a weight too great for many small banks to bear. Congress must be vigilant in its oversight of the efforts to implement the Dodd-Frank Act to ensure that rules are adopted only if they result in a benefit that clearly outweighs the burden. Some rules under Dodd-Frank, if done improperly, ***will literally drive banks out of lines of business.*** With regulation as broad and far-reaching as Dodd-Frank, there are too many areas of concern for community banks to address them all, but I would like to review some that standout from my perspective as President of City National Bank.

One of the changes required in Dodd-Frank is that lenders must show that borrowers meet an "ability to repay" test—***which can be challenged in court for the entire life of the loan***, raising the risk of litigation tremendously. It is ludicrous to conclude that banks need regulators to tell them that borrowers should be able to demonstrate an ability to repay their loans. The sad reality that a few "bad actors" made loans that were beyond the capacity of some borrowers to repay shouldn't be used to justify over-reaching regulations whose unintended consequences exceed the projected benefits. The most important question legislators ought to be asking is: What makes you believe banks are, generally, unable to make these risk-reward decisions on their own? Bankers have made these decisions successfully for centuries. What was different this time? Did banker's inherent ability to make risk-return decisions fail, or was it something else? In this case, an "economic bubble" in home building was created by the belief that residential real estate prices could not drop, (at least very much). This conclusion was based upon past historical observation - in fact home prices had not ever dropped very much. As a result, some banks misjudged the risk-return tradeoff. Economic bubbles occur from time to time in market-based economies. By their very definition they are difficult to recognize until they have already happened. Now that we have recognized that home prices can be quite volatile under certain circumstances, I would propose it unlikely that banks will make the same mistake again. Therefore, I seriously question whether new regulations designed to control how banks make residential mortgage loans are really necessary. All regulation carries with it "Unintended Consequences". If the regulation serves little real purpose, the unintended consequences may create more problems than the regulation fixes. In this case, the risk is that the "unintended consequence" may be far less lending to "non-standard" customers for mortgages that have been successfully made for years to the benefit of bank and customer alike – but will now be subject to potential litigation which will choke many customers that should and could qualify for a mortgage loan out of the market.

Dodd-Frank does provide that banks can show they have met the ability to repay test by making loans that fall into a category known as a Qualified Mortgage ("QM"). The QM is intended to be a category of loans with certain low risk features made to borrowers shown to be creditworthy and able to meet the payment terms. The CFPB is tasked with finalizing a rule setting forth exactly what will qualify as a QM, but a number of concerns have arisen with regard to the approach which the CFPB may take. If the QM category is made too narrow by excluding too many loan types or by requiring borrowers to meet too high a standard of creditworthiness, then credit will contract and potential borrowers will be denied credit for which they would otherwise qualify. This is a very real concern for City National Bank and other West Virginia banks. A significant portion of our loans finance residential mortgages. Most of the mortgages we make are not sold through FNMA or FHLMC or other government agencies but are held on our own books. If the Qualified Mortgage is too narrowly defined, then loans to many of the customers we have served for years may not be "Qualified", and we would be forced to restrict our lending to these customers despite the fact that we have been able to successfully underwrite these customer's loans for many years, including throughout the recession which began in 2008. A poorly thought out definition of a "Qualified

Mortgage" would be bad for our customers, bad for us, and bad for small towns across America where perhaps we are able to make home loans that are quite ordinary and reasonable within our markets but don't look the same as mortgages made in big urban markets.

Beyond concerns surrounding QM's, Dodd-Frank also imposes broad risk retention requirements on most loans sold into the secondary market. These requirements have the potential to make it much more costly for banks to make loans and could also have the unintended consequence of denying quality loans to creditworthy borrowers.

Additionally with respect to mortgage lending, the CFPB is attempting to improve customer disclosures regarding mortgages to insure that customers better understand the provisions of their mortgage. The Real Estate Settlement Act (RESPA) covers escrow accounts, settlement statements, referral fees and other procedures regarding real estate settlement. Regulation Z (Truth in Lending) requires banks to provide disclosure statements explain the terms and cost of credit. Both disclosures statements are complicated (and required). The goal was to combine them into a simple statement easier to understand. While a good goal, implementation has been anything but. The proposed disclosure is just as complicated as the originals. Tremendous management time at our company has gone into, and continues to go into, staying abreast of disclosure requirements. Customers have not benefited and there is no evidence that they ever will. Meanwhile, our internal processes have become much more complicated. We have had to acquire new software to prepare the documents. We are now required to wait 7 days before we complete a home equity loan – in addition to the traditional 3 day right to cancel. We have been required to develop a database to track waiting times (which can change as we go thru the origination process), and processing staff has to be trained so that they understand complicated rules on waiting times. And what is the benefit? What is the consumer protected from? For our home equity loans, we cover all closing costs. So, if the customer decides they don't need the product they may cancel at any time – without cost. If they have borrowed on the line, they may find alternative financing and pay back the loan at any time with the only cost being interest between the date of disbursement and date of repayment. There are no fees or penalties for not closing. Customers prefer and request quick closing timeframes – they do not like the longer wait times, and the delay is not consistent with their needs.

Also in the area of mortgage lending, under Regulation Z, certain loans are now characterized as high-priced mortgage loans (HPML). In the case of City National Bank, some of our small-balance residential mortgage loans would qualify as HPML's. Some loans appropriately carry higher interest rates because the balance is small or the loan is less well secured. However, if the loan meets the definition as a HPML, we are required to escrow taxes and insurance. We are also required to undergo a more extensive underwriting process (which ought to be our choice and not a requirement. If the loan is for $5,000 and we choose to utilize an abbreviated underwriting process it seems to me that ought to be our choice and not a regulatory directive.) For small loans, the requirement that the loan be subject to escrow & taxes makes it more expensive to offer the loan, and thusly more expensive for the customer. As an example, if a customer owns their home free and clear, and wants to borrow $5,000 for a new furnace, we would have to structure the loan and the payments to include the costs of the annual taxes and insurance on their home. Again, these are unintended consequences for small balance loans which are quite common in our market area.

Here is another example. Under the Dodd Frank Act, a great deal of energy has been devoted to derivatives. It is the commonly held belief that "derivatives" are bad, and need to be significantly controlled. And, in their totality, is seems clear that our financial regulators need a much better understanding of the market for derivatives and the impact that they have on the global economy. But it is not true that all derivatives are bad. We frequently use derivatives to benefit our customers. Further, were accounting and regulation not so restrictive, City National Bank would be able to use derivatives to reduce our company's exposure to interest rate risk in ways that would be beneficial to our shareholders. Let's talk about derivatives from our customer's perspective. Banks do not make many long-term loans (where rates are set for more than say 5 years) because we have very few sources of long-term liabilities (we have no deposits with fixed rates for more than 5 years). If we made significant numbers of very long-term loans funded with short-term deposits, we would put ourselves at risk to rising interest rates as happened in the early 1980's when many banks failed for just this reason. However, our customers often would like to make loans with very long-term fixed rates, particularly in this low interest rate environment. As a result, our customers are led to seek financial institutions (such as insurance companies) that are willing to make very long-term fixed-rate loans. City National Bank can solve this problem by adding a derivative to the equation which allows the customer to pay a fixed-rate for a long-time while City National Bank receives a rate tied to Prime which better matches off against our short-term deposits. As a result of the Dodd Frank Act more than a dozen new regulations have been issued affecting the use of derivatives for our customers (which I do not think was ever the intent of the lesiglation. These are again the unintended consequences). While we are still sorting through all the new regulations, we recently received notice that customers may now have to be qualified as "Qualified Participants" as defined in the regulation. Unfortunately our customers are relatively small businesses and many won't meet the set standard, so we may be unable to continue to meet our customers needs using a very standard product that no one could reasonably object to but which has been made inaccessible to our customer by these new regulations. And, often a large bank, with access to "capital markets" will now be positioned to offer this customer an alternative "2nd best" solution. This is not helpful regulation and it will impact our ability our bank and other community banks to extend credit to small business customers in our markets.

The Safe Act (HUD) National Mortgage Licensing System (NMLS) requires that all bank employees who take real estate secured loan applications have to undergo a background check and register annually at a cost of $69. The real costs of this regulation are that City National Bank had to establish an internal process to track all employees that take mortgage loan applications to insure that they are relicensed annually. And, what is achieved here? A convicted felon can register under the NMLS and a mortgage broker whose business previously failed can register as well. I see the cost. Where is the benefit?

The provision on municipal advisors is also problematic and would limit services to municipalities by community banks. Banks offer public sector customers banking services and are regulated closely by several government agencies. It is generally believed that Dodd-Frank intended to establish a regulatory scheme for unregulated persons providing advice to municipalities with respect to municipal derivatives, guaranteed investment contracts, investment strategies or the issuance of municipal securities. The Securities and Exchange Commission has proposed a very broad definition of "investment strategies" that would cover traditional bank products and services such as deposit accounts, cash management products and loans to municipalities. This means that community banks would have to register as municipal advisors and be subject to a whole new layer of regulation on bank products for no meaningful public purpose. Such regulation would be duplicative and costly. Consequently, community banks would not be able to offer banking services to municipalities at a price that would be competitive and many may decide not to provide them at all. The likely result will be less innovation and diminished job creation and economic expansion. I urge Congress to oversee this implementation and ensure that the rule addresses unregulated parties and that neither Section 975 of Dodd-Frank nor its implementing regulation reaches through to traditional bank products and services.

V. Future Landscape of the Banking Industry

In my testimony I have argued that community banks have a special role within the banking system. Locally based, they are more focused on lending to consumers and small businesses, they operate in small cities and towns sometimes shunned by large banks, they provide service levels not usually seen at large banks, they engender competition which benefits the customers, and they are more invested in the community fabric than large banking institutions.

I have also argued that small community banks are struggling since the onset of the recession in 2008. Many banks, including the small community ones, were hard hit by loan losses during the recession which lowered capital levels. While larger banks were able to recapitalize, smaller banks have generally not been able to do so, which necessarily limits their ability to return to being robust lenders. Low interest rates and slow economic growth have hurt small community banks whose income is primarily driven by the spread between loan rates and deposit rates. And, sources of fee income have been negatively impacted by regulation. On top of all of these challenges, the regulatory over-burden, which was predominantly directed at problems seen to have emanated from large banks, are instead disproportionately falling upon small community banks with limited resources to address these regulations. What then is the future of community banking in the US?

Community Banks come in a variety of sizes from the very small institutions to banks the size of City National Bank. All of us have been negatively impacted by current economic conditions – low interest rates and lack of loan demand has reduced our earnings. Lower earnings means that it has been difficult to rebuild capital levels, and we are at risk that required capital levels are going to be significantly increased by Basel III which will impact our ability to actively lend to help get the economy re-energized. The industry continues to grow more and more competitive, and technological trends threaten our profitability as well. It is a tough time to be a community bank.

Consolidation within the banking industry has been an inevitable force for 30 years, and the forces that drive consolidation will continue. Consolidation is driven by the challenges of getting qualified management, aging boards, increased competition from other financial service providers, the desire for liquidity on the part of small bank shareholders, the opportunity for shareholders to profit from the sale of the small bank to a larger partner, etc. We can not, and probably should not, stop these fundamental market forces. It is my experience that there are relatively large number of small community banks that would like to join with a larger partner, have attempted to do so, are unable to find an interested partner, and so remain independent. In time, these institutions who no longer desire to run independent community banks are likely to find the right opportunity to partner with a larger bank. But, in conversation with almost every small community bank CEO that I have met, regulatory over-burden is greatly accelerating the inevitable trend toward consolidation within the industry. If, as I suggest, the small community bank holds an important part within the financial system for many small communities, this is terribly unfortunate – particularly to the extent that the regulations that they are forced to comply with, as I have demonstrated above, have relatively little to do with their own situations. And, while consolidation of the smallest community banks is probably inevitable, the recent banking crisis should have taught us that consolidation of larger community banks such as City National Bank into the largest banks in the US is undesirable. There is even talk about whether it would be advantageous to break apart the largest banking institutions. At present 10 banks control 72% of banking resources. I don't know whether breaking them up makes sense or not. But, I do believe that allowing these 10 to increase their domination of the banking industry, with the consequent reduction in competition, can not be a good thing.

If you talk with any bank CEO you will hear the same thing - regulatory over-burden is clearly driving community banks to consider consolidation, and I believe that this reality is a very clear, and very undesirable "unintended consequence" of the unfolding regulatory environment.

Testimony of

William A. Loving

President and CEO
Pendleton Community Bank
Franklin, West Virginia

On behalf of the
Community Bankers of West Virginia

Before the

Congress of the United States
House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

Field Hearing on

"An Examination of the Challenges Facing Community Financial Institutions in West Virginia"

August 20, 2012
Charleston, West Virginia

Chairman Capito, Ranking Member Maloney, and members of the Subcommittee, my name is William A. Loving, Jr., and I am President and CEO of Pendleton Community Bank, a $250 million asset bank in Franklin. Thank you for convening this field hearing here in Charleston to examine challenges facing community financial institutions in West Virginia.

Strong, vibrant community banks will play a critical role in the future prosperity of our state. I deeply appreciate you raising the profile of the serious challenges we face, and I'm pleased to testify on behalf of the Community Bankers of West Virginia. I would also like to note that I serve as Chairman-Elect of the Independent Community Bankers of America.

Speaking for the thousands of community bankers of the CBWB and ICBA, I can assure you that growing regulatory complexity and compliance costs is a top concern. In particular, the proposed rules to implement Basel III are a cause of serious alarm among community bankers. Basel III may be the gravest regulatory threat we face today and has the potential to trigger a wave of consolidation that will remake the financial industry to the harm of the communities of West Virginia. Exemptions for community banks will ensure that we are not overly burdened by international standards that are not appropriate for banks like mine serving communities in West Virginia.

But before detailing our concerns with Basel III and other regulations, it's worth considering why the preservation of the community banking industry in West Virginia and elsewhere is so important and should be a priority for policymakers. Community banks serve the credit and other financial needs of rural, small town, exurban, and suburban customers and markets that are not comprehensively served by large banks. For that reason, we will play a significant role in any broad based economic recovery. Our business is based on longstanding relationships in the communities in which we live. We make loans often passed over by the large banks because a community banker's personal knowledge of the community and the borrower provides firsthand insight into the true credit quality of a loan, in stark contrast to the statistical model used by a large bank in another state or region of the country. These localized credit decisions, made one-by-one by thousands of community bankers, will restore our economic strength.

When community banks thrive they create a diverse, competitive financial services sector offering real choice, including customized products, to consumers and small businesses alike. An economy dominated by a small number of large banks wielding undue market power and offering commodity products would not provide the same level of competitive pricing and choice. Promoting a vibrant community banking sector is an important public policy goal.

Community bank regulatory burden must be reasonable, manageable and calibrated to the actual level of risk they pose to individual customers and to the financial system. Community banks did not cause the financial crisis nor have we engaged in abusive practices that were pervasive in the lead-up to the crisis such as trading in exotic financial instruments or making mortgage loans with little chance of being repaid. Community banks should be shielded from the regulatory onslaught triggered by the crisis. Overreaching and overly complex regulation of community banks is unwarranted and imposes a disproportionate burden on them. Unlike large banks, we don't have large in-house legal and compliance teams and cannot amortize the cost of compliance over a large asset base. Even the "hard costs" of compliance do not tell the full story. Soft costs – harder to measure but of no less impact – have also increased dramatically. Employee turnover is a good example of a soft cost. Regulatory complexity causes employee turnover and increases the cost of turnover because of the expense of training new employees to comply with increasingly complex rules.

Every dollar spent on compliance is a dollar less that we have to lend and invest in the communities we serve. Every hour I spend on compliance is an hour I could be spending with customers and potential customers, acquiring new deposits and making new loans. Pendleton Community Bank survived the Great Depression and many recessions since that time. Our longevity is a testament to our conservative risk management. We treat our customers fairly because we live in the same communities and because an unimpeachable reputation for putting customers first is the key to our success. The compliance costs that we are now incurring are vastly out of proportion to any risk we pose.

New regulations have been layered on for decades but they are rarely repealed or revised. The result is a nearly unmanageable burden that is quickly approaching a tipping point where the community banking model is no longer feasible due to excessive regulatory costs.

Basel III

Regulations touch every aspect of a community banker's business. I'd like to start with a topic that is current and that is setting off alarms among community bankers in West Virginia and across the nation – the proposed rules to implement the Basel III capital standards. Unchanged, these rules have the potential, by themselves and in conjunction with many other regulatory burdens, to make community banking itself a losing proposition and trigger further industry consolidation. Today, just four banks control some 40 percent of the nation's deposits. Increasing regulatory burden will accelerate that trend, and Basel III, on top of everything else, could well spell the demise of community banking before the end of the decade.

I will note here just a few of the top concerns we have with Basel III:

- New risk weights on certain residential mortgages will impose punitive capital charges on all but standardized, "plain vanilla" loans. What's more, because of their complexity, the new risk weights will be exceedingly difficult to comply with without incurring significant software upgrades and other operational costs. Customized home loans like balloon loans – a staple of community banking – will be severely penalized with new capital constraints during a fragile housing recovery. This strikes right at the heart of the community banking model. Our direct knowledge of the community and often the borrower him or herself allows us to underwrite loans tailored to the unique needs of the borrower – loans that larger lenders are unwilling to make. It is critical that we overturn these punishing risk weights, which are also troublesome for certain types of commercial loans and nonperforming loans. We recommend that community banks have the option of continuing to use the current Basel I risk weights.

- Accumulated other comprehensive income (AOCI), a component of shareholders' equity that represents unrealized gains and losses on certain investment securities held at fair value, should not be included in regulatory capital. AOCI, as a result of a fair value measure, introduces volatility in capital that does not represent a bank's ability to absorb future losses. Additionally, in this ultra low interest rate environment, banks have been carrying large positive AOCI balances that will quickly evaporate with any meaningful rise in interest rates, which, we can all agree, will eventually occur. Larger banks have tools at their disposal to minimize the impact of AOCI on regulatory capital; community banks do not and would therefore be subject to the greatest amount of capital volatility.
- We oppose the phase-out of Tier 1 treatment of trust preferred securities (TRUPS). We believe the intent of Section 171 of the Dodd-Frank Act, commonly known as the Collins Amendment, was to permanently grandfather Tier 1 treatment for TRUPS issued prior to May 19, 2010 by bank holding companies with less than $15 billion in consolidated assets. TRUPS are a reliable source of capital for community banks and one that would be difficult to replace.
- Community banks should be given more time to meet the proposed minimum regulatory capital levels. Unlike their larger too-big-too-fail counterparts, community banks do not have access to the capital markets to raise new capital. All new regulatory capital must come from retained earnings, which is difficult to accumulate today. Artificially low interest rates make it very difficult for community banks to generate the earnings needed to meet regulatory capital minimum levels. More time is needed to ensure community banks can meet the proposed requirements for adequate capitalization. We recommend that community banks be allowed to extend the phase-in schedule for minimum regulatory capital by at least five years.

Basel III was meant to apply to the largest, interconnected, internationally active and systemically important banks. Applying the same regulatory capital standards to community banks – in a one-size-fits-all fashion – demonstrates a failure to appreciate the fundamental distinctions between banks like mine and the largest banks. West Virginia, as a largely rural state, would be significantly disadvantaged by a banking system dominated by a handful of large banks. But Basel III will put us on a fast track to just such a system. Though the rules do not become fully phased in until 2019, examiners are already beginning to apply them in the field. I urge this subcommittee to support our efforts to exempt community banks from Basel III.

To understand why Basel III is such a grave threat to community banks, consider the many other recent and pending regulations that are reshaping the regulatory landscape for community banks, particularly in the critical area of mortgage lending. Mortgage lending now involves such regulatory complexity that it can only be done by a dedicated specialist. More generalized consumer lenders can no longer originate mortgages. This complexity will only get worse. New underwriting standards, risk retention requirements, new servicing standards, escrow requirements, and new rules governing the use of disclosures will all be finalized and take effect in the coming months.

In the limited space of this testimony, it is impossible to enumerate our concerns with the gamut of these new rules. I will focus on a select few beginning with the Consumer Financial Protection Bureau's proposed ability-to-repay, or "qualified mortgage," regulations.

Ability-to-Repay Determination in Mortgage Underwriting

The CFPB proposal requires mortgage lenders to determine the borrower's ability-to-repay a mortgage before extending credit and provides an exemption from this requirement for "qualified mortgages" (QM). Because the ability-to-repay determination exposes the lender to significant legal liability in the event of default, the QM definition, and the legal protection provided to lenders for mortgages that meet the definition, will determine whether mortgage lending is an acceptable risk for community banks. We urge the CFPB to provide a "safe harbor" legal protection standard for QM loans, as opposed to a "rebuttable presumption," a much weaker standard that exposes lenders to ongoing legal liability. We thank Chairman Capito, Representative Sherman, and the 90 members of the House, including many who serve on the Financial Services Committee, for their recent letter to the CFPB in support of a safe harbor standard. Without a safe harbor many community banks will withdraw from the market, making it less competitive and more costly for borrowers. Many rural areas and small communities would be left with no or extremely limited access to mortgage credit. Without a safe harbor, the ability-to-repay provision would harm the very borrowers it is intended to help and would seriously impede the housing recovery.

We also urge the CFPB to include in the safe harbor balloon mortgage loans held in portfolio by the originating banks for the life of the loan, regardless of where and to whom the loans are made. Community banks provide these loans as a service to their customers, especially in smaller markets and rural areas where loans may be ineligible for sale into the secondary market due to property or borrower characteristics. Community banks have a vested interest in the performance of loans held in portfolio.

Municipal Advisor Registration

Another concern for community bankers is the new municipal advisor registration requirement. Community banks have always provided traditional banking services such as demand deposits, certificates of deposit, cash management services, loans and letters of credit to the municipal governments of the communities they serve. Community banks provide these services under close supervision by state and federal bank regulators. The Dodd-Frank Act provision, if interpreted broadly by the SEC, could force thousands of community banks to register as municipal advisors with the SEC and the Municipal Securities Rulemaking Board and be examined by the SEC in order to continue providing traditional banking services to municipalities. An act as simple as a town treasurer phoning a community bank to inquire about CD rates could be enough to trigger registration. We strongly support legislation introduced by Rep. Robert Dold, H.R. 2827, to provide an exemption for financial institutions and their employees from this onerous and over-reaching requirement. We thank the committee for passing H.R. 2827 and will work with you to advance it into law.

Regulatory examinations

In addition to the proposed regulations I have mentioned, and many others I could have mentioned, the trend toward oppressive, micromanaged exams is a grave concern to community bankers nationwide. The harsh examination environment impacts community banks both because we are forced to expend time and resources in interacting with examiners and because examiners are unjustifiably requiring capital levels much higher than current official standards and are inappropriately downgrading performing commercial real estate loans. As examiners begin to apply the new Basel III standards, which is already occurring well in advance of their formal effective date of 2019, the exam environment will further suffocate community banks' ability to lend and exacerbate the current economic downturn.

The Financial Institutions Examination Fairness and Reform Act (H.R. 3462) will go a long way toward improving the oppressive examination environment by creating a workable appeals process and consistent, commonsense standards for classifying loans. We are grateful to Chairman Capito for introducing this legislation. The current appeals process is arbitrary, frustrating, and ineffective. Appeals panels, or other processes, routinely lack the independence and market expertise necessary to reach a fair, unbiased decision. H.R. 3461 is a good start to improving the appeals process by taking it out of the examining agencies and empowering a newly-created Ombudsman, situated in the Federal Financial Institutions Examination Council, to make final appeals decisions. Though we favor additional measures to bring a higher level of accountability to the regulators and their field examiners, we are pleased to support the provisions of H.R. 3461 as a foundation on which to build a more rigorous appeals process in the future.

Temporarily Extending the Transaction Account Guarantee (TAG) Program

I would also encourage Members to support a temporary extension of full FDIC coverage of non-interest bearing transaction accounts. Transaction accounts, which have no restrictions on withdrawals, are typically used by businesses of all sizes as well as municipalities, hospitals and other nonprofit organizations to meet payroll and operating expenses. With so much uncertainty hampering the economy – from the looming "fiscal cliff" to unstable foreign and domestic markets – the last thing small businesses need is for the full insurance on their business accounts to expire.

With $1.4 trillion (or 20% of all domestic deposits) insured under this coverage, Congress should not ignore the danger of the sudden withdrawal of insurance if the program expires as scheduled at year-end 2012. Once-stable deposits will become "hot money" that could flee an institution at the click of a mouse in pursuit of a higher interest rate or the implicit government guarantee of a too-big-to-fail institution. The abrupt shift in funds an expiration of TAG could trigger could easily destabilize the recovering banking system, curtail credit, and threaten the fragile economic recovery.

Closing

Thank you again for your commitment to the community banks of West Virginia and for the opportunity to testify today. I've outlined some of the more significant regulatory challenges we face in the months ahead. We ask for this committee's help in providing regulatory relief for community banks so we can better serve our communities and promote the economic recovery – a goal we share with this committee. Thank you for hearing our concerns. We look forward to working with you.

MOUNTAINEER MOBILE HOMES
815 W. KING STREET
MARTINSBURG, WV 25401

Testimony of Mr. JW Wohlever
Mountaineer Mobile Homes, LLC

Before the
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
U.S. House of Representatives

Hearing on
An Examination of the Challenges Facing Community Financial Institutions in West Virginia
August 20, 2012

Charleston, WV

Thank you, Chairwoman Capito, Vice Chairman Renacci and Guests of the Subcommittee for the opportunity to testify this morning on the challenges facing the community financial institutions in West Virginia.

My name is JW Wohlever and I own Mountaineer Mobile Homes, LLC in Martinsburg, WV. Mountaineer Mobile Homes does not operate like a traditional mobile home dealer but rather it operates more like a real estate brokerage assisting owners sell their mobile homes without ever taking ownership or control of a mobile home. I am the owner and managing-member and operate this small business with one full-time employee while I am employed full-time with the federal government as a budget analyst.

What I would like to present this morning is the impact on Mountaineer Mobile Homes based on the challenges that face our community financial institutions, the reasons why I believe our community financial institutions face these challenges, and the broader scope of these challenges on the future landscape.

Mountaineer Mobile Homes was established in 2008 and operates similarly to a real estate brokerage in the mobile home community. Unlike a traditional mobile home dealer/broker which purchases mobile homes, takes possession, and sells for a profit Mountaineer Mobile Homes never takes ownership or possession of the mobile home. Mobile home owners contact us for our expertise to facilitate a sale and when the transfer from seller to buyer is executed we receive a small fee for locating a buyer and for facilitating the transaction.

In 2008 the average value of a mobile home in a Mountaineer Mobile Homes' transaction was approximately $45,000. In 2009 the average value of a mobile home transaction was just under $35,000. In 2010 and 2011 the average value of a mobile home dropped to less than $21,000 and $17,300 respectively. So far in 2012 the average value of a mobile home in a Mountaineer Mobile Homes transaction is just under $22,000.

The number of transactions that Mountaineer Mobile Homes has handled on an annual basis has declined as well. 2008 was too short of an operating year to extrapolate useful data; however, in 2009 the company handled 25 transactions. 2010 the number of transactions rose to 40 then dropped to 24 transactions in 2011. Based on Mountaineer Mobile Homes current pace we project 16 units for 2012.

The final metrics that we measured was the percentage of transactions that were financed versus number of transactions that were purchased with cash. In 2009 and 2010 the amount of mobile homes that were financed were 60% and 40% respectively. In 2011 and 2012 the amount of mobile home transactions that were financed dropped to 10% each year. The results of these three metrics are illustrated in the table below.

Year	Average/Transaction	Total Transactions	% Financed
2008	$45,000	3	Too little data
2009	$34,720	25	60%
2010	$20,825	40	40%

2011	$17,300	24	10%
2012 (Projected)	$21,800	16	10%

When the data is illustrated in a table format the trends are clearly visible. Each year the average value per transaction is declining, the total number of transactions per year is declining, and the amounts of transactions that are financed are declining. These declining trends make it very difficult and an ongoing challenge to keep Mountaineer Mobile Homes a viable ongoing concern, but notwithstanding these difficulties our customers face similar challenges.

With the credit markets nearly nonexistent for chattel loans any customer with a mobile home priced over $30,000 is facing next to insurmountable odds and hoping that we will secure a cash buyer. After lengthy listing periods with no success many mobile home owners priced over $30,000 drop their listings because they do not believe their homes will sell or sell for enough to pay off their lien. These homes coming off the market have indirectly led to some of our falling total transactions per year numbers as the number of mobile homes for sale has dwindled. When one looks at Mountaineer Mobile Homes' declining numbers and the disenfranchisement of many of the higher priced mobile home owners there appears to be a common denominator among them; the uncertainty within the local banking community.

In 2008 through 2010 Mountaineer Mobile Homes financed through seven lending institutions and they included Vanderbilt (a subsidiary of Clayton Homes), United Bank (Martinsburg), 167th Federal Credit Union (Martinsburg), Eastern Panhandle Federal Credit Union (Martinsburg), First United (Martinsburg), Citizens National Bank (Martinsburg), and City National (Martinsburg). Vanderbilt was the only equity lender and would make a loan to a poor credit customer but would require high down payments perhaps as high as 50% or more. Vanderbilt was an excellent resource because there are many individuals with poor credit but who are not high credit risks. These individuals include individuals who had one time extensive medical bills or individuals who never had consumer credit loans and thus have no credit rating. Unfortunately Vanderbilt no longer makes loans. All of the remaining lenders mentioned above are community lenders and all but Citizens National Bank have stopped making chattel loans. Citizens National Bank is the only local lender that will make a loan on a mobile home on rented land rent or in a mobile home park but requires a 30% down payment. After prequalifying a customer most of the individuals we send to Citizens National Bank are converted into real estate loan customers and they do not purchase a mobile home.

In the 30 plus transactions that we have helped individuals purchase mobile homes with financing Mountaineer Mobile Homes is only aware of one instance of default and we believe this superior record is a combination of providing sound advice and properly qualifying prospects. Given our strong track record we are perplexed while almost every local lender has ceased making chattel loans. **We believe the reason why community banks have stopped making mobile home loans is because of the Dodd-Frank Act.** Community banks which are either small to medium-size banks are aware that one of the provisions in Dodd-Frank allows federal regulators to seize and take over a bank if they believe questionable loans are being made or if they believe the bank is not being run properly. So great is the fear of federal intervention that most community banks have curtailed their lending practices and have focused on limited markets such as single-family real estate home loans. As community banks have contracted their lending business the mobile home community has been particularly hard hit because their lending options have always been more limited. Chattel loans are a niche market but it can be a very lucrative market if proper qualifying standards are applied. The problem is accentuated for Mountaineer Mobile Homes because we are focused on the used mobile home business and lending for used mobile homes is even more restricted than for new mobile homes.

As more community banks decided to stop making mobile home loans Mountaineer Mobile Homes explored the idea of raising private capital to finance transactions. The enormous amount of rules and regulations imposed by RED Laws and the SAFE Act made it impossible to pursue this avenue. After studying these requirements it is our understanding that only a large bank can meet the requirements of RED Laws and the SAFE Act. However, if we could have done this we would have set up an equity lending operation and made sensible loans to individuals with poor credit but possessed other positive compensating factor such as high savings, long-term steady employment, or high income. Like our mobile home customers Mountaineer Mobile Homes has limited financing options.

Manufactured housing is a key source of quality, affordable housing for more than 22 million Americans and comprises 8% of the homes the United States (Housing Statistics > Percent of Housing Units That are Mobile Homes by state, 2004). According to the U.S. Census Bureau in 2010 there were approximately 132,000,000 homes (State & County QuickFacts, 2012) in the United States and at 8% 11,000,000 are mobile homes. This puts into perspective the amount of households, mobile homes, and individuals who have their options limited because of the lack of financing.

Mobile homes offer an affordable housing choice that fills the need that cannot be filled in any other way. The affordability of mobile homes is striking; the median purchase price of a used manufactured home is $27,000 versus $107,500 for an existing single-family home according to 2009 American Housing Survey data. Mobile homes are excellent starter homes that get people away from renting and into homeownership and all the benefits that are derived from homeownership. They become a stepping stone into more traditional single-family homes; however, this cycle does not work when mobile home loans are not available. Individuals who are unable to purchase and sell mobile homes stop the cycle before it begins and this also slows traditional single-family homeowners from moving into larger single-family homes.

This paralysis in the cycle of homeownership purchasing and selling is a direct result of community banks pulling out of chattel lending and refusing to make mobile home loans. We believe the community banking decision to stop making mobile home loans is a direct result of the fear created by the Dodd-Frank Act which allows federal regulators to take over bank due to questionable loans or questionable operating procedures. While the Dodd-Frank Act may have had good intentions we believe its repercussions has forced small to medium banks, which represent the majority of community-based banks, away from the mobile home lending business. This decision has had a direct and negative effect on Mountaineer Mobile Homes as our business has declined. We believe this Act has far greater reaching and negative effects as it has stopped or greatly reduced a significant portion of the entry-level housing market from purchasing and selling their homes and has curtailed the buying cycle preventing millions of Americans from progressing into larger homes.

In closing I would like to put out one more thought which deals with the problems of limited liquidity. During the subprime lending crisis of 2007 and 2008 much attention was given to the small down payment loans which made it easy for individuals to walk away from their commitments and forced banks holding large portfolios of repossessed properties. I've often thought about the Veterans Administration which has been guaranteeing loans for over 60 years. The majority of these loans are made with no down payments yet VA guaranteed loans did not suffer from the same high failure rates similar to the subprime market. The reason I believe that VA guaranteed loans were not subject to abnormally high default rates is because the VA maintained high qualifying standards; through proper qualification they identified good lending candidates despite the fact they may have made no down payment. I submit that one of the solutions to the lending problem is to focus on qualification standards and not down payment benchmarks.

Thank you very much for the opportunity to testify on this important issue and I welcome any questions.

JOHN D. ROCKEFELLER IV
WEST VIRGINIA

United States Senate
WASHINGTON, DC 20510–4802

John D. Rockefeller IV
Statement for Record for House Financial Services Subcommittee Hearing on Financial Institutions in West Virginia
August 20, 2012

Madam Chairman Capito,

Thank you for holding this subcommittee hearing today on an issue of great importance to the state of West Virginia. Our financial institutions provide the capital to new and existing businesses that allows them to survive and prosper.

Over the past year, I have had a number of opportunities to discuss the challenges West Virginia's financial institutions are facing with officials from banks and credit unions, as well as the small business owners who rely on capital from these financial institutions.

A common theme I have heard in these discussions is the fear that over-regulation will drive up the cost of lending and make it more difficult for businesses to borrow. I am pleased that today's witnesses will be able to share their concerns about existing and proposed regulations, and I look forward to studying their recommendations carefully.

The Dodd-Frank legislation was passed in the wake of years of unethical behavior by a number of bad actors, who helped fuel the financial crisis that caused the Great Recession. The results of this recession touched every American in the form of lost jobs, lower home values, and retirement fund losses.

The Dodd-Frank legislation was important, but no law is perfect. The bad actors that caused the crisis are not in this room today. West Virginia's banks and credit unions were forced to weather the storm along with the rest of the state. If there are pieces of the Dodd-Frank law that are unworkable, or there are unintended consequences of this law that harm West Virginians, they should be fixed. But we must be careful not to throw out the good with the bad, or else we will place millions of Americans at risk again in the future.

The Dodd-Frank law touches on every facet of our economy and includes important items I fought for related to items as varied as mine safety and preventing unscrupulous debt collection efforts. As Chairman of the Senate Commerce, Science, and Transportation Committee, I am particularly proud of the provisions in the law designed to improve the consumer protection work of the Federal Trade Commission.

Today's hearing is an important step in the ongoing debate over our financial regulatory system, and I look forward to hearing the testimony today's expert witnesses will share.

Sincerely,

John D. Rockefeller IV

CYCLOPS INDUSTRIES
Safety Sight Glasses
PO Box 8614 • South Charleston, WV 25303
1.800.716.7506 • 304.744.9486 • Fax: 304.744.2505
email: cyclops@wvdsl.net
FACTORY MUTUAL FM APPROVED
www.cyclopswv.com

August 16, 2012

Honorable Congresswoman Shelly Moore Capito,

Reference: hearing regarding "An Examination of the Challenges Facing Community Financial Institutions in West Virginia

Chairman Capito,

On behalf of myself and 2 sisters who now own our family business of 53 years I appreciate being contacted by the Congresswoman regarding this event.

Following I have outlined the issues I find concerning regarding our current economic environment State and Nationwide.

- B & O Taxes for having a business inside city limits. .30/$100 of income.
- Personal Property taxes on equipment and inventory to produce our product.
- EPA increased fees on minimal producers of hazardous waste from $24.00 to $100.00 in one year time.
- In order to do business with our government the hoops you have to jump through with the paperwork alone is discouraging to say the least. Example of a government order and current non-government client will be presented if desired.
- Have to spend capitol for someone who has gone to school to learn how to obtain a government bid on order to comply with all the regulations involved in that.
- We are a 100% woman owned business. In order to have us registered with the government as such we would have to hire someone to help us with that process.
- Increased cost of our Workers Compensation policy to fund the defunded State policy.
- Increased cost to business who pay their taxes from the ones who don't and the inadequacy of State and National government to go after those and the ones who can afford to hire "Big Time" lawyers to find the deeply buried loop holes provided in legislation and tax law. A lot of it being buried in other legislation.
- The more money our company makes the more taxes and insurance we pay. Can not keep any capitol in excess without it being almost double taxed by the state and federal government.
- Our company only borrows money with secured loans. It helps reduce the interest rate we can obtain from a bank, reduces the risk for the bank of us defaulting on the loan. They have nothing to lose in the transaction.
- Really 50 copies of my response to submitted 2 days before the hearing? That is ½ a ream of paper !!!!!

- The reduction in the FICA rate to employees by 2% with no breaks given to the employer.
- Increased bank fees to small business because of the government's regulation on their industry. $6.00 for the bank to now make a photo copy of the checks we write on the back of our statement when we used to get the actual check back? Make an error in addition? Well that will cost you and your company another $5 - $10 dollars. Want to do business overseas and collect the money for your product? That will cost your company a minimum of $40.00 per transaction via wire transfer.
- Cost of processing credit cards..... well that could be a hearing by itself.
- Complicated tax codes designed for the "Big" businesses that have the capitol to keep on staff accountants and lawyers to swim through all those regulations and loop holes.
- Our company has been in business 53 years not because the "government" made us Mr. President, but because our grandfather had an idea and through his hard work and determination created what we do today.
- The skyward costs of providing insurance to our employees through Obama Care and being penalized if you don't. Our company proudly does offer this benefit to our employees currently.
- Special tax breaks and electricity rates given to a big business promising to bring their company to our state when we pay the same no matter if we have a stellar or lean year.

I know a lot of what I have outlined does not directly pertain to the banking industry, however if you truly want to know what is plaguing our economy you need go no further than Washington. Small business owners can talk to our faces are blue and it seems we are talking to people who have more than likely spent more time in Washington giving themselves raises, loop holes, premium insurance coverage, outstanding retirement benefits, friends jobs and influential positions in regulatory branches, all on the taxes collected from business like ours. Can we really expect anyone, anyone in government to (as my Dad used to say) cut their noses off to spite their face?

Friend wants to run for political office, I express how wonderful that is and ask why. Friend responds: If I would happen to be elected I would have it made for the rest of my life." Speaks volumes to me, how about you?

Thank you for the opportunity to express our challenges.

Kindest Regards,

Mrs. Kim Mack, President
Cyclops Industries, Inc.

*****CYCLOPS INDUSTRIES, INC.*****
SERVING THE INDUSTY FOR 53 YEARS
WE ARE A PROUD SMALL BUSINESS