PRESERVING CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

HEARING

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U.S. HOUSE OF REPRESENTATIVES

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PRESERVING CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

Wednesday, March 18, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room HVC–210, Capitol Visitor Center, Hon. Jeb Hensarling [chairman of the committee] presiding.

Members present: Representatives Hensarling, King, Royce, Lucas, Neugebauer, Pearce, Posey, Fitzpatrick, Westmoreland, Luetkemeyer, Huizenga, Hurt, Stivers, Mulvaney, Hultgren, Ross, Pittenger, Barr, Rothfus, Messer, Schweikert, Dold, Guinta, Tipton, Williams, Poliquin, Love, Hill; Waters, Maloney, Sherman, Lynch, Green, Cleaver, Himes, Kildee, Delaney, Sinema, Beatty, Heck, and Vargas.

Chairman HENSARLING. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "Preserving Consumer Choice and Financial Independence." I now recognize myself for 3 minutes to give an opening statement.

I would say of all the priorities of our committee, I know of not one that is more urgent than providing some regulatory relief for our community financial institutions. It is not an exaggeration to say that they are literally withering on the vine. We are losing more than one a day and they are not perishing of natural causes. The sheer weight, volume, cost complexity, and uncertainty of Federal regulation is a burden that is killing them off. And as they die, unfortunately so do the dreams of millions and millions of our fellow citizens, hardworking taxpayers who rely upon these community financial institutions to help buy a pickup truck to drive to work, maybe help fund the first kid in their family to ever go to college, or to start a small business and achieve their American dream of financial independence.

It is not an exaggeration to say that every single week, we hear from another financial institution that is having trouble meeting the needs of their customers. I have one here from a bank in Arkansas who says that due to the Qualified Mortgage (QM) rule, they have had to cease funding mobile homes, "which have long been a source of homeownership for low- to moderate-income consumers in our markets."

Here is one from a credit union in California who says that due to Federal regulation, one of their members can no longer wire funds to a family member in the Ukraine. Here is one from a bank in Massachusetts, that writes, "We have experienced a spike in loan declines to women." Further investigation identified that women attempting to buy the family home to settle their divorce and stabilize their family were being declined at a high rate due to the Dodd-Frank Qualified Mortgage rules and the ability-to-pay rules.

Regrettably, these are not exceptions. We hear from these banks and credit unions every day and we understand how the Federal regulation can adversely impact low- and moderate-income Americans.

Now some, particularly those on the other side of the Capitol, have said community financial institutions are doing just fine. In fact, they have said, "Regulators have been doing a pretty good job of protecting community banks." I suspect many of our witnesses will disagree with their statement. And I believe that assertion is just wrong, dangerously wrong and out of touch with low- and moderate-income Americans.

Much, but certainly not all, of this regulatory burden has emanated from Dodd-Frank. I am not a fan of Dodd-Frank, but even I can find some good in it: what Dodd-Frank attempted to do on Section 13(3) of the Fed; what it has done to help eliminate the credit rating agency's monopoly; what it has done to make balance sheets less opaque.

So if I can find some good in it, I hope that my friends on the other side of the aisle can admit that maybe it has done some harm. I know Barney Frank has found at least a half dozen different areas where he would amend his own law. He said it right in front of us, right in front of this committee back in July. So I would ask all my Democrat colleagues to have an open mind as we enter into this, and I invite all Members to engage in the bipartisan effort of regulatory relief for our community financial institutions; find some common ground.

I will reserve the right to have an exception to the rule, but the rule is going to be that if any Member brings us a legitimate bipartisan piece of legislation to provide needed regulatory relief to community financial institutions, we will mark it up. Time is of the essence, so let's get started.

I yield 4 minutes to the ranking member.

Ms. WATERS. Thank you, Mr. Chairman. Today we gather to supposedly discuss preserving consumer choice. And while the principle itself is an important one, I am highly skeptical that any of the issues or solutions we will consider today can be described as a serious effort to do so. History tells us that opposed to virtually every effort to sensibly correct private sector failures have cried wolf in our position to reform; saying that the regulation would end by hurting the very people it tries to help by removing their choices. It is a talking point that has existed for as long as this government has tried to protect consumers and the broader economy.

For example, in 1934 New York Stock Exchange President Richard Whitney opposed the creation of the Securities and Exchange Commission, arguing that it would destroy the markets and businesses Congress sought to protect.

As recently as March 2007, just months before the economic collapse, representatives of industry and the Bush Administration argued in front of this very committee that reforms to the toxic subprime market would harm access to credit for first-time home buyers. Over time, these regulations, like those that prohibit child labor, mandate seatbelts, and protect consumers from poor quality foods, drugs, and toxins in our environment, among others, have shown that markets and industries function better when consumers know that products need basic standards, and that means protecting consumers from unsafe and unsound financial products, no matter how profitable they are to lenders or how cheaply they can be offered to borrowers.

The irony is that by weakening regulations and consumer protections put in place after the Great Recession, this committee would affect choice and financial independence, but in the wrong way. It would invite a return to a recent time when hardworking Americans were choosing whether to pay for medication or their mortgage, and when they were choosing between taking their family to a homeless shelter or spending one more night in the car. A free market system with ample consumer choice only works when businesses compete on cost and quality.

I don't know how much they can cut corners or bend the rules. That is true whether they are talking about faulty exploding toasters or faulty exploding mortgages. Mr. Chairman and Members, I welcome your invitation for bipartisan legislation. As you know, I have met with you and I have tried. We have worked hard and continue to work hard for community banks. Unfortunately, there are those who wish to include too-big-to-fail banks in anything that we try for our community banks. We have witnessed a time when consumers had no protection. We have witnessed a time a time when not only did consumers have no protection, but the fact of the matter is, we had one of the most important things happen in Dodd-Frank, and that is the development of the Consumer Financial Protection Bureau, which has taken into consideration concerns of community banks, and has made modifications. And we have said on this side of the aisle, where there are technical changes or concerns, we are willing to work with them.

And so I am pleased to hear the offer that has been made by the chairman today and I look forward to working with them in any and every way that we can to deal with real issues and not just talking points.

Chairman HENSARLING. The gentlewoman yields back. The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, the chairman of our Financial Institutions Subcommittee, for 2 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman, for holding this important hearing. There was a recent Harvard University study that appropriately described what I knew when I was a community banker, that their competitive advantage is the knowledge and history of their customers and the willingness to be flexible.

Unfortunately, this big regulatory burden that we have placed over our community financial institutions is taking away their flexibility. And every Member here has been back to their district and has heard from their financial institutions on how they are maybe not able to provide the same services, or make some of the same loans that they made in the past.

What we are also hearing is, alarmingly, that we are seeing a lot of consolidation in our community financial institutions. I think when you look at the credit unions and the community banks, that nearly 2,200 consolidations over the last 4 or 5 years, and why is that important to our communities? Because when you look at the community financial institutions, they are the primary supplier of credit for our small businesses. They are, in many cases, the only source for mortgages in those particular markets.

If you look at, in my district, for example, production agricultural loans. Community financial institutions make over 75 percent of the production agricultural loans in this country. And so we have to move away from the government knows what financial products are best for you, and go back to the scenario where the customer, the consumer, the borrower and their lender are working out the best solutions for them. And we also need to preserve our community financial institutions which are such an integral part of our community.

And so, Mr. Chairman, I thank you for holding the hearing today. And I look forward to hearing from our witnesses on this very important subject. With that, I yield back.

Chairman HENSARLING. The gentleman yields back.

We will now go to our witnesses.

Our first witness is Mr. Tyrone Fenderson, the president and CEO of Commonwealth National Bank, testifying today on behalf of ABA. He received his bachelors degree from Faulkner University and completed the graduate programs at the Louisiana State University and Troy University. He was named to Birmingham Business Journal's top 40 under 40 list in 2006.

Our second witness is Mr. Patrick Miller, the president and CEO of CBC Federal Credit Union, testifying today on behalf of CUNA. Prior to joining CBC, Mr. Miller worked for 22 years in the financial services industry. Mr. Miller is a graduate of Hiram College.

At this point, I will yield back to the gentleman from Texas for our next introduction.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. It is my pleasure to introduce David Williams, the chairman and CEO of Centennial Bank in Lubbock, Texas, testifying today on behalf of ICBA. He is a Lubbock native, second generation of family. Their family has been in banking for a very long time. David knows a lot about community banking. And another special relationship that I have is that not only is David a personal friend, but about 38 years ago Mr. Williams helped this young homeowner from Lubbock, Texas, start a development company and took a chance. I think that is the spirit of community banking, so we are delighted to have Mr. Williams testifying today.

Chairman HENSARLING. And the gentleman's recommendation is that he took a chance on you?

Our next witness, Peggy LaMascus, is the president and CEO of the Patriot Federal Credit Union in Chambersburg, Pennsylvania, and she is testifying today on behalf of NAFCU. This Thursday is Ms. LaMascus' 45th anniversary in the credit union industry. We all know she must have started at the age of 10. Ms. LaMascus is a graduate of the Huntington College of Business.

And finally, Professor Adam Levitin is a professor of law at Georgetown University Law Center, and he has testified before us before. Before joining the Law Center, Professor Levitin worked as an attorney in private practice and clerked on the U.S. Court of Appeals for the third circuit. He holds degrees from Harvard Law School, Columbia University, and Harvard College.

Each of you will be recognized for 5 minutes to give an oral presentation of your testimony. And without objection, each of your written statements will be made a part of the record. For those who have not testified before, there is a green light, yellow light, and red light system, not unlike the lights you encounter on the highways, and they mean the same thing. We would appreciate you keeping to the 5-minute limit.

At this time, Mr. Fenderson, you are recognized for your testimony.

STATEMENT OF TYRONE FENDERSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMONWEALTH NATIONAL BANK, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)

Mr. FENDERSON. Chairman Hensarling, Ranking Member Waters, my name is Tyrone Fenderson, and I serve as president and CE0 of Commonwealth National Bank in Mobile, Alabama. My bank is one of the small community banks that I hear members of this committee often speak of. We are a $60 million institution that works every day to serve the needs of our customers of Mobile.

I appreciate the opportunity to be here to represent ABA and to discuss how the growing volume of bank regulations, particularly for community banks, is hurting the ability of banks to meet the needs of consumers and our communities. ABA appreciates the leadership of many members of this committee in addressing this issue. Community banks are resilient. We have found ways to meet our customer's needs despite the ups and downs in the economy. This job has been made much more difficult by the avalanche of new rules, guidance, and seemingly ever-changing expectation of regulators.

It is this regulatory burden and the fear of even more regulation that often pushes small banks to sell to banks many times their size. In fact, today there are 1,200 fewer community banks than there were 5 years ago. This trend will continue unless some rational changes are made to provide relief to America's hometown banks.

Regulation shapes the ways banks do business and can help or hinder the smooth functioning of the credit cycle. Every bank regulatory change directly affects the cost of providing banking products and services to customers. Even small changes can reduce credit availability, raise costs, and drive consolidation. Everyone who uses banking products and services is impacted by changes and bank regulation.

Let me briefly share a story that a banker recently shared that illustrates the impact these rules have on communities. The bank located in Texas recently had to take all lending discretion away from its loan officers. Due to the fears of inadvertently violating fair lending regulations, it now must rely solely and exclusively on a numbers-driven model to underwrite their loans. This has meant turning away loans that they otherwise would have made. In one case, this meant turning down a 30-year customer who had never been late on a payment for a loan to repair the heat in his daughter's home.

Stories such as this are common in hometowns across the country. This is why it is so important for Congress to take steps to ensure that the banking industry's ability to facilitate jobs and grow our economy exists.

We urge Congress to work together, Senate and House, to pass bipartisan legislation that would enhance the ability of community banks to serve our customers. We support legislation that would require regulators to tailor their regulatory approach so that it only applies where the bank's business model and risk profile require it. Regulators should be empowered and directed to make sure that rules, regulations, and compliance burdens only apply to segments of the industry where it is warranted.

Some of the bills introduced by this committee are also an important first step. Representative Barr's American Jobs and Community Revitalization Act, H.R. 1389, contains provisions that would reduce the burden on community banks in ways that make it easier to meet customer's needs.

A few key provisions include ensuring that loans held in portfolio are considered Qualified Mortgages; requiring a review and reconciliation of existing regulation; providing a longer exam cycle for highly-rated community banks; and streamlining currency transaction reports for seasoned customers.

Additionally, legislation introduced by Representatives Luetkemeyer, Neugebauer, and Barr contains measures that would help American hometown banks get back to serving our communities. Some of these provisions of the bill would eliminate mailing the privacy notices when no changes have been made to privacy policies; allow highly-rated, well-capitalized community banks to file short-form call reports; establish an effective appeals process to the definition of a rural area; and ensure proper oversight of the CFPB. ABA stands ready to help and work with Congress to address this important issue. I would like to thank you for your time, and I will be happy to answer any questions that you may have.

[The prepared statement of Mr. Fenderson can be found on page 109 of the appendix.]

Chairman HENSARLING. Thank you.

Mr. Miller, you are now recognized for your testimony.

STATEMENT OF PATRICK MILLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CBC FEDERAL CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION (CUNA)

Mr. MILLER. Thank you, Chairman Hensarling and Ranking Member Waters. Thank you for the invitation to testify today for the Credit Union National Association. I am Patrick Miller, president and CE0 of CBC Federal Credit Union located in Oxnard, California. America's 100 million credit union members rely on their credit unions for safe and affordable financial service products. As member-owned, not-for-profit institutions, credit unions continue to provide tremendous benefits in terms of lower interest rate loans, higher returns on deposits, low or no-fee products and services, and financial counseling and education. Because credit unions actively fulfill their mission as Congress intended, consumers benefit to the tune of about $10 billion annually.

However, since the beginning of the financial crisis, credit unions have been subjected to more than 190 regulatory changes from nearly 3 dozen Federal agencies, totaling nearly 6,000 pages. These new rules, usually aimed at curtailing practices that we don't engage in, impact us because we have to do several things: assess the rule and determine how to comply; change internal policies and controls; design and print new forms; dedicate additional resources to retrain staff; update computer systems; and finally, help our members understand all these changes.

And we have done this over 190 times in just the last few years. Obviously, this takes time and money, both of which could be far better spent serving our members. After all, every additional dollar spent on compliance is a dollar that cannot be loaned to a member.

Regulatory burden is not just about the dollars and cents of running a credit union. We serve hardworking members, your constituents, and this constant onslaught of regulations directly affects their ability to borrow. Not every member and every loan fits arbitrary rules imposed by regulators. Without the flexibility to determine the appropriate services, credit union members lose out. After the CFPB issued a QM rule, we originated about half the amount of our borderline mortgage loans that we would have made before.

For example, we had to deny 50 families a home loan, who we feel were qualified borrowers, simply because we feared regulatory scrutiny on non-QM loans. I should be able to evaluate the ability to repay of my credit union members in Oxnard, California. The decision should not be left to someone in Washington.

Overregulation has real-world consequences for our members. Credit unions should not be required to comply with rules more appropriately suited for too-big-to-fail institutions. I agree with members of this committee who said that too-big-to-fail has turned into too-small-to-survive. Small financial institutions are consolidating at an alarming rate due to the weight of regulatory burdens and the high cost of compliance. Jobs are lost, communities are underserved, and the consumer is left with fewer options. For example, regulations that adversely affected my credit union are the CFPB mortgage servicing rules. These rules were created because of companies like high-risk mortgage servicers and Wall Street banks, not credit unions. Our credit unions have never had any loan servicing complaints, yet the pages and pages of new rules make it more onerous and expensive to service home loans.

Outsourcing costs are outrageous and would cost our credit union more than $100,000 per year. This is an unnecessary expense, and since credit unions are member-owned, this extra cost affects our members directly.

While I can share numerous other stories with the committee, I also want to focus on just a few of the more than two dozen recommendations for statutory changes found in my written testimony. For example, we encouraged Congress to ensure the CFPB uses exemption authority to a much greater extent than it has to date. Members of this committee have acknowledged that the Bureau has such authority, but we believe it is now being used sufficiently. We ask Congress to clarify and strengthen these exemption instructions as they pertain to smaller depository institutions like credit unions.

We also urge the committee to actively engage in the debate over data security. Credit unions and their members are greatly impacted by the weak merchant data security practices that have allowed several large-scale breaches. At my small credit union, we dedicate $575,000 a year to cybersecurity because protection of data is of the highest priority, particularly when merchants are not doing their part. The negligence of those that don't protect their payment information costs my industry money, and shakes the confidence of our members. These fees would be significantly reduced if those that accept payments were subject to the same standards as those that provide cards.

Frankly, I am concerned about the security of the vast amount of consumer data being collected by the CFPB and other regulators. More needs to be done on this issue, and we encourage the committee to act.

My written testimony also includes two recommendations related to the Federal Home Loan Bank System: one would permit credit unions to join the System; and the other would give us parity with banks and extend the community financial institution exemption to include credit unions under $1 billion in assets.

Credit unions did not cause the crisis, but you wouldn't know that based on the hundreds of rules to which we have been subjected. Since you believe we are not the problem, please work with us to remove the barriers that keep us from serving our members, your constituents. Congress can do a lot more to remove barriers for credit unions and we are grateful for the committee's desire to address these issues. Thank you again for the opportunity to testify today.

[The prepared statement of Mr. Miller can be found on page 135 of the appendix.]

Chairman HENSARLING. Mr. Williams, you are now recognized for your testimony.

STATEMENT OF J. DAVID WILLIAMS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CENTENNIAL BANK, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA (ICBA)

Mr. WILLIAMS. Chairman Hensarling, Ranking Member Waters, and members of the committee, I am David Williams, chairman of the Centennial Bank in Lubbock, Texas. I am pleased to represent the Independent Community Bankers Association of America, and 6,400 community banks, at this most important hearing.

Centennial Bank, chartered in 1934, is a $740 million bank. It serves rural and urban markets in the Panhandle, South Plains, and central Texas. Our mission is to build successful and meaningful lifetime relationships with our customers. This long-term culture, typical of thousands of community banks across the Nation, is at risk today.

In recent years, Centennial Bank has seen the nature of our business fundamentally change from lending to compliance. Regulatory burden reaches the level of overkill when it injures the customer or consumer it was intended to protect.

Please consider the following examples: A startup small business owner, or farmer, may have business-related debt on their credit report that will disqualify them under QM's 43 percent debt-to-income (DTI) limitation. Business formation should be encouraged, not punished. Minority borrowers are more likely to exceed the DTI limitation according to a Federal Reserve study of lending in 2010.

As a small creditor under the CFPB's definition, my bank is not subject to the debt-to-income limitation and we serve these customers, but many other community banks do not have small creditor status.

Even as a small creditor, my bank is significantly limited by QM. Here are some examples of loans that are not QM even for small creditors. Low-dollar loans are common in many parts of the country for rural and refinancing. Both the QM closing fee—excuse me, but the QM closing fee cap is often a challenge when making these loans. Balloon loans, which were used to manage interest rate risk on loans that can't be sold into the secondary market, are non-QM unless they are made by lenders in predominantly rural areas, beginning in 2016.

For banks like mine that serve both rural and urban markets, it is nearly impossible to meet the "rural lender" definition. In our New Mexico market, regulatory barriers to mortgage lending are pushing would-be homeowners into the rental market. In Clayton, New Mexico, for example, an average renter now pays $800 to $900 a month, though he or she could purchase a much nicer home for $80,000 with a monthly mortgage payment of $400. I believe the disparity between rents and mortgage payments in this market is directly attributable to the overly stringent underwriting required by the new mortgage rules.

I hear these stories again and again from community bankers in Texas and around the country. These are not isolated anecdotes. Numerous empirical studies, which I cite in my written statement, have reached the same conclusion. The good news is there are readily available solutions to this pending crisis. ICBA's plan for prosperity is a robust regulatory relief agenda with nearly 40 recommendations that will allow Main Street and rural America to prosper. A copy of the plan is attached to my written statement.

This committee's work in the last Congress set the stage for enacting meaningful regulatory relief in Congress. We are encouraged by the bills that have been introduced so far, many of which reflect our plan for prosperity. Chairman Neugebauer's Financial Product Safety Commission Act, H.R. 1266, would changes the structure of the CFPB so that it is governed by a five-member commission. This would create a system of checks and balances that is absent in the single director form of governance.

I want to highlight the CLEARR Act, H.R. 1233, introduced by Representative Luetkemeyer, which contains provisions addressing mortgage regulatory relief, capital access, and reform of oversight and supervision. The CLEARR Act has been endorsed by 34 State community bank associations. A key provision of the bill, automatic QM status for any mortgage held in portfolio, is also contained in the Portfolio Lending and Mortgage Access Act, H.R. 1210, introduced by Representative Barr.

A portfolio lender that holds 100 percent of a credit risk has every incentive to thoroughly assess the borrowers financial condition. This is a simple, easy-to-apply solution to the threat of QM. These bills, among others before the committee, are all a part of the solution to regulatory burden. We strongly encourage this committee to complete the work that was done in the last Congress, and enact meaningful regulatory relief for community banks. Thank you again for the opportunity to testify. I look forward to your questions.

[The prepared statement of Mr. Williams can be found on page 186 of the appendix.]

Chairman HENSARLING. Ms. LaMascus, you are recognized for your testimony.

STATEMENT OF PEGGY BOSMA-LAMASCUS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PATRIOT FEDERAL CREDIT UNION, ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS (NAFCU)

Ms. LAMASCUS. Thank you. Good morning, Chairman Hensarling, Ranking Member Waters, and members of the committee. My name is Peggy LaMascus, and I am testifying today on behalf of NAFCU. Tomorrow will mark my 45th anniversary with credit unions, having started at Westvasamco Federal Credit Union on March 19, 1970. For the last 33 years, I have been the CEO of Patriot Federal Credit Union, a community credit union in Chambersburg, Pennsylvania, serving over 51,000 members in 3 counties in Pennsylvania and Maryland.

The entire credit union community appreciates the opportunity to expand on the topic of regulatory relief. The impact of the growing compliance burden is evident as the number of credit unions continues to decline. Since the second quarter of 2010, we have lost 1,200 federally-insured credit unions, 96 percent of which were below $100 million in assets.

Many institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over. Many others have had to cut service to their members. Credit unions and their members need regulatory relief, both from Congress and their regulators, including NCUA and the CFPB. Our members at Patriot have been directly impacted by regulations. For example, we hear from members who are angered by the outdated six transfer limitation from Federal Reserve Regulation D. This includes a homebound, disabled member who managed her finances primarily through phone and electronic services because of the difficulty of leaving home to come to a branch. She is one of our many members feeling the burden of this outdated requirement.

Other members can no longer make international remittance transfers with us. Patriot opted to stop doing them because the new CFPB requirements were too costly and burdensome to comply with for the limited number we make annually. One of the greatest challenges credit unions face is the major disconnect between the regulatory agencies in Washington, and the real world credit unions and their members live in.

While regulators have taken some small steps toward relief, too often arbitrary assets thresholds don't actually consider the risk or complexities of institutions. Regulation of the system should match the risk to the system. My written testimony outlines NAFCU's updated, five-point plan for credit union regulatory relief, as well as our new top 10 list of regulations that need to be amended or eliminated.

One example of a burdensome regulation where costs will outweigh the benefits is NCUA's new risk-based capital proposal. The new proposal is an improvement over the initial proposal, but the problem with the regulation remains. The proposed rule is extremely costly, and NCUA has not demonstrated why credit unions need a broad brush regulation.

Despite NCUA's estimate that a limited number of credit unions will be downgraded, the proposal would force credit unions to hold hundreds of millions of dollars in additional reserves to achieve the same capital cushion levels they currently maintain. These funds could otherwise be used to make loans to consumers or small businesses.

Ultimately, we believe legislative changes are required to bring about comprehensive capital reform, including allowing credit unions access to supplemental capital. NAFCU also believes that field of membership rules for credit unions should be modernized on both the legislative and regulatory fronts, and I have outlined ideas for those in my written testimony.

Additionally, cost and time burden estimates issued by regulators are often grossly understated. We believe Congress should require periodic reviews of actual regulatory burdens of finalized rules, and ensure agencies remove or amend those rules that vastly underestimated the compliance burden.

Some credit unions have reported to NAFCU that it has taken them over 1,000 hours to comply with CFPB's new mortgage requirements. There are also a number of bills outlined in my written statement that NAFCU supports and we would urge action on. My statement also highlights areas where regulators can provide relief without congressional action.

In conclusion, the growing regulator burden on credit unions is the top challenge facing the industry today. It must be addressed in order for credit unions to survive and meet their mission of serving their members' needs. We thank you for the opportunity to share our thoughts with you today. I welcome any questions you may have.

[The prepared statement of Ms. LaMascus can be found on page 60 of the appendix.]

Chairman HENSARLING. And, Professor Levitin, you are now recognized for your testimony.

STATEMENT OF ADAM J. LEVITIN, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

Mr. LEVITIN. Chairman Hensarling, Ranking Member Waters and members of the committee, good morning. Thank you for inviting me to testify today. My name is Adam Levitin, and I am a professor of law at Georgetown University, where I teach courses in consumer finance, among other topics.

I am glad to see the committee show interest in the problems facing community financial institutions. Community banks and credit unions play an important role in their communities and in the American financial system. They are key sources for small business and commercial real estate and agricultural credit, and they are essential for preserving consumer choice in the financial services marketplace.

There is no question that as an industry, community financial institutions are ailing. The number of community banks in the United States has fallen nearly in half over the last decade. This is the continuation of a long-term trend. Indeed, for the past couple of decades community banks have disappeared at a steady rate of around 300 a year, and similar situations exist for credit unions.

The central problem that community banks face, however, and the main reason they are disappearing is not regulation and is not the CFPB. Community banks have been disappearing at the same steady rate for decades before the CFPB came into existence, much less before its regulations became effective. CFPB regulations have only been in effect for the past 1 or 2 years. It is hard to blame new regulations for a decade's old trend.

The CFPB has actually repeatedly put a friendly sum on the regulatory scale to ease regulatory burdens for community banks. My written testimony outlines no fewer that 10 CFPB regulatory exemptions for small financial institutions. This is on top of key statutory exemptions. Additionally, the CFPB has a proposed rulemaking that would expand some of the exemptions to potentially cover nearly all community financial institutions.

The CFPB has also taken pains to create multiple channels for smaller financial institutions to communicate their concerns to the Bureau, including voluntarily establishing a community bank advisory board, a credit union advisory board, and an office of financial institutions. All of this is in addition to the special rulemaking requirements with which the CFPB must comply under the Small Business Regulatory Enforcement Fairness Act.

The real problem that community banks face is not the CFPB or regulation; instead, it is the cold, hard truth of the market. Size matters in consumer finance. Community banks lack the economies of scale necessary to compete in the key consumer finance market of mortgages and credit cards. Increasingly, economies of scale matter for deposits because mobile banking and security issues are driving up technology costs. In short, community banks face a serious structural disadvantage in the consumer finance marketplace.

Members of this committee have proposed a number of bills that would address various aspects of CFPB regulation. I address some of these bills in detail in my written testimony. With one exception related to mortgage servicing, I believe them to be ill-advised, because they are either premature, unnecessary, or, in some cases, would actually encourage predatory lending or restrict access to credit.

These bills would also add to regulatory uncertainty. Any changes that are made now by statute would call for a further round of regulations and more uncertainty for the industry. Most critically, though, none of these bills are responsive to the real problem faced by community financial institutions. Focusing on the weedy details of CFPB regulations instead of addressing the unequal playing field between community banks and mega-banks is like worrying about electrolysis and chin hairs while ignoring a malignant tumor. It just misses the point.

If this committee really wants to help community financial institutions, the single best thing it could do would be to pass legislation that would tax or break up the mega-banks. Additional regulatory exemptions for community banks are insufficient to save this industry because no amount of regulatory exemptions will sufficiently level the playing field for community banks.

Moreover, these exemptions will come at the cost of consumer protection. American families' financial security should not be put at risk to subsidize private corporations, even community banks. If Congress truly cares about community banks, it needs to take action to break up the too-big-to-fail banks, to benefit from the implicit taxpayer guarantee, and pose a serious threat to financial stability. Until and unless this is done, community banks will never be able to compete on a level playing field. The only way to save the community banking industry in the long run is to break up the mega-banks. Thank you.

[The prepared statement of Mr. Levitin can be found on page 121 of the appendix.]

Chairman HENSARLING. The Chair now yields himself 5 minutes for questions. Ms. LaMascus, you are sitting right next to the law professor who says regulation is not your problem. Do you agree with that assessment?

Ms. LAMASCUS. No, I don't. I do believe that there should be an exemption for credit unions or a general exemption for small institutions. The CFPB does provide some exemptions for small institutions; however, they vary based on each rule. I understand the arguments that each rule deserves its own consideration for its impact on small institutions. We think the CFPB could provide better relief if it would provide one general exemption for small institutions, such as credit unions, for most of the regulations.

Chairman HENSARLING. Ms. LaMascus, you mentioned in your testimony a member of your credit union whom I believe is disabled, and after triggering the six-transfer limitation under Reg D, this disabled member has to find some physical way to walk into the credit union. Did I understand you correctly?

Ms. LAMASCUS. She has to have someone who helps her get to the credit union. Of course, we are an accessible credit union, but it is difficult. She has to find—

Chairman HENSARLING. Do you happen to know if this member somehow works on Wall Street, because supposedly these regulations were designed to rein in Wall Street. Is she part of the Wall Street—

Ms. LAMASCUS. No, no, she does not work on Wall Street.

Chairman HENSARLING. Do you have a branch on Wall Street?

Ms. LAMASCUS. No.

Chairman HENSARLING. Do any of you all have a branch or credit union or bank on Wall Street? You don't.

Mr. LEVITIN. Mr. Chairman?

Chairman HENSARLING. It is my time, Professor Levitin. I am sure you will have plenty of time to have your views heard.

So we understand that there has been a decline in our community financial institutions but the statistic I have shows it has been greatly exacerbated over the last few years. I think the rate of decline has almost doubled. I also see that there have only been four de novo bank charters since Dodd-Frank came about.

Isn't part of the problem here that the regulations are really helping commoditize credit? So we have the thesis that regulations are not your problem, your problem is scale. You are told you have to know your customer for purposes of law enforcement. Apparently, it is not good enough to know your customer for purposes of credit extension. If you are denied the ability to engage in relationship banking, which I assume the regulations are causing us to lose relationship banking, and I assume you are having more difficulty competing. Mr. Williams, I see your head nodding. Do you have an opinion on the matter?

Mr. WILLIAMS. Yes, Mr. Chairman. Recently we merged with another bank to achieve economies of scale for reasons that I would disagree on. Regulatory burden clearly is a major cause of that. And we provide credit to rural Americans and the QM rule is affecting that, certainly in west Texas. And to farmers and small business folks in that area and clearly it is disqualified applicants that we would have once approved.

Chairman HENSARLING. Mr. Fenderson, do I understand it properly that your bank is one of the few federally-chartered minority-owned banks; is that correct?

Mr. FENDERSON. Yes, sir, we are one of the three national chartered banks owned by African-Americans, predominantly.

Chairman HENSARLING. Do I understand that you primarily serve underserved areas around the Mobile, Alabama, area?

Mr. FENDERSON. That is correct.

Chairman HENSARLING. And do I also understand that when the QM rule came out, you had to suspend mortgage lending to your underserved population, is that correct?

Mr. FENDERSON. When the regulation burden started, we had to pull back and suspend mortgage lending in order to understand it. We have 27 full-time equivalent employees, and as an institution in a metropolitan market, we simply did not have the staff and had to add compliance staff.

Chairman HENSARLING. So as a minority-owned bank, serving an underserved population, if you have to suspend mortgage lending, where do these people go?

Mr. FENDERSON. To alternatives, which means we don't get a chance to make that money, and it means that they have to find other alternative sources, which sometimes are not very friendly with the price.

Chairman HENSARLING. I assume some of them may not have the ability to actually find the credit necessary to buy that home that they wanted to buy?

Mr. FENDERSON. That is correct.

Chairman HENSARLING. And you also don't have a branch on Wall Street; is that correct?

Mr. FENDERSON. We do not.

Chairman HENSARLING. Okay. The Chair now recognizes the ranking member.

Ms. WATERS. Thank you, Mr. Chairman. First, I would like to go to Mr. Levitin. A recent Harvard working paper states that community banks share banking assets, and the lending market has been in a fast decline since the passage of the Dodd-Frank Act and echoes the concerns of the industry that recent financial reforms and the establishment of the Consumer Protection Financial Bureau are the cause. Are you familiar with that study, Mr. Levitin?

Mr. LEVITIN. I am.

Ms. WATERS. And do you agree with the conclusions?

Mr. LEVITIN. No, I think it is a—

Ms. WATERS. Why not?

Mr. LEVITIN. It is not really a scholarly study, let's start with that.

Ms. WATERS. What you do mean it was not scholarly?

Mr. LEVITIN. Well, how to count the ways. I think one of the most simple things is the way it treats the data. The article looks at—it says, well, community banks have been shrinking since the Dodd-Frank Act, therefore it is because of the Dodd-Frank Act. That is bad logic, that is what is called an ex post ergo—ah, I am going to get my Latin wrong, but point being, just because something happens afterwards doesn't mean it is an effect.

Rather, what the article completely ignores is that there has been a long-term trend with community banks shrinking, and that the article is not actually able to show any cause and effect with the Dodd-Frank Act, much less when the regulations under the Dodd-Frank Act actually go into effect, which has only been in the past year.

Actually, it is ironic because in the last year, the fourth quarter of the last year, community banks grew 28 percent over the previous year. They actually had a great end of the year as compared to the large banks, which did not. So I think it is really hard to say that regulation is causing all the problems of community banks.

Is it possible that there is a regulation or two that needs to be tweaked? No doubt. I would not make such an absolute argument against it. But I think it is just a serious mistake to claim that regulation is the problem for community banks. I would note for the chairman's benefit, Regulation D is not a CFPB regulation and has been on the books without changes for many, many years. So the problem that you discussed with Ms. Bosma-LaMascus is not one caused by any new regulatory changes.

Ms. WATERS. All right. Thank you very much. I think I would like to go to Ms. Peggy Bosma-LaMascus. I see that you have mentioned as the various to credit unions that Congress—to correct these barriers, Congress should make several improvements to the Federal Credit Union Act. One you list is to restore credit unions' business lending authority, increase the member business lending cap. Would you make more loans, mortgage loans if we did that?

Ms. LAMASCUS. Yes.

Ms. WATERS. I can't hear you.

Ms. LAMASCUS. Sorry. Yes.

Ms. WATERS. Do you realize that there are many Members, particularly on this side of the aisle, who support that?

Ms. LAMASCUS. Yes.

Ms. WATERS. And have you worked with the banks so that you could have an effort to come together to support the credit unions being able to increase business lending? A lot of you say we should work together more. Can the banks and the credit unions come together around something like this?

Ms. LAMASCUS. I can't necessarily speak for my brethren who are down the line here.

Ms. WATERS. Have you talked to them about it? Have you tried? You have been around for a long time. In 40 years, have you ever talked to the banks about coming together and stop opposing your ability to expand business lending?

Ms. LAMASCUS. Representative Waters, actually today, we have many issues on which we are very much in agreement, and, in fact, I believe we are all in agreement that if Congress could require realistic and robust cost-benefit analyses of proposed regulations, documentation, that we would all be able to give much more targeted feedback so that the result would be smarter regulation.

I believe that we are all supportive of changes to Reg D, such as increasing that limitation from six. It makes sense in today's lifestyles with so many people using electronic technology. I believe that we are all in agreement on changes that need to be made to the—

Ms. WATERS. Thank you very much. I just wanted to mention that because that is one of the issues that I care a lot about.

Mr. Miller, you talk a lot in your testimony about what is wrong with the Consumer Financial Protection Bureau, and you mentioned everything from they should go before the Appropriations Committee to have a five-member mission, et cetera. What and why do you think those issues are important to what you need to have done to eliminate your ability to make loans?

Mr. MILLER. We feel that generally, the structure of how the CFPB was created creates a situation where there is regulation without representation from all relevant stakeholders. We believe a larger board of three to five members—I would prefer five members—who are appointed would allow for diversity of perspectives, and opinions, and deliberation, and debate before decisions are made, before rules are rolled out.

Ms. WATERS. Thank you very much.

Mr. MILLER. We think transparency and the appropriations process and budget process would make sense too.

Chairman HENSARLING. The time of the gentlelady has expired. The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, chairman of our Financial Institutions Subcommittee.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. Mr. Williams, in your testimony you talked about the QM rule and debt-to-income ratio and low-dollar, high-cost loans. I was just thinking as you were saying that, and then you mentioned about people not able to access homeownership, and continue to rent. I was thinking about Hart, Texas. I was wondering if that single mom maybe works at the Hart Cafe part-time, and she has another part-time job, but she has saved up some money over the years, and she would like to quit being a renter and wants to be a homeowner. If you can't make that loan, who is going to make that loan to her?

Mr. WILLIAMS. Congressman, I can't say who would make that loan. We couldn't make the loan or we would have difficulty, because it is a small community, it is going to be non-conforming—it is a non-conforming property because it is not an urban. We wouldn't have comparables for the appraisals. It would be a very difficult loan to make. We would try to find a way to do it. We do have portfolio lending services, but under the QM rule, we could not make a qualified loan.

Mr. NEUGEBAUER. And so particularly, I believe, in Hart, you are the only bank, is that correct?

Mr. WILLIAMS. Yes, sir, that is correct.

Mr. NEUGEBAUER. In a lot of communities around the country now there is just one community bank left. And so if there is not a community bank left to make those loans, whether it is a mortgage loan for that single mom or a production agricultural loan, it doesn't leave a lot of choices, does it?

Mr. WILLIAMS. No, sir, it doesn't. I have empirical data from our State association of Texas where we went out and solicited feedback from our member bankers, and 25 percent of those banks' remarks in the rural markets, if they were not there to make the loans, no one was there to make the loans.

Mr. NEUGEBAUER. I thank you for that. Mr. Miller, I think you mentioned in your testimony about one of the credit unions in Corpus Christi maybe—the CFPB's final rules on making remittances was put in place, I think, about 150 members of the credit union kind of lost access to be able to utilize those services. What other kinds of choice limitations are going on in the credit unions that are beginning to limit the products that members are able to access?

Mr. MILLER. The remittance rule is a great example, well-intended legislation, if you wanted to give people a chance to shop for a half hour after they place their instructions to send a wire, an international wire. I don't know anybody who shops after they make a decision and walks into a non-Wall Street bank or credit union and says, I am going to shop around and see if I can save $10 on my international wire transmittal. Most people do their shopping before they walk in and make a decision. That is our opinion on the remittances.

On QMs, we have turned down 50 members who couldn't get a home loan because we are afraid of regulatory scrutiny. What that is going to do is, it's going to force fewer and fewer choices for the consumer. They are going to pay more, because when there are fewer choices, markets are efficient, so whoever gets that business is going to charge a little bit more, and fewer people are going to enjoy the benefits of homeownership, which I know has always been something the members of this committee are pretty passionate about: Letting people who qualify to own a home, own a home.

Whether it is credit cards, whether it is car loans, whether it is personal loans or school loans, there are all kinds of—the same thing is going to happen in virtually every category of lending: fewer choices; higher prices; fewer jobs; fewer banks and credit unions that are generating their own jobs to create a cascading impact on their local economies; fewer business lenders; fewer mortgage lenders; fewer car loan lenders. It is going to cost jobs and it is going to be a down draft in on the economy. There won't be an explosion of toasters and mortgages; there will be an implosion of jobs and economic growth.

Mr. NEUGEBAUER. Thank you. Mr. Fenderson, you indicated you are a relatively small bank, I think $60 million, is that correct?

Mr. FENDERSON. That is correct.

Mr. NEUGEBAUER. We have the new Basel III capital requirements for small institutions which became effective January 1st of this year. So for a small institution, when you have to keep more capital, what does that do to your ability to serve your customers?

Mr. FENDERSON. I can speak generally about that, we are not a seller servicer so we are not applicable to Basel III, but the colleagues I speak with across the country understand that will restrict—if they have to hold more capital, then they are not able to make as many loans, and it will make them decide how they treat those loans, on whether they want to be in that business or not. In fact, I have heard of some servicers who are getting out of that business.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentlelady from New York, Mrs. Maloney, ranking member of our Capital Markets Subcommittee.

Mrs. MALONEY. Thank you, Chairman Hensarling and Ranking Member Waters. Professor Levitin, as you know, my colleagues on the other side of the aisle have had a string of hearings, a relentless campaign to weaken Dodd-Frank and they claim that it is too costly for financial institutions, but this just looks at one side of the equation, the cost to financial institutions. I would look also and take into account the cost to consumers of not having adequate consumer protections in place. They say this downturn cost $16 trillion of household wealth, large unemployment, we were shedding 700 jobs a month, 800 jobs a month. Can you comment on the long-term cost to consumers, and I would say the overall economy, of not adequately regulating financial products and services?

It has been said that our regulation didn't keep up with the innovation, and experts testified before this committee and others that this was the first financial crisis in history that could have been prevented with better financial regulation of risky products and risk-taking. So, your comments please.

Mr. LEVITIN. The financial crisis was completely preventable and would have been prevented if the Dodd-Frank Act mortgage regulations had been in place. The scape of the scale of the financial destruction, and particularly household wealth, and especially for communities of color, as a result of improving mortgage lending, not all of which was done through securitization, but a great deal which was also financed through bank portfolio lending, particularly Countrywide, Wachovia and Washington Mutual all had large portfolio lending operations. All of that caused tremendous loss of wealth for American families.

I think it is also important to note that sometimes regulations actually not only protect consumers, but put money back in their pockets. The Credit Card Act, of which you were one of the authors, has been found to actually have saved consumers billions of dollars, yet we don't hear—

Mrs. MALONEY. Over $10 billion a year, that is a stimulus package that we gave the American people.

Mr. LEVITIN. I thought you would have the number. But we don't hear a peep about that when regulation is discussed. Instead, regulation is only looked at in terms of compliance costs without seeing the benefits, whether it is financial stability or clear pocketbook savings for American families.

Mrs. MALONEY. So just to emphasize, do you think these costs outweigh the incremental costs of compliance to financial institutions? I would say the Credit Cardholders Bill of Rights helped institutions, it hasn't hurt their bottom line; you cut out unfair, deceptive practices so that more people have trust in their services.

Mr. LEVITIN. There are costs to doing business and there is not an inherent right to get to operate a bank. It requires a charter and you have to be able to be competitive. And part of being competitive is being able to comply with regulations, particularly regulations that are necessary for preserving certain minimum standards within the industry.

Mrs. MALONEY. Also in your testimony, you noted that the CFPB has already granted community banks significant regulatory relief. In your opinion, do you think the CFPB has been sufficiently responsive to the concerns of community banks?

Mr. LEVITIN. Generally, I believe it has been.

There are some places where one might dicker with the CFPB about a particular threshold for exemptions. For example, on the remittances rule, should the number of remittances be 100 per year or 200? I think there are reasonable differences of opinion.

But, directionally, I think the CFPB has made considered judgments. And it is trying to balance important considerations not just about small financial institutions but about consumers.

Mrs. MALONEY. And you raised another important point in your testimony, that the oversight of the non-bank mortgage servicing industry is uncoordinated, to use your words, and that, "Until and unless housing finance reform is resolved, the industry will remain in flux and in need of reform."

Given the uncertainty surrounding housing finance reform, what alternatives would you suggest concerning coordination across the relevant regulators of non-bank mortgage servicers that could begin to address the reforms that you believe would improve the overall economy and consumer experience?

Chairman HENSARLING. The gentlelady's time has expired, so a quick answer, please.

Mr. LEVITIN. Obviously, there are tremendous difficulties with getting any kind of legislation passed on housing finance reform. Until and unless that happens, I think that there needs to be a formal coordination mechanism among financial regulators on mortgage servicing in order to try and stabilize the servicing industry.

Chairman HENSARLING. The Chair now recognizes the gentleman from Missouri, Mr. Luetkemeyer, the chairman of our Housing and Insurance Subcommittee.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Professor Levitin, I just want to thank you. Mr. Perlmutter and I have been working on, for the last 2 years, legislation to delay the implementation of Basel III on capital standards for mortgage servicing assets, and I see in your testimony you support doing that. I certainly appreciate that.

Just quickly, have you ever worked in the private sector? Have you ever worked at a bank or a credit union?

Mr. LEVITIN. No, I have not.

Mr. LUETKEMEYER. Have you—

Mr. LEVITIN. I have worked for them, but I have never worked at them.

Mr. LUETKEMEYER. Okay. I was just kind of curious. So your real-world experience is really based on what you read in books or magazines or newspapers or read from studies of things that go on in the financial world. Is that correct?

Mr. LEVITIN. No, that is not correct.

Mr. LUETKEMEYER. You just said—

Mr. LEVITIN. I would add to that, I regularly work as a consultant for financial institutions and trade associations, including one of the ones that is represented here. And I also—

Mr. LUETKEMEYER. Mr. Levitin, I think one of the—

Mr. LEVITIN. —before I get to see the internal workings of financial—

Mr. LUETKEMEYER. As part of your testimony here, you continually try to say that the CFPB is the problem that these folks here are consumed with, and I think their testimony talks about the overwhelming amount of regulations. Your testimony basically talks about the CFPB. And I think each of these folks have given that.

And just to make the point about the CFPB, I have here a letter, and I will just sort of summarize it. Basically, what they are saying is that on February 25th, the CFPB proposed to suspend a rule with regard to credit card users and the card agreements that the Bureau had developed so that they could streamline their system. Because they don't have enough people to input the automation and do the cataloging and review that it is going to take, they don't even have the ability to watchdog and oversee the rules they make.

So I wish they would give time to the other institutions they oversee to be able to have the ability to implement these rules on their own, which they don't seem to be willing to do.

Along that line, I brought with me this morning a real estate loan matrix. This was put together by a compliance company, a company that deals in providing forms for institutions that provide real estate loans. And there are seven—I am sure you can't see it, but there are seven different categories of security. There is a total of 370 boxes that have to be checked or reviewed to see where this loan fits into. There is a timetable down here that has 24 different forms that have to be used at some point, or may be used, during the course of the implementation and working out this loan.

This is the kind of stuff that is overwhelming the system. It is not just the CFPB; it is all of this in its totality. So I appreciate the comment this morning by Mr. Williams that said 25 percent of the loans would no longer be made by you as a result of this type of inundation and the QM rule and all these things that are going on.

So I was just kind of curious if I can get a figure from each of you this morning with regards to how much have you seen that this curtailed.

For instance, Mr. Williams and Mr. Miller, where do these people go when you no longer have access? Are these people going to get their home loans now at FHA, to the Federal Government, these agencies? Where are they going?

Mr. WILLIAMS. I can't answer that, Congressman. All I can say is my information was wrong. I said 25 percent said there are no other banks or financial institutions in the area, and it is actually 29.7 percent. And I apologize, but I wanted to correct that.

It is important to understand that there are secondary lenders, but it is going to cost the consumer a great deal more money, or they are going to have to rent. They are not going to be able to get a loan.

Mr. LUETKEMEYER Mr. Miller, do you know where those folks go when they can't get a loan from you?

Mr. MILLER. I think, in most cases, because they came to us, they didn't go to a big bank for a reason. Because they either already got turned down, or they wanted to come in to somebody local that they know and they trust, that they have been a member of for decades.

Mr. LUETKEMEYER. Mr. Fenderson, do you know where your folks go when they can't get a loan?

Mr. FENDERSON. I would say that community banks represent choice and flexibility when consumers try to decide. So, like Mr. Miller noted, they are coming to us for a reason, because they believe that we have the flexibility. Unfortunately, there are some consumers who are not highly qualified for mortgages, and that gives us the ability to do those loans. And then they have to find a source that is probably not as cost-effective.

Mr. MILLER. If I could add, maybe they still rent that mobile home that the other bank can't make a loan on anymore.

Mr. LUETKEMEYER. Ms. LaMascus, do you know where your folks go when you can't make a loan to them?

Ms. LAMASCUS. They either are unable to conduct their transaction or they have to go somewhere else where they have to pay more, dealing with people they don't know. They are not able to work with their trusted creditors.

Mr. LUETKEMEYER. So, basically, what you have all told me is that there is an access-to-credit problem as a result of the excessive amount of rules, regulations, forms, and restrictions you have to deal with.

Mr. WILLIAMS. Yes, sir.

Mr. LUETKEMEYER. Thank you very much.

I yield back.

Chairman HENSARLING. The Chair now recognizes the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. I want to thank you all for your willingness to come before the committee and help us with our work.

And I feel like I have to defend Professor Levitin down there. I do want to point out that Mr. Levitin is the only witness on our panel this morning who is not being paid by a specific interest, in connection with his testimony. Mr. Levitin has not received any Federal grants or any compensation connected with his testimony. He is not testifying on behalf of any organization, and the views expressed by him are his own.

So, enough about that.

Mr. Levitin, let me ask you, your testimony indicates that there were—you identified several accommodations that we try to make in Dodd-Frank to actually address the clear differences between the mega-banks that we were trying to reel in and the community banks.

And I know from my personal work on that bill with Congressman Frank that we tried at every turn to try to make a distinction between the regulation against the big banks that caused the problem and the community banks who did not cause the problem.

I love my community banks. And maybe this is just my district, but when I have seen community banks go away in my district, they have merged where there have been acquisitions. Larger community banks have purchased smaller community banks in pursuit of growth. As a matter of fact, we have had two major credit unions that have been so successful in my district that they have converted to become banks so that they could expand further than their jurisdiction allowed as a credit union.

So, yes, they have gone away, but for growth purposes.

But, Professor Levitin, if you could just talk a little bit about what you identified in some of your testimony, but drill down a little bit deeper about the advantages that we have tried to give to community banks so that they might succeed.

Mr. LEVITIN. Sure.

In the Dodd-Frank Act, I think there are three really important distinctions made between community banks and credit unions and large banks.

First, the Consumer Financial Protection Bureau has no authority to examine financial institutions with less than $10 billion of assets. Instead, their examinations occur with their regular prudential regulator, and they are, therefore, subject to only one set of examinations, not two.

Mr. LYNCH. So in the universe of the under $10 billion, what is the percentage of that? Do you have any idea?

Mr. LEVITIN. I have the number right around here.

For the under $10 billion, we are talking about—for banks, there are 108 banks that have over $10 billion in assets. That is out of 6,518 banks in the United States. So about 2 percent of banks are subject to CFPB examination. And only five credit unions—

Mr. LYNCH. Wow.

Mr. LEVITIN. —out of—it is around 6,400.

Mr. LYNCH. And we are being accused of overreaching.

Mr. LEVITIN. That is correct.

Mr. LYNCH. Okay.

Mr. LEVITIN. The second thing the Dodd-Frank Act does is it exempts these smaller financial institutions—again, less than $10 billion of assets—from enforcement actions by the CFPB. Enforcement actions would have to be undertaken by their prudential regulators. And, to date, I am not aware of their prudential regulators having undertaken a single enforcement action for authorities that exist under the Consumer Financial Protection Act.

Finally, the Durbin Amendment to the Dodd-Frank Act exempts financial institutions with less than $10 billion of assets from regulation of debit card interchange fees, the fees that merchants have to pay whenever they accept a debit card transaction. That gives smaller institutions a tremendous leg up competitively against large institutions.

So, there are already a number of things in the Dodd-Frank Act that are really trying to look out for small financial institutions.

Mr. LYNCH. Great.

I only have 40 seconds left. Anything else you want to add to your testimony that you might have been asked by another Member and didn't have an opportunity to respond?

Mr. LEVITIN. Not at this point, but I appreciate that.

Mr. LYNCH. Okay.

I yield back, Mr. Chairman. Thank you.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

And I thank each of you for your testimony today.

Mr. Levitin, you made a comment on page 7 of your testimony that absent FDIC insurance, depositors would never use small institutions instead of large ones.

Where did you get that information from?

Mr. LEVITIN. I think you can look at what happened at the—

Mr. PEARCE. No, I just asked where you got it from.

Mr. LEVITIN. I got that from my own research, sir.

Mr. PEARCE. Okay.

So, Mr. Fenderson, do you find, when the people walk in the door to make deposits, they tell you they are there because you are an FDIC institution?

Mr. FENDERSON. No, sir.

Mr. PEARCE. Okay.

Mr. Miller, you have a lot of small outfits. Do they walk in to you and say, we are looking for your insurance, that is the reason we are going to put our money with you?

Mr. MILLER. No, sir.

Mr. LEVITIN. Sir, I would just point out there are three non-FDI-insured—

Mr. PEARCE. No, no. Please. No, please. You are the one who was critical. I think you said that there was not a scholarly study earlier in answer to one of the questions, and I am trying to get to the basis of the scholarly study that came up with the observation that people only use small institutions because of the FDIC. Because that has no relevance. I represent the Second District of New Mexico, and I will guarantee you the people who walk in the doors are not there because they are FDIC-insured.

The Second District, by the way, is Roswell, New Mexico. The aliens landed there. And the aliens have more knowledge of what happens in small banks than what you do, sir. And your scholarly study leaves a little bit to be desired.

Mr. LEVITIN. Sir, I think I am entitled to a point of personal privilege on this.

Chairman HENSARLING. The time belongs to the gentleman from New Mexico.

Mr. PEARCE. You will have to ask the chairman for personal privilege.

I am just telling you that when you say in your testimony that a portfolio lender can lend at high rates and aggressively pursue defaults—50 percent of the homes in my district are manufactured houses. Now, those people who loan money and keep the mortgages in their portfolio are not doing that so they can go and repossess those things. They are trying to help low-income borrowers get a place to live.

Mr. LEVITIN. You have no disagreement with me on that, sir.

Mr. PEARCE. Mr. Chairman, if you would have him pursue his own time, I would appreciate it.

But your scholarly study that you bring and give to us today is offensive to the people on the low-income ladder, because Dodd-Frank has made it very difficult for them to make a living. It is, in fact, a war on the poor and the middle-income people of this country. And to have you sit here and just say things that the people next to you can't counteract is—

Mr. MILLER. Mr. Pearce, can I make a follow-up comment?

Mr. PEARCE. Yes.

Mr. MILLER. I also take umbrage with the comment that it is just a cost of doing business. There is no such thing as a cost of doing business because it is passed directly on to our members and the customers of the banks that are represented here. We pass on roughly 25 basis points on every loan and increase higher interest rates because of compliance costs. We pay our members roughly 25 basis points less overall on deposits because of compliance costs.

Mr. PEARCE. Mr. Miller, do you—

Mr. MILLER. So it is not a cost of doing business. It is a cost to your constituents and our members.

Mr. PEARCE. I understand.

Mr. Miller, do you make loans on manufactured houses?

Mr. MILLER. No, we do not.

Mr. PEARCE. I'm sorry, not Mr. Miller but Mr. Williams. I was looking at Mr. Williams and calling him Mr. Miller.

Mr. WILLIAMS. Yes, we do. And the answer to your first question is, no.

Mr. PEARCE. Yes, okay. People don't come in for the FDIC insurance.

Mr. WILLIAMS. They do not.

Mr. PEARCE. So what is the status in the manufactured house loans?

Mr. WILLIAMS. We can't qualify them under the QM rules.

Mr. PEARCE. Do you hold them in portfolio?

Mr. WILLIAMS. Yes, sir.

Mr. PEARCE. How many do you repossess in a year?

Mr. WILLIAMS. The last 4 or 5 years, I would say maybe one, possibly two.

Mr. PEARCE. Yes. That is what I—

Mr. WILLIAMS. A very, very small number.

Mr. PEARCE. There is only one institution left in the southeast part of New Mexico that makes loans on these kind of houses, and they have the lowest default rate of any.

And so it seems like scholarly studies would include coming out and actually visiting those institutions where they make those kinds of loans before they start passing along this genius bit of information that caused the CFPB to include balloon loans and these manufactured housing loans as predatory lending, because it makes life very difficult for us out there in the parts of America that never get visited by the educated-leap-making scholarly studies.

The fact that there are two tiers of regulations—that is another point that Mr. Levitin makes—do you find those two tiers of regulation, Mr. Williams?

Mr. WILLIAMS. I find it—I would like to see multiple-tiered regulations.

Mr. PEARCE. Yes. In other words, the regulator just—they are not going to learn two standards. They are going to come in, and they are going to judge everybody by the same standard. That is trickle-down regulations, and it is a point that is completely overlooked by the CFPB.

But, again, thank you.

Mr. WILLIAMS. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, ranking member of our Oversight and Investigations Subcommittee.

Mr. GREEN. Thank you, Mr. Chairman.

And I thank the ranking member, as well.

Mr. Levitin, you have some comments that you would like to make. I would like to yield some time to you for your commentary.

Mr. LEVITIN. I very much appreciate that, Mr. Green.

I think it is important to understand FDIC insurance a little better than the gentleman from New Mexico was discussing.

There are, I think, around three financial institutions in the United States, three depositories, that do not have FDIC insurance. No depository is required to have FDIC insurance. They choose to get it. And why do they choose to get it? Because they know they can't compete without it.

It is not that any consumer goes in looking for FDIC insurance; we take it for granted today. We just assume that every bank has FDIC insurance.

But there are all kinds of regulations that support the existence of our financial services industry in its current state. And I think that you deeply misunderstood what I was saying in my testimony, and I hope that misunderstanding is being corrected.

Beyond that, I think it is just offensive to throw at me characterizations about being an elitist or something when you know absolutely nothing about where I am from or my background. And I would appreciate it if I would be treated with courtesy when I testify here.

Thank you.

Mr. GREEN. Thank you, sir.

Permit me, if I may at this time, Mr. Chairman, to introduce for the record, with unanimous consent, testimony of Mr. Hilary Shelton. This is what he would say if given the opportunity to present testimony. He represents the NAACP.

May I ask unanimous consent to present this for the record?

Chairman HENSARLING. Without objection, it is so ordered.

Mr. GREEN. Thank you.

Now, let's talk for just a moment about what we do and what we say. We talk about small banks, community banks, but we legislate large. When we try as best as we can to legislate for the small, the terminology becomes large.

Example: We have actually had testimony indicating that a community bank is a $50 billion bank. If we legislate for a community bank and the legislation covers $50 billion banks, have we done what we sought to do?

Many of the community banks that I have worked with, that I talk to, have indicated that they would like to get some help, and I would like to help them.

The question becomes, what is a community bank? Is a $50 billion bank a community bank?

I am going to ask my friend from Texas.

Mr. Williams?

Mr. WILLIAMS. Congressman, it is very difficult to define a community bank—

Mr. GREEN. I will withdraw my question.

Mr. WILLIAMS. Okay.

Mr. GREEN. Let me go on.

We want to help the small banks. More than 90 percent of the banks in this country have assets of under a billion dollars, a billion or under, 90 percent or more. And we would like to help that 90 percent, or we would like to move it up to a higher amount.

But whenever we try to do this, we run into this question of the legislation applying to $50 billion banks. It is very difficult to perceive of legislating to cover $50 billion banks under the guise of helping small banks. That is a difficult lift. So I would like to help the small banks, but whenever we get to a definition, we can't seem to find one.

So let me ask you, Mr. Fenderson, is a $50 billion bank a community bank?

Mr. FENDERSON. A $50 billion bank that has the sensitivity of its community—

Mr. GREEN. "Has the sensitivity of its community." So if we pass legislation to help small banks under the guise of helping community banks and we help the $50 billion banks—you have just heard the testimony about mega versus small banks—we will end up helping mega-banks.

So, in your opinion, a $50 billion bank can be a community bank?

Mr. FENDERSON. Yes. We need the ability to be flexible as a—

Mr. GREEN. Are you a $50 billion bank?

Mr. FENDERSON. We are a $60 million bank.

Mr. GREEN. $60 billion?

Mr. FENDERSON. $60 million.

Mr. GREEN. Okay. So I am asking you about billions. Is a $50 billion bank a small bank?

Mr. FENDERSON. By asset size, a $50 billion bank is not a small—

Mr. GREEN. Is it a community bank?

Mr. FENDERSON. A $50 billion bank can be a community bank.

Mr. GREEN. Therein lies the problem, dear sir. Therein lies the problem.

If we want to help you and the $60 million banks and the billion-dollar banks and the banks under $10 billion and we legislate such that we cover $50 billion banks, why don't we just repeal Dodd-Frank? Because that is what we are talking about here. We would end up eliminating the protections that Dodd-Frank accords consumers from the mega-banks.

Mr. FENDERSON. May I answer?

Mr. GREEN. I have no more time.

Mr. NEUGEBAUER [presiding]. The time of the gentleman has expired.

I now recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman.

I have to agree with my distinguished colleague that maybe we should repeal it. I think that is a great idea.

In the meantime, I have a question for Mr. Miller.

Mr. Miller, you stated that you are concerned about the data collection at the CFPB, and I wonder if you would be kind enough to expand on those concerns, and what it is that you fear.

Mr. MILLER. There are roughly 37 new data fields that are collected on a loan because of the proposed HMDA rules from CFPB. They say they want to improve the quality of data gathered. We believe this is Big Brother gone wild.

The rule adds these 37 new data elements. We don't know what they are going to do with it, but we do know what the data elements are. They include things like where you live, your age, your sex, value of your home, income, how much you spend, how much you owe, your payment amounts on your credit cards and other debt obligations.

That is too much information that could be use for improper purposes. Anybody can go ask for this information. It is an invitation to massive identity theft that could threaten the financial security of hundreds of millions of Americans.

Mr. POSEY. Besides anyone asking for the information, we know of quite a few Federal databases that have been violated, including the Pentagon.

How secure do you feel that data is in the hands of the CFPB?

Mr. MILLER. My members tell me they are very fearful. I am more concerned about what my members think, but we are also very fearful. We want more done in this area, and we would ask the committee to do some work to establish some very tight standards.

So if they are going to gather all this information and make it accessible to people, what is the purpose? And do a cost-benefit analysis. And how many people are we going to catch making a bad loan as a result of gathering all these new data fields? And where is the information security for your constituents?

Mr. POSEY. As they did with the foreign deposit issue, the Treasury obviously does not feel that it is important to comply with the cost-benefit law. And since they control the purse strings of the CFPB, I am hesitant to believe there is any possibility we would get the proper relief there.

A question for you and Mrs. Bosma-LaMascus: The NCUA has put out a new proposal on risk-based capital after thousands of comments, including a letter I signed along with 323 other Members of Congress, which supposedly improves the risk-based capital rule.

What do you think about that rule, and is it necessary? Does it add to the regulatory burden?

Mr. MILLER. We believe there are improvements in the second draft of risk-based capital from NCUA, but we think several components result in additional situations like we just discussed that are solutions that won't work to problems that don't exist.

Mr. POSEY. We understand that. We interpret that as the omnipresent defenders of the nonexistent problems of the people. We are getting quite familiar with that.

Mr. MILLER. Yes. Yes, sir.

For example, they were asked to establish what the definition of "well-capitalized" is, and they added another definition—or they were asked to address "adequately capitalized." Then they added another definition of what "well-capitalized" is. So they have created more complexity, and we don't think that is what they were commanded to do. They were commanded to provide one definition, and they created two. So we don't support the two-tiered rule on capitalization.

We also—no, I will just yield to Ms. LaMascus because I want to make sure she has some time, because we are running out of your time.

Mr. POSEY. Thank you very much.

Ms. LAMASCUS. Thank you, Mr. Miller.

We don't have enough time to talk about the additional complexity that this new way of measuring our capital based on this risk would cost and add to credit unions.

We believe it is unnecessary. NCUA has not been able to substantiate to us why it is necessary. It is costly. They are building in additional tiers, as Mr. Miller talked about, which will take millions of dollars out of play for credit unions to be able to lend to their members and keep our economy growing. So—

Mr. POSEY. Who owns the credit unions? Who are the big, greedy capitalists they are trying to protect us from?

Ms. LAMASCUS. They are all members. Credit unions are owned by their members, which tend to be working-class people.

Mr. POSEY. Thank you, Mr. Chairman.

Mr. NEUGEBAUER. I thank the gentleman.

And now the gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. The backbone of our economy is small business. All of us in our districts every week meet people who can't get the business loan they need to expand. And, as much as I want to help the businesses represented here, I want to help the businesses that need to borrow for those business loans, particularly if they are in the San Fernando Valley.

Now, the ranking member has pointed out that one way to do this is through member business lending and credit unions. And I think that has been covered well at the hearing, and I certainly support it.

But I am told by many depository institutions, they say, look, if we make a loan at prime that deserves to be at prime, everything is fine, but if we make a loan at prime-plus-4, prime-plus-5—because there is some risk, because there is a 1 in 20 chance that we are going to have some problems collecting, and our examiner comes down on us like a ton of bricks, and requires, in effect, a 100 percent charge-off.

What do we need to do—and don't limit yourself to changing Dodd-Frank. I know that is the hot political issue. What do we need to do so that you can make the $5 million prime-plus-5 loan to the small business that has an element of risk in it, for which you deserve to be compensated, but needs capital to expand?

I am looking for someone who wants to answer.

Yes, Mr. Williams?

Mr. WILLIAMS. Congressman, the best thing we could do in your specific example would be to do away with the QM rule as regards the qualification, potentially, for that business. And I know that relates to a mortgage—

Mr. SHERMAN. Yes, that relates to a mortgage.

Mr. WILLIAMS. And that relates to a mortgage—

Mr. SHERMAN. We are talking about businesspeople who will pledge their homes—

Mr. WILLIAMS. Yes.

Mr. SHERMAN. Okay.

So there is one small element of this, and that is some institutions that don't do a lot of real estate servicing want to make a loan to one of their customers, and they are required to have an impound account.

And I am working on legislation now with others to at least say that if you are holding if for your portfolio—because it really is a loan to help somebody expand their business or really is a personal loan—that if you don't want to have an impound account, you would not have to if it is a loan you are holding for your portfolio. I think that would help a bit.

But what modification would you have for QM loans that are really business loans?

Mr. WILLIAMS. For loans that we hold in our portfolio, for them to be exempted from QM.

Mr. SHERMAN. Just exempt from QM, not—

Mr. WILLIAMS. Yes, sir. Because we take 100 percent of the credit risk—

Mr. SHERMAN. That is my bill on steroids.

Mr. WILLIAMS. —and we are comfortable with that because we underwrite it.

Mr. SHERMAN. Gotcha.

I have a question about the HUD–1 that is being phased in, TILA and RESPA forms. These go into effect on August 1st. I wonder what steps the organizations you represent are taking to comply with this regulation and make sure that consumers who buy a home this summer won't face disruptions?

Do you think you are on schedule?

I will ask first the representative of the American Bankers Association.

Mr. FENDERSON. Yes, sir. Thank you very much.

We, as a small community bank, rely heavily upon the vendor to provide those new disclosures to us. And there is an integration process that has to be fulfilled.

We don't have a timeline because our service provider cannot provide us with a timeline so far. All we know is that there is a bullet deadline that we have to meet and that there are some—

Mr. SHERMAN. How confident are you that you can meet it without disrupting the real estate market?

Mr. FENDERSON. Unfortunately, we are relying upon a service provider. And so I don't have a whole lot of confidence that we will get there, except for the fact that they have to get it done.

Mr. SHERMAN. Gotcha. If I had a service provider I was relying on, I would want to find out whether they are going to be able to help.

One other issue is we have all these data thefts, cybercrime. And a lot of retailers, for example, have not done a good job, or at least an adequately good job, in protecting their data. It is my understanding that part of the reason for that is because all of the cost that is occasioned by these cyber breaches falls on the folks represented here.

What do we need to do so that there is a fair sharing of the cost of this data theft, particularly with credit and debit cards?

Chairman HENSARLING. Regrettably, the time of the gentleman has expired.

Mr. SHERMAN. I look forward to getting a response for the record.

Chairman HENSARLING. The Chair now recognizes the gentleman from California, Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman.

The outlook for community banks and credit unions is one of increasing challenges because we have smaller financial institutions that have fewer assets over which to spread these compliance costs that we are talking about here. And looking at the numbers, they seek to achieve this economy of scale as a consequence through mergers, which is not exactly what we want to encourage here.

From 2013 to 2014, the number of community banks fell by 273 banks. Now, that is a 4⅓ percent decrease in just one year. And, similarly, we heard testimony that, since mid-2010, 1,200 federally-insured credit unions have left the market. And that is not the calling card of a sector that is doing better than ever.

So I will go to Mr. Williams and I will ask him—because we did hear previously from a community bank that saw its compliance cost double in the last few years. They had to hire a new full-time—they had to hire full-time employees, they testified, as I recall, at $65,000 each. And a recent Minneapolis Fed study found that one-third of banks with assets under $50 million would become unprofitable with the addition of just two full-time employees. That study was done because of these compliance costs.

So, a question for Mr. Williams: Are we experiencing this situation where increased personnel costs affect the variability to extend credit?

Mr. WILLIAMS. Congressman Royce, yes, we are.

Frankly, it is difficult to measure our total compliance cost. I have colleagues who have said they have done an in-depth study and their costs are 18 percent of their operating budget. We estimate 15 to 20 percent of our operating overhead is now focused on hard and soft costs for compliance costs. And this would be up, from 10 to 15 years ago, a 5 percent number. So I would easily say fourfold.

Mr. ROYCE. Personally, I think much of the problem is that recent regulations are aimed at attempting to outlaw risk-taking, rather than ensuring through examination and supervision that such business practices are backed by adequate capital and low leverage.

And so, because of the approach, in my view—if instead the focus was capital on the part of the regulatory community here, banks would be hiring more loan officers than they are hiring lawyers on the compliance end. I think we have set this thing in a way in which is very injurious to the extension of credit.

But let me raise one other issue, which was mentioned by our ranking member, Ms. Waters. Today, Congressman Jared Huffman and I are going to reintroduce a bill which corrects a disparity between banks and credit unions in the treatment of loans made to finance the purchase of small apartment buildings known as non-owner-occupied one- to four-unit buildings. And, specifically, the bill removes these loans from the calculation of the member business lending cap imposed on credit unions.

So I am wondering if I can ask our credit union witnesses if this bipartisan bill will help increase credit availability for commercial businesses and for rental housing without costing taxpayers a dime.

Mr. MILLER. The short answer is, yes, it will.

The overwhelming majority of these types of loans go to regular, average, working Americans who have just done well enough in life where they can afford to buy a rental property or they move into a new home and they want to convert a dwelling that they were in into a multifamily dwelling, and they are just regular folks. They are not running big businesses. They are not real estate investment trusts.

And it would free up capital for credit unions to do more member business lending and generate more jobs.

Ms. LAMASCUS. Thank you very much, sir, for doing that for credit unions.

Our credit union does not currently offer member business loans, but we will, and that will be important to us.

May I make a couple more comments on the compliance for you?

Mr. ROYCE. Absolutely.

Ms. LAMASCUS. I found it very interesting what you were saying.

First off, within the last couple of years, two very small credit unions found themselves having to merge, and they were are able to merge with Patriot Federal Credit Union. One was only $6.5 million in assets; one was $11 million. They just could not keep up with the regulations and also be able to provide services to their members.

In addition to the things that Mr. Miller has done, we have had to hire 2 full-time compliance officers within the last 3 years. I just hired another person. About 50 percent of his time will be spent on compliance.

Mr. ROYCE. Thank you.

Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Cleaver, ranking member of our Housing and Insurance Subcommittee.

Mr. CLEAVER. Thank you, Mr. Chairman.

Let me, first of all, thank you all for being here. As Mr. Lynch said, these committee hearings are designed for the receipt of information that will help us do our work.

I want to associate myself with the comments of my colleague Mr. Green, who talked about the very difficult task of separating the small banks, community banks, and credit unions from the humongous banks, the ones that are probably "too-brute-to-prosecute."

But I want to just tell you, I don't know if any of you are sports fans, or whether or not you have paid attention to the fact that yesterday Chris Borland, a 24-year-old linebacker for the world-champ Patriots, retired after one season. He made some comments that I think are profound about the game.

"I played the game. As a result, last January 6th, I had my 7th operation on my left knee, and 2 on my right shoulder. It is a tough game."

I don't know, Ms. LaMascus, if you have ever been hit by a 245-pound linebacker running at full speed.

Ms. LAMASCUS. Not lately.

Mr. CLEAVER. Yes. It is not fun. I have been hit by those—two of those games played in Lubbock.

But the NFL responded to the retirement of Borland by saying that they are continuing to redesign the rules. Now, when I played, you could go low and hit someone just about anyplace. They will not allow clipping anymore. You used to be able to hit people in the backfield, which you can't do anymore, at least not from behind. They are continuing to change the rules trying to protect the players.

I have a friend, Otis Taylor. I went to school with him. He is an all-pro wide receiver who can't get out of bed today. Many of you remember Earl Campbell, particularly the Texans, I am sure, our chairman, Mr. Neugebauer, and Mr. Green. Great running back. Can't even walk anymore. You have to roll him on the field during the annual Old Timers' Day at the stadium in Houston.

The rules are being redesigned. People are trying to protect the players. It is a brutal game.

Are all of you in favor of trying to come up with rules to protect the players? Whether you played the game or not, if you watched it, do you agree with me that changing the rules is okay?

And the helmets are now much more expensive. They are trying to design helmets that will reduce the likelihood of someone getting one of these hits to the head that will affect them for the rest of their lives.

So should the NFL continue to try to design rules to protect the players?

Mr. FENDERSON. Yes, sir.

Mr. CLEAVER. Does anybody disagree?

Mr. WILLIAMS. Yes, we agree. I agree.

Mr. CLEAVER. Because people are getting hurt. Is it—

Mr. FENDERSON. Yes, sir.

Mr. WILLIAMS. Yes, sir.

Ms. LAMASCUS. Yes.

Mr. LEVITIN. Yes.

Mr. CLEAVER. No one disagrees.

Mr. FENDERSON. Might I expand on that?

I would like the ability to be able to get out of bed tomorrow, walk into our bank, and continue to service the customers that we serve. What we are asking Congress to consider is tailoring legislation that matches my business model.

We didn't to secure title to mortgages. We accept deposits, we make loans. That is how we meet the needs of our community. We make mortgage loans that we portfolio. We make automobile loans that we portfolio.

Mr. CLEAVER. Yes. But I want you to harken back to—I harken back to what Mr. Green said earlier. We can't have this hearing and disregard the fact that the thing that separates the things that many of us would like to do, which is to remove the burdens from you—and I am not sure that—and maybe we are not articulating well enough the challenge of trying to get something to do that. I think that if we paused, the five of you would have difficulty coming to an agreement on how do we separate the "too-brute-to-prosecute" from community banks.

Thank you, Mr. Chairman. I apologize for going over my time.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Fitzpatrick.

Mr. FITZPATRICK. I thank the chairman.

And I also want to thank the panel members who have given testimony here today, especially the community bankers and the credit union professionals who meet with our constituents and help them, provide the credit to start their small and family-owned businesses and buy their first homes.

And I wanted to follow up on one of the comments, actually, from the committee to the panel, that credit unions are fewer in number today because of strength and growth and because they have gone on to perhaps merge with a larger entity. And I am sure in an occasional case, that is true. We could probably point to one.

Ms. LaMascus, in your testimony you stated that the impact of this growing compliance, which is the subject of this hearing, is evident as the number of credit unions continues to decline, dropping by 23 percent. You said dropping by—I think you said 1,800 since 2007. Is that correct?

Ms. LAMASCUS. 1,200.

Mr. FITZPATRICK. 1,200? And those 1,200, they don't cease to exist today because of strength and growth in the economy or that they have gone on to become some different or larger charter or entity. Why do they not exist?

Ms. LAMASCUS. They can't keep up with regulations, is one huge reason. They don't have the staff, they don't have the resources to be able to study them, to implement them, to pay for them, and also be able to provide the services to their members. They just don't have the resources to do it.

And, frankly, that is why I advocate for smart regulations. I would agree, we don't want people to be hurt. But we do believe that smart regulations make more sense.

That is why we believe that for you to require regulators to do lookback cost-benefit analyses so that they can document, show us why they are recommending or planning to put in place what they are, we could give better, more targeted feedback. I believe, then, that it would be more collaborative, and less confrontational, because we all do want to protect and help the consumer.

We could do this together. And then hopefully, we will learn from that, and then later we can go back and revisit and modify where the costs were greatly underestimated.

So we believe that smarter regs make more sense.

Mr. FITZPATRICK. Ms. LaMascus, my district is not far from where you do business. I represent southeastern Pennsylvania, Bucks County, Montgomery County. And I was thinking, as you were testifying, about a small credit union that I represent, the Ukrainian Selfreliance Federal Credit Union.

It probably has less than 10,000 members, less than—or maybe $250 million in assets. And the individuals who come here, new citizens, new residents of Pennsylvania and of the United States, many times are going straight to that credit union for the cultural background, the language.

And they are not going to be acquired by some larger entity. They are struggling to cover these compliance costs, the same compliance costs that the big companies can cover, but they are doing it with much smaller, sort of, cost-effectiveness. And I worry about, where will these individuals who go to Ukrainian Selfreliance today, where will they go?

Ms. LAMASCUS. Unless they can qualify to join another credit union, or if it is a merger, they will have to find someplace else to go, likely to someplace that doesn't know them and is not able or willing to do for them what their credit union can.

Mr. FITZPATRICK. Right.

Mr. Williams, you were talking about—you referred to the HMDA reports. Increasing the amount of information for HMDA reports adds to the cost of doing business—

Mr. WILLIAMS. Yes, sir.

Mr. FITZPATRICK. —for community bankers; is that true?

Mr. WILLIAMS. Yes, sir.

Mr. FITZPATRICK. Mr. Fenderson, do you agree?

Mr. FENDERSON. Yes, it does.

Mr. FITZPATRICK. Do you believe that these demands translate to better homeowner lending?

Mr. FENDERSON. I do not believe they translate into better home loan lending. Anytime you add a checklist upon checklist upon checklist, our bank is subject to have to spend more time on that, and, therefore, we are not able to help as many customers as we would like.

Mr. WILLIAMS. If I could follow up, we have had to go to a full-time employee just for HMDA reporting in anticipation of the expanded areas we need to report on.

Mr. FENDERSON. Of specific note, I would say that currently, HMDA data is collected on banks that are $43 million and larger in size. And that is a—I don't know when that was enacted, but it is probably not a modern number. That probably should be looked at. And, I think, does 25 or more mortgage loans a year, which is not modern.

Mr. FITZPATRICK. I am out of time.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Washington, Mr. Heck.

Mr. HECK. Thank you, Mr. Chairman.

I actually am not satisfied to wait for entry into the record the answer to Mr. Sherman's question, so I want to take you back to it, if I may.

I think where he ended when his time ran out was, is it true when there has been a breach of a retailer's system that you, the financial institutions, are on the hook to make the consumer whole?

Mr. WILLIAMS. Yes.

Mr. FENDERSON. Absolutely. We spent $8,000 because of the Home Depot breach.

Mr. HECK. How much?

Mr. FENDERSON. $8,000.

Mr. WILLIAMS. We spent a great deal more than that.

Mr. MILLER. We spent more that $150,000 on the Target breach.

Mr. WILLIAMS. It was significant.

Mr. LEVITIN. I think it is actually a little more complicated. Consumers—

Mr. HECK. I am going to get there.

Mr. LEVITIN. Okay.

Ms. LAMASCUS. Ours was about $42,000.

Mr. HECK. Thank you for that.

So what I hear from retailers is that they have to pay fines to the credit card companies, which they believe are intended to help cover some of the cost of the loss.

Mr. MILLER. If you can send me the information on where I can get that recovery, I would be very interested—

Mr. HECK. That is what I am getting at. Is it true that retailers pay fines to credit card companies when there has been a breach? And if it is true, have any of your ever seen any recovery?

Professor, if this gets to where you were going to—

Mr. LEVITIN. Yes. It is true. If you want to see something published on it, I have an article for which I am happy to give you the citation about this.

The consumer liability is capped by the Truth In Lending Act—

Mr. HECK. Right.

Mr. LEVITIN. —and the Electronic Funds Transfer Act. So the consumer is not going to be out of—in most situations, the consumer will not be out of pocket.

There are considerable collateral losses that occur in a data breach. Some of those get eaten by the financial institutions. A lot of them get eaten by merchants. Walmart's estimate for what a data breach costs is something like $100 per consumer.

Mr. HECK. Does their loss—

Mr. LEVITIN. When it is millions, you are talking about real money there, when it is millions of records.

Mr. HECK. Okay. But I heard all of them say they have not recovered from—

Mr. FENDERSON. Yes, we are not Walmart, unfortunately, and we don't have the dollars that they do.

Mr. HECK. Yes. Well, I am getting back at his point, though.

None of them said they got any recovery. You said it was—

Mr. LEVITIN. Oh, no, no. I am saying Walmart—usually, it is the retailer that eats most of the cost of the data breach. Banks eat a small bit of it, but it is mainly the retailers.

Mr. WILLIAMS. I would disagree. We suffered—

Mr. MILLER. The biggest cost is reputation risk that—it is our card that the member swiped, and we are the ones that have to call them. We can't tell them which retailer it was that caused the data breach to their information—

Mr. HECK. All right.

Mr. MILLER. —so we are the ones that take the reputation hit.

Mr. WILLIAMS. And we have to replace all the cards that have been breached, not just the ones that actual fraud has been perpetuated on.

Ms. LAMASCUS. And Walmart is not protecting our members. We are.

And I agree with whoever said it down there, our members want to know who did this, who caused it, because they don't want to do business there anymore, and we can't tell hem.

Mr. LEVITIN. There are technology changes that—

Mr. HECK. I have more questions and limited time, but I do think that this exchange indicates: one, a problem; two, a complexity to the problem; and three, a very worthy subject of consideration.

I just want to note for the record that there are other committees in the House of Representatives taking this up. It would be, I think, nice, if I can use this as a friendly suggestion, that this committee that has significant interest in the financial sector could exam it from the standpoint of its impact on you.

Professor, I read your testimony, I listened, and you make a case. But I am wondering if you would at least acknowledge that there are significant compliance costs, whether or not that is the reason, as you argue against—and I followed that logic chain—there are significant compliance costs placed on small institutions.

Mr. LEVITIN. Absolutely. And I appreciate that you picked up on the subtle difference between whether it is the real cause of these institutions' problems or whether—I make no argument that there are no compliance costs. There are serious compliance costs.

Mr. HECK. Thank you. That is all I needed.

Lastly, for anybody from the institutions, I am concerned that smaller institutions are being required to exit certain lines of business and become more specialized, and therefore more concentrated.

I wonder if that is your perspective? And, do you think it may have a material impact on safety and soundness if you are becoming more concentrated as economies of scale disallow, prohibit, or impede your entry to other areas?

That is a great question to finish on with my time running out.

Mr. MILLER. The short answer is, yes, it is going to cause some credit unions to get out of mortgage lending because of the QM rules. So they are going to be more concentrated in car loans and credit cards.

Mr. HECK. Is your safety and soundness affected?

Mr. MILLER. Yes. When you take away the ability to have multiple lines of business and concentrate them in fewer, you create more risk.

Mr. HECK. Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Westmoreland.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Professor, are you still on the Consumer Financial Protection Bureau's Board? Are you still a member of that?

Mr. LEVITIN. I am a member of the Consumer Financial Protection Bureau's Consumer Advisory Board, yes.

Mr. WESTMORELAND. Okay. So you do represent—

Mr. LEVITIN. No, I do not, sir. I am here today solely in my individual capacity. I have no authority whatsoever to speak for the Advisory Board, and the Advisory Board is an independent body from the Bureau itself.

Mr. WESTMORELAND. But you are on that Board, correct?

Mr. LEVITIN. I am on the Board, as well as the president of American Express, as well as the president—

Mr. WESTMORELAND. No, that is okay. I just wanted to know if you were. I don't want to know the rest of them.

The gentleman from Missouri made a great analogy about the NFL changing rules to keep players from getting hurt. It seems to me the CFPB is protecting the people in the stands while the players on the field are getting clipped and getting hurt. And so, if your objective or if our objective is to save the players on the field, I think these gentlemen and the lady are the players on the field.

I want to ask a question, and start with you, Mr. Fenderson, and we will just go straight down the line.

If an unbanked person came into your bank on a Monday and said that his or her car was broken down on the side of the road, and they needed $150 to get it fixed, and they would pay you back Friday, would you make that person that loan?

Mr. FENDERSON. Yes, we would. We have a small-dollar loan program.

Mr. WESTMORELAND. And what would be the charge on that?

Mr. FENDERSON. For unsecured lending, 18 percent.

Mr. WESTMORELAND. How much?

Mr. FENDERSON. 18 percent.

Mr. WESTMORELAND. 18 percent.

Would you, the credit union, make that?

Mr. MILLER. Yes, we would. And I don't know the specific rate, but I can get back to you on that on a follow-up.

Mr. WESTMORELAND. Okay.

Mr. MILLER. I have another comment regarding Mr. Cleaver's testimony and Mr. Green's testimony. I believe a $50 billion bank or credit union looks a lot more like a $10 billion bank than any way that it would resemble a $1 trillion mega-bank.

Mr. WESTMORELAND. Okay.

Mr. Williams?

Mr. WILLIAMS. Yes. We don't have a minimum loan. We would make it. And, in Texas, we would make it at 17½ percent because 18 percent is usurious.

Mr. WESTMORELAND. Ma'am?

Ms. LAMASCUS. Yes, we would make it, and it could be up to 18 percent.

But I would like to make one other comment, as well. We are talking about the cost of regulation on our institution, and that is a serious concern. But it does also impact the consumer, because all the procedures, all the processes, all the checklists, and all the things that we can and can't do get between us and our members. We can't really spend that time with them finding ways that we can better help them with their financial situation because of regulations.

Mr. WESTMORELAND. Professor, would 18 percent be a fair interest rate for that?

Mr. LEVITIN. Sure. I don't have any problem with 18 percent.

Mr. WESTMORELAND. Okay.

Mr. LEVITIN. That is actually by Federal regulation that they are capped at 18 percent.

Mr. WESTMORELAND. So you—

Mr. LEVITIN. I want to say, I liked your analogy with the ball game, protecting the fans. We do that. When you go to a hockey game, they have a wall so the fans don't get hit by a puck.

Mr. WESTMORELAND. Thank you.

Mr. Fenderson, you made reference to several of the bills that our colleagues are going to introduce. I am planning on reintroducing the Financial Institutions Examination Fairness and Reform Act. I don't know if you are familiar with that, but Mrs. Capito, who is now in the Senate, had introduced that in the last Congress.

And there is a section in there that talks about non-accrual loans, where you have a loan that is current but then the regulators come in and tell you for certain reasons, you have to put it in a non-accrual.

Does that hurt your bank when you have to do that?

Mr. FENDERSON. It does. It is a tremendous drain where we were accruing for that loan and, therefore, recognizing the income, and, therefore, we are not able to recognize that income.

Mr. WESTMORELAND. Mr. Williams?

Mr. WILLIAMS. Yes, I agree, clearly.

Mr. WESTMORELAND. Would you have any problem with that being in the bill, these regulations that say a current loan would have to be some way put into a non-accrual status—would not have to be put into a non-accrual?

Mr. FENDERSON. What we would like to have is the ability to manage, and manage our own risk. And by doing that, if we think that loan is a problem, we will probably place it in non-accrual on our own.

Mr. WESTMORELAND. Okay.

Mr. Williams?

Mr. WILLIAMS. We would have a very similar situation. We would think we would have already identified it and we wouldn't need a regulator to do so.

Mr. WESTMORELAND. Okay.

Thank you, and I yield back, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from California, Mr. Vargas.

Mr. VARGAS. Thank you very much, Mr. Chairman. I appreciate the opportunity to speak.

I am also happy that my colleague from Missouri has left, because I was a 245-pound lineman and linebacker.

But I guess the only thing I—and I am not trying to make any points here today, so I don't have any bones to pick, other than one for Latin. I think you were looking at "post hoc ergo propter hoc." That is the logical fallacy that I was thinking that you were thinking of when you were thinking of "after this, therefore because of this."

Mr. LEVITIN. You got it. And what is really embarrassing about this is, back in 8th grade, I won a Latin competition.

Mr. VARGAS. Oh, okay.

I listened to all the testimony today, and I think we are—there is a lot of goodwill, I think, in trying to figure out how to treat smaller financial institutions differently and whether the exemptions that exist now in the CFPB are robust enough, really, to handle their problem. And it seems that the testimony here is saying, no, they are not. They haven't gone far enough.

Professor, why don't you comment on that? Because I think that is what we are getting to here, that you can't treat a bank with an "M" the same as one with a big "B," when you talked about $60 billion or $60 million. They are different banks.

Mr. LEVITIN. Oh, absolutely, I would agree with you. I think I am trying to make—there are two points I would make. The first is that yes, there are real—regulation causes difficulties for smaller financial institutions. It is not their main problem, but it does cause difficulties for them. We should be thinking about ways to ease their regulatory burdens. We need to do it in a way that it doesn't cost consumers important protections. The current way regulations work right now is we have a table full of representatives of regulated depositories. They are not the only actors in the market. There are also non-banks, and the non-banks are subject to the same statutes.

So for example, the Qualified Mortgage rule, which is an exception to the ability—that isn't just for banks and credit unions. It is also for the hard money lenders that have historically been rather predatory in their lending. It would be, I think, a totally reasonable thing to make clear by statute that the CFPB could exempt regulated depositories and credit unions from certain rules—the

CFPB doesn't think that it has that authority currently. That would be a sensible way to proceed, and then let the agency exercise more discretion about this.

Mr. VARGAS. I think we need to look at that, because I listened to Mr. Fenderson, and I understand his issue. I think he is here saying, we have a lot of people I could really loan to, and the bank should be loaning to them, but I really can't at this moment. The regulations that are on me are too rough; I would have to hire another person. It is very costly. I can't do that.

I actually represent the border in California, and we have our own special set of problems there because of potential money laundering. A lot of the big banks are going out of that area because of those regulations, so I do think that there is something that has to be done and maybe there is some middle ground here to be reached.

Mr. LEVITIN. I think it is important to look at the size threshold, $50 billion is a very, very large bank. $10 billion which is often used—for $10 billion, you could buy the Cowboys, the Patriots, and the Giants, and have some money to spare. You would own three different football teams, but that is not a community bank.

Mr. VARGAS. No, I understood that. In fact, some of the questions—

Mr. MILLER. Can I make a comment on that? The assets of a $10 billion credit union do not represent the equity of a $10 billion dollar credit union. They are more like $1 billion in assets; they can't go buy the Patriots.

Mr. VARGAS. In fact, I think that is why the nature of the institution is important. I think that is what they were getting to when the questions were being asked earlier—is a $50 billion bank a community bank?

Mr. MILLER. It looks a lot more like a community bank than a $1 trillion mega-bank with hundreds of thousands of employees.

Mr. VARGAS. Thank you, sir. I do understand that. But I think that is why the question was difficult. Mr. Fenderson, you wanted to say something?

Mr. FENDERSON. I would say, again, the emphasis has to be on the business model. Regulators are well-trained to do their jobs. I think Congress can help make sure they are put in a lane where they get the flexibility to regulate us the way we need to be regulated, based on our business model and the risks that we take.

Mr. VARGAS. I believe someone else had their hand up.

Ms. LAMASCUS. Yes, thank you. In my testimony, I referred to credit unions being, regardless of size, a cooperative institution organized for the purpose of promoting thrift among its members and creating a source of credit for provident and productive purposes. There is not a thing in there that says I should be having to spend 25 or more percent of my time figuring out regulation and implementing them. Dodd-Frank gave CFPB the exemption—

Mr. VARGAS. I don't want to cut you off, but I don't want to go over my time.

Ms. LAMASCUS. Thank you.

Chairman HENSARLING. The gentleman yields back. The Chair recognizes the gentleman from Illinois, Mr. Hultgren.

Mr. HULTGREN. Thank you, Mr. Chairman. Thank you all so much for being here. I appreciate your time and your input in this very important issue, just to discuss Dodd-Frank and absolutely necessary regulatory relief for community banks and credit unions. I have come to strongly believe that Dodd-Frank is damaging our economy and is slowing our Nation's economic recovery.

Dodd-Frank's current regulations and guidelines span 8,231 pages. I think that is just 60 percent about of what is coming. Our Nation's job creators will spend $60 million labor hours and employ 30,000 workers to navigate this bureaucratic minefield.

Unfortunately, community banks and credit unions which help people access the American dream have been disproportionately hurt by Dodd-Frank. These institutions provide almost half of small business loans and serve 1,200 rural counties that otherwise would have limited options. Without them, as we have heard today, many responsible Americans would not be able to own a home, start a business, or preserve a family farm. Community financial institutions depend on personal relationships and local knowledge of their community to lend. This means they can tailor-make loans to fit their customers' needs.

This lending model actually works. These lenders know your story, know your business, and know exactly what kind of loan you need. Large banks often can't follow that lending model. Their size forces them to make simple, plain vanilla loans, and disproportionately consult statistics like income or credit score to evaluate borrowers.

Our economy absolutely needs both kinds of lending. Unfortunately, parts of Dodd-Frank target the relationship lending model by forcing these smaller institutions into regulatory straitjackets, tailor-made for big banks. For example, in my home State of Illinois, Robert Smith of Soy Capital Bank and Trust Company has told us that the Qualified Mortgage rule has reduced their ability to make mortgage exceptions to people with unique circumstances, even though they can afford the loan.

Real lives are disrupted along the way as banks reduce lending, merge with competitors or shut down. Thankfully, there are bipartisan solutions to provide much-needed relief to community banks and credit unions. My constituents in the 14th Congressional District of Illinois are desperate for real solutions here, so I am grateful for the opportunity to explore them with each of you today.

I am going to address my first question to Mr. Williams, and then if Mr. Fenderson, Mr. Miller, and Ms. Bosma-LaMascus could also comment. Proponents of regulatory relief can be painted as being against consumer protection and eager to return policies that cause a financial crisis. I find this narrative ridiculous, including when it comes to regulatory relief for community financial institutions.

Consumers need regulatory protection. We all agree with that, but these institutions were not the cause of the financial crisis such as subprime lending, securitization or derivatives. Will targeted regulatory relief for small banks and credit unions return us to policies that cause the financial crisis, do you think? I will start with Mr. Williams.

Mr. WILLIAMS. It would not. It is a difficult question to answer, Congressman, but we need the relief so we can provide the services to our customers. I agree with everything you have said. We know our customers and we are going to try to find ways to make the loans. What has happened is examples in Dodd-Frank under QM have made it difficult for us to approve those credits.

Mr. FENDERSON. The flexibility to do our jobs and serve the customers that we serve is all we are asking for. And that obviously comes in the form of relief because of the unintended consequences that we deal with. Let me be clear, small institutions, as everyone knows, are not regulated by the CFPB. However, the rules that they regulate create a playing field in which we have to participate.

Mr. HULTGREN. Let me get on to my next question—probably you all would echo similar things here. This is personal for me—my family owns a funeral home, I grew up in a family funeral home, and I am convinced that my mom and dad would not have been able to purchase that funeral home in the mid-1970s, but for a local community banker who saw something special in them. The idea of judgment, being able to know a person, know a community, and be able to make a decision, Dodd-Frank takes that away, takes that ability away to be able to know a customer, have a business, not a model, know a community, and be able to make those decisions. To me, that is tragic.

I think it also is reflected in the fact that the lowest number of business startups that we are seeing in 3 decades is part of this problem.

Let me touch quickly on, community financial institutions don't need the same regulations as large ones. As Federal Reserve Governor Daniel Tarullo has said, many rules and examinations that are important for institutions that are larger do not make sense in light of the nature of the risk to community banks.

A question would be, could we have some sort of tiered regulation, should we give Federal Reserve or other regulatory agencies clear legislative authorization? We just have a few seconds, so if any of you have any thoughts?

Mr. MILLER. The short answer is yes, because we didn't create the problem, and all of us combined as small community banks and credit unions don't add up to the systemic risk created by the large banks.

Mr. WILLIAMS. Absolutely, yes.

Mr. HULTGREN. My time has expired. Thank you for being here. I know it takes courage sometimes to come out and talk about these things. We need your voice. I yield back to the chairman. Thank you.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Michigan, Mr. Huizenga, chairman of our Monetary Policy and Trade Subcommittee.

Mr. HUIZENGA. Thank you, Mr. Chairman. I appreciate it. And gentleman, I'm sorry, but ironically, I had to step out to introduce a constituent at the Small Business Committee, which is dealing with conflicting regulations from the EPA and the Department of Energy. This is the frustration that I have, is we have so many of those circumstances, even here in the financial services world.

Mr. Fenderson, it struck me, you were discussing how smaller institutions are exempt; we know that, right? But it sets a new bar, doesn't it? It sets a new regulatory bar. When we had Mr. Cordray in here earlier, I was exploring some of this with him and expressing to him why many of the companies that I talked to in Michigan want to talk anonymously. He seemed a little confused by that, why anybody would want to be anonymous in their criticism. I think anybody who has dealt with that knows exactly why you want to be anonymous on that. But he couldn't seem to understand that was the new floor that was being set, the new bar that was being set. And I think that is something we have to be very diligent about.

I want to hit a little bit on Qualified Mortgages. And we have examples, I have one here from Michigan, anonymous, as you can imagine. Sixty percent of their mortgages are to members of the credit union, members with under a 600 credit score, but they charge the same interest rates, and this is in a small, poorer, rural area, and they are looking at dropping even offering those credit opportunities. A closing fee of $50 plus whatever a third-party vendor charges. But suddenly they are finding these criteria and they are not matching up. I am curious for any of the four of you, are you going to be offering non-Qualified Mortgages, or if not, why not? You have talked a little bit about QM.

Mr. WILLIAMS. Congressman, we do offer them, we do offer non-QM loans.

Mr. HUIZENGA. And will you continue to do that?

Mr. WILLIAMS. Yes, we will continue, but that doesn't matter. Almost all of the banks are dropping out of it because they are fearful of not being able to obtain the safe harbors that QM offers. The important thing is we need to get QM dropped on portfolio loans that we underwrite, and we are willing to accept that credit risk.

Mr. HUIZENGA. Any others?

Mr. FENDERSON. We absolutely will continue to make those loans, it is a market that we serve. It is an expectation that we have and a part of the role that we play in the communities we serve.

Mr. HUIZENGA. Others?

Mr. MILLER. We will do about half that we were before, because we, frankly, are fearful of the regulatory scrutiny.

Ms. LAMASCUS. We are not yet within the requirements for it, but we will be. And I would anticipate that we would make QM loans. The thing that is fortunate for us is we will have time to see how case law plays out on this and make a better business decision at that time, but that is the problem is trying to determine what is the level of risk?

Mr. HUIZENGA. Mr. Miller, you might have hit on, what are—my follow-up question is, what are the costs to your members and/or your customers? You are saying that maybe half of the people you would have serviced, you are not going to be able to, because you are afraid of that additional scrutiny and maybe from some of the others—the trade-offs that—

Mr. MILLER. We may even lose a relationship because we made a business decision, not in Oxnard, California, but it was made for us in Washington, and the member gets mad at us because we said no, when we said yes to them the last 3 times they have come in to do a mortgage over the last 20 years. That is frustrating. They have to go somewhere else and it will probably cost them more.

Mr. HUIZENGA. My colleague—

Mr. MILLER. If they can get it at all.

Mr. HUIZENGA. —Mr. Hultgren was talking about his small family business. I have a small family business, a third-generation as well. I am really concerned about what impact recent mortgage rules are going to have on small businesses in the community and their ability to be small business owners, to be community leaders. Anybody on the panel?

Mr. WILLIAMS. I would like to follow up and say that a lot of these loans we make are nonconforming markets that are rural, and if we don't make them, nobody will.

Mr. HUIZENGA. So you are willing to take that additional risk to make sure that you are servicing your community?

Mr. WILLIAMS. Yes, and we understand the risk. We underwrite it and that is what we do.

Mr. MILLER. I would say we also, everyone at this table is probably good at underwriting. Over a 6-year period beginning in 2009, we are a $400 million credit union, we do a lot of mortgage loans, we had a total of $339,000 of charge-offs for mortgages, less than one-tenth of 1 percent. I would offer a thought that we respectfully appreciate the help, but I think we are pretty good at underwriting mortgage loans. We don't need more regulations to help us do that.

Mr. HUIZENGA. Mr. Fenderson, quickly?

Mr. FENDERSON. I just wanted to quickly say that we will make small business loans whether it pulls us into the question of adding HMDA data or not. That is the only way we understand the rule to suggest that we bring in QM, because a business loan is not a consumer transaction.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger.

Mr. PITTENGER. Thank you, Mr. Chairman, and I thank each of the witnesses for your public service and for being with us today. Last week, I had the occasion of meeting with a small community bank in my district, with the president and the credit officer there. Mr. Chairman, for the record, I would like to introduce a memo that they have provided.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. PITTENGER. The discussion we had was frankly very informative but very alarming to appreciate the real challenges and difficulty that each of you go through. I am going to read a bit of his comments. I videotaped it, and then we have transcribed the comments. It was so amazing to me what, regrettably, he had to say. He said, "We are a $145 million bank, with 2 branches and 27 employees. We all spend time with customers trying to build our business. But the sheer complexity in the mortgage system makes it almost impossible for an entity of our size to appropriately meet all these regulations. This is the ability to repay a Qualified Mortgage rule, small entity guide"—and he held it up, this guide is 56 pages.

There have been, since it was published on August 14, 2013, 4 pages of additional rules that have been added. If based on this guide you meet certain criteria, you have to provide an escrow account for an individual's taxes and insurance on their mortgage. If you want to do this, there is another small entity guide for the TILA–RESPA. That is another 91 pages, and he held it up. If you want to pay your mortgage originator, then you have the 80-page small entity guide, and he held that up for the 2013 loan origination.

For all of these guides, there is a paragraph that is contained in all of it. There are other guides that apply to the mortgage loans as well. That basic paragraph says, "This guide's summarizes the ATR QM rule, but is not a substitute for the rule." Essentially, it says you must refer to the final rule. The final rule is 185 pages long. The final rule then refers to the Act. The Act, of course, is thousands of pages. As I said earlier, it is longer than the Bible. So our ability to understand all of these rules and appropriately follow them is very difficult to do. And he said, "Congressman, do whatever you can. Help us out."

I would just like to know if this is your experience as well, Mr. Fenderson, Mr. Williams, and any of the rest of you, Mr. Miller?

Mr. FENDERSON. I would say that you explained a very real scenario in which as a banker, we not only—our credential regulator is the OCC. They have regulation that they are sharing with us that we have to understand and interpret, and then we have the rules from the CFPB that we have to learn and understand. And so that creates a volume of information such that if you have 27 employees, which happens to be exactly what we have, it becomes difficult. We only have one person who is dedicated to compliance. We had to add that person in order to try to be prepared for the regulations that are coming down the pike.

Mr. PITTENGER. Another cost burden to you.

Mr. FENDERSON. Absolutely.

Mr. PITTENGER. Mr. Williams?

Mr. WILLIAMS. Clearly we are seeing in our area, 11 percent of banks are just getting out of the business that once were in the business of making single-family residential loans. We had the wheel invented, we are staying in it, but the point is, we have a long relationship with our rural customers. We understand them, we know who is going to repay and who is not, and we are going to stick with them. That doesn't matter, too many banks are getting out of it simply over, we are not going to make QM loans.

Mr. PITTENGER. How many man-hours would you say a year is added to your compliance requirements?

Mr. WILLIAMS. We had one compliance officer 5 years ago; today, we have six.

Mr. PITTENGER. Mr. Miller, do you want to make a comment?

Mr. MILLER. We haven't grown our compliance department as aggressively as Mr. Williams' bank has, but we are heading down that road.

Ms. LAMASCUS. NCUA has estimated that it will take 40 hours to review the 450-page proposal regarding our call reports under the new risk-based capital they are proposing. When you mentioned the Bible, it made me think of something that I was thinking about yesterday: Envision 450 pages. That is almost a ream of paper that you get in a standard package. Good luck! Someone might be able to read it in 40 hours, but to understand it, figure out how it is going to impact your operation and all of the changes you have to make, 40 hours is nothing toward the additional labor this costs. I was thinking when I thought of that much paper, of the Old Testament. It is huge, and 40 hours does not adequately describe the number of hours.

Mr. PITTENGER. Longer than the Bible, but none of the good news.

Ms. LAMASCUS. That is right, that is right.

Chairman HENSARLING. Regrettably, the time of the gentlemen has expired. See if you can top that. The gentleman from Kentucky, Mr. Barr, is now recognized.

Mr. BARR. Thank you, Mr. Chairman, and thank you to the witnesses and the organizations that you all represent for your endorsement of several pieces of legislation. We have introduced the Portfolio Lending and Mortgage Access Act, the HELP Rural Communities Act, and the American Jobs and Community Revitalization Act.

The law professor's testimony today was that Dodd-Frank and regulations are not the cause of the decrease in the number of community banks and credit unions in America. He has gone to great lengths, it seems, to distinguish between causation and correlation. And when I was in law school, I preferred the Socratic method to lecture classes. So let's do a little bit of Socratic method right here down the row of our witnesses. Since the enactment of Dodd-Frank and the Qualified Mortgage rules, have your compliance costs increased or decreased, Mr. Fenderson?

Mr. FENDERSON. Our compliance costs have increased.

Mr. BARR. Mr. Miller?

Mr. MILLER. Increased by more than $100,000.

Mr. BARR. Mr. Williams?

Mr. WILLIAMS. Increased by probably 15 to 20 percent.

Mr. BARR. And Ms. LaMascus?

Ms. LAMASCUS. Increased by at least $250,000.

Mr. BARR. Have you had to hire more or less compliance officers, Mr. Fenderson?

Mr. FENDERSON. More.

Mr. MILLER. More.

Mr. WILLIAMS. More.

Ms. LAMASCUS. I have hired two more, and just hired another one, and 50 percent of his time will be on compliance.

Mr. BARR. And since the finalization of the Qualified Mortgage rule, has the volume of your mortgage originations increased or decreased?

Mr. FENDERSON. Ours has remained roughly the same, but we have not made as many mortgages.

Mr. MILLER. We are also about the same, but we have a lost opportunity cost because we have had to turn away 50 members.

Mr. WILLIAMS. Our volume is static, we are making about the same number of loans, but we are still turning down loans.

Ms. LAMASCUS. Decreased.

Mr. BARR. And has the cost of borrowing for your customers, if you are remaining static, increased or decreased?

Mr. FENDERSON. Unfortunately, we are in a heavily competitive market, so it has not gone up cost wise, per se, because in order to get that loan on the books, we have to be competitive.

Mr. MILLER. We have also had to be competitive with rates, so our margins have suffered.

Mr. WILLIAMS. Our margins have suffered, but the costs have gone up, primarily on appraisals.

Ms. LAMASCUS. Costs have gone up and margins have declined.

Mr. BARR. And my final question, do higher compliance costs and the compromising of your business model that you had before Dodd-Frank make it more likely or less likely that a small community bank or credit union like yours will fail?

Mr. FENDERSON. I would say that most institutions that are well-run would have an opportunity to merge before they fail.

Mr. BARR. Okay. Merge or fail, that is a good point.

Mr. FENDERSON. Yes.

Mr. MILLER. More likely.

Mr. WILLIAMS. More likely.

Ms. LAMASCUS. More likely.

Mr. WILLIAMS. As a matter of fact, we did merge, specifically because we had two banks, and with the cost, we felt like the economies made a lot of sense.

Mr. BARR. With respect to the portfolio lending idea that we have proposed, the professor blames portfolio loans on the financial crisis. What do you think was the principal cause of the financial crisis? Portfolio loans or the originate to distribute model that was fueled by Fannie Mae and Freddie Mac that allowed for purchases of billions of these subprime mortgages, unlike portfolio loans that were not properly underwritten? In other words, just as a summary, what was the root cause of the financial crisis? Was it portfolio loans, or was it GSEs fueling subprime origination? I will just ask Mr. Williams on that one.

Mr. WILLIAMS. GSEs, subprime.

Mr. BARR. Okay. Does anybody disagree with that?

Mr. LEVITIN. Yes, sir.

Mr. BARR. Well, besides the professor. We heard your testimony, sir.

Mr. LEVITIN. I don't think you actually characterized what I said correctly.

Mr. BARR. We heard your testimony.

Mr. LEVITIN. You mischaracterized it. I did not say portfolio—

Mr. BARR. I heard your testimony. I have one minute left. Let me just ask you this about Professor Levitin's arguments against the bill and Director Cordray's as well. What do you think the likelihood is that your institutions would make ill-advised loans if you have to retain the credit risk? Remember, this is on your members and on your shareholders. Is it more likely that you would make ill-advised loans if you know you have to retain the credit risk? Mr. Fenderson, we will start with you.

Mr. FENDERSON. The mortgages that we make and hold in portfolio are obviously loans that impact the long-term nature of our balance sheet and its quality, so we will continue to make those loans.

Mr. BARR. Mr. Miller?

Mr. MILLER. It is less likely. Once again, I offer our mortgage charge-off figure, over a 6-year period for a $400 million credit union, was $339,000, less than one-tenth of 1 percent. We are pretty good at evaluating risk in our portfolio.

Mr. BARR. Mr. Williams, in anticipating your similar response, could you also add to that? Are you in a better position to assess the credit risk of your customers as a community bank knowing your customers than the Consumer Financial Protection Bureau in Washington?

Mr. WILLIAMS. Yes, we are, and our business is to make good loans.

Ms. LAMASCUS. We know our members, we make good loans, and we don't differentiate with our underwriting whether we are going to keep them in portfolio or sell them off in the secondary market. We use equally, credible underwriting.

Mr. BARR. My time has expired.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Pennsylvania, Mr. Rothfus.

Mr. ROTHFUS. Thank you, Mr. Chairman. Let me start by thanking you all for appearing before the committee this morning and sharing your stories with the American people. Your experiences are important because they are illustrative of the problems that come about when you have a one-size-fits-all, Washington-knows-best approach to regulating community banking.

Instead of institutions making reasoned decisions based on actual knowledge and long-standing relationships with their customers, the elites here in Washington, D.C., would rather have everyone fit into predetermined boxes or not have access to banking at all. This mindset has a direct impact on the ability of institutions to serve their local communities, particularly those in need. It dictates whether an institution will offer important services like free checking and overdraft protection, whether it can offer a mortgage for a first-time home buyer, or whether it can extend a loan to a promising startup business.

In my district in Western Pennsylvania, for example, we have a credit union in Johnstown that ran into regulatory barriers when it was trying to rescue a deserving single mother from a mortgage that had been sold 4 different times with the interest rate increasing with each new lender.

We also have a community bank in Pittsburgh that provides loans to small businesses. The institution does not offer prepackaged loans or loan terms, but rather every loan is specifically designed considering the facts, circumstances, and risks.

The bank tried to set up a compensation system for its loan officers that rewarded them for building and maintaining relationships with their consumers. The FDIC, however, thinks that the system violates CFPB lending regulations, and the CFPB won't give the banks a straight answer.

In the meantime, the bank isn't making many of these loans, and local small businesses are at a block. Finally, we have a community bank in Monroeville that recently calculated the amount of time that the institution had devoted to studying, analyzing, making changes, and training staff to comply with new CFPB regulations.

The bank determined that it took over 2,000 hours, in other words, it took more than a year. Every hour spent doing this was non-productive and took the bank staff away from meeting with customers and serving its community.

To be clear, these institutions and the consumers they serve had nothing to do with the financial crisis, yet they are the ones that are being harmed the most by Dodd-Frank and the regulatory avalanche that has followed. And they are the ones that will suffer if the President continues to promise to veto any legislation that attempts to fix this under a misguided belief that Dodd-Frank is the next thing to gospel. Western Pennsylvanians want to say yes to commonsense reform, but Washington just continues to say no.

Ms. Bosma-LaMascus, and also this is for Mr. Fenderson, since the passage of Dodd-Frank, fees have gone up for many products and services, making it increasingly difficult for middle-class and lower-income Americans to access banking services. For example, in 2009, 76 percent of banks offered free checking, but now, only 39 percent of banks offer that service. And the mandatory account balance to qualify for free checking has increased.

Similarly, 76 percent of banks offered bank accounts free of charge in 2009, but this number has dropped to 38 percent following the passage of Dodd-Frank. I think that we would all agree that more needs to be done to ensure that people are not shut out of the mainstream banking system. So I would be interested to hear about your own experiences on this issue and how Dodd-Frank has negatively affected your ability to do this and what you are doing in response. Mr. Fenderson?

Mr. FENDERSON. Thank you very much. We have seen a steady reduction in what we call non-interest income, that is a source tied to overdraft fees and other ancillary fees. We did have to repeal and retire our free checking account because we frankly had to figure out a way to replace that revenue. The impact to the consumer is that they now have to pay for an account that they did not have to pay for before. So as an institution, unfortunately, we see the burden of our need to generate a return, which is a part of the safety and soundness earnings in order to continue to be in business.

Mr. ROTHFUS. Ms. Bosma-LaMascus?

Ms. LAMASCUS. We grandfathered our free checking accounts, so our members who already had them still have them. But also, in order to keep the cost down for our consumer members on a couple of our other share draft type checking account types, our members, when they use their debit card, can actually earn money back. So that is how we are able to continue to provide additional checking services for them, but we did do that. But that is why we have such concerns about debit cards and interchange and the fraud connected with them.

Mr. ROTHFUS. Thank you, I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from New Hampshire, Mr. Guinta.

Mr. GUINTA. Thank you very much, Mr. Chairman, and thank you all for participating in this morning's hearing. I, too, share a deep concern about the regulatory environment and the burdens that affect my State and the credit unions and community banks that try to do business and provide access to credit to many families across New Hampshire. My State has about 26 different credit unions, and has about 36 different community banks. As a matter of fact, New Hampshire is the birthplace of the credit union, Saint Mary's Bank.

I have recently spoken with other bank presidents, Rick Wallace from Piscataqua Savings Bank. I want to tell you a little bit about his story, and then I want to get some comments, both from the professor and from some others. He has one branch in Portsmouth, New Hampshire. He is a small $230 million bank, less than 50 employees. The regulatory compliance requirements that have come out of Dodd-Frank have forced him to focus on meeting compliance rather than being focused on consumer access to credit, according to the bank president.

He is telling me now that he is only making about half the loans that he used to prior to Dodd-Frank. And that his own cost analysis has determined that 25 percent of his bank resources are now going to compliance. So my question I first want to ask the professor is, do you believe that this regulatory environment, do you believe that is a true and accurate assessment of what he is communicating? And if you do agree, do you think that the regulatory environment is actually harmful in some circumstances to the actual end-user and consumer?

Mr. LEVITIN. To answer your question, I have no reason to doubt what this bank president says about his lending volume. Regarding compliance costs, that is a very subjective and difficult measurement. I don't doubt his numbers, I just am not sure what they really represent. No one has a good way of measuring compliance cost, there is no definitive measure.

As far as the ultimate question, though, are regulatory burdens harming smaller financial institutions? Yes, in some circumstances. They have real costs to small financial institutions. There are also benefits from some of the regulations, and we need to think about the proper balancing. You won't see any blanket objection from me to having regulatory relief for smaller financial institutions, but I think that the regulatory relief needs to be smart, it needs to be targeted, and it cannot come at the cost of consumer protection.

Mr. GUINTA. Could you identify maybe one or two regulatory relief items that we should pursue for small community banks?

Mr. LEVITIN. Certainly. One thing that I think should go the way of the Dodo Bird are the Gramm-Leach-Bliley privacy notices. Nobody reads them. If anything, the only effect they have would be to lull consumers into thinking they actually have some privacy rights. There is no reason anyone, even the large banks, should spend money on giving those notices.

Mr. GUINTA. Ms. LaMascus, could you give me a little idea, from your perspective, on the two or three things that we should be doing to try to reduce the regulatory compliance to your industry?

Ms. LAMASCUS. Yes, first, I am glad to hear Professor Levitin comment on smart regulations. I think we are making progress. If I were to limit to just three out of all the opportunities for improvement, NAFCU and member credit unions would request legislative capital reform, including supplemental capital. We would ask for field of membership relief, and that we pursue smarter regulation by requiring realistic robust cost and benefit analyses that we could provide better feedback and get smarter regulations.

Mr. GUINTA. And do you believe the lending volume decline, whether it is community banks or credit unions, is directly impacted by regulatory requirements in Dodd-Frank?

Ms. LAMASCUS. Yes. I can give you an example.

Mr. GUINTA. Please do.

Ms. LAMASCUS. I would like to actually go off of what someone said here—I think it was you—about the mortgage officers who were being compensated for the relationship and that type of thing. I think this is an example of how regulations get between the financial institutions and their customer members.

A mortgage officer in a community bank or in a credit union is one of the best-positioned persons to know that person's financial condition and also to be able to see other ways that they can help them make better financial choices and actually save them money or enhance their return. So it is unfortunate that those people are being prohibited or discouraged from being able to further that relationship.

Mr. GUINTA. Thank you. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Colorado, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. And I thank the panel for taking the time to be here. The professor just talked about having smart regulations. Yesterday, we had Secretary Lew before our committee. I found it a little bit surprising that the chairman of the FSOC, in not one of their hearings, ever spoke about community banks. Unfortunately, when we are talking about smart rules, smart regulations, we see Dodd-Frank roll up, and apparently our community banks are simply an afterthought when it comes to Washington, D.C., and the impacts that we are seeing. Do you think it would be in the interest, perhaps, of the Chairman of the FSOC to maybe pay attention to the community banks, Mr. Williams?

Mr. WILLIAMS. Yes, I do, because the FDIC finding is that 94 percent of the banks in the United States are community banks.

Mr. TIPTON. Did you know when we are talking about regulations, we get focused here obviously on the financial services industry. When we look across-the-board, a report came out last year which said that $2 trillion is being paid in regulatory costs. Ultimately, those costs get passed on to consumers, which is stifling.

Small businesses need opportunities to be able to grow. Is it your experience in your community—I visited with First Colorado National Bank in Delta, Colorado, a small community bank, and they are seeing more businesses shut down. In fact, we have a report that just came out that we are, for the first time, seeing more small businesses shut down in this country than there are new business startups. Is that going to impact your ability to be able to help your community?

Mr. WILLIAMS. Are you speaking to me, Congressman? Obviously, if we see businesses shut down, that is jobs, that is everything. And yes, that is going to hurt our ability to be effective in our communities. We are in rural communities that are generally non-growth, so any time a business shuts down, it hurts the community because we don't have the jobs.

Mr. TIPTON. Thank you.

Mr. FENDERSON. Without question, as small businesses go, so does our local economy, and we understand there is an ecosystem to ensuring that we all have an opportunity to succeed.

Mr. TIPTON. When we are talking about small community banks, often simply as a matter of survival, and you spoke of this, Mr. Fenderson, about being able to consolidate, to get the economies of scale, I believe, Mr. Williams, that you had spoken about it also. We are looking at some legislation right now, I believe, Mr. Fenderson, you are already covered under this. The OCC has an 18-month exam cycle for well-run banks. Would it be sensible, as we see a need for that economy of scale, to be able to take up that 18-month cycle for examination up to, say, a $1 billion bank, would that be a good idea?

Mr. WILLIAMS. Yes, sir, absolutely.

Mr. TIPTON. Would you support that? I know you have ambitions to grow that bank.

Mr. FENDERSON. I certainly would, and I think that the exam cycle needs to reflect the safety and soundness concerns of the business model, and therefore, it would make sense to extend that. And also attached to that, some turnaround time with respect to delivering the final report.

Mr. TIPTON. Great. I would like to talk a little bit about the Federal credit unions as well, a topic we haven't been able to cover here today. I recently heard that Partner Colorado Credit Union and Pikes Peak Credit Union were forced into a difficult situation right now. Partner Colorado Credit Union is close to surpassing the 100th international wire remittance in 2015, primarily due to 2 members who send wires twice a month. They must now decide whether or not to offer international wires to make a large change to their wire platform to become compliant with the International Wire Remittance Rules. Either way, the credit unions and their members actually lose.

Mr. Miller, would you like to, maybe, address this first? Although I am confident there are several examples of burdensome regulations that don't necessarily apply to credit unions, can you give us some ideas and discussion on CFPB's International Remittance Transfer Rule?

Mr. MILLER. It is another example of majoring in the minors and focusing on a problem that really doesn't exist. People don't shop for a wire before they walk into the bank or credit union to place that instruction and get that money to somebody who really needs it. People send a wire because there is some kind of emergency or some kind of urgent need for the recipient to receive their funds. They are not going to use this half-hour waiting period to go shop and try to save $10 or $20; they want to get the money there, and they want to get it there now.

Your constituent is looking down the barrel of having to double the cost for every one of those transactions that member is trying to do, and that is unfair to the consumer.

Mr. TIPTON. Ms. LaMascus? Any comment?

Ms. LaMascus. We previously did just a few of the remittances. Whenever the changes came through, we did research it, and we found that for us to be able do it, it would have been cost-prohibitive. We could not see our members being able to justify, nor us justify doing for them, about $50 to transfer $100 or something like that. It didn't make sense.

Mr. Tipton. It just simply echoes Ronald Reagan's words that we need to be frightened if the Federal Government is here to help.

Chairman Hensarling. The time of the gentleman has expired. The Chair now recognizes the gentleman from Texas, Mr. Williams.

Mr. Williams of Texas. Thank you, Mr. Chairman, and I thank all of you for being here today. I am a small business owner in Texas, a job creator for 44 years, a Main Street guy, and in full disclosure, I am an auto dealer. And I understand that they are squeezing you to get to me, I get it. When a new regulation is put into place or a new law is enacted, banks or credit unions have to increase the amount of resources they devote to compliance. More regulators, I am told, are hired by some bankers than loan officers.

While the stated purpose of these new laws and regulations is to protect consumers, the opposite is actually happening. Increasing regulation means two things: fewer products; and fewer services.

For example, take Dublin, Texas, the home of Dr. Pepper, population just shy of 4,000. Bankers have told me that because of regulatory overreach, they won't make loans for homes valued at $150,000 or more, much less for $50,000, which is the average price in Dublin.

And who does this impact? We know who it impacts. It impacts the seller, impacts the buyer, and the bank trying to make the loan. But what about the plumbers? What about the carpenters and electricians and local contractors and hardware stores that would benefit if we sold a home? So is it goes on and on and on. And regulations are not just hurting banks but the customers who depend on them.

And for the customer, relationships matter. My constituents want to bank with people they can trust, and that is not the Federal Government. And they want a banker to have relationships that are built not in a week or a month or a year but over a lifetime. And I tell everybody in the Federal Government, being a small-business owner, reputation is the most important thing all of us have at the end of day, something that this Administration just doesn't get.

Now in Texas, we are not immune to the impact of Dodd-Frank. The other day, as we have talked about, in Texas alone—and, Mr. Williams, you will probably back me up on this—we have 115 fewer community banks than we did 4 years ago. And that is an economy that is the best in the world.

Mr. Williams. Yes.

Mr. Williams of Texas. And so we had Secretary Lew here yesterday, and we were talking about Dodd-Frank, and he was expounding on how great it was and said that we—we had also talked about how there is a possibility that he can just, with the stroke of a pen, take the $50 billion guys and get them out. Even Barney Frank agrees with that. But he thinks he has to continue to get Dodd-Frank in full implementation before he would do that.

And I told him that I would like for him not to do that, because if we go that long, we could lose banks, we could lose all lending institutions, we could lose businesses, and we could lose jobs. So I hope he considers that.

And then there is the worry and the fervor and the fear over fair lending evaluations and the use of disparate impact as a viable theory to evaluate all this. It is reportedly limiting the number of banks willing to make small-dollar loans; we understand that. And as someone who is in the automobile business, I am very sensitive to the idea that some think that people are given different rates based on race, religion, or gender.

So I support reform in the Consumer Financial Protection Bureau's mortgage rules, but I also want to make it easier on you to be recognized for your performance and not penalized.

I guess I would ask a question, really "yes" or "no" to all of you. I want to get back to what Secretary Lew said. Should we wait for full implementation of Dodd-Frank, or should we try reform it and get you guys out of it?

Mr. FENDERSON. We should reform it.

Mr. MILLER. If it is broke, fix it. Reform it.

Mr. WILLIAMS. We definitely need to reform it.

Ms. LAMASCUS. We weren't the bad actors. Reform it. Get us out of it.

Mr. WILLIAMS. And it would also help mitigate the costs on consumers that we have to pass along.

Mr. WILLIAMS OF TEXAS. Right.

Mr. LEVITIN. I think it really depends on the provision.

Mr. WILLIAMS OF TEXAS. Okay. Thank you.

Now, we have talked, too, about—one of the questions I had was how much this is affecting your bottom line. We have talked a lot about that.

I heard a thing the other day that says it takes more man-hours to meet Dodd-Frank now, halfway through it, than it did to build the Panama Canal. So that puts it in perspective.

We also just heard from the professor that it is hard to measure compliance costs in a business. I would think that—is that right, Mr. Miller?

Mr. MILLER. That is correct, sir.

Mr. WILLIAMS OF TEXAS. But you also might—one way to measure this is it is cutting into your bottom line—

Mr. MILLER. Yes, it does.

Mr. WILLIAMS OF TEXAS. —because you are having to hire someone who can't loan money out.

Mr. MILLER. It does cut into the bottom line tremendously.

Mr. WILLIAMS OF TEXAS. I will be brief. The economy is not fixed. I think that Main Street America is still hurting. Risk and reward is being attacked.

And I guess I would ask any one of you just to respond quickly: If we reduce burdensome regulations on you all, don't you think it would help small-business guys like me to take risks, get rewards, put people to work, get them off unemployment, and get net worth back in America?

Mr. FENDERSON. Yes.

Mr. WILLIAMS. And it would decrease your cost of doing business.

Mr. MILLER. Yes.

Ms. LAMASCUS. Yes.

Mr. WILLIAMS OF TEXAS. All right. Thank you very much. Thank you for being here.

Mr. Chairman, I yield back.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentlelady from Utah, Mrs. Love.

Mrs. LOVE. Thank you.

I appreciate you all being here today.

I have sat here, and I have listened to testimony and listened to questions and expertise from scholars and expertise from professionals in the area. I have just a couple of yes-or-no questions, and then I want to just get into what I believe is the primary purpose of us being here.

First of all, Mr. Levitin, yes or no, do you consider yourself a professional or an expert in this area?

Mr. LEVITIN. I do.

Mrs. LOVE. Okay. Do you proclaim that you know more, yes or no, than the consumers and the members of these banks and the four people who are sitting next to you?

Mr. LEVITIN. About what?

Mrs. LOVE. Do you know more about the banking industry than the people sitting next to you?

Mr. LEVITIN. About certain aspects of it, yes.

Mrs. LOVE. Okay.

It is really interesting to me, as I have sat here and I think about my experiences in the past, short 2½ months, is this is the biggest problem that we have. We continue to say to the American people: Let Washington fix all of our problems. Let the professional, the scholarly elites make the decisions for us. Let us go in and try and protect the American people from themselves.

And I think it is high time that we as Americans start trusting the American people again to make decisions in their homes, in their communities, and with the community banks that actually know them by name.

I have realized, in everything that we have looked at, in all of our history, when Washington gets too involved in anything, the same thing always happens: Prices go up and quality goes down, every single time.

And I want to just be very clear here that I am not anti-government. I am pro-limited-government. I am pro the American people having more decision-making in what they are doing and learning and being able to—I think that the American people are smart enough to make decisions.

So I just wanted to just ask a few questions concerning what this hearing is about today. I have been hearing a lot about small banks and how much more vulnerable to costs and burdens of regulations they are because of the lack of balance sheets and resources of the larger banks in which to absorb the cost of compliance.

Would you say—and this question is for Mr. Fenderson—that smaller banks are suffering terribly and disproportionately, in your opinion, under the burden of Dodd-Frank and Basel III?

Mr. FENDERSON. I think there is a combination of regulation as a whole that require small banks to react and respond, and, therefore, it is a burden on us financially.

Mrs. LOVE. Okay.

As a result, and certainly not surprisingly, community banks are failing and certainly merging and being bought out by larger banks at near record rates. And, certainly, the rate of new banks being launched has fallen to an all-time low level in 8 decades.

Would you say that would be as a result of some of the regulations that we are seeing today, Mr. Williams?

Mr. WILLIAMS. Yes.

Mrs. LOVE. Do we—go ahead?

Mr. WILLIAMS. And I would also like to follow up. The Basel capital rules are coming in over time, they are being phased in. And we shouldn't be subjected to those capital rules, clearly, because we don't have the risk that are designed for the international banks that they are written for.

Mrs. LOVE. Okay.

So, Mr. Miller, you talked about the cost of compliance being pushed down to the consumer. Would you say that you would have hard evidence of that actually happening, that you can see the cost of compliance, of trying to conform to these regulations, actually being passed down to the consumers who come in and are trying to receive a specialized, more personal relationship and loan from your institution?

Mr. MILLER. Absolutely, and we have hard evidence. We can submit some follow-up comments for the record on that from some of my peer credit unions.

I also want to make another comment, if I may. There was an inference that there is a conflict of interest with four of the people at this table earlier today because we represent the banks and credit unions for which we work.

I work for my 22,650 members. They are member-owners. They elect a board of directors. It is all volunteer. They hire me, and I hire my staff to run the credit union on their behalf. I don't think that is a conflict of interest, respectfully.

Mrs. LOVE. I would also say that I work for the American people, and I work for my district. And that is exactly what I am doing here, making sure that I have their back in terms of letting them keep a little more of their money so that they can take care of their needs.

I also want to say that when we are looking at some of these things, what I tend to see is that Dodd-Frank is actually making it so that these banks are being pushed to be either absorbed or being pushed into bigger banks, which is what we are trying to protect the American people from.

Anyway—

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Arkansas, Mr. Hill.

Mr. HILL. Thank you, Chairman Hensarling and Ranking Member Waters, for this good panel.

I appreciate all of you being here and suffering through a long morning with us.

I spent 35 years in the banking business prior to being elected to Congress in November, starting in Texas and in Arkansas. And so I have lived under all these rules and all these organizations for 3 decades and enjoyed every minute of it. It was a dream come true and prepared me for running for Congress.

Professor, you made a comment earlier that sort of left the impression, I think, that FDIC insurance is optional in some way. And since FIRREA or FDICIA, I don't remember which, it is certainly not. It is contingent on getting a charter to be a bank in the country.

Mr. LEVITIN. For getting a national bank charter, it is. For getting a State bank charter, it is not.

Mr. HILL. I don't believe that is true. We are not going to debate it today. I would just invite you to go check that out.

I also reject the premise that banks sell bad loans on the secondary market and keep good loans for their own portfolio, which seems sort of implicit, kind of hanging in the room. I have certainly never seen that in my 3 decades of experience.

I also reject the fact that somehow consumer protection was lax in the financial services industry prior to the dawn of a new world with the CFPB. We have had State attorneys general, we have had insurance departments, securities departments, State banking departments, we have had the FDIC and the OCC, I think, do a splendid job of enforcing consumer regulation in the commercial banking and credit union industries for years and years.

Finally, I would like to suggest that the burden of regulation is cumulative. And we never talk about that, we never reflect on that. And it is like that last straw that breaks the camel's back.

For me, something I would like to point out is just the breadth of paperwork in 4 or 5 years. I am so glad our bank went to our loan committee on iPads so that we didn't have to cut down more trees.

But I got a note the other day from a bank in Searcy, Arkansas, in my district, for a $174,000 home loan. And prior to the ability-to-repay rules that are now in place, the package was this thick. And that comports with my memory of it, from just leaving banking a few weeks ago. This is the size of the packet today, 255 pages, not including the appraisal, not including the tax returns, to go through a loan approval process—255 pages versus 20 pages.

So I think that speaks to what everyone is feeling. And all that cost is sent to the consumer, and I hope everyone understands that.

The last topic I want to get your views on is this issue of disparate treatment that Mr. Williams raised. Because we all want our consumers to get an absolute fair deal and a great deal from our financial institutions, be they banks or credit unions, and we want that regardless of a bank's size, right? So the fair lending laws are good, and HMDA allows us to check to make sure we are doing a good job.

But reflect on this one-size-fits-all, no price variability, no matter what your geography you are covering, in disparate treatment.

Let's start with you, Mr. Fenderson.

Mr. FENDERSON. I would say that as we evaluate consumer loans, we try to evaluate them on an individual basis. And, in many cases, we are dealing with someone that we have dealt with before. But when we are dealing with a new borrower, we simply evaluate their ability to repay and all the things that we normally have to check and balance for.

We don't think that, as an institution, there is any disparate treatment to pricing a loan based on its risk, because your debt-to-income ratio may be higher than another borrower. So we would like to retain that ability do that.

Mr. HILL. Mr. Miller?

Mr. MILLER. I would concur with Mr. Fenderson that we need flexibility to make appropriate business decisions. And if you look at how credit unions have done in controlling risk, we have done a phenomenal job.

And this one-size-fits-all approach once again forces us to major in the minors. We are forcing minor players in the industry to comply with rules that the major offenders have committed. And that is not fair for the consumer, it is not fair for the American people, it is not fair for the economy and jobs. And, once again, it is going to create this implosion of jobs in the financial services industry that also has a cascading effect and causes loss of jobs in other industries. And tax revenues will suffer as a result of that, too.

Mr. WILLIAMS. Congressman, disparate treatment, we are very concerned about this expanded HMDA reporting. We think that is designed to be the new enforcement mechanism and the backbone for the Federal regulators to enforce disparate lending on banks. We have had a lot of experience with fair lending in the past, and it is a very difficult issue when dealing with disparate lending, disparate impact.

Mr. HILL. Thank you.

I yield back, Mr. Chairman.

Chairman HENSARLING. The gentleman yields back.

There are no other Members in the queue, so I would like to thank each and every one of our witnesses for their testimony and their patience today.

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 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing stands adjourned.

[Whereupon, at 1:04 p.m., the hearing was adjourned.]

A P P E N D I X

March 18, 2015

Testimony of

Peggy Bosma-LaMascus

President and CEO of Patriot Federal Credit Union

On behalf of the

National Association of Federal Credit Unions

"Preserving Consumer Choice and Financial Independence"

Before the

House Financial Services Committee

March 18, 2015

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Introduction

Good Morning, Chairman Hensarling, Ranking Member Waters and Members of the Committee. My name is Peggy LaMascus and I am testifying today on behalf of the National Association of Federal Credit Unions (NAFCU). I serve as the President and CEO of Patriot Federal Credit Union, headquartered in Chambersburg, Pennsylvania. Tomorrow will mark my 45th anniversary with credit unions, having started at Westvasamco Federal Credit Union on March 19, 1970. For the last 33 years, I have been the CEO of Patriot Federal Credit Union. Patriot FCU is a community credit union serving over 51,000 members in Franklin and Fulton Counties in Pennsylvania and Washington County in Maryland.

Patriot FCU is celebrating its 50th anniversary this year, having started in 1965 serving the employees at the Letterkenny Army Depot in Chambersburg, Pennsylvania, when 32 individuals pooled $3,000 to start the credit union. Today the credit union holds over $510 million in assets and employs 160 people. We have 8 branches in South Central Pennsylvania and North Western Maryland, including a student branch.

As you are aware, NAFCU is the only national organization exclusively representing the interests of the nation's federally-chartered credit unions. NAFCU-member credit unions collectively account for approximately 69 percent of the assets of all federally chartered credit unions. NAFCU and the entire credit union community appreciate the opportunity to participate in today's hearing regarding regulatory relief for credit unions.

Historically, credit unions have served a unique function in the delivery of essential financial services to American consumers. Established by an Act of Congress in 1934, the federal credit union system was created, and has been recognized, as a way to promote thrift and to make financial services available to all Americans, many of whom may otherwise have limited access to financial services. Congress established credit unions as an alternative to banks and to meet a precise public need – a niche that credit unions still fill today.

Every credit union, regardless of size, is a cooperative institution organized "for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes." (12 USC 1752(1)). While over 80 years have passed since the Federal Credit Union Act (FCUA) was signed into law, two fundamental principles regarding the operation of credit unions remain every bit as important today as in 1934:

- credit unions remain wholly committed to providing their members with efficient, low-cost, personal financial service; and,
- credit unions continue to emphasize traditional cooperative values such as democracy and volunteerism.

These principles apply for all credit unions, regardless of their size. When compared with the nation's "Too Big To Fail" financial institutions, all credit unions are "small" institutions. It is with this fact in mind that NAFCU believes that there should not be artificial or arbitrary asset thresholds established for which size credit unions should receive regulatory relief. The challenges facing the industry impact, or stand to impact, all credit unions and all ultimately need relief.

Today's hearing is an important one and the entire credit union community appreciates the opportunity to expand on the topic of regulatory relief. In my testimony I will cover several main points, including:

- **Increased regulatory burden and how it is impacting credit unions and our members;**
- **The importance of legitimate cost-benefit analysis at the regulatory agencies from the onset;**
- **Understanding risk in the financial system and the potential of regulating credit unions out of existence with one-size fits all regulatory solutions;**
- **How Congress can provide regulatory relief; and**
- **How the regulatory agencies can provide regulatory relief.**

I. Increased Regulatory Burden has Impacted Credit Unions and Our Members

Credit unions have a long track record of helping the economy grow and making loans when other lenders have left various markets. This was evidenced during the recent financial crisis when credit unions kept making auto loans, home loans, and small business loans when other lenders cut back. Still, credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital.

Credit union lending continues to grow at a solid pace today, up about 24% as of December 2014, as compared to 2009. Although credit unions continue to focus on their members, the increasing complexity of the regulatory environment is taking a toll on the credit union industry. While NAFCU and its member credit unions take safety and soundness extremely seriously, the regulatory pendulum post-crisis has swung too far towards an environment of overregulation that threatens to stifle economic growth. As the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB) work to prevent the next financial crisis, even the most well intended regulations have the potential to regulate our industry out of business.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the CFPB having rulemaking authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true. While there may be credible arguments to be made for the existence of a CFPB, its primary focus should be on regulating the unregulated bad actors, not adding new regulatory burdens to good actors like credit unions that already fall under a prudential regulator. As expected, the breadth and pace of CFPB rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense. While it is true that credit unions under $10 billion are exempt from the examination and enforcement from the CFPB, all credit unions are subject to the rulemakings of the agency and they are feeling this burden. While the CFPB has the authority to exempt certain institutions, such as credit unions, from agency rules, they have been reluctant to use this authority to provide relief.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline, dropping by 23% (more than 1,800 institutions since 2007). A main reason for the decline is the increasing cost and complexity of complying with the ever-increasing onslaught of regulations. Since the 2^{nd} quarter of 2010, we have lost 1,200 federally-insured credit unions, 96% of which were smaller institutions below $100 million in assets. Many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over. Credit unions need regulatory relief, both from Congress and their regulators.

This growing demand on credit unions is demonstrated by a 2011 NAFCU survey of our membership that found that nearly 97% of respondents were spending more time on regulatory compliance issues than they did in 2009. A 2012 NAFCU survey of our membership found that 94% of respondents had seen their compliance burdens increase since the passage of the *Dodd-Frank Act* in 2010. At Patriot FCU our compliance costs have continued to grow. Many credit unions find themselves in the same situation, as a March, 2013, survey of NAFCU members found that nearly 27% had increased their full-time equivalents (FTEs) for compliance personnel in 2013, as compared to 2012. That same survey found that over 70% of respondents have had non-compliance staff members take on compliance-related duties due to the increasing regulatory burden. This highlights the fact that many non-compliance staff are being forced to take time away from serving members to spend time on compliance issues.

At Patriot FCU we have felt the pain of these burdens as well. We incur costs each time a rule is changed and most costs of compliance do not vary by size, therefore it is a greater burden on credit unions like mine. We are required to update our forms and disclosures, reprogram our data processing systems and retrain our staff each time there is a change, just as large institutions are. Every dollar spent on compliance, takes a dollar away from serving our members through additional loans and better rates. Unfortunately, lending regulation revisions never seem to occur all at once. If all of the changes were coordinated and were implemented at one time, these costs would have been significantly reduced and a considerable amount of our resources used to comply could have been used to benefit our members instead.

Credit union members, the consumer, are negatively impacted by this burden as well. At Patriot FCU, we regularly hear from our members about how regulatory requirements on financial institutions inconvenience and often confuse them. For example:

- We hear from members who believe that they should have the right to access their funds with a level of ease and are confused and angered by outdated 6 transfer limitation from Regulation D. For example, we have a homebound disabled member who manages her finances primarily through phone and electronic services. However, because phone requests and electronic transactions are limited by Regulation D and the only way the member can make a transfer (after reaching her limit of 6 for a savings account) is by physically coming into the branch to request the transfer in person. Due to her disability, it is a hardship for her to leave her home as well as find someone to transport her. Today's consumers want convenience. In today's age of internet banking, where the consumer can make transactions and never have to leave their home, there is no reason for this outdated requirement that serves to limit the movement of funds. While we are thankful that the GAO is now studying this issue, our members would prefer that this limit be done away with immediately.

- We have members who desire international remittance and wire transfer services, but we stopped providing those services because the new requirements were too costly and burdensome to comply with for the limited number that we would do. A number of other credit unions have stopped providing this service as well.

- We hear complaints from our members about the HPML (Higher Priced Mortgage Loans) requirement for escrow. Some members required to pay the escrow in monthly installments were very upset and confused as to why they were unable to pay their taxes how they always had. For example, we have some members who used an income tax refund to pay these costs every year and other members that used their yearly bonuses at work to pay these costs. When Patriot had to collect the escrow payments from these members, they often complained to us about the requirement and felt offended. Many small loan request HPML borrowers end up with escrow payments larger than their mortgage payment. These members had managed their tax and insurance payments for years without institution interference, but suddenly feel like the government now told them they were not responsible enough to manage their own affairs.

If Congress and the regulators will not act to provide regulatory relief to credit unions and our members, the industry may look vastly different a decade from now.

II. Credit Unions Need Regulatory Relief

Regulatory burden is the top challenge facing all credit unions. While smaller credit unions continue to disappear from the growing burden, all credit unions are finding the current environment challenging. Finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is the only way for credit unions to thrive and continue to provide their member-owners with basic financial services and the exemplary service they need and deserve. It is also a top goal of NAFCU.

Ongoing discussions with NAFCU member credit unions led to the unveiling of NAFCU's initial "Five Point Plan for Regulatory Relief" in February, 2013, and a call for Congress to enact meaningful legislative reforms that would provide much needed assistance to our nation's credit unions. The need for regulatory relief is even stronger in 2015, which is why we released an updated version of the plan for the 114th Congress.

The 2015 plan calls for relief in five key areas: (1) Capital Reforms for Credit Unions, (2) Field of Membership Improvements for Credit Unions, (3) Reducing CFPB Burdens on Credit Unions, (4) Operational Improvements for Credit Unions, and (5) 21st Century Data Security Standards.

Recognizing that there are a number of outdated regulations and requirements that no longer make sense and need to be modernized or eliminated, NAFCU also compiled and released a document entitled "NAFCU'S Dirty Dozen" list of regulations to remove or amend in December of 2013 that outlined twelve key regulatory issues credit unions face that should be eliminated or amended. While some slight progress was made on several of these recommendations, we have updated that list for 2015 to outline the "Top Ten" regulations that regulators can and should act on now to provide relief. This list includes:

1. Improving the process for credit unions seeking changes to their field of membership;
2. Providing More Meaningful Exemptions for Small Institutions;
3. Expanding credit union investment authority;
4. Increasing the number of Reg D transfers allowed;

5. Additional regulatory flexibility for credit unions that offer member business loans;
6. Updating the requirement to disclose account numbers to protect the privacy of members;
7. Updating advertising requirements for loan products and share accounts;
8. Improvements to the Central Liquidity Facility (CLF);
9. Granting of waivers by NCUA to a federal credit union to follow a state law; and
10. Updating, simplifying and making improvements to regulations governing check processing and fund availability.

In my statement today, I will highlight a number of key issues where these regulatory burdens and proposals are posing immediate threats to the ability of credit unions to serve their members and give them the financial products that they want and need. Perhaps one of the greatest challenges credit unions face is the often grossly distorted time and cost estimates provided to them by the regulatory agencies in the proposal stages of rulemaking. As will be further discussed in my testimony below, regardless of whether or not the estimates are put forward in good faith, there continues to be a major disconnect between the regulatory agencies in Washington, D.C., and credit unions across the country in terms of how time consuming, costly, and problematic it can be to implement various proposals. Additionally, there isn't always a great amount of thought given to the actual operational aspects of many proposals including how they will interact with existing regulations and how they would address risk in the system without layering needless regulation upon needless regulation.

III. Recent Actions to Provide Relief

NAFCU and the entire credit union community would like to thank the members of this committee and your staffs for all of your work on the passage of H.R. 3468, the *Credit Union Share Insurance Fund Parity Act* in the 113th Congress. As you are aware, this legislation allows NCUA to provide pass-through share insurance coverage on Interest on Lawyers Trust Accounts (IOLTAs) and other similar accounts, comparable to what the Federal Deposit Insurance Corporation (FDIC) provides. We also appreciate the passage of the *American Savings Promotion Act*, H.R. 3374.

NAFCU also recognizes that there has been effort by regulators, such as NCUA and CFPB to provide relief via the regulatory process. While there have been some small steps taken, too often regulators set arbitrary asset thresholds for relief and don't actually consider the risk or complexities of institutions and often fail to provide meaningful relief. Regulation of the system should match the risk to the system. As previously noted, when compared with the nation's "Too Big To Fail" financial institutions, all credit unions are "small" institutions and not very complex. There should not be artificial or arbitrary asset thresholds established for which size credit unions should receive regulatory relief. The challenges facing the industry impact, or stand to impact, all credit unions and all ultimately need relief.

More needs to be done. In particular, NAFCU is also concerned that regulators sometimes try to frame new costly and burdensome proposals as "regulatory relief" when the end result for credit unions is higher costs for little relief. One example is NCUA's request for additional third party vendor examination authority for credit unions which they have called "regulatory relief."

NAFCU does not support spending credit union resources to expand NCUA's examination authority into non-credit union third parties. While NCUA contends that examination and enforcement authority over third party vendors will provide regulatory relief for the industry, NAFCU and our members firmly believe that such authority is unnecessary and will require considerable expenditure of the agency's resources and time. NAFCU disagrees with the assertion that third party vendor examination and enforcement authority will provide any significant improvement to credit union safety and soundness or help the agency address cybersecurity concerns. We believe that the agency already has the tools that it needs to address concerns with vendors. The key to success with appropriate management of vendors is due diligence on behalf of the credit union. NAFCU supports credit unions being able to do this due diligence and NCUA already offers due diligence guidance to credit unions. Giving NCUA additional authority will require an additional outlay of agency resources, which will in turn necessitate higher costs to credit unions.

Another prime example of a proposal NCUA has called relief, but is in fact a new heavy burden on the industry, is the agency's current proposal for a risk-based capital system for credit unions.

IV. NCUA's 2nd Risk-Based Capital Proposal: Still a Solution in Search of a Problem

On January 15, 2015, the National Credit Union Administration (NCUA) Board, in a 2-1 vote, issued a revised risk-based capital proposed rule for credit unions. NAFCU is currently analyzing the proposal and will be providing NCUA with detailed comments and concerns from our membership as part of the agency's request for comment before the April 27, 2015, deadline. We are encouraged to see that the revised version of this proposal addresses some changes sought by our membership. However, NAFCU maintains that this costly proposal is unnecessary and will ultimately unduly burden credit unions and the communities they serve.

A Costly Experiment for Credit Unions

NAFCU and its member credit unions remain deeply concerned about the cost of this proposal. NAFCU's analysis estimates that credit unions' capital cushions (a practice encouraged by NCUA's own examiners) will suffer over a $470 million hit if NCUA promulgates separate risk-based capital threshold for well capitalized and adequately capitalized credit unions (a "two-tier" approach). Specifically, in order to satisfy the proposal's "well-capitalized" thresholds, today's credit unions would need to hold at least an additional $729 million. On the other hand, to satisfy the proposal's "adequately capitalized" thresholds, today's credit unions would need to hold at least an additional $260 million. Despite NCUA's assertion that only a limited number of credit unions will be impacted, this proposal would force credit unions to hold hundreds of millions of dollars in additional reserves to achieve the same capital cushion levels that they currently maintain. A majority of credit unions responding to a recent survey of NAFCU members expect that this new proposal will force them to hold more capital in the long run and almost as many also believe it will slow their growth. The funds used to meet these new onerous requirements are monies that could otherwise be used to make loans to consumers or small businesses and aid in our nation's economic recovery. The requirements in this proposal will serve to restrict lending to consumers from credit unions by forcing them to park capital on their books, rather than lending to their members.

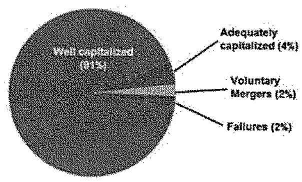
In addition, NCUA's own direct cost estimate approximates that it will cost $3.75 million for the agency to adjust the Call Report, update its examination systems and train internal staff to implement the proposed requirements. NCUA also estimates credit unions would incur an ongoing $1.1 million expense to complete the adjusted Call Report fields. NCUA's conservative estimate states that it will only take a meager 40 hours to completely review the 450-page proposal against a credit union's current policies at a cost of over $5.1 million. We expect that the true costs will be much higher when credit unions have to comply. Furthermore, with the uncertainty of the impact of the Basel III requirements for banks and future action by banking regulators, credit unions could see these costs increase as NCUA modifies and updates this unneeded proposal.

Impact Analysis

NCUA estimates that 19 credit unions would be downgraded if the new risk-based proposal were in place today. NAFCU believes the real impact is best illustrated with a look at its implications during a financial downturn. Under the new proposal, the number of credit unions downgraded more than doubles during a downturn in the business cycle. Because the nature of the proposal is such that, in many cases, assets that would receive varying risk weights under the proposal are grouped into the same category on NCUA call reports, numerous assumptions must be made to estimate impact.

Under our most recent analysis, NAFCU believes 45 credit unions would have been downgraded during the financial crisis under this proposal. Of those 45, 41 of credit unions would be well-capitalized today. To have avoided downgrade, the institutions would have had to increase capital by $145 million, or an average $3.2 million per institution. As the chart on the next page demonstrates, almost all of the credit unions that would have been downgraded—95%—are well capitalized or adequately capitalized today. This provides strong evidence that NCUA's risk-based capital proposal is unnecessary and unduly burdensome.

Current status of the credit unions that would have been downgraded in 2009 under RBC2



Source: NCUA call report data

Legal Authority

NAFCU strongly believes that NCUA lacks the statutory authority to prescribe a separate risk-based capital threshold for well capitalized and adequately capitalized credit unions. NCUA Board Member J. Mark McWatters, the dissenting vote on the proposal, called NCUA's lack of legal authority the most "fundamental issue presented before the Board." The Federal Credit Union (FCU) Act expressly provides that NCUA shall implement a risk-based net worth requirement that "take[s] account of any material risk against which the net worth ratio required for an insured credit union to be *adequately capitalized* may not provide adequate protection." 12 U.S.C. § 1790d(d). The FCU Act does not provide NCUA the express authority to implement a separate risk-based net worth threshold for the "well capitalized" net worth category. Simply put, Congress has not expressly authorized the Board to adopt a two-tier risk-based net worth standard.

Further, it has been disclosed that NCUA authorized the expenditure of $150,000 to seek an outside legal opinion over the legality of the risk-based proposal. It is worth noting that NCUA continued forward with this proposal despite the neutrality of the outside opinion which recognized the questionable legal standing of the proposal by noting only that a court "could" conclude that NCUA had the statutory authority to offer a two-tier system.

Legislative Change

Ultimately, NAFCU believes legislative changes are necessary to bring about comprehensive capital reform for credit unions such as allowing credit unions to have access to supplemental capital sources, and making the statutory changes necessary to design a true risk-based capital system for credit unions that gives greater statutory flexibility in determining corresponding leverage ratio standards.

V. Credit Unions Need Field-of-Membership Help

In addition to the legislative changes needed on the capital front for credit unions, field-of-membership (FOM) rules for credit unions need to be modernized, both on the legislative front and by NCUA.

Regulatory Changes to Field-of-Membership

At the January 2015, NCUA Board meeting, Vice Chairman Metsger noted that NCUA needs to take a "fresh look" at its application process for field of membership expansion requests. He explained his belief that credit unions often submit applications longer than necessary because the agency has failed to give definitive directions on its expectations and what exactly should be submitted. Vice Chairman Metsger noted that credit unions do not routinely submit field of membership requests, and the agency needs to provide a "sample completed application" for the public so the industry has a more clear understanding of NCUA's expectation at the outset.

Many federal credit unions (FCUs) report that they must wait between 18 months to two years before a field of membership expansion request is approved or denied by NCUA. Furthermore, during the extensive waiting time after the application has been submitted, the FCU is rarely provided any information from NCUA about the status of their request.

NCUA can remedy and streamline the current field of membership expansion procedures by issuing interpretive guidance outlining a more transparent process. NCUA has the existing statutory authority to make the following procedural changes:

Require Deadlines for FOM Amendment Requests.

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate Regional Director, who will then review the request to ensure compliance with NCUA policy. Under current NCUA guidelines, there is no deadline in which the Director is required to respond to an expansion request. This is particularly burdensome because many FCUs are unable to plan their strategic goals due to the lack of a reliable timeline for agency review and approval of their request.

NAFCU recommends that NCUA adopt a 90-day time limit for the Regional Director to either approve or deny a field of membership expansion request.

Increase Transparency in the Decision Making Process.

Once a FCU submits the appropriate information for a field of membership amendment request, NCUA does not provide the FCU with any notifications or updates on the status of their request until a final decision has been made. The lack of transparency and communication during the amendment process only serves to increase uncertainty in the FCUs ability to engage in prudent future business planning.

NCUA should establish a formal notification process with the FCU, requiring weekly or bi-weekly status updates to the FCU.

Streamline Cumbersome Notification Requirements.

NCUA has created inefficient rules governing how a credit union must notify groups that will be removed from the field of membership as a result of a charter conversion. Rather than establish rules governing how to properly alert individuals that the credit union is no longer able to serve them, NCUA should permit credit unions to continue to serve these groups after the conversion has taken place.

Based on input that NAFCU has received from our members, we believe some of the most cumbersome issues faced by FCUs can be remedied by NCUA adopting changes to its current procedural requirements.

Even without procedural action, there are a number of regulatory interpretations relating to field of membership that NCUA can presently adopt in order to provide relief and promote growth.

Charter Conversions

NAFCU consistently hears from our members the feeling of frustration when navigating the needlessly complex and inflexible regulations governing the conversion from one type of federal charter to another. Under current regulatory scheme, FCUs are allowed to convert their charters by undergoing an application process overseen by NCUA. However, as a result, groups within the previous charter which cannot qualify under the new charter can no longer be served by the credit union post-conversion. Although this does not take away credit union membership from existing members, this regulation unnecessarily limits the rights of potential members.

NAFCU and our members strongly oppose the chartering rule that prevents a single- or multi-associational chartered credit union from continuing to serve its existing field of membership when it converts to a community charter. The effect of this restriction has been to deter FCUs from even attempting to offer their services to wider range of individuals through the expansion of their charters, a result that is undesirable for everyone.

Credit unions are faced with the daunting task of dealing with charter conversion regulations that are unnecessarily time-consuming and burdensome. NAFCU believes the NCUA should review its rules on conversions and initiate a rulemaking in order to produce beneficial changes, with particular focus on FCU conversions to a community charter.

Definition of "Rural District"

NCUA's Rules and Regulations currently define a "rural district" as (1) a district that has well-defined, contiguous geographic boundaries; (2) the total population of the district does not exceed the greater of 250,000 or 3 percent of the population of the state in which the majority of the district is located; *and* (3) the district meets one of two other population requirements. The district *either* (a) does not have a population density in excess of 100 people per square mile, *or* (b) more than 50% of the district's population resides in census blocks or other geographic areas that are designated as rural by the U.S. Census Bureau. This definition of "rural district" has been in place since February 2013.

Although the Federal Credit Union (FCU) Act directs NCUA to establish a definition for "rural district" there is no statutory requirement to apply a population limit. The population limit is a creation of NCUA and has proven to be excessively restrictive and arbitrary. Under the "three percent" rule, only those credit unions that seek to serve in rural areas in the thirteen most populous states in the country have been benefited. Meanwhile, credit unions in thirty-seven other states are subjected to an arbitrary 250,000 population limit. It is important that the definition of "rural district" not be unreasonably limited in a manner that deprives numerous Americans the opportunity to receive high-quality financial services from a credit union that wants to serve them.

NAFCU urges NCUA to remove or significantly increase the 250,000 population limit or, *at minimum*, restore the pre-2010 population threshold of 500,000, which was cut-in-half without justification. NAFCU has also sought the removal or increase of the 100 person per square mile limit as this population density threshold is far too low and a person-per-square-mile limitation should not be part of the formula used to define a "rural district."

Well-Defined Local Community

NCUA regulations define a "well-defined local community" to mean "the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or a clearly identifiable neighborhood." However, in today's modern interconnected society, geographic proximity is no longer the predominate factor in the formation and purpose of a community.

Due to the evolution of technology and digital communication platforms, today's society is ubiquitous and widespread. Individuals can form cohesive bonds and be integrally related regardless of geographic location because modern technology provides the tools through which individuals can connect to one another from anywhere in the world. In an age of teleconferences and webinars, individuals can participate in activities that allow them to develop common loyalties, mutual benefits, and shared interests without geographic restriction. FCUs should not be penalized for adopting the use of these technologies to serve and grow their memberships. Therefore, NAFCU believes NCUA regulations should acknowledge the diverse ways we interact and develop bonds and not impose a "well-defined local community" definition dependent on narrow and static geographical limitations.

Core Based Statistical Area

In 2010, NCUA made changes to how the agency determines the existence of a "local community." Under these changes, in order to qualify as a multiple political jurisdiction, the area must have well-defined, contiguous geographic boundaries *and* be previously approved as a community under IRPS 99-1 *or* the area is designated a Core Based Statistical Area (CBSA) with a population of 2.5 million or less.

NAFCU strongly opposes this population cap as arbitrary, capricious and against the intent and spirit of the FCU Act. NAFCU believes an area should not be disqualified as a well-defined local community simply because it exceeds a particular population size. There are many areas around the country that should qualify as local communities but would fail simply because of the maximum population threshold. For example, there currently are 21 metropolitan statistical areas (MSA) with populations in excess of 2.5 million. Of these MSAs, 15 do not have a city or county with at least 2.5 million in population. Accordingly, these 15 MSAs would automatically be disqualified because of the arbitrary 2.5 million population cap. NAFCU can see no reason why a widely recognized metropolitan area designated as a MSA should not be regarded as a well-defined local community.

NAFCU believes that the options for proving that a local community exists are drawn too narrow. To ensure all persons have access to credit union services, NCUA should permit an alternate method for community charter applicants to demonstrate that a proposed area is a well-defined local community. There are a number of circumstances where an FCU can demonstrate the existence of a well-defined local community outside of the current requirements.

Accordingly, NAFCU recommends that NCUA develop a procedure to allow applicants to validate the existence of well-defined local community in cases where one or more of the requirements are not met. We believe a modified version of the current rules can provide the proper vehicle for such an exception. NAFCU member FCUs have also noted that there appears to be inconsistent analysis within the industry about the number of communities with multiple jurisdictions that qualify under the rule, so we urge the NCUA to carefully consider the exclusionary effect that the rule has had and develop an alternative method to obtain a community charter.

Trade, Industry, or Profession (TIP) Charters

According to Section 1759(b) of the FCU Act, the membership of an FCU may be limited to "One group that has a common bond of occupation or association." This statutory language has been interpreted by the agency to cover what they call Trade, Industry, or Profession common bond charters, or TIP charters. NCUA states that, "The common bond relationship must be one that demonstrates a narrow commonality of interests within a specific trade, industry, or profession."

NCUA imposes two broad limitations on the TIP charter requirements that are not based on the statute. First, TIP charters are subject to a geographic limitation which must be part of the credit union's charter and generally correspond to its current or planned operational area. NAFCU recommends that NCUA revise its narrowly defined geographical limitation on TIP charters. Secondly, a TIP cannot be added to a multiple common bond or community of FOM. NAFCU recommends that NCUA reconsiders the purpose of this prohibition for TIP charters to allow for flexibility in an emergency merger or a purchase & assumption situation.

Service Facility Requirement

Traditionally, NCUA considers several requirements before granting a federal credit union its charter. Among the inquiry is a requirement to describe how the credit union plans to reasonably provide services to its field of membership within a geographic area. NCUA defines a federal credit union's service area as the area that can reasonably be served by the facilities accessible to the groups within the field of membership. This definition has been interpreted to include facilities such as a credit union owned branch, a mobile branch, an office operated on a regularly scheduled basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. NAFCU believes this rigid service area definition needs to be modernized in order to bring the regulation more in-line with the progression and widespread use of online banking services.

The current physical presence requirement constrains credit unions and requires them to expend valuable resources on outdated service portals. These are resources that would otherwise have been available to provide important services to the credit union's members and community. Requiring credit unions to maintain a physical presence within a geographic area is unnecessary and does not help credit unions to effectively and efficiently serve their members.

NAFCU recommends that NCUA eliminate the service area requirement or, alternatively, revise the definition of service area to include "facilities that are accessible to groups within the field of membership through online services."

Statutory Changes are Needed for Field-of-Membership

Congress can provide FOM relief by removing outdated restrictions that credit unions face such as expanding the criteria for defining "urban" and "rural" and allowing voluntary mergers involving multiple common bond credit unions and allowing credit unions that convert to community charters to retain their current select employee groups (SEGs). Furthermore, Congress should clarify that all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

VI. Regulators Must Be Held Accountable for Cost and Compliance Burden Estimates

Cost and time burden estimates issued by regulators such as NCUA and CFPB are often grossly understated. Unfortunately, there often is never any effort to go back and review these estimates for accuracy once a proposal is final. We believe Congress should require periodic reviews of "actual" regulatory burdens of finalized rules and ensure agencies remove or amend those rules that vastly underestimate the compliance burden. A March, 2013, survey of NAFCU's membership found that over 55% of credit unions believe compliance cost estimates from

NCUA and CFPB are lower than the actual costs incurred when the credit union actually has to implement the proposal.

We believe Congress should use their oversight authority to require regulators to provide specific details on how they determined their assumptions in their cost estimates when submitting those estimates to OMB and publishing them in proposed rules. It is important that regulators be held to a standard that recognizes burden at a financial institution goes well beyond additional recordkeeping.

For example, NCUA's 2014 submission to OMB estimates the time to complete the Call Report to be 6.6 hours per reporting cycle. A recent NAFCU survey of our members found that many spend between 40 to 80 hours or more to complete a call report. Something is amiss. That's a number of hours of regulatory burden that are not being recognized on just one form. With the requirements of the new proposed risk-based capital proposal, this burden is likely to get worse. NCUA is not the only regulator with inaccurate estimates. Some of our members have told us that they have had to spend over 1,000 staff hours to train and comply with all of the requirements of the CFPB's Qualified Mortgage (QM) rule. More needs to be done to require regulators to justify that the benefits of a proposal outweigh its costs.

VII. Legislation to Provide Relief for Credit Unions

There are a number of bills that have been introduced in the House that would provide regulatory relief to credit unions. I am pleased to outline a number of them here and urge the Committee to act on these measures.

Member Business Lending Improvements

Representatives Ed Royce and Greg Meeks introduced H.R. 1188, the *Credit Union Small Business Jobs Creation Act*. This legislation would raise the arbitrary cap on credit union member business loans from 12.25% to 27.5% of total assets for credit unions meeting strict eligibility requirements

Additionally, NAFCU supports legislation (H.R. 1133) introduced by House Veterans Affairs Committee Chairman Jeff Miller to exempt loans made to our nation's veterans from the definition of a member business loan. We would also support reintroduction of legislation to exclude loans made to non-owner occupied 1- to- 4 family dwelling from the definition of a member business loan and legislation (H.R. 5061 in the 113^{th} Congress).

Furthermore, NAFCU also supports exempting from the member business lending cap loans made to non-profit religious organizations, businesses with fewer than 20 employees, and businesses in "underserved areas."

Supplemental Capital for Credit Unions

Allowing eligible credit unions access to supplemental capital, in addition to retained earning sources, will help ensure healthy credit unions can achieve manageable asset growth and continue to serve their member-owners efficiently as the country recovers from the financial crisis.

NAFCU supports legislation from Representatives Pete King and Brad Sherman, H.R. 989, the *Capital Access for Small Businesses and Jobs Act*, a bill that would authorize NCUA to allow federal credit unions to receive payments on uninsured, non-share capital accounts, provided the accounts do not alter the cooperative nature of the credit union. The need for supplemental capital is even greater today as the NCUA pushes ahead with their stringent risk-based capital proposal.

The *Community Lending Enhancement and Regulatory Relief Act of 2015*

NAFCU supports this legislation (H.R. 1233) that would provide a series of relief measures for credit unions, including:

- Amending the *Gramm-Leach-Bliley Act* to exempt from the annual privacy policy notice requirement any financial institution that does not share nonpublic information with unaffiliated third parties and has not changed its policy on the sharing of nonpublic personal information from the previous year.

- A study and report provision that would delay the implementation of proposed NCUA risk-based capital regulation as it relates to mortgage servicing assets until an impact study is conducted and alternatives are explored. This language would promote much-needed transparency, require a thorough analysis of the proposal's impact on mortgage servicing assets and encourage NCUA to take more time to consider the full impact of its proposed capital rule.

- Waive escrow mandates for loans held in portfolio and increase the "small servicer" exemption threshold to 20,000 mortgages annually. This important exemption recognizes the strong history of small institutions providing high-quality mortgage servicing. Given their track record, small servicers should be incentivized to continue to service mortgage loans. The existing escrow rules drive small creditors from the mortgage market because it is difficult to provide cost effective escrow services.

- Exempt higher-risk mortgages of $250,000 or less from appraisal requirement provisions under the *Truth in Lending Act* if the lender holds the loan in portfolio for at least 3 years. This bill would also provide important legal safeguards for lenders acting in good faith throughout the appraisal process. When the committee reviews this bill for potential improvements, NAFCU would also recommend raising the $250,000 threshold to a higher level.

- Ensure residential mortgage loans held in portfolio by originators, such as credit unions, automatically attain the qualified mortgage (QM) safe harbor under the Consumer Financial Protection Bureau's (CFPB) rules.

NCUA Budget Transparency Act

NAFCU supports this legislation (H.R. 1176) sponsored by Representative Mick Mulvaney. NCUA is funded by the credit unions it supervises. Each year, credit unions are assessed a different operating fee based on asset size. NCUA then pools the monies it receives from credit unions and uses those funds to create and manage an examination program. The monies that

NCUA collects, however, have significantly increased over the past six years to cover a $109.7 million increase in the agency's budget during that period.

NAFCU supports the agency's efforts to accurately calculate the appropriate overhead transfer rate and urges NCUA to maintain a rate that is equitable to FCUs given they are funding the remaining agency expenses through operating fees. NAFCU encourages NCUA to continue to look for ways to decrease costs in order to reduce fees FCUs pay to the agency. In connection with this, NAFCU believes that credit unions deserve clearer disclosures of how the fees they pay the agency are managed.

As NAFCU has stated in previous communications to the agency, NCUA is charged by Congress to oversee and manage the National Credit Union Share Insurance Fund (NCUSIF), the Temporary Corporate Credit Union Stabilization Fund, the Central Liquidity Fund, and its annual operating budget. These funds are comprised of monies paid by credit unions. NCUA is charged with protecting these funds and using its operating budget to advance the safety and soundness of credit unions.

Because these funds are fully supported by credit union assets, NAFCU and our members strongly believe that credit unions are entitled to know how each fund is being managed. Currently, NCUA publicly releases general financial statements and aggregated balance sheets for each fund. However, the agency does not provide non-aggregated breakdowns of the components that go into the expenditures from the funds, such as the overhead transfer rate. Although NCUA releases a plethora of public information on the general financial condition of the funds, NAFCU urges the agency to fully disclose the amounts disbursed and allocated for each fund. For example, NAFCU and our members believe that NCUA should be transparent about how the monies transferred from the NCUSIF through the overhead transfer rate are allocated to the NCUA Operating Budget.

NCUA Board Member McWatters has urged greater transparency in NCUA's budget process, including an industry hearing on the budget, which NAFCU has long advocated. He has also outlined a series of recommendations for the agency to take to provide great budget transparency:

1. Additional detail regarding each of the following expenditures: Employee Pay and Benefits, Travel, Rent/Communications/Utilities, Administrative, and Contracted Services;
2. A detailed analysis of how NCUA may reduce the expenditures noted in item 1 above;
3. The submission of the methodology employed by NCUA in calculating the OTR for public comment, and a detailed description of the methodology adopted by NCUA following a thoughtful analysis of the comments received;
4. A detailed analysis of expenditures among NCUA, the National Credit Union Share Insurance Fund, the Temporary Corporate Credit Union Stabilization Fund, and the Central Liquidity Facility;
5. A detailed analysis of why NCUA's budget has increased by over 50-percent in the past five years, as well as a year-by-year analysis of all such increases;
6. A detailed analysis of all cost savings programs implemented by NCUA over the past five years;
7. A detailed analysis of all expenditures incurred by NCUA to support the Financial Stability Oversight Council (FSOC);
8. A detailed analysis of all expenditures incurred by NCUA in implementing the Sensitive Compartmented Information Facility (SCIF);
9. A detailed analysis of all expenditures that NCUA anticipates to incur with respect to the proposed risk based net worth rule, as well as all other proposed rules;
10. A formal cost-benefit analysis with respect to each rule or regulation proposed by NCUA, as well as a detailed description of the methodology employed by NCUA in conducting such analysis; and
11. A detailed reconciliation of how NCUA plans to allocate budget expenditures to achieve its strategic goals.

Many of these recommendations align with NAFCU's concerns and we would urge the Committee to act on H.R. 1176 and call on the agency to implement these recommendations.

Reforms to the definition of "Points and Fees"

NAFCU supports legislation introduced by Representatives Bill Huizenga and Greg Meeks, H.R. 685, *The Mortgage Choice Act*, a bipartisan bill that would exclude affiliated title charges from the "points and fees" definition, and clarify that escrow charges should be excluded from any calculation of "points and fees." These important changes would greatly improve the definition of "points and fees" used to determine whether a loan meets the QM test, and would ensure that those with low and moderate means would continue to be able to obtain their mortgages from their credit union at a reasonable price.

Portfolio Lending and Mortgage Access Act

NAFCU supports this legislation, H.R. 1210, introduced by Representative Andy Barr that would ensure residential mortgage loans held in portfolio by originators, such as credit unions, automatically attain the qualified mortgage (QM) safe harbor under the CFPB's rules.

Privacy Notices

NAFCU supports legislation introduced by Representatives Blaine Luetkemeyer and Brad Sherman, H.R. 601, the *Eliminate Privacy Notice Confusion Act* that would remove the requirement that financial institutions send redundant paper annual privacy notices if they do not share information and their policies have not changed, provided that they remain accessible elsewhere. These duplicative notices are costly for the financial institution and often confusing for the consumer as well. In the 113th Congress, this legislation passed the House. We appreciate the continued leadership on this important issue.

Relief from the Consumer Financial Protection Bureau

NAFCU supports measures to bring greater accountability and transparency to the Consumer Financial Protection Bureau (CFPB) including replacing the director with a board akin to other federal financial regulators (H.R. 1266 the *Financial Product Safety Commission Act of 2015*), bringing the CFPB under the Congressional appropriations process (H.R. 1261, the *Bureau of Consumer Financial Protection Act*), and giving the Financial Stability Oversight Council additional tools to challenge CFPB rulemaking (H.R. 1263, the *Consumer Financial Protection*

Safety and Soundness Improvement Act). NAFCU appreciates the leadership of Chairman Neugebauer and Chairman Duffy in taking the lead on these important measures.

Relief from Operation Choke Point

The Operation Choke Point initiative was launched in an effort to fight consumer fraud by denying fraudulent businesses access to banking services and holding financial institutions and third-party processors accountable if they continue to serve a client operating in a fraudulent manner. NAFCU, with many others in the financial services industry, has noted concerns that this program "could seriously deter the natural growth and development of e-commerce and stifle future economic growth."

NAFCU supports the efforts of Representative Leutkemeyer in H.R. 766, the *Financial Institutions Customer Protection Act*, a bill that would rein in the Justice Department's "Operation Choke Point" initiative by restricting its ability to order the termination of accounts in financial institutions by requiring federal banking regulators, to provide material reason beyond reputational risk for ordering a financial institutions to terminate a banking relationship. It would also require regulators to put any order to terminate a customer's account into writing.

Helping Expand Lending Practices in Rural Communities Act

Introduced by Representative Andy Barr (H.R. 1259), this bill would be helpful to small creditors, including credit unions, as they deal with the CFPB's definition "rural area" particularly as it relates to the ability-to-repay rule. As I outline in my testimony below, NAFCU also has concerns with how NCUA defines "rural."

Additionally NAFCU would support reintroduction of measures from the 113th Congress including:

Regulatory Relief for Credit Unions Act of 2013

The *Regulatory Relief for Credit Unions Act of 2013* (H.R. 2572) reflected several provisions important to NAFCU. The legislation would:

- establish a true risk-based capital system for credit unions;

- allow NCUA to grant federal credit unions a waiver to follow a state rule instead of a federal one in certain situations;
- authorize NCUA to step in where appropriate to modify a CFPB rule affecting credit unions;
- require that NCUA and CFPB revisit cost/benefit analyses of rules after three years so they have a true sense of the compliance costs for credit unions;
- require NCUA to conduct a study of the Central Liquidity Facility and make legislative recommendations for its modernization;
- give credit unions better control over their investment decisions and portfolio risk.

Examination Fairness

Credit unions face more examiner scrutiny than ever, as the examination cycles for credit unions have gone from 18 months to 12 months since the onset of the financial crisis even though credit union financial conditions continue to improve. Additional exams mean additional staff time and resources to prepare and respond to examiner needs. NAFCU has concerns about the continued use of Documents of Resolution (DOR) when they are not necessary or are used in place of open and honest conversations about examiner concerns. A survey of NAFCU members last year found that nearly 40% of credit unions that received DORs during their last exam felt it was unjustified and nearly 15% of credit unions said their examiners appeared less competent than in the past. NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives and later in my testimony we will outline areas where we think NCUA can do more.

NAFCU strongly supported legislation introduced in the 113th Congress (H.R. 1533) that would have helped to ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.

VIII. Areas Where Regulators Can Provide Relief to Credit Unions

While my testimony has outlined important issues impacting credit unions and highlighted steps that Congress can take to help, there are additional steps that NCUA, CFPB, FHFA, the Federal Reserve and others can take to provide relief without Congressional action and we would encourage them to do so.

NCUA

We are pleased that the National Credit Union Administration has been willing to take some small steps recently to provide credit unions relief. A prime example of this is the agency's proposed fixed-asset rule. This is a topic that was previously on NAFCU's "Dirty Dozen" and we are hopeful that the agency will continue moving forward and finalize this proposal.

We are also glad to see NCUA's voluntary participation in review of its regulations pursuant to the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA). This review provides an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements of NCUA's Rules and Regulations.

While these small steps by NCUA are positive, NAFCU believes that a big part of the problem is the cumulative impact of numerous regulations. While NCUA is not required to follow the President's Executive Order 13563 -- Improving Regulation and Regulatory Review, we believe that the agency should adhere to the spirit of it during the rulemaking process, such as taking into account cumulative costs of its regulations on the credit union industry. As noted earlier, NAFCU believes all credit unions need relief and regulators such as NCUA should not solely rely on an arbitrary asset size threshold when providing relief.

While my testimony has already outlined key areas such as field of membership, risk-based capital and compliance burden estimates, there are a number of additional areas where we would like to see NCUA action to provide relief.

Member Business Lending

A major area where we think NCUA can use its authority to provide relief is with member business lending. The Member Business Lending (MBL) regulation, as NAFCU and our members have consistently maintained, is far too restrictive and cumbersome.

As NAFCU outlined in both its March 5, 2014, letter to NCUA Board and our "Top Ten" list of regulations to eliminate or amend, there are several aspects of the MBL requirements which should be improved, including: changes to the waiver requirements and waiver process to make it more efficient and easier to obtain individual and blanket waivers; expanding opportunities to obtain waivers; and removing the five year relationship requirement to obtain a personal guarantee waiver. Additionally, NCUA should use its authority granted in the FCU Act to provide an exception to the limitations on member business loans (the MBL cap) for those credit unions that have a history of making MBLs to their members for a period of time.

Section 1757a of the FCU Act contains the limitations on MBLs. Under Part 723 of NCUA's Rules and Regulations, the aggregate MBL limit for a credit union is limited to the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. However, the FCU Act also contains exceptions to the MBL cap. In particular, it provides exception authority from the MBL cap for "an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, as determined by the Board." *See*, 12 U.S.C. § 1757a(b)(1).

Traditionally, this provision in § 1757a has been construed narrowly by NCUA. Section 723.17(c) of NCUA's Rules and Regulations currently defines credit unions that have a history of primarily making member business loans as credit unions that have either 25 percent of their outstanding loans in member business loans or member business loans comprise the largest portion of their loan portfolios, as evidenced by any Call Report or other document filed between 1995 and 1998. NAFCU continues to hear from our members that this definition is overly restrictive and often prevents them from extending sound loans to their small business members, many of whom have been abandoned by other financial institutions due to their smaller size.

NAFCU has urged NCUA to take a broader interpretation of the history of primarily making MBLs provision of the FCU Act. This can be done by NCUA utilizing its statutory authority to create an exception from the MBL cap for all credit unions that have a history of making MBLs for an extended period of time. NAFCU and our members believe that a credit union that has had a successful MBL program in place for a period of five years or greater would be a reasonable basis to satisfy this statutory authority.

NCUA has explained that the current definition "focuses on a credit union's historical behavior during the years leading up to the enactment of the *Credit Union Membership Access Act* (CUMAA)." NAFCU and our members believe this focus is unnecessarily restrictive, and we have urged the agency to expand the scope of the definition. NAFCU contends that it would be more appropriate for NCUA to consider a credit union's history of making MBLs in general, rather than restricting its focus solely to a credit union's behavior from 1995 through 1998. In particular, we believe the agency should define credit unions that have had a successful MBL program in place for at least five years as having a "history of primarily making MBLs." NAFCU has encouraged the NCUA Board to set this standard and make the exception available to all credit unions.

NCUA expanding opportunities for credit unions to obtain waivers is another area where they could help. In February 2013, NCUA issued supervisory letter 13-01 to credit unions attempting to shed light on the criteria and processes for obtaining MBL waivers. While this guidance was useful to credit unions, NAFCU continues to hear from its members that the waiver process is complicated, slow moving, and inefficient. As a result, many credit unions have been unable to extend sound loans to their small business members, loans which may have been lost to competitors, or worse, never extended at all.

While waivers should not be used so frequently that they are the norm, the process to obtain one should not be so excessively difficult as to prevent credit unions from serving their membership effectively. Healthy, well-run credit unions with risk focused MBL programs that maintain appropriate policies and procedures and that perform adequate due diligence on their member borrowers should be able to apply for and obtain blanket waivers which would help their membership.

Furthermore, the MBL regulations should be amended to expand a credit union's ability to obtain an individual or blanket waiver. Credit unions, because of their fundamental nature, are in a great position to extend credit to small businesses which will help fuel our nation's economic recovery. Expansion of the waiver capabilities would enable well run credit unions to extend loans to their small business members.

As noted above, the FCU Act contains the limitations on and exceptions to MBLs. However, the FCU Act does not prescribe limitations on the waivers that NCUA can put in place with regard to the regulations it imposes for MBLs that are not statutory requirements.

Section 723.10 of NCUA's Rules and Regulations contains an enumerated list of MBL related requirements for which a credit union can apply for a waiver. NAFCU believes that this enumerated list of available waivers should be replaced with a more flexible waiver provision that would allow a credit union to apply for, and obtain, a waiver from a non-statutorily required MBL regulatory requirement. The use of an enumerated list necessarily restricts a credit union from obtaining a waiver of a requirement which is not listed, even where such a waiver would not pose a safety and soundness concern to the credit union. NAFCU encourages NCUA to amend Section 723.10 to provide a more flexible waiver provision.

NCUA could issue appropriate guidance for the types of waivers that a credit union could obtain using a more flexible standard, which could include enumerated lists and appropriate examples. Section 723.11 of NCUA's Rules and Regulations contains the procedural requirements for a credit union to obtain a waiver, and it requires a credit union to submit a waiver request accompanied by a great deal of information related to the credit union's member business loan program. Under a more flexible provision, and taking into account safety and soundness considerations, NCUA should be able to determine from the information required to be provided pursuant to Section 723.11 whether a waiver is appropriate for a credit union. This approach would enhance a credit union's ability to provide MBLs to its members without compromising the safety and soundness of the credit union.

Advertising

Another area where NCUA could provide relief would be to amend its Rules and Regulations to accommodate for the rise of social media and mobile banking. Regulations governing advertising, such as 12 CFR 740.5, for example, contain requirements that are impossible to apply to social media and mobile banking, especially mediums that are interactive. A survey earlier this year of NAFCU members found that nearly one-in-four have a hard time advertising online or on mobile devices because of these rules. We believe these rules should be amended with the use of social media and mobile banking in mind to include more flexibility as opposed to the rigidity of the current rules. Credit unions have fared very well in safely adopting the use of such technology, and they take actions necessary to ensure their policies and procedures provide oversight and controls with regard to the risk associated by social media activities. A modernization of these rules by NCUA would clear up ambiguity and help credit unions use new technologies to better meet the needs of their members.

The *Credit Union Share Insurance Fund Parity Act Implementation*

The *Credit Union Share Insurance Fund Parity Act* expressly addresses Interest on Lawyers Trust Accounts (IOLTAs), but it also provides pass-through insurance coverage to "other similar trust accounts." As NCUA considers a rulemaking to conform with this legislation, NAFCU recommends that the agency provide broader coverage for realtor escrow and prepaid funeral accounts. Similar to how a lawyer establishes an IOLTA under state law to hold his or her clients' funds, escrow agents and funeral homes establish realtor escrow and prepaid funeral accounts under state law to hold the funds of the consumers that they serve. Because these accounts have a similar structure to IOLTAs, NAFCU and our members respectively request that NCUA amend Part 745 to provide pass-through share insurance coverage to realtor escrow and prepaid funeral accounts.

NAFCU also believes the *Credit Union Share Insurance Fund Parity Act* authorizes NCUA to provide pass-through share insurance coverage to the funds underlying stored value products and general-use prepaid cards. Stored value products commonly serve as the delivery mechanism for vital consumer funds, such as employee payroll, government benefit payments, and tax refunds. General-use prepaid cards also offer a safe and effective way for consumers to store funds, make purchases, and pay bills.

Examination Issues

While I have already outlined our support for the *Financial Institutions Examination Fairness and Reform Act* that was introduced in the last Congress, NAFCU believes that NCUA could take action now to vastly improve the examination process for credit unions.

NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives. However, the examination process, by its very nature, can be inconsistent. Regulatory agencies in Washington try to interpret the will of Congress, examiners in the field try to interpret the will of their agency, and financial institutions often become caught in the middle as they try to interpret all three as they run their institution. Unfortunately, the messages are not always consistent.

Exam Modernization

As part of its Regulatory Modernization Initiative, NCUA recently issued its Letter to Credit Unions (Letter No. 13-CU-09). It streamlined the examination report and clarifies for credit unions the difference between a Document of Resolution (DOR) and an Examiner's Findings Report. Full implementation of these new documents began with exams that started on or after January 1, 2014.

NAFCU has concerns about the continued use of Documents of Resolution (DOR) when they are not necessary or are used in place of open and honest conversations about examiner concerns. Examiner Findings Reports should be used in place of DORs for less urgent issues. That may allow management to use its own discretion to determine the timeframe and approach for correcting those less urgent problems.

Finally, NAFCU believes NCUA should update its exam manual and provide credit unions with the updates so that they may better understand the examination process.

Consistency

One of the most troublesome complaints we hear is that NCUA examinations continue to apply regulations inconsistently. While we fully recognize that examiners must have a certain degree of discretion, as we have previously communicated to the agency, inconsistent examinations and application of regulations create unnecessary confusion and are costly.

Additionally, regulators should ensure that their regulations are consistently applied from one examiner to another. Inconsistent application of laws and regulations among examiners increases uncertainty. This increased uncertainty adds another unnecessary layer of difficulty for credit unions to maintain the highest levels of compliance.

More importantly, it is also unclear how an examiner will evaluate compliance. In addition to actual regulations, NCUA also routinely provides "guidance" in any one of a number of different forms. Some examiners treat the guidance as just that; a tool to be used for credit unions to comply with regulations or implement best practices. Some examiners, however, treat the "guidance" as if it were part of the regulation itself, and consider failure to comply with the guidance as something roughly equal to failing to comply with the regulation. More should be done to ensure that all examiners treat both regulations and guidance consistently and for the purpose each was issued.

Unfortunately, if examinations are not conducted consistently, compliance with the ever-growing number of regulations will be ever more difficult. As a significant percent of examiners are new and with a large number retiring, NCUA will no doubt be continuing to hire new examiners. Thus, we believe that this is a critical juncture, as well as a great opportunity, for the agency to appropriately train and educate examiners so that examinations are conducted consistently. With this goal in mind, NCUA should take any and all measures it deems appropriate to achieve this goal.

Examination Appeal Process

NAFCU understands that some of our concerns cannot be addressed by regulators. Generally, NCUA and its examiners do a satisfactory job, but every inconsistency that forces credit unions to divert more resources to compliance reduces their ability to better serve their members. This ultimately translates to lower interest rates on savings, higher interest rates on loans, and in some cases, the inability to extend credit to a member that would receive credit otherwise.

NAFCU urges reforms to establish an appeals process that should provide an opportunity to identify inconsistencies and serve as a quality assurance check. The existing appeal process does not promote either. Under the existing process, if an examiner makes a determination to take action against the credit union, the credit union must first address the issues with the examiner. The second step is to contact the supervisory examiner, who evaluates the facts and reviews the analysis. If the issue is still not resolved, the credit union may send a letter to the regional director. After the previous steps have been taken, a credit union may then appeal to the NCUA Board for review of the decisions below.

The appeal process has a number of inherent flaws, not the least of which is the exclusion (in most instances) of a review by an independent third party at any level of the process. Under these circumstances it is almost impossible to avoid conflicts of interest and approach each situation objectively.

CFPB

We would also like to acknowledge efforts by the CFPB to provide relief, such as seeking to act on the privacy notice issue in the absence of any final Congressional action and efforts to revisit some of the concerns raised about points and fees under the new QM rule. While we believe that legislative action is still necessary in both regards, the Bureau deserves credit for taking steps in the absence of Congressional action. Still, NAFCU has consistently maintained that the tidal wave of the Bureau's new regulations, taken individually, and more so in their cumulative effect, have significantly altered the lending market in unintended ways. In particular, the ability-to-repay, qualified mortgage, and mortgage servicing rules have required credit unions of various sizes and complexities to make major investments, and incur significant expenses. Taken all together, these regulations have made credit unions rework nearly every aspect of their mortgage origination and servicing operations.

Exemption Authority

One area where the CFPB could be the most helpful to credit unions would be to use its legal authority to exempt credit unions from various rulemakings. Given the unique member-owner nature of credit unions and the fact that credit unions did not participate in many of the questionable practices that led to the financial crisis and the creation of the CFPB, subjecting credit unions to rules aimed at large bad actors only hampers their ability to serve their members. While the rules of the CFPB may be well-intentioned, many credit unions do not have the economies of scale that large for-profit institutions have and may opt to end a product line or service rather than face the hurdles of complying with new regulation. While the CFPB has taken steps, such as their small creditor exemption, more needs to be done to exempt all credit unions.

Credit unions are also further hampered by the fact that the CFPB does not have one consistent definition of "small entities" from rule to rule. We are pleased that the CFPB makes an effort to meet its obligations under the Small Business Regulatory Enforcement Fairness Act (SBREFA). However, we believe that the Bureau must do more to address the concerns of smaller financial institutions in its final rulemaking, so that new rules do not unduly burden credit unions.

Under SBREFA, the CFPB is required to consider three specific factors during the rulemaking process. First, the agency is to consider "any projected increase in the cost of credit for small entities." Second, the CFPB is required to examine "significant alternatives to the proposed rule which accomplish the stated objective of applicable statutes and which minimize any increase in the cost of credit for small entities." Third, the CFPB is to consider the "advice and recommendations" from small entities. 5 U.S.C. § 603(d). This directive serves an important function. When Congress passed the Dodd-Frank Act, it expected the newly established CFPB to be a proactive regulatory body. NAFCU believes the decision to subject the CFPB to SBREFA was a conscious decision to help ensure that regulations, promulgated with large entities in mind, do not disproportionately impact small financial institutions that were not responsible for the financial crisis.

Regulation E

As NAFCU outlined in our "Top Ten" list of regulations to eliminate or amend in order to better serve credit union customers, the requirement to disclose account numbers on periodic statements should be amended in order to protect the privacy and security of consumers.

Under Regulation E, credit unions are currently required to list a member's full account number on every periodic statement sent to the member for their share accounts. Placing both the consumer's full name and full account number on the same document puts a consumer at great risk for possible fraud or identity theft.

NAFCU has encouraged the CFPB to amend Regulation E §205.9(b)(2) to allow financial institutions to truncate account numbers on periodic statements. This modification is consistent with 12 C.F.R. § 205.9(a)(4), which allows for truncated account numbers to be used on a receipt for an electronic fund transfer at an electronic terminal. This change is also consistent with § 605(g) of the Fair Credit Reporting Act that states, "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt." NAFCU believes that by adopting this change, the CFPB will allow financial institutions to better protect the security and confidentiality of consumer information.

Compromised accounts are not only dangerous for consumers, but can be extremely costly for credit unions. In the past year alone data breaches have cost the credit union industry millions of dollars. According to feedback from our member credit unions, in 2014 each credit union on average experienced $226,000 in loses related to data breaches. The majority of these costs were related to fraud losses, investigations, reissuing cards, and monitoring member accounts.

As the recent high-profile data breaches at some of our nation's largest retailers have highlighted, criminals are willing to go to great extremes to obtain consumer's sensitive financial information. Credit unions understand the importance of steadfastly protecting their member's confidential account information, which is why we strongly suggest this regulatory update.

Until Congress passes new legislation to ensure other third parties, such as merchants, who have access to consumer's financial information, have effective safeguards in place to protect consumer information, the CFPB should consider this minor modification to Regulation E. This change would go a long way in keeping sensitive financial information out of the hands of criminals and reduce the increasing fraud costs borne by credit unions and other financial institutions.

Remittances

The *Dodd-Frank Act* added new requirements involving remittance transfers under the *Electronic Fund Transfer Act* (EFTA) and directed the CFPB to issue final rules amending Regulation E to reflect these additions. Under this mandate, the Bureau, released a series of final rules concerning remittances, all of which became effective on October 28, 2013.

In February 2012, the CFPB issued its first set of final rules on remittances. These rules required, among other things, remittance service providers, including credit unions, to provide a pre-payment disclosure to a sender containing detailed information about the transfer requested by the sender, and a written receipt on completion of the payment. Following the release of the February 2012, final rule, the CFPB issued on August 20, 2012, a supplemental final that provided a safe harbor for determining whether a credit union is subject to the remittance transfer regulations. Specifically, a credit union that conducts 100 or fewer remittances in the previous and current calendar years would not be subject to the rules.

In May 2013, the Bureau modified the final rules previously issued in 2012, to address substantive issues on international remittance transfers. This final rule eliminated the requirement to disclose certain third-party fees and taxes not imposed by the remittance transfer provider and established new disclaimers related to the fees and taxes for which the servicer was no longer required to disclose. Under the rule, providers may choose, however, to provide an estimate of the fees and taxes they no longer must disclose. In addition, the rule created two new exceptions to the definition of error: situations in which the amount disclosed differs from the amount received due to imposition of certain taxes and fees, and situations in which the sender provided the provider with incorrect or incomplete information.

NAFCU opposed the transaction size-based threshold for the final rule's safe harbor. The CFPB relied on an institution size-based threshold, rather than a transaction size-based threshold, in its recently released mortgage rules, and NAFCU urged the Bureau to adopt a similar approach for differentiating between remittance transfer providers. Additionally, NAFCU raised concerns with the final rule's requirement of immediate compliance if an entity exceeds the safe harbor's 100 transaction threshold. It encouraged the CFPB to allow entities who exceed the safe harbor threshold a realistic period in which to meet the standards of the final rule.

NAFCU continues to raise concerns that the regulatory burden imposed by the final rule leads to a significant reduction in consumers' access to remittance transfer services. NAFCU has heard from a number of its members that, because of the final rule's enormous compliance burden, they have been forced to discontinue, or will be forced to discontinue, their remittance programs. This has been the case at Patriot FCU as we have discontinued this service. A 2013, NAFCU survey of our members found that over one-quarter of those that offered remittance services before the rule have now stopped offering that service to members and even more are considering dropping. Those that continue to offer remittances have been forced to significantly increase their members' fees. NAFCU encourages the CFPB to expand the threshold for the safe harbor from the definition of "remittance transfer provider" in order to ensure that a meaningful safe harbor is established. We would also encourage Congress to act to exempt credit unions from this rule.

HMDA Changes Going Beyond the Dodd-Frank Act

The *Dodd-Frank Act* transferred *Home Mortgage Disclosure Act* (HMDA) rulemaking authority to the CFPB and directed the Bureau to expand the HMDA dataset to include additional loan information that would help in spotting troublesome trends. Specifically, Dodd-Frank requires the Bureau to update HMDA regulations by having lenders report the length of the loan, total points and fees, the length of any teaser or introductory interest rates, and the applicant or borrower's age and credit score. However, in its proposal, the Bureau is also contemplating adding additional items of information to the HMDA dataset. NAFCU has urged the CFPB to limit the changes to the HMDA dataset to those mandated by Dodd-Frank.

HMDA was originally intended to ensure mortgage originators did not "redline" to avoid lending in certain geographical areas. The HMDA dataset should be used to collect and provide reasonable data for a specific reason. The Bureau contends that it is going beyond Dodd-Frank's mandated changes to get "new information that could alert regulators to potential problems in the marketplace" and "give regulators a better view of developments in all segments of the housing market." These open-ended statements could be applied to virtually any type of data collection, and do not further the original intent of HMDA. NAFCU urged the CFPB to amend the dataset to advance the original purpose of HMDA, rather than using it as a vehicle to "police" its recent Qualified Mortgage rules.

The various mortgage-related regulations promulgated by the CFPB have exponentially increased credit unions' regulatory burden and compliance costs. Any additions to the HMDA dataset will create even more operational expenses for credit unions. Credit unions that collect and report HMDA data through an automated system will have to work with their staffs and vendors to update their processes and software. Those without automated systems will experience particularly significant implementation costs. The CFPB should eliminate unnecessary regulatory burden and compliance costs by limiting the changes to the HMDA dataset to those mandated by Dodd-Frank.

TILA/RESPA

Dodd-Frank directed the CFPB to combine the mortgage disclosures under the *Truth in Lending Act* and *Real Estate Settlement Procedures Act*. Under this mandate, the Bureau, in November 2013, released the integrated disclosures rule. This 1900-page rule requires a complete overhaul of the systems, disclosures, and processes currently in place for a consumer to obtain a mortgage. For example, the rule mandates the use of two disclosures: the three-page Loan Estimate (which replaces the Good Faith Estimate and initial Truth in Lending Disclosure); and the five-page Closing Disclosure (which replaces the HUD-1 and final Truth in Lending disclosure). There are also a number of stringent timing requirements and other substantive changes lenders must follow. The rule is effective August 2015, but lenders are still feeling pressure to be compliant on time. The sheer magnitude of this rule, read in conjunction with the totality of the other mortgage rules, has created a very burdensome regulatory environment and many credit unions are finding it difficult to continue lending. Credit unions must comply with the current disclosure requirements, which are extensive, and they must prepare their compliance solutions for the upcoming ones effective in August 2015, further exacerbating costs.

A major issue is that the CFPB and regulators are not allowing early compliance for this change, meaning credit unions will essentially be testing their systems when the rule takes effect on August 1, 2015, and the CFPB and other regulators have not indicated that they will accept good faith efforts at compliance for a period of time.

Qualified Mortgages

NAFCU continues to have serious concerns about the "Qualified Mortgage" (QM) standard. In short, given the unique member-relationship credit unions have, many make good loans that work for their members that don't fit into all of the parameters of the QM box and fall into the "non-qualified mortgage" category. NAFCU would support the changes below, whether made legislatively or by the Bureau, to the QM standard to make it more consistent with the quality loans credit unions are already making. Further, credit unions should have the freedom to decide whether to make loans within or outside of the standard without pressure from regulators.

Points and Fees

NAFCU strongly supports bipartisan legislation to alter the definition of "points and fees" under the "ability-to-repay" rule. NAFCU has taken advantage of every opportunity available to educate and discuss with the CFPB aspects of the ability-to-repay rule that are likely to be problematic for credit unions and their members. While credit unions understand the intention of the rule and importance of hindering unscrupulous mortgage lenders from entering the marketplace, it is time for Congress to address unfair and unnecessarily restrictive aspects of this CFPB rule.

NAFCU supports exempting from the QM cap on points and fees: (1) affiliated title charges, (2) double counting of loan officer compensation, (3) escrow charges for taxes and insurance, (4) lender-paid compensation to a correspondent bank, credit union or mortgage brokerage firm, and

(5) loan level price adjustments which is an upfront fee that the Enterprises charge to offset loan-specific risk factors such as a borrower's credit score and the loan-to-value ratio.

Making important exclusions from the cap on points and fees will go a long way toward ensuring many affiliated loans, particularly those made to low- and moderate-income borrowers, attain QM status and therefore are still made in the future.

Loans Held in Portfolio

NAFCU supports exempting mortgage loans held in portfolio from the QM definition as the lender, via its balance sheet, already assumes risk associated with the borrower's ability-to-repay.

40-year Loan Product

Credit unions offer the 40 year product their members often demand. To ensure that consumers can access a variety of mortgage products, NAFCU supports mortgages of duration of 40 years or less being considered a QM.

Debt-to-Income Ratio

NAFCU supports Congress directing the CFPB to revise aspects of the 'ability-to-repay' rule that dictates a consumer have a total debt-to-income (DTI) ratio that is less than or equal to 43 percent in order for that loan to be considered a QM. This arbitrary threshold will prevent otherwise healthy borrowers from obtaining mortgage loans and will have a particularly serious impact in rural and underserved areas where consumers have a limited number of options. The CFPB should either remove or increase the DTI requirement on QMs.

Legal Opinion Letters

In attempting to understand ambiguous sections of CFPB rules, NAFCU and many of its members have reached out to the CFPB to obtain legal opinion letters as to the agencies interpretation if it's regulations. While legal opinion letters don't carry the weight of law, they do provide guidance on ambiguous section of regulations. Many other financial agencies such as NCUA, FTC, FDIC and others issue legal opinion letters so as to help institutions and other agencies understand otherwise ambiguously written rules. The CFPB has declined to do so. What they have done is set up a help line where financial institutions can call for guidance from the agency. While this is helpful, there are reports of conflicting guidance being given depending on who answers the phone. This is not just unhelpful, but confusing when NCUA examines credit unions for compliance with CFPB regulations.

Federal Reserve Board

NAFCU has long encouraged the Federal Reserve to update Regulation D. This issue is also on NAFCU's "Dirty Dozen" and "Top Ten" list. Regulation D generally imposes reserve requirements on depository institutions with transaction accounts or nonpersonal time deposits, and requires reporting to the Federal Reserve. The regulation aims to facilitate monetary policy and ensure sufficient liquidity in the financial system. It requires credit unions to reserve against transaction accounts, but not against savings accounts and time deposits.

NAFCU believes the Federal Reserve Board should revisit the transaction limitation requirements for savings deposits. As I outlined earlier in this testimony, the six-transaction limit imposes a significant burden on both credit union members in attempting to access and manage their deposits and credit unions in monitoring such activity. Member use of electronic methods to remotely access, review and manage their accounts, as well as the contemporary transfer needs of members and consumers at all types of financial institutions, make a monthly transaction limit an obsolete and archaic measure. Should the Board decide not to outright remove the transaction limitation requirement for savings deposits, NAFCU has urged the Board to raise the current limitation. If the Board fails to act in this area, we believe Congress should be ready to address this issue. We were pleased to see Chairman Hensarling and Representative Robert Pittenger request a GAO study on this issue, but we would also urge action on this matter to provide relief to consumers by striking the limitation before completion of the study and then revisiting the issue of whether not there should even be a limitation after the study results are published.

FHFA

In September 2014, FHFA released a proposed rule that would establish new asset threshold for both FHLB applications and ongoing membership. Specifically, FHLB members and applicants would be required to keep 1 percent of assets in home mortgage loans. Also, current FHLB members would be required to hold at least 10 percent of assets in residential mortgage loans on an ongoing basis – a marked change from the current rule, which only requires this 10 percent threshold at the application stage. The proposal would also require FHLBs to evaluate member compliance annually and to terminate membership after two consecutive years of noncompliance.

This proposed rule threatens to severely hamper credit unions' access to the valuable services the FHLBs provide and must be carefully considered for its full impact before moving forward. In 2007, 11.4% of credit unions were members of an FHLB, representing 61.7% of total credit union assets. Today, however, 20% of all credit unions are members of an FHLB, and these credit unions represent 77.5% of the total credit union assets and this number continues to grow. This growth of credit union membership in FHLBs only underscores the need to ensure that the eligibility requirements for membership in FHLBs are set appropriately. Unfortunately, this proposal would disenfranchise over 1 million credit union member-owners from receiving the benefits of FHLB resources as their institution's membership would be terminated under the newly proposed requirements.

While NAFCU appreciates FHFA's intention of fostering FHLB's housing finance missions, we believe the current regulatory requirements effectively ensure that FHLB members demonstrate ongoing commitments to mortgage lending in their communities. For example, when an FHLB member borrows an advance, it must provide eligible collateral to secure the advance. Nearly all eligible types of collateral, which are determined by Congress, are related to housing. In addition, current members must certify their active support of housing for first-time homebuyers to the FHFA every two years through the Community Support Statement. Further, FHFA has failed to provide any data or empirical evidence to support its claims that the FHLB system is at risk because some members may not meet the proposed asset percentage requirements on an ongoing basis. Given the sufficient existing requirements, and the lack of statistical support for the proposed changes, NAFCU does not believe FHFA needs to move forward with the newly proposed "ongoing" membership requirements for depository institutions in this rulemaking.

Further exacerbating this issue for credit unions is the statutory exemption for community financial institutions, which are unfortunately only defined as FDIC-insured banks with under $1.1 billion in assets, from the 10% requirement as outlined in the *Federal Home Loan Bank Act*. In addition to seeking changes to the underlying FHFA proposal, NAFCU believes this discrepancy also needs to be addressed to ensure an even playing field between all financial institutions including credit unions on this matter. We believe *all* credit unions should be recognized as community financial institutions, and, at the very least, we would urge the committee to act on this matter and create parity for credit unions.

IX. Department of Defense (Military Lending Act Proposed Rule)

NAFCU is in full support of protecting servicemembers from predatory and unscrupulous lenders. It is clear this is the intent of the proposed rule DoD has issued. Unfortunately, and unlike the original regulation promulgated by DoD in 2007, this rule does not take into account the unintended consequences to the financial industry. While well-intentioned, the rule creates a significant and unnecessary regulatory burden on financial institutions particularly for small community institutions like credit unions.

The burden is significant because it will force all lenders to add an extra time consuming and costly step to essentially every extension of consumer credit. Under the DoD proposed rule, all lenders would be forced to determine if any individual receiving consumer credit is a servicemember or a dependent of a servicemember. While the rule provides flexibility in the manner in which a lender could determine the status of a borrower, it only grants a safe harbor from civil and potentially criminal penalties if the lender uses the Defense Manpower Data Center (DMDC) database. Additionally, even this safe harbor can become invalid if it is found that financial institution had actual knowledge of a borrower's status.

This presents a number of issues for credit unions particularly small credit unions. First, every lender would be forced to review all information and documentation on every existing member or customer to determine if they have actual knowledge of the status of that particular individual. This would produce a significant cost to a lender to not only review all records but also to implement a system of checks to ensure that any information given to them in the future that could serve as actual knowledge is documented.

Second, lenders would have to institute a set of procedures to check the DMDC database for every extension of consumer credit. Credit unions would either have to manually check the database in every situation or pay what could amount to an enormous cost to integrate an automated system into their current systems. This burden would be created for virtually every extension of credit to identify individuals that may make-up less than 1% of a credit union's membership.

As noted, NAFCU supports providing servicemembers with protections, and if incurring the unintended consequences of this rule was the only way to protect service members, this would certainly be a different discussion. What is most perplexing about the DoD rule is the fact that there is a very simple solution to this problem that would significantly reduce the burden on credit unions and lenders while still providing servicemembers with the same protections. This solution is self-identification. If service members self-identify themselves, virtually all the unnecessary burden of the rule would be mitigated and service members would still receive the protections intended by the rule. This method has worked extremely well with the interest rate reduction required under the *Servicemembers Civil Relief Act* (SCRA).

Another major concern regarding the rulemaking has been the process. While this rule will effectively cover almost every lender in the nation, the Department of Defense has refused to meet with industry to discuss how this rule could be implemented in the most effective manner. Given the opportunity, we believe that industry could make a valuable contribution to ensuring this rule works both effectively and efficiently.

X. Regulatory Coordination is also Needed

With numerous new rulemakings coming from regulators, coordination between the agencies is more important than ever. Congress should use its oversight authority to make sure that regulators are coordinating their efforts and not duplicating burdens on credit unions by working independently on changes to regulations that impact the same areas of service. There are a number of areas where opportunities for coordination exist and can be beneficial. We outline two of them below.

Financial Stability Oversight Council (FSOC)

NAFCU has been on the forefront encouraging the FSOC regulators to fulfill their Dodd-Frank mandated duty to facilitate rule coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure and promoting a safer and more stable system. It is extremely important to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden. We urge Congress to exercise oversight in this regard and consider putting into statute parameters that would encourage the FSOC to fulfill this duty in a thorough and timely manner.

Data Security

Outside of advocating for federal legislation with regard to the safekeeping of information and breach notification requirements for our nation's retailers, NAFCU has also urged regulatory coordination for credit unions already in compliance with the stringent standards in the *Gramm-Leach-Bliley Act*. In the wake of the massive Target data breach in December 2013 the Federal Trade Commission began exploring a range of regulatory options to assist consumers, businesses, and financial institutions. Moving forward, it is imperative that NCUA ensure that credit unions are protected from any unnecessary regulatory burden and continue to allow them to provide quality services to their members.

Congress must also act to establish a national data security standard for retailers who hold personal financial data. Numerous breaches at our nation's retailers are having a negative impact on our nation's consumers. The financial services industry has been subject to such a standard since the passage of Gramm-Leach-Bliley in 1999, it's time that others who hold financial data are held to a similar standard. While it is not the subject of this hearing, we hope that the Committee will make addressing data security concerns one of its priorities in the 114th Congress.

XI. Conclusion: All Credit Unions Need Regulatory Relief

The growing regulatory burden on credit unions is the top challenge facing the industry today. All credit unions and their members are being impacted. This burden has been especially damaging to smaller institutions that are disappearing at an alarming rate. The number of credit unions continues to decline, as the compliance requirements in a post Dodd-Frank environment have grown to a tipping point where it is hard for many smaller institutions to survive. Those that do are forced to cut back their service to members due to increased compliance costs.

Credit unions want to continue to aid in the economic recovery, but are being stymied by this overregulation. NAFCU appreciates the Committee holding this hearing today. Moving forward, we would urge the Committee to act on credit union relief measures pending before the House and the additional issues outlined in NAFCU's Five Point Plan for Credit Union Regulatory Relief and NAFCU's "Top Ten" list of regulations to review and amend. Additionally, Congress needs to provide vigorous oversight to the NCUA's proposed risk-based capital rule and be ready to step in and stop the process so that the impacts can be studied further. Finally, the Committee should also encourage regulators to act to provide relief where they can without additional Congressional action.

We thank you for the opportunity to share our thoughts with you today. I welcome any questions you might have.

March 18, 2015

Testimony of

Tyrone Fenderson

On behalf of the

American Bankers Association

before the

Committee on Financial Services

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Chairman Hensarling, Ranking Member Waters, my name is Tyrone Fenderson, President and Chief Executive Officer of Commonwealth National Bank in Mobile, Alabama. I appreciate the opportunity to be here to present the views of the American Bankers Association (ABA) regarding regulatory relief for small financial institutions. The ABA is the voice of the nation's $14 trillion banking industry, which is composed of small, mid-size, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans.

Commonwealth National Bank is a $60 million minority owned bank. We have 3 branches serving the Mobile area and extend $30 million in loans to our local community.

ABA appreciates the opportunity to be here today to talk about how the growing volume of bank regulation—particularly for community banks—is negatively impacting the ability of banks throughout the nation to meet our customers' and communities' needs. This is not a new subject, yet the imperative to do something grows every day.

Community banks are resilient. We have found ways to meet our customers' needs in spite of the ups and downs of the economy. But that job has become much more difficult by the avalanche of new rules, guidances and seemingly ever-changing expectations of the regulators. This—not the local economic conditions—is often the tipping point that drives small banks to merge with banks typically many times larger. The fact remains that there are 1,200 fewer community banks today than there were 5 years ago—a trend that will continue until some rational changes are made that will provide some relief to America's hometown banks.

Each and every bank in this country helps fuel our economic system. Each has a direct impact on job creation, economic growth and prosperity. The credit cycle that banks facilitate is simple: customer deposits provide funding to make loans. These loans allow customers of all kinds—

businesses, individuals, governments and non-profits—to invest in their hometown and across the globe. The profits generated by this investment flow back into banks as deposits and the cycle repeats—creating jobs, wealth for individuals and capital to expand businesses. As those businesses grow, they, their employees and their customers come to banks for a variety of other key financial services such as cash management, liquidity, wealth management, trust and custodial services. For individuals, bank loans and services can significantly increase their purchasing power and improve their quality of life, helping them attain their goals and realize their dreams.

This credit cycle does not exist in a vacuum. Regulation shapes the way banks do business and can help or hinder the smooth functioning of the credit cycle. Bank regulatory changes—through each and every law and regulation, court case and legal settlement—directly affect the cost of providing banking products and services to customers. Even small changes can have a big impact on bank customers by reducing credit availability, raising costs and driving consolidation in the industry. Everyone who uses banking products or services is touched by changes in bank regulation.

I would like to share some specific examples of how bank regulation has impacted consumers across the country:

- Another $500 million bank in Texas has had to take all lending discretion away from loan officers and rely exclusively on a numbers-driven computerized underwriting model for fear of inadvertently violating fair lending regulations. As a result they were forced to turn down a 30-year customer who has never been late on a payment who wanted to guarantee a loan to fund a new HVAC system to restore heat to his daughter's home. Another customer was denied a loan despite having fully paid 20 loans to the bank.
- In one case, the customer of an Oklahoma bank passed away. The customer's daughter had been living with the mother and supplementing her mortgage payments while she was alive. Upon the mother's death the daughter wanted to remain in the house and continue paying the mortgage. The daughter did not qualify to purchase the home under ability to repay standards. This left the bank with the choice of foreclosing on the home and evicting the daughter or ignoring its policy and making a non-QM loan. **Instead this bank decided to charge off the loan – taking an immediate loss – and allow the daughter to continue making payments on her deceased mother's loan,** recapturing portions of the loss as the daughter makes monthly payments.

These stories are common at hometown banks across the country. Community banks have always prided themselves on being flexible to meet the unique circumstances of their customers. But the inflexible rules, regulatory risk, and potential law suits have led to fewer loans, hurting customers and the communities they live in. This is why it is imperative that Congress take steps to ensure and enhance the banking industry's ability to facilitate job creation and economic growth through the credit cycle. The time to address these issues is now before it becomes impossible to reverse the negative impacts. When a bank disappears everyone is affected.

We thank Representative Luetkemeyer for introducing the CLEARR Act (H.R. 1233) and Chairman Neugebauer for introducing the Financial Products Safety Commission Act (H.R. 1266). We also thank Representative Barr for introducing the HELP in Rural Communities Act (H.R. 1259) and the soon to be introduced American Jobs and Community Revitalization Act. These measures are an important first step. We urge Congress to work together— Senate and House—to pass legislation that will enhance the ability of community banks to serve our customers.

More can and must be done. In particular, Congress can take action to ensure credit flows to communities across the country by:

- removing impediments to serving customers,
- improving access to home loans, and
- ensure proper oversight of the Consumer Financial Protection Bureau.

In the remainder of my testimony, I will highlight some specific actions under each of these that would help begin the process of providing meaningful relief to help community banks and help bank customers.

I. Remove Impediments to Serving Customers

Rules and requirements surround every bank activity. When it works well, bank regulation helps ensure the safety and soundness of the overall banking system. When it does not, it constricts the natural cycle of facilitating credit, job growth and economic expansion. Finding the right balance is key to encouraging growth and prosperity as unnecessary regulatory requirements lead to inefficiencies and higher expenses which reduce resources devoted to lending and investment.

Bank Testimonial:

An 80 employee bank in Massachusetts has had to hire an additional compliance officer and 3 additional software engineers over the past three years to address new documentation and compliance requirements.

The bank is forced to pass along a portion of these costs to customers in the form of fees and less favorable rates on loans.

The key to changing the consolidation trend is to stop treating all banks as if they were the largest and most complex institutions. Financial regulation and examination should not be one-size-fits-all. All too often, regulation intended for the largest institutions become the standard that is applied to every bank—Basel III being the most egregious. Such an approach only layers on unnecessary requirements that add little to improve safety and soundness, but add much to the cost of providing services—a cost which customers ultimately bear. Instead, ABA has urged for years that a better approach to regulation is to tailor bank supervision to take into account the charter, business model, and scope of each bank's operations. This would ensure that regulations and the exam process add value for banks of all sizes and types.

By eliminating unnecessary impediments to the natural credit cycle, Congress can help stem the tide of community bank consolidation driven by these unnecessary impediments which negatively impacts every community across the United States.

American Jobs and Community Revitalization Act

ABA supports Representative Barr's soon to be introduced American Jobs and Community Revitalization Act which contains a number of provisions that will reduce the burden on community banks in ways that make it easier for community banks to meet their customers' needs. In particular, this legislation would:

- **Require a review and reconciliation of existing regulations**. Congress should require a review and reconciliation of existing regulations that may be in conflict with or duplicative of new rules being promulgated by the banking agencies, or which in their application badly fit the variety of institutions that make up the banking industry.

- **Provide a longer examination cycle for community banks.** This bill would expand the number of banks eligible for an 18-month exam cycle for highly rated community banks. This would reduce significantly the resources required to deal with yearly examinations by the regulators. The Comptroller of the Currency, Thomas Curry, publicly stated such a change would reduce burden on well-managed community institutions and would also allow the agencies to focus their efforts on institutions that may present supervisory concerns.

- **Streamline currency transaction reporting.** Anti-money laundering efforts by financial institutions can be improved by eliminating needless currency transaction reporting through a "qualified customer" exemption to the Currency Transaction Reporting (CTR) rules. This would significantly reduce the more than 13 million CTRs filed annually, saving banks many hours each year in filling out unneeded and used forms.

- **Ensure Subchapter S banks are treated equitably.** Banks are required to build capital under the Capital Conservation Buffer requirements of the agencies' Basel III regulations. However, the current regulations do not take into consideration the unique cash flows applicable to S Corporation banks where income is calculated prior to consideration of distributions for payment of taxes arising from S Corporation activities. This puts S Corporation banks at a disadvantage when compared to C Corporation banks.

- **Improve Access to Home Loans.** This bill also contains a number of provisions to ensure consumers have access to home loans that are discussed further below.

CLEARR Act

ABA supports Representative Luetkemeyer's CLEARR Act which also contains a number of provisions that would lift or modify many requirements, better allowing community banks to meet the needs of their customers. In particular, this legislation would:

- **Reduce unnecessary and redundant paperwork.** This legislation would provide an exemption from the Gramm-Leach-Bliley Act's annual notice requirement for institutions that have not changed their privacy policies and only share personal information within the statutory exceptions, resulting in significant savings in mailing costs for banks across the country. Institutions that changed their privacy policies during the preceding year still would be required to provide privacy notices.

- **Ensure that both the costs and benefits are considered before issuing new regulation.** The bill also would require the Securities and Exchange Commission (SEC) to conduct an analysis of the costs and benefits, including economic benefits, of any new or amended accounting principle. Benefits to investors would have to outweigh costs before the SEC could recognize the principle.

- **Provide a longer examination cycle for community banks.** This legislation would also expand the number of banks eligible for an 18-month exam cycle for highly rated community banks.

- **Improve Access to Home Loans.** This bill also contains a number of provisions to ensure consumers have access to home loans that are discussed further below.

Tailor Regulation to a Bank's Business Model

In addition to measures mentioned above, the ABA also recommends that Congress ensure that regulation is tailored to a bank's business model. Time and again, I hear from bankers wondering why the complex set of rules, reporting requirements, and testing that are imposed upon the largest most diverse and global institutions become the standard applied to the smaller community banks in the country. The approach seems to be: "If it's the 'best practice' for the biggest banks it must be the best practice for all banks." Such an approach makes no sense in our diverse banking system with different business models and strategies.

Of course, the supervisory process should assure risk is identified and managed prudently. This risk assessment must be appropriate to the type of institution. In the aftermath of the financial crisis, the pendulum of bank examination has swung to the extreme—affecting every sized bank. Overbroad, complicated restrictions supplant prudent oversight. Inconsistent examinations hinder lending, increase costs, and create procedural roadblocks that undermine the development of new products and services to bank customers.

The banking agencies should move towards customized examinations that consider the nature of a bank's business model, charter type, and perhaps most important, bank management's success at managing credits, including a borrower's character, prior repayment history and strength of personal guarantees. In today's complex banking environment, an array of risk factors have a far greater impact on a banks' ability to serve its customers—as well as its likelihood to get in trouble—than asset size.

This proposal is an excellent starting point. Although no single piece of legislation could remedy all concerns about the current supervisory environment, this legislation would ensure that banks are regulated according to their business model.

II. Improve Access to Home Loans

The mortgage market touches the lives of nearly every American household. Banks help individual consumers achieve lifelong goals of homeownership by giving them access to the funding they need. Without home loans most Americans would not be able to purchase a home.

Banks are a major source of mortgage loans—holding more than $2 trillion in one-to-four family home loans on their books and originating others under government guarantees. In addition, banks support the housing industry with construction and development loans, and homeowners with home equity lines of credit. These critical services of banks results in more income and jobs in communities, along with a larger tax base for local governments.

It is painfully clear that new regulatory requirements have restrained mortgage lending and have made it particularly difficult for first-time homebuyers to obtain a home loan. The complex and liability-laden maze of compliance has made home loan origination more difficult, especially for borrowers with little or weak credit history. Over-regulation of the mortgage market has reduced credit available to bank customers, raised the cost of services, and limited bank products. The result has been a housing market still struggling to gain momentum.

Congress can help reduce needless impediments to mortgage lending that have constrained the banking industry's ability to help first-time homebuyers and dampened the growth of prosperity across the nation's communities. For example, Congress should:

Treat Loans Held in Portfolio as Qualified Mortgages:

The Dodd Frank Act (DFA) is very restrictive in its definition of "ability to repay" (ATR) and this is having a detrimental impact on the market and consumer access to credit. In fact, the Consumer Financial Protection Bureau (CFPB) has been forced to delay implementation of some aspects of the rule which would eliminate balloon loans. These loans, which are in virtually all cases held in portfolio, are a useful and in-demand product for many customers, particularly those in rural areas seeking smaller dollar loans and those that do not meet secondary market eligibility requirements. It helps bank manage interest rate risk, and without tools like this some borrowers would not have access to mortgage loans at all. While the bureau has recently proposed expanded exemptions for smaller lenders serving rural and underserved areas, more relief is needed for lenders and borrowers in all areas of the country.

> **Bank Testimonial:**
>
> A $500 million Massachusetts bank noticed a spike in loan declines to women. Further investigation revealed a number of women who were attempting to buy their family home to settle a divorce and stabilize their family. These women had often recently reentered the workforce, and therefore did not have the work history required to meet ATR requirements.
>
> Previously the bank would have written these loans, recognizing that she would do what is necessary to keep the home provide stability for her family. The ATR requirement does not allow this flexibility.

ABA is thankful for the CFPB's work to address this issue, but legislation is needed for a real fix. Both H.R. 1233 and the American Jobs and Community Revitalization Act would deem ***any*** loan made by an insured depository and held in that lender's portfolio as compliant with the Qualified Mortgage rule under the DFA (so long as the loan is not sold). The Qualified Mortgage or QM label is given to loans which can be shown to meet the qualifications of the Ability to Repay provisions of DFA. Loans held in portfolio are, by their very nature, loans which can be repaid because the bank takes **all** the risk that the loan might default. A bank would not stay in business very long if it made and held loans on their books that cannot be repaid. The approaches taken in both of these bills common sense approaches to showing that a loan has been properly underwritten and meets the QM and ability to repay requirements of the DFA.

Eliminate the Excessively High Life-of-Loan Liability:

Not only are the rules complex and liability-laden, the level of liability is both high and often extends for the life of the loan. A liability with such a long life will give any lender pause when considering any but the lowest-risk borrowers. Why should ability to repay liabilities hang over a lender's business for twenty years or more into the life of a thirty-year loan? Common sense suggests that any mortgage loan that has remained current for a number of years has certainly demonstrated the borrower's ability to repay. Congress should replace the ATR life of loan liability with a more reasonable term so that liability ends after a loan has performed for a reasonable number of years.

Mandate a Study of the Basel III Capital Requirements Impact on Mortgage Servicing Assets:

Implementation of Basel III is disrupting the market for mortgage servicing rights by imposing punitive capital requirements that are causing many banks to sell these assets, usually to nonbank mortgage servicing firms that have little connection with the original borrowers. ABA supports the American Jobs and Community Revitalization Act which requires the banking regulators to study the overall impact of these requirements on the safety and soundness of the banking system, including the impact on the value of such assets as sales are required; the financial stability of nonbank purchasers of mortgage servicing assets; and the risks posed by shifting servicing duties from the banking industry to nonbank entities. The regulators should be required to report to the committees of jurisdiction within one year on recommendations for legislative and/or regulatory changes to address concerns identified by the study, and steps to implement the provisions should be halted until Congress has the opportunity to review the study and act.

III. Ensure proper oversight of the Consumer Financial Protection Bureau

The banking industry fully supports effective consumer protection. We believe that Americans are best served by a financially sound banking industry that safeguards customer deposits, lends those deposits responsibly, and processes payments efficiently.

Fair service to our banking customers is inseparable from sound management of our banking business. Yet despite this axiom, the Dodd-Frank Act erected a Bureau that divides consumer protection regulation from safety and soundness supervision. It is for this reason I and my fellow bankers, from banks small to large and everywhere in between, have common cause to advocate for improvements to assure this new Bureau is accountable to the fundamentals of safe and sound operation, to the gaps in regulating non-banks that motivated financial reform, and to the principles of consistent regulatory standards consistently applied. In order to accomplish this ABA recommends that Congress:

Ensure proper oversight of the CFPB:

ABA supports H.R. 1266, introduced by Chairman Randy Neugebauer, which would replace the position of Director of the CFPB with a bi-partisan 5-member commission, similar to other financial regulatory agencies. ABA has long supported the commission concept and believes that a commission structure is appropriate to address the extremely broad authority of the Bureau's Director. We believe that the commission approach would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and it would provide needed balance and appropriate checks in the exercise of the Bureau's authority.

We urge Congress to require the commission to include members with consumer finance business experience and direct safety and soundness regulatory expertise. We believe this expertise provides an important and necessary perspective as standards are set and enforcement activities are undertaken.

Establish an Effective Appeals Process to the Definition of a Rural Area:

The definition of rural and underserved is critical and can dramatically affect banks and the communities they serve. The CFPB has already recognized this and has used its DFA discretionary authority to exempt certain loans from the qualified mortgage rule. This has been very important to accommodate community banks that make short-term balloon loans as a means of hedging against interest rate risk. However, the exemption applies only if, during the preceding calendar year, the creditor extended more than 50 percent of its total covered transactions that provide for balloon payments in one or more counties designated by the Bureau as "rural" or "underserved." Thus, the definitions used can be limiting and hurt mortgage customers that are inevitably in counties that may have been inappropriate excluded.

ABA supports H.R. 1259 and the American Jobs and Community Revitalization Act which would direct the CFPB to establish an application process to have an area designated as a rural area if it has not already been designated as such by the Bureau. An appropriate exemption process is critical since it would help to assure that whatever definition of rural is ultimately used by the CFPB, there would be an avenue to apply to the Bureau to extend the definition of rural in those inevitable cases where a county may have been inappropriately excluded.

Conclusion

Community banks have been the backbone of hometowns across America. Our presence in small towns and large cities everywhere means we have a personal stake in the economic growth, health, and vitality of nearly every community. A bank's presence is a symbol of hope, a vote of confidence in a town's future. When a bank sets down roots, communities thrive. We thank Representatives Barr, Luetkemeyer, and Neugebauer for introducing the American Jobs and Community Revitalization Act, the CLEARR Act, the Financial Products Safety Commission Act and the HELP in Rural Communities Act. These measures are an important first step. We urge Congress to act now and pass these pieces of legislation to help turn the tide of community bank consolidation and protect communities from losing a key partner supporting economic growth.

GEORGETOWN UNIVERSITY LAW CENTER

Adam J. Levitin
Professor of Law

Written Testimony of

Adam J. Levitin
Professor of Law
Georgetown University Law Center

Before the United States House of Representatives
Committee on Financial Services

"Preserving Consumer Choice and Financial Independence"

March 18, 2015
10:00 pm

Witness Background Statement

Adam J. Levitin is a Professor of Law at the Georgetown University Law Center, in Washington, D.C., where he teaches courses in financial regulation, structured finance, contracts, bankruptcy, and commercial law.

Professor Levitin has previously served as the Bruce W. Nichols Visiting Professor of Law at Harvard Law School, as the Robert Zinman Scholar in Residence at the American Bankruptcy Institute, and as Special Counsel to the Congressional Oversight Panel supervising the Troubled Asset Relief Program (TARP). Professor Levitin currently serves on Consumer Financial Protection Bureau's Consumer Advisory Board.

Before joining the Georgetown faculty, Professor Levitin practiced in the Business Finance & Restructuring Department of Weil, Gotshal & Manges, LLP in New York, and served as law clerk to the Honorable Jane R. Roth on the United States Court of Appeals for the Third Circuit.

Professor Levitin holds a J.D. from Harvard Law School, an M.Phil and an A.M. from Columbia University, and an A.B. from Harvard College. In 2013 he was awarded the American Law Institute's Young Scholar's Medal.

Professor Levitin has not received any federal grants or any compensation in connection with his testimony, and he is not testifying on behalf of any organization. The views expressed in his testimony are solely his own.

Mr. Chairman Hensarling, Ranking Member Waters, Members of the Committee:

Good morning. Thank you for inviting me to testify at this hearing. My name is Adam Levitin. I am a Professor of Law at the Georgetown University, where I teach courses in consumer finance, among other topics. I also serve on the Consumer Financial Protection Bureau's statutory Consumer Advisory Board. I am here today solely as an academic who studies consumer finance and am not testifying on behalf of the CFPB or its Consumer Advisory Board.

Community banks are ailing, but their problems are not because of the CFPB. The central problem for community banks is that size matters in consumer finance. Community banks lack the economies of scale necessary to compete in mortgages and credit cards. The CFPB has actually put a friendly thumb on the regulatory scale to ease regulatory burdens for community banks, but no amount of regulatory relief will offset the structural problem faced by community banks. Indeed, some of the regulatory relief that has been proposed would actually help megabanks more than community banks.

If Congress is truly interested in helping community banks, then tinkering with about the minutiae of CFPB regulations is not the right course of action. Instead, the best way to help community banks would be to pass legislation breaking up the megabanks. Until and unless the megabanks are broken up, there is every reason to expect that community banks will continue to disappear at their historical rate of nearly 300 per year.

I. COMMUNITY BANKS ARE AILING, BUT NOT BECAUSE OF THE CFPB

This hearing is focused on the concerns of community financial institutions about the current regulatory environment. As a starting point, we should all be on the same page regarding what is a "community financial institution," or "community bank." The definition of community banks is a depository with less than $10 billion in assets.[1] By this measure, almost all depositories in the United States are considered community banks. Of the 6,509 depositories in the United States only 109 have over $10 billion assets, so there are 6,400 community banks in the United States.

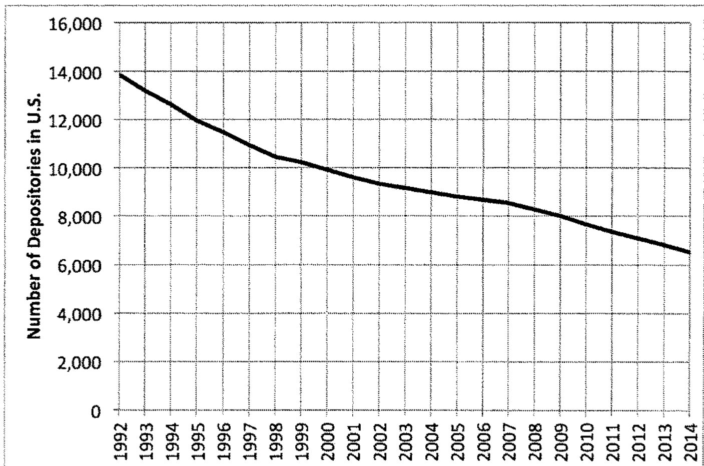
Community banks play an important role in the American financial system: they are key sources of credit in small business and commercial real estate lending, they tend to pride themselves on more personalized customer service and products, and they are often deeply engaged with the civic fabric of their communities. The health of community banks is also important for preserving choices for consumers in the financial products market place.

There is no question that community banks are ailing. The number of community banks in the United States has fallen nearly in half over the last decade. As Figure 1 (below) shows, this is the continuation of a long-term trend. In 1992 there were nearly 14,000 depositories in the United States, virtually all of which were community banks. Many small financial institutions failed during the savings and loan crisis, and the removal of interstate branch banking restrictions in 1994 encouraged bank mergers and the emergence of megabanks. Community banks continue to fail, be gobbled up by

[1] While $10 billion in assets is the commonly used threshold, it is unreasonably high and includes

larger banks, or more rarely grow out of being community banks.[2] For the past twenty-two years nearly 300 community banks have disappeared annually.

Figure 1. Number of Depositories in United States, 1992-2014[3]



None of the problems of community banks has anything to do with the CFPB or the post-financial crisis consumer financial protection reforms. Community banks' problems are structural and long-standing; they pre-dated the CFPB's existence (much less the key CFPB regulations, which only became effective in January 2014) by decades. There is zero evidence that the CFPB's regulations have been harming community banks. The CFPB and post-financial crisis reforms have actually given community banks a leg up by putting a friendly thumb on the regulatory scale.

Indeed, the overall banking industry's profits were down 7.3% in the fourth quarter of 2014 compared to the previous year. These poor results were driven by large banks. In contrast, ***community banks' profits were up 27.7% in the fourth quarter of 2014 compared to the previous year.***[4] Larger banks bounced back from the financial crisis faster than community banks because of the bailout assistance they received,[5] but *community banks appear to be flourishing under the new CFPB regulations* even accounting for additional compliance costs and adjustments to regulations.

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[2] While community banks' share of total banking system assets is shrinking, their total size is actually growing. This is consistent with a more optimistic view that community banks are reasonably healthy, but that large banks continue to enjoy economies of scale and too-big-to-fail benefits.

[3] FDIC Statistics on Depository Institutions (year end figures). The slope of the line has a coefficient of -295, with a r^2 of over 95%.

[4] FDIC Quarterly Banking Profile: Fourth Quarter 2014, *at* https://www.fdic.gov/bank/analytical/quarterly/2015_vol9_1/FDIC_4Q2014_v9n1.pdf (executive summary).

[5] *See* Victoria McGrane, *Annual Bank Profit Falls for the First Time in Five Years*, WALL ST. J. Feb. 24, 2015, *at* http://www.wsj.com/articles/u-s-banking-industry-profit-in-2014-falls-for-first-time-in-five-years-1424790315 (quoting FDIC Chairman Martin Gruenberg).

Unfortunately, many community bankers—and their trade associations—are unwilling to face the fact that community bank faces a serious structural challenge; it is far easier to blame the regulator because there is little that community banks can themselves do about their structural problem. Yet focusing on tweaks to the details of CFPB regulations as somehow the solution for community banks is like worrying about electrolysis while ignoring a malignant tumor.

II. Size Matters in Consumer Finance

There is a simple structural reason why community banks are ailing: *size matters in consumer finance*. Consumer finance is a huge business built on lots of small transactions. As such it often have significant economies of scale. For example, a bank that offers consumer financial products will typically need to have a call center to handle communications with consumers. Much of the investment in the call center—the technology, the overhead and to some degree the labor costs—do not vary based on the volume of calls. Thus, there are inherent economies of scale for institutions doing business on a larger scale.

Community banks are, by definition, unable to leverage economies of scale the way megabanks do. Consider the two of the largest consumer finance markets: credit cards and residential mortgages, where community banks do poorly, and how they contrast with community banks' strength in commercial mortgages, small business lending, and deposit accounts.

The credit card business is all about economies of scale: mass marketing solicitation and intensive data mining and computer security.[6] Small banks just can't compete in this market. Not surprisingly, many small banks (and credit unions) don't even offer credit cards, and about 10 banks have 90% of the credit card market.[7]

Residential mortgages tell a similar story. Mortgage lending is a bad fit for small institutions for four reasons. First, mortgages, like credit cards, are increasingly technology-driven, both on underwriting and servicing. The servicing industry is all about economies of scale (and that's part of its problem). Second, mortgages are large loans, meaning a $100 million in mortgages is a less diversified portfolio simply in terms of number of borrowers than $100 million in credit card receivables. Second, most mortgages are long-term fixed-rate obligations. Small banks cannot handle the interest rate risk of holding large fixed-rate mortgage portfolios, and do not want their capital so tied up, so they sell the mortgages to aggregators, who eventually securitize them via Fannie Mae, Freddie Mac or Ginnie Mae executions. Securitization, however, creates a third problem for small banks. When mortgages are sold into the secondary market, they are sold with representations and warranties from the originators. Simply by virtue of their size, small banks raise more significant counterparty risk on representations and warranties than large banks.

[6] Adam J. Levitin, *Interchange Regulation: Implications for Credit* Unions, Filene Research Institute, Research Brief #224 (Nov. 2010) at 39-40; Adam J. Levitin, *The Credit C.A.R.D. Act: Opportunities and Challenges for Credit Unions*, Filene Research Institute, Research Brief #202 (Nov. 2009) at 6, 11.

[7] NILSON REPORT # 1058 (Feb. 2015).

In contrast, community banks are able to compete the commercial real estate (CRE) mortgage market, but it's because most of the factors that make them uncompetitive in the residential market are not at play. CRE loans are much larger and more unique than residential loans, so there are not economies of scale in underwriting and servicing. CRE loans are shorter-term (rarely over 10 years) and more frequently adjustable rate or at least have yield-maintenance clauses to protect lenders from rate risk. Moreover, most CRE mortgages are not securitized,[8] so the counterparty representation and warranty risk does not exist. And for CRE lending, local knowledge might matter more for underwriting; a community banker is more likely to know the business climate of the community than the personal situation of an individual borrower.

This same story holds true for small-business lending. The economies of scale do not exist because the loans are more heterogeneous. The loans have shorter terms tan residential mortgage (and more often have adjustable rates), so there is less interest rate risk, and securitization is much rarer because it is harder to securitize heterogeneous products. And again, local knowledge might matter for underwriting.

Deposits accounts (and debit cards) have certain operations and technology economies of scale, particularly with the growth of on-line/mobile banking, but these disadvantages for community banks are counterbalanced by locational factors: many consumers still value having a nearby brick-and-mortar bank branch. Not surprisingly, many more community banks offer debit cards than credit cards.[9]

There is really no way to avoid the fact that size matters in consumer finance. Federal statutes and regulations already attempt to put a friendly finger on the scale to help community banks (as detailed below), but even if these regulatory subsidies were expanded, it would not make a material difference to the community banking industry.

III. Community Banks Already Receive Significant Regulatory Relief

Community banks already receive significant relief from consumer finance regulation. As an initial matter, it is important to recognize that absent regulatory intervention community banks would not exist in the first place.

The existence of community banks in the United States is a legacy of historic interstate branch banking restrictions, which were repealed in 1994. The United States has nearly 6,000 depository institutions. Only around 100 of those institutions have more than $10 billion in assets, which is the cut-off typically used for defining "community" banks. In other words, virtually all US depositories are community banks, and most of those depositories have under $1 billion in assets. No other country in the world has as many depositories as the United States by a couple of orders of magnitude. What we are

[8] CRE securitization deals with properties in only about 60 major urban markets. The rest is all balance sheet lending. Adam J. Levitin & Susan M. Wachter, *The Commercial Real Estate Bubble*, 3 HARV. BUS. L. REV. 83, 93 (2013).

[9] Adam J. Levitin, *Interchange Regulation: Implications for Credit* Unions, Filene Research Institute, Research Brief #224 (Nov. 2010) at 18-19.

witnessing now in the consolidation of the banking industry is the mean reversion one would expect absent restrictions on interstate branch banking.

Even today, regulation helps support the community banking industry. Absent FDIC insurance, depositors would never use small institutions instead of large ones. And merger approval requirements and entry restrictions help protect the community banking business.

The Dodd-Frank Act codifies special solicitude for community banks through several provisions:

- Community banks are exempt from the Durbin Interchange Amendment's debit card fee regulation.[10] This gives community banks a significant competitive advantage over megabanks.
- All financial institutions with less than $10 billion in assets are exempt from examination and enforcement actions by the CFPB.[11] There are only 111 financial institutions that are subject to CFPB examination and enforcement. Instead, smaller banks and credit unions are examined and subject to enforcement by their regular prudential regulators. This means that community banks have to deal with fewer examinations and are not subject to the scrutiny of a dedicated consumer protection agency. To date, I am unaware of a single enforcement action brought against a community bank under the Consumer Financial Protection Act. Instead, all enforcement actions have been against megabanks and non-banks.
- In addition to the regular notice and comment requirements of the Administrative Procedures Act, the CFPB is required to go through a special rulemaking process under the Small Business Regulatory Enforcement Fairness Act when it promulgates rules that will affect small businesses, including community banks.[12] The SBREFA process lets small businesses comment on proposed rules when they are in an early stage, before the "train has left the station."

The CFPB has also codified special provisions for community banks in its regulatory implementations of the Dodd-Frank Act, even though it is not required to do so. The CFPB has built in numerous exceptions for smaller financial institutions to its rule:

- Small creditors (with less than $2 billion in assets) can make mortgage loans at APRs 200 basis points (2%) higher than larger creditors and still qualify for the absolute safe harbor to the Ability to Repay Rule.[13]
- Small creditors (with less than $2 billion in assets) that originate less than 500 mortgage loans per year can qualify for the absolute safe harbor to the Ability to

[10] 15 U.S.C. § 1693o-2(a)(6).
[11] 12 U.S.C. §§ 5515, 5516(d).
[12] 5 U.S.C. §§ 603(d), 609(d)(2).
[13] 12 C.F.R. § 1026.43(b)(4), (e)(5).

Repay Rule for the loans they retain on portfolio even if those loans have debt-to-income ratios above 43%.[14] If these loans are held in portfolio for three years, they retain their safe harbor even if subsequently sold to another small creditor. [15]

- Small creditors (with less than $2 billion in assets) that operate predominantly in rural and underserved areas are exempt from the requirement of maintaining escrow accounts for high-cost mortgages.[16]
- Small creditors (with less than $2 billion in assets) in rural and underserved areas are exempt from the prohibition on high-cost balloon loans.[17]
- Small creditors in rural and underserved areas may until 2016 make balloon mortgages that qualify for the safe harbor from the ability-to-repay rule.[18]
- Implementation of balloon payment limitations is delayed for two-years (until 2016) for all small creditors (with less than $2 billion in assets) irrespective of whether they operate predominantly in rural or underserved areas.[19]
- Loans made against rural properties are not subject to the same rules regarding appraisals for high-cost mortgage loans.[20]
- Small mortgage servicers are exempted from the Truth in Lending Act requirement of periodic statements.[21]
- Small servicers are exempted from most of the Real Estate Settlement Procedures Act loss mitigation requirements (other than prohibition on commencing foreclosure until 120 days delinquency)
- Entities that handle 100 or fewer remittances per year are exempt from the Remittance Rulemaking under Regulation E under the Electronic Fund Transfers Act.[22]

CFPB has also proposed rules that would expand the definition of "rural" creditor and as well as increase the small creditor debt-to-income exemption from 500 loan originations to 2,000 loans sold annually (and unlimited originations).[23]

Beyond this, the CFPB has voluntarily taken actions to ensure that the voices of small institutions are heard in the regulatory process:

- The CFPB has voluntarily created a Community Bank Advisory Board and a Credit Union Advisory Board, in addition to its statutorily required Consumer Advisory Board.
- The CFPB has included representatives of small financial institutions on its Consumer Advisory Board, which is currently chaired by the chairman of rural community development credit union.

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[14] 12 C.F.R. § 1026.43(e)(5)(i); 1026.35(b)(2)(iii)(B)-(C).
[15] 12 C.F.R. § 1026.43(e)(5)(ii)(A).
[16] 12 C.F.R. § 1026.35(b)(2)(iii).
[17] 12 C.F.R. § 1026.43(e)(6).
[18] 12 C.F.R. § 1026.43(f)(1)(vi).
[19] 12 C.F.R. § 1026.43(e)(6).
[20] 12 C.F.R. § 1026.35(b)(4)(vii)(H)
[21] 12 C.F.R. § 1026.41(e)(4).
[22] 12 C.F.R. § 1005.30(f)(2).
[23] 80 FED. REG. 7769 (Feb. 11, 2015).

All of this is to say that the CFPB has shown particular solicitude for small financial institutions, attempting to balance their particular concerns and cost structures with the need for uniform consumer protection laws.

IV. COMMENTS ON SPECIFIC LEGISLATIVE PROPOSALS

In this section, I provide some comments on specific legislative proposals affecting consumer finance regulation. Not all of these proposals have been introduced as bills yet in the current Congress, but as their introduction is anticipated, I will comment on them here.

(1) Making All Residential Mortgages Loans Held in Portfolio Qualified Mortgages

One proposal (not yet introduced this Congress, but introduced in the last Congress as the Portfolio Lending and Mortgage Access Act, H.R. 2673) is to make all residential mortgages held in portfolio "qualified mortgages" (QM) and thus exempt from the Dodd-Frank Act's Ability to Repay Rule.

This proposal is unwise. It is based on an assumption that lenders will not make ill-advised loans if they have to retain the credit risk. This assumption ignores the substantial amount of evidence of principal-agent conflicts within financial institutions in which the incentives of loan officers do not align with those of the institution. A loan officer has shorter term incentives based on increasing lending volume, while the institution has incentives based on longer-term loan performance. These principal-agent concerns are not merely hypothetical: Countrywide, Wachovia, and Washington Mutual all kept a significant volume of the loans they originated on their portfolios with disastrous results. Many of these loans had low-or-no documentation, high loan-to-value ratios, and were not fully amortized. The resulting foreclosures harmed both borrowers and the banks. Although the originate-to-distribute lending model was a major contributor to the financial crisis, it is not the only way to tank a bank, and portfolio lending does not ensure good lending.

Additionally, portfolio lending can be predatory. A portfolio lender can lend at high interest rates to borrowers and aggressively pursue defaults with the aim of taking ownership of the borrower's property and capturing the borrower's equity. Indeed, given that the QM rulemaking keys off of "creditors" rather than "insured depositories" and "insured credit unions," it includes not just banks and credit unions, but also non-bank "hard money" lenders that have traditionally been among the most predatory lenders. Allowing these hard money lenders to evade QM through a portfolio exemption would be to invite abusive lending.

Therefore, I would urge that to the extent that a safe harbor from the Ability to Repay rule is considered for portfolio loans, it include a minimum down payment requirement of at least 20% in order to create an equity cushion to protect lending institutions as well as a requirement that the income or assets supporting the underwriting decision be fully documented.

(2) Raising the HOEPA APR Trigger for Manufactured Housing Loans

The Preserving Access to Manufactured Housing Act of 2015, H.R. 650, would raise the APR and points-and fees triggers for the application of the Home Ownership and Equity Protection Act (HOEPA) for manufactured housing loans. H.R. 650 would also exempt manufactured housing retailers from the HOEPA definition of "mortgage originators".

H.R. 650 would not expand access to *sustainable* credit; it would instead encourage predatory lending. Under H.R. 650, HOEPA protections would not kick in for manufactured housing loans in the current lending environment unless interest rates were around 14%. In contrast, the going-rate for a traditional real estate mortgage loan is around 4%. Likewise, under H.R. 650, a manufactured home borrower could pay almost $3,500 in documentation and other junk fees on a $75,000 loan. Again, this is a license for abusive lending practices. Similarly, exempting manufactured housing retailers from the definition of "mortgage originators" would mean that manufactured housing borrower would not be protected from steering and other conflicts of interest

HOEPA provides an important set of protections against predatory lending by requiring additional disclosures, regulatory reporting, and private rights of action. There is no principled reason for changing the HOEPA caps solely for manufactured housing. H.R. 650 would be a license for predatory lending aimed at the generally lower-income population that lives in manufactured housing.

(3) Removing Affiliated Title Fees from Counting Toward the QM Fee Cap

H.R. 685, the Mortgage Choice Act of 2015, would exempt title insurance fees from inclusion in the both HOEPA points-and-fees trigger and from the points-and-fees cap on Qualified Mortgages (QM). H.R. 685 is an ill-advised proposal that would harm consumers by subjecting them to fee gouging and restrict access to credit.

Title insurance is a broken market. Borrowers are responsible for paying for title insurance, but title insurance pricing is basically negotiated between the lender and the title insurance company; the pricing and sales system is completely opaque, making it impossible for borrowers to shop for better prices on title insurance. As a result, competition does not drive down title insurance prices. Instead, title insurance premiums often reflect a significant mark-up over actual risk: the title insurance industry pays out less than 7¢ in claims for every $1 of premiums paid.[24] Most of the premiums are compensation for the sales agent, rather than set aside to provide coverage for losses. The result is that borrowers significantly overpay for title insurance, and this can easily add $1,000 to the upfront costs of a mortgage.

The inclusion of title insurance in the HOEPA and QM point-and-fee caps serves to limit title insurance pricing from even greater excesses. To the extent that the Committee is concerned about ensuring greater availability of credit to consumers, exempting title insurance from the HOEPA and QM point-and-fee caps is a terrible idea,

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[24] American Land Title Association, *2013 Year-End Title Insurance Industry Financial Statement*, *at* http://www.alta.org/industry/13-04/Form9_Industry.pdf. *See also* GAO, *Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*, GAO-07-041 (April 2007), at 42.

as it virtually guarantees that consumers will be gouged with increased title insurance costs, which will make homeownership more expensive.

(4) Creating a Process for Banks to Petition to be Given a Rural Exemption by CFPB

H.R. 1259, the Helping Expand Lending Practices in Rural Communities Act, would create a process for individual lenders to petition the CFPB for designation as rural lenders. Rural lender designation exempts a lender from the requirement to establish escrow accounts for high-cost mortgages.[25] To qualify, a lender must make over half of its loans in rural or underserved areas, make less than 500 loans per year and have assets of less than $2 billion.[26] The CFPB currently defines "rural" as counties that are not in a metropolitan statistical area or a micropolitan statistical areas adjacent to a metropolitan statistical area, as defined by the Office of Management and Budget.[27]

It is not clear that such an individualized petition process is necessary, at least at this point. The CFPB has proposed an amendment to its regulatory definition of "rural" that would expand its definition of rural lenders to include all census blocks in that are not in urban areas as defined by the Census Bureau.[28] The proposed rule-making would also adjust the lookback period for evaluating rural lender status from three years to one year to more accurately reflect lenders' current operations, as well extend a grace harbor for applications received in the first three months of the following year in the result that a lender's status changes. The CFPB estimates that the proposed rulemaking will increase the number of lenders with rural status from around 2,400 to 4,100 (most of these creditors are already exempt from QM as small creditors.)[29] The CFPB believes that most of these creditors, however, already provide escrow accounts because they originate higher-cost loans, so the benefit of rural designation will have little effect on these institutions.[30]

Additionally, an implementation of H.R. 1259 would likely require the CFPB to further amend its definition of "rural." Such further amendment would add to regulatory uncertainty for the thousands of financial institutions while potentially benefitting only a few.

Given that the CFPB is already amending its process of designating rural lenders, it makes sense to allow the CFPB to finalize its rulemaking and to see its impact on rural lenders before attempting legislative fine-tuning of the regulatory process and creating more regulatory uncertainty for lenders.

(5) Amendments to CFPB Advisory Board Structure

Other proposals focus on changes to the CFPB's Advisory Board structure, such as mandating a Small Business Advisory Board for the CFPB or subjecting the CFPB to

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[25] 12 C.F.R. § 1026.35(b)(2)(iii).
[26] 12 C.F.R. § 1026.35(b)(2)(iii).
[27] 12 C.F.R. § 1026.35(b)(2)(iv)(A).
[28] 80 FED. REG. 7769 (Feb. 11, 2015).
[29] 80 FED. REG. 7769, 7788 (Feb. 11, 2015).
[30] 80 FED. REG. 7769, 7791 (Feb. 11, 2015).

the Federal Advisory Committee Act. Such proposals have little to commend them other than as political harassment of the CFPB.

The CFPB has a statutory Consumer Advisory Board, of which I am a member. (I emphasize that my testimony here is solely in my individual capacity as an academic who studies consumer finance.) The CFPB has also voluntarily created a Community Bank Advisory Board and a Credit Union Advisory Board. It also is required to vet all major rulemakings with small business panels assembled by the Small Business Administration as part of the SBREFA rulemaking process.[31] Only two other federal agencies are subject to this requirement. Additionally, the CFPB has created an Office of Financial Institutions to be a point of contact with regulated institutions. The consumer finance industry—including small entities—do not lack for points of access to engage the CFPB. Therefore, it is not clear why an additional "Small Business Advisory Board" is needed.

As far as subjecting the CFPB's existing advisory boards to FACA, the CFPB is currently exempt from FACA by virtue of being a bureau within the Federal Reserve Board, which is entirely exempt from FACA. The Federal Reserve Board had a Consumer Advisory Board for years without there being concerns that FACA should apply to its meetings. It is hard to see why concerns would suddenly arise with the creation of the CFPB as a bureau within the Federal Reserve Board.

As it stands, however, even though it is not legally subject to FACA, the CFPB already ensures that it currently complies with FACA. CFPB advisory board meetings are conducted in public and include opportunities for public comment. The documents made available to the advisory board are made available to the public, as are transcripts and minutes of the meetings. Therefore, it is not clear why it is necessary to specifically legislate that CFPB advisory boards are subject to FACA.

(6) Delaying the Implementation of Basel III's Treatment of Mortgage Servicing Rights

Another proposal for regulatory relief is to delay the regulatory implementation of the Basel III Bank Capital Accord's treatment of mortgage servicing rights (MSRs). MSRs have traditionally been an important asset class for depositories, as their value provides a countercyclical offset to mortgage origination activity, and MSR accounting is subject-enough to give depositories room to smooth their earnings.

Currently, banks are required to deduct 10% of the fair market value of their MSRs from their Tier 1 capital. Banks are also currently limited to having the total value of their intangible assets, including MSRs, as no more than 100% of their Tier 1 capital. Under Basel III, MSRs would be limited to 10% of a bank's common equity (a component of Tier 1 capital). Additionally, the combined balance of a bank's MSRs, deferred tax assets, and investments in unconsolidated financial institutions' common stock is capped at 15% of common equity, with the excess deducted from common

[31] 5 U.S.C. §§ 603(d), 609(d)(2).

equity.[32] Those MSRs would receive a 100% risk-weighting that will increase to a punitive 250% risk-weighting in 2018.[33] Any MSR values about 10% of common equity would be deducted from common equity, meaning that for every dollar of MSRs above 10% of common equity, the bank would need to raise an additional dollar of common equity to be in compliance with capital requirements.[34]

The Basel III changes make MSRs an unattractive asset for banks. Not surprisingly, banks have been selling off their MSRs to non-banks in anticipation of the Basel III implementation.

I am supportive of delaying the regulatory implementation of Basel III on MSRs because I believe that there is a major regulatory coordination problem regarding mortgage servicing. The mortgage servicing industry is in complete collapse as a result of the financial crisis. The industry was built to handle performing loans. The servicing of performing loans requires little discretion and can be highly automated, creating economies of scale. The servicing of defaulted loans is another matter, and mis-servicing has resulted in enormous litigation settlements, including Consent Orders with the Office of the Comptroller of the Currency, the $25 billion National Mortgage Settlement, a $8.5 billion settlement between Bank of America and the trustees for various securitization trusts. Many banks have been transferring their servicing to non-bank servicers, such as Ocwen and Nationstar and Seterus, but (not surprisingly) many of the problems that exist in bank servicing space also exist with non-bank servicers.

The servicing industry is badly in need of reform. Unfortunately there are several different regulatory changes of that have been occurring in an uncoordinated fashion. Bank regulators are changing capital requirements for MSRs, the CFPB has changed consumer protection regulations for servicing, the FHFA has been pressing Fannie Mae and Freddie Mac for improvements in their servicing guidelines, Ginnie Mae has been concerned about the counterparty risk presented by its servicers, and looming over everything is the uncertainty created by the unresolved question of housing finance reform. Until and unless housing finance reform is resolved, it is hard for anyone to predict what the lending and hence the servicing business model will look like going forward, and this discourages investment in servicing. Accordingly, I believe it is sensible to weight implementing further regulatory changes of servicing that do not implicate consumer protection until the housing finance reform issue is resolved.

CONCLUSION

Community banks face a serious structural impediment to being able to compete in the consumer finance marketplace because they lack the size necessary to leverage economies of scale. The CFPB has repeatedly acted to ease regulatory burdens on community banks in an attempt to offset this structural disadvantage. While community banks continue to face serious problems with their business model, their profits were up

[32] 78 FED. REG. 62178 (Oct. 11, 2103).
[33] 78 FED. REG. 62181 (Oct. 11, 2013).
[34] 78 FED. REG. 62178 (Oct. 11, 2103).

nearly 28% in the last quarter of 2014 over the preceding year, which strongly indicates that they are not being subjected to stifling regulatory burdens.

Ultimately, if Congress wants to help community banks, the answer is not to tinker with the details of CFPB regulations. As noted above, the particular proposals that have been made are ill-advised on their own merits. Instead, if Congress cares about community banks it needs to take action to break up the too-big-to-fail banks that receive an implicit government guarantee and pose a serious threat to global financial stability. Until and unless Congress acts to break up the too-big-to-fail banks, community banks will never be able to compete on a level playing field.

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TESTIMONY
OF
PATRICK MILLER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
CBC FEDERAL CREDIT UNION

ON BEHALF OF
THE CREDIT UNION NATIONAL ASSOCIATION

AT THE HEARING OF
THE COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

ON
PRESERVING CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

MARCH 18, 2015

Testimony
of
Patrick Miller
President and Chief Executive Officer
CBC Federal Credit Union
On Behalf of
The Credit Union National Association
Before the Hearing of
The Committee on Financial Services
United States House of Representatives
On
Preserving Consumer Choice and Financial Independence
March 18, 2015

Chairman Hensarling, Ranking Member Waters, Members of the Committee:

Thank you for the opportunity to testify today regarding proposals for regulatory relief for small depository institutions. My name is Patrick Miller, and I am president and chief executive officer of CBC Federal Credit Union, a federally insured state chartered credit union located in Oxnard, California, serving more than 22,000 members. I am testifying today on behalf of the Credit Union National Association, the national trade association for America's state and federally chartered credit unions. CUNA represents approximately 90% of America's 6,500 credit unions and their 102 million memberships.

For over 100 years, credit unions' have provided safe and sound lending opportunities for their members. In return, credit union members have been loyal borrowers through economic good times and bad. The system's size and growth in terms of membership, loans and deposits, and its consistent soundness are indicators that credit unions succeed in meeting their members' needs. Together, credit union employees and members have created a member-owned cooperative financial system that works, with a system wide capital ratio of over 10%.

However, the continuous onslaught of unnecessary regulatory rules threatens access to safe and sound lending. Regulatory proposals do not exist in a vacuum. Every action the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB), and Congress take has real world consequences for credit unions and their 102 million members.

Credit unions have been vocal regarding the cost of overregulation. For instance, Capital Communications FCU in New York, provided the following story regarding CFPB regulations:

> As a credit union with a mortgage subsidiary we were hit particularly hard in relation to the CFPB's mortgage regulations which were implemented in light of Dodd-Frank. Throughout nearly all of 2013 and a good part of 2014 we were working diligently in order to be in compliance with the many onerous provisions of the mortgage regulations; and one of the definitive words is "we"! The mortgage regulations were not something that could be dealt with by one person and it took a team of employees knowledgeable in mortgage lending and multiple hours expended to ensure that we were in full compliance prior to the January 2014 implementation date. And the CFPB's efforts didn't stop with those mortgage regulations as now we are faced with the regulation that combines the TILA and RESPA forms as well as amendments to the Home Mortgage Disclosure Act that we are potentially facing. We often wonder if these proposed regulations issued by the CFPB are fully thought through before they are issued as it sometimes appears that provisions are added on a whim rather than fully analyzing the ramifications and impact on financial institutions. Many times it seems like the CFPB's proposals are solutions in search of problems.

This is just one of many stories where burdensome regulations have prevented credit unions from fully serving their members. It is important to note credit unions are not attempting to lend irresponsibly and, in fact, have historically always been very prudent lenders. Credit union employees know their members and their ability to borrow, but that relationship is not recognized in the over 6,000 pages of regulations implemented since 2009.

Credit unions and their members acted responsibly during the economic crisis, but they continue to be unfairly penalized for the actions of too-big-to-fail financial institutions. We work every day to deliver service excellence to our members, but that cannot happen when certain statutory and regulatory barriers keep credit unions from fully serving the needs of their members. We want to work with Congress, and specifically the Financial Services Committee, to remove barriers and create opportunities, so credit unions can better server their members all while continuing to practice safe and sound lending practices.

The Consequences of Doing Nothing

Since the beginning of the financial crisis, credit unions have been subjected to more than 190 regulatory changes from nearly three dozen Federal agencies totaling nearly 6,000 *Federal Register* pages.[1] These numbers do not even take into account regulatory changes that may emanate from state regulators. Every time a rule or regulation is changed or adopted, credit unions, and thereby their members, incur costs. They must take time to understand the new requirement, modify their computer systems, update their internal processes and controls, train and oftentimes retrain their staff, design and print new forms and produce material to help their members understand each new requirement.

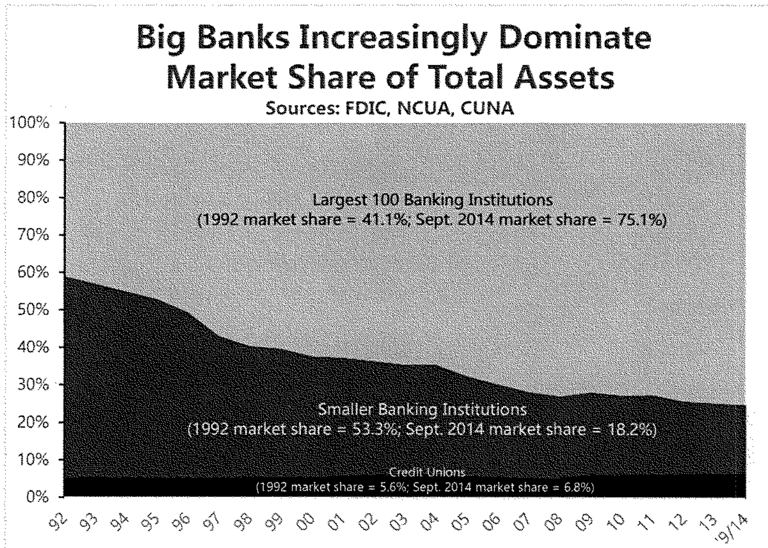
Even simple changes in regulation cost credit unions thousands of dollars and many hours: time and resources that could be more appropriately spent on serving the needs of credit union members, not the desire of overzealous regulators. Congress needs to tell regulators to stop treating credit unions like we

[1] A list of these changes, the agencies which promulgated them and the number of pages of each rule is attached to this testimony.

created the financial crisis or contributed to it. Regulations have real world consequences that prevent hardworking Americans from receiving the best financial services and products they could. That is a disservice to your constituents which we try very hard to serve.

Constant regulatory changes present a particularly difficult challenge for small depository institutions, because the fixed cost of compliance are proportionately higher for smaller-sized credit unions and banks than for large institutions. Congress and regulators ask a lot of small, not-for-profit, financial institutions when they tell them to comply with the same rules as J.P. Morgan, Bank of America and Citibank. Almost half of the credit unions in the United States operate with five or fewer full-time equivalent employees; the largest banks likely have compliance departments that exceed that number by multiples of a hundred or more. To put the question of size in further perspective, consider that each of the four largest banks in the United States has total assets greater than the combined assets of the entire credit union system. The rules that the CFPB has promulgated so far have not taken this disparity -- and disproportionate burden -- into consideration as much as we feel it can or should under the law.

This is one of the primary reasons that small financial institutions are disappearing at an alarming rate. Over the last 20 years, the number of credit unions have been cut in half – from more than 12,500 in 1995 to just more than 6,500 today. This means small financial institutions that know their members and their ability to borrow are becoming extinct. The alternative for consumers is to turn to large financial institutions that are more concerned with their own bottom line than the borrower's needs. Small financial institutions are proud to serve their members, your constituents, but when overly burdensome regulations are required, it becomes much harder for those institutions to survive.



The problem is that regulators are, in many cases, applying a one-size-fits-all approach to regulation on depository institutions; and, when there are exceptions or exemptions provided in rulemaking, they are too narrow to be effective. The CFPB's international remittance transfer (IRT) rule is a great example of the negative consequences of regulation that is too broad and has unintended consequences when applied to credit unions, which did not engage in the activity that brought on the new rule.

CUNA recently conducted a survey of credit unions that offer or have offered IRTs since 2013. Responses to the CUNA survey clearly show the shockingly large impact a regulation can have on service provision and consumer costs. The survey reveals that almost half of credit unions (49%) have either stopped offering IRTs (23%) or now turn members away (26%), purposefully limiting the number of IRTs to stay below the CFPB's rule threshold. Another 12% say they are considering discontinuing the service.

Among those who still offer IRT services, one third do so through third-party providers. Fully 71% of these credit unions indicate the cost of providing these services has increased, with 25% saying those costs have increased by 50% or more. Among those that continue to offer IRT services in-house, 56% say they've had to increase prices, with 32% indicating they've had to increase prices 50% or more.

When asked to describe their approach to pricing IRTs, none indicate that they choose prices to earn a significant profit. Overall, 40% say they price to break-even and 44% say they price to make a small profit, while 15% indicate that they lose money on IRT service provision.

The numbers paint a clear picture: as a result of the rule, fewer credit unions are offering remittances; those that continue to offer remittances conduct fewer transactions; and the transactions that credit unions complete are priced higher than they were prior to the rule. It is hard to see how credit union members benefit when their credit unions are forced to discontinue, limit or significantly increase the cost of this critical lifeline service.

If Congress does nothing to protect small depository institutions from unnecessary regulatory burden, the trend of consolidation will continue; consumers will have fewer options in the financial marketplace; and the cost of accessing mainstream financial services will increase. Today, because credit unions are actively fulfilling their mission, consumers – credit union members and nonmembers – benefit to the tune of $10 billion annually. Without credit unions providing their low-cost services to members, everyone pays a higher price. This outcome is unacceptable, and Congress can do something about it.

The Barriers Credit Unions Face

Credit unions face many statutory and regulatory barriers as they work to fulfill their mission and fully serve their members. This testimony discusses more than two dozen proposals or issues that Congress should address:

- Congress Should Make Several Improvements to the *Federal Credit Union Act:*
  - Improve Credit Union Capital Requirements, H.R. 989, the Capital Access for Small Businesses and Jobs Act
  - Restore Credit Unions' Business Lending Authority
    - Increase the Member Business Lending Cap (H.R. 1188, the *Credit Union Small Business Job Creation Act*)
    - Treat 1-4 Family Non-Owner Occupied Residential Loans as Residential Loans, and Not Credit Union Business Loans
    - Improve Credit Unions' Ability to Engage in Small Business Administration and Other Guaranteed Lending Programs
  - Modernize Credit Unions' Loan Maturity Restrictions
  - Modernize Credit Union Investment Authority
  - Modernize Regulation of Federal Credit Union By-Laws
  - Address Credit Unions' Incidental Powers
  - Clarify Credit Unions' Ability to Offer Prepaid Cards
  - Improve Analysis of NCUA Rulemakings and Require Public Hearings on the NCUA Budget
- Improve the Structure of the CFPB to Achieve Better Results for Consumers and Covered Entities
  - Expand and Specify the CFPB's Exemption Authority
  - Install a Five-Person Board to Run the CFPB (H.R. 1266, The Financial Product Safety Commission Act)
  - Fund the CFPB Through the Appropriations Process (H.R. 1261, the Bureau of Consumer Financial Protection Accountability Act of 2015)
  - Substantially Increase the CFPB Examination Threshold and increase it for inflation. (S. 482, the Consumer Financial

Protection Bureau Examination and Reporting Threshold Act of 2015)
    - Require Cost-Benefit Analysis of all CFPB Proposals
    - Codify the Credit Union Advisory Council (H.R. 1195, the Bureau of Consumer Financial Protection Advisory Boards Act)
    - Require Small Business Regulatory Enforcement Fairness Act Panels for CFPB Rulemakings
    - Improve the Definition of Rural and Underserved Areas (H.R. 1259, the Help Expand Lending Practices (HELP) in Rural Communities Act)
    - Enact the Mortgage Choice Act (H.R. 685)
    - Raise the Points and Fees Limit on Qualified Mortgages Greater than $100,000
    - Standardize the Definition of Mortgage Originator
    - Deem Mortgages Held in Portfolio as Qualified Mortgages (H.R. 1210, the Portfolio Lending and Mortgage Access Act)
- Enact Examination Fairness Legislation
- Address Issues Related to Federal Home Loan Bank Membership Eligibility
    - Ensure FHLB Membership Eligibility Rules are the Same for Small Credit Unions and Banks
    - Make Privately Insured Credit Unions Eligible to Join the Federal Home Loan Bank System (H.R. 299, the Capital Access for Small Community Financial Institutions Act of 2015)
- Enact the Privacy Notification Modernization Act (H.R. 601/S. 423)
- Stop Merchant Data Breaches

This testimony also discusses issues we believe could develop into new barriers for credit unions if Congress does not undertake oversight of them. These include possible proposals from the National Credit Union Administration (NCUA) related to third-party vendor authority and interest rate risk.

Congress Should Make Several Improvements to the *Federal Credit Union Act*

It has been nearly 20 years since Congress enacted meaningful and comprehensive amendments to the *Federal Credit Union Act*. Since the enactment of the *Credit Union Membership Access Act of 1998*, Congress has amended the *Federal Credit Union Act* precisely nine times. These amendments included restrictions of former NCUA employees,[2] requirements on the use of the NCUA logo,[3] an increase of loan maturity limits on certain loans,[4] authorization for credit unions to provide certain lifeline services to nonmembers within their field of membership,[5] *Bankruptcy Reform Act* conforming amendments,[6] *Housing and Economic Recovery Act* conforming amendments,[7] establishment of the corporate credit union stabilization fund,[8] *Dodd-Frank Act* conforming amendments,[9] additional clarification related to the stabilization fund,[10] and most recently an amendment providing parity with FDIC insurance coverage of trust accounts.[11]

During the same period of time, Congress repealed the *Glass-Steagall Act*, removing the barrier between commercial and investment banking and enacted

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[2] Public Law 108-458 (December 17, 2004) added Section 206(w). Added a section restricting employment of certain NCUA employees after leaving the agency.
[3] Public Law 109-173 (February 15, 2006) amended Section 205(a), 207(k). Amended sections requiring insurance logo and increased insurance coverage for certain retirement accounts.
[4] Public Law 109-351, Financial Services Regulatory Relief Act (October 13, 2006). Increased certain loan maturities from 12 to 15 years; allowed certain check cashing and money transfer services to be offered and other small housekeeping amendments.
[5] Ibid.
[6] Public Law 109-8 (April 20, 2005) amended Section 207(c)(8)(D). Amended definition to give the NCUA Board more authority to define a "qualified financial contract", which generally is a securities contract. This was part of the Bankruptcy Abuse Prevention and Consumer Protection Act.
[7] Public Law 110-289, the Housing and Economic Recovery Act (July 30 2008) div. A, title VI, § 1604(b)(2), amended Section 207. Minor amendment to changing the term "bridge bank" to "bridge depository institution.
[8] Public Law 111-22, Preventing Mortgage Foreclosures and Enhancing Mortgage Credit Act (May 20, 2009) div. A, title II, § 204(c), (e), & (f) amended Sections 202(c)(2), 203(d) and added Section 217. Created the Temporary Corporate Credit Union Stabilization Fund; temporarily increased share deposit insurance.
[9] Public Law 111-203, the Dodd Frank Act (July 21, 2010) title III, §§ 335(b), 343(b)(1), (3), 351, 362(3) amended Sections 206(g)(7) and 207, title III, § 362(1) and title X, § 1073(d), amended Sections 107, 205 and 206; title IX, § 988(a) amended Section 216.
[10] Public Law 111-382, National Credit Union Authority Clarification (January 4, 2011) §§ 1 & 2, amended Section 202 and added Section 217; § 3 amended Section 216. Authorized NCUA to make stabilization fund expenditures without borrowing from the Treasury; required a study of the supervision of corporates and the use of prompt corrective action.
[11] Public Law 113-252, Credit Union Share Insurance Fund Parity Act (December 18, 2014). Allows NCUA to provide NCUSIF insurance to IOLTAs and other similar escrow accounts.

several bills aimed at removing barriers for small banks to compete against large banks;[12] reduced the frequency of examinations for banks between $200 million and $500 million;[13] provided banks with access to the $700 billion taxpayer funded Troubled Asset Relief Program (TARP);[14] adjusted the deposit insurance base to save community banks $4.5 billion over three years;[15] temporarily guaranteed all deposits in banks through the Transaction Account Guarantee (TAG) program;[16] created a $30 billion business lending program for banks under $10 billion in total assets;[17] raised the bank shareholder threshold for registering with the Securities and Exchange Commission;[18] increased the threshold for bank holding companies and savings and loan holding companies to satisfy certain tests to incur additional debt for the purposes of acquiring other banks from $500 million to $1 billion;[19] and ensured that there is a community bank representative on the Federal Reserve Board of Governors.[20]

When the extensive procedural and substantive relief that Congress has provided to banks is juxtaposed with the limited and modest amendments which have been enacted to the *Federal Credit Union Act*, it becomes easy to understand the frustration from many in the credit union system. Congress must ensure the credit union charter allows institutions to fully serve their members' needs in the sophisticated financial services marketplace we have today. The following proposals would help credit unions more fully serve their members while at the same time enhancing the safety and soundness of the credit union system.

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[12] Public Law 106-102, Gramm-Leach-Bliley Act.
[13] Public Law 109-473, a bill to make a conforming amendment to the Federal Deposit Insurance Act with respect to examinations of certain insured depository institutions.
[14] Public Law 110-343, the Emergency Economic Stabilization Act.
[15] Public Law 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act.
[16] Ibid.
[17] Public Law 111-240, the Small Business Jobs Act.
[18] Public Law 112-106, the Jumpstart our Business Startups.
[19] Public Law 113-250, a bill to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, and increase individual savings.
[20] Public Law 114-1, the Terrorism Risk Insurance Act.

Improve Credit Union Capital Requirements

One lesson of the financial crisis is "capital is king" and the measures used to assess the capital condition of financial institutions were imperfect, to put it mildly. Financial regulators, including NCUA, have worked in recent years to impose "better" schemes to assess the health of financial institutions; NCUA's new risk-based capital proposal is its latest attempt in this area. While we appreciate the significant improvements that NCUA has made to the second version of this proposed rule, questions persist on whether the costs of implementing the proposal outweigh the benefit to the National Credit Union Share Insurance Fund. Stakeholders will continue to weigh in on the rulemaking process, but Congress should seriously consider whether significant changes to the statutory framework need to be made.

The questions for Congress are whether, in a modern financial services environment in which regulators use scalpels to assess the risk of various asset types:

- Does it make sense for the credit union system to have its leverage ratio hardwired into the statute, or would it make more sense for the safety and soundness regulator to have more discretion to develop capital requirements that more appropriately reflect the risk a credit union might present to the share insurance fund?
- Would the safety and soundness of the credit union system benefit if credit unions had access to additional sources of capital in a form consistent with the cooperative ownership structure under which they operate?

We encourage Congress to consider comprehensive reforms to the credit union capital structure, including authorizing NCUA to define what the different net worth levels must be in order to be "well-capitalized," "adequately capitalized," "undercapitalized," and "significantly undercapitalized," based on credit unions' financial performance, current economic trends and other relevant factors.

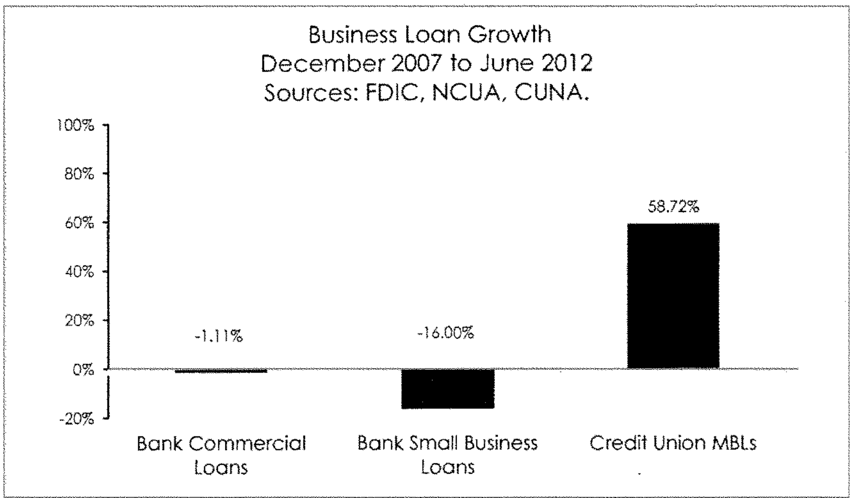
We also believe that NCUA should have the authority to allow all credit unions to accept supplemental forms of capital. Under current law, approximately 2,000 credit unions, those designated as low-income credit unions, have this authority. Permitting all credit unions to acquire supplemental capital in a manner consistent with their cooperative ownership structure would enhance the safety and soundness of the credit union system. As we have testified in the past, we support H.R. 989, the Capital Access for Small Businesses and Jobs Act, that Representatives King (R-NY) and Sherman (D-CA) have introduced, which would clarify the National Credit Union Administration's (NCUA) authority to improve credit union safety and soundness by permitting credit unions to accept supplemental forms of capital. H.R. 989 would be a good place to start regarding credit union capital reform.

Restore Credit Unions' Business Lending Authority

We reiterate our call on Congress to restore credit unions' authority to lend to their small business members. No economic or safety and soundness rationale has ever been established for why credit unions should be subjected to a cap on small business lending, and we believe Congress should fully restore credit unions' ability to lend to their small business members, as they did without statutory restriction until 1998.

As we have testified many times before, while the small banks were asking for taxpayer money to lend to small businesses, credit unions were pleading with Congress to permit well-capitalized credit unions with a strong history of business lending to lend beyond the arbitrary cap on business lending that is in statute.

The facts are not in dispute. During the financial crisis, banks withdrew access to credit for small businesses while credit unions kept lending.



Anecdotally, we are aware of several instances in which banks referred business lending customers to credit unions, because they were unable to make the loans themselves.

NCUA has testified in support of expanding the business lending cap several times, most recently before the Senate Banking Committee in February.[21] The administration has supported expanding the business lending cap.[22] There are close to 500 credit unions for which the cap is a significant operational restriction. These credit unions deserve the opportunity to continue to serve their business members and their communities, and Congress should address this issue.

[21] Testimony of Larry Fazio, Director, Office of Examination and Insurance, National Credit Union Administration, before the Senate Banking Committee Hearing on "Regulatory Relief for Community Banks and Credit Unions." February 10, 2015.
[22] Letter from U.S. Secretary of Treasury Timothy Geithner to House Financial Services Committee Chairman Barney Frank. May 25, 2010.

Increase the Member Business Lending Cap

If Congress is unable to eliminate the cap entirely, we strongly urge enactment of H.R. 1188, the Credit Union Small Business Jobs Creation Act, which we would like to thank Members of this Committee, Representative Royce (R-CA) and Representative Meeks (D-NY) for introducing. This bill has been introduced in the last several Congresses and would permit Federally insured credit unions to make member business loans (MBLs) in an aggregate of 27.5% of its total assets as long as the credit union: (a) is well-capitalized; (b) can demonstrate at least 5 years' experience managing a sound MBL program; (c) has had MBLs outstanding equal to at least 80% of 12.25% of its assets; and (d) complies with applicable regulations. We believe this is a reasonable approach that ensures that business lending in excess of the current statutory cap is conducted by healthy credit unions with a demonstrated history of sound business lending practices. While it does not get credit unions back to the place they were prior to 1998 when they were not subject to a statutory cap on business lending, it will provide several hundred credit unions with relief to continue to serve their small business members and their communities.

Importantly, raising the cap in the manner outlined above would increase small business lending by as much as $16 billion, helping to create nearly 150,000 new jobs, in the first year after enactment. This level of growth would have been very helpful in the throes of the financial crisis, but even in the recovering economy, this type of growth is important. And, contrary to the banker argument, this lending would not produce a dollar for dollar reduction in bank lending. In fact, the Small Business Administration (SBA) commissioned a study that suggested 80% of additional credit union lending would be new small business lending.[23] This would be a benefit for small business owners and it would not jeopardize the banking

[23] Wilcox, James A. "The Increasing Importance of Credit Unions in Small Business Lending." Small Business Administration Office of Advocacy. September 2011. 20.

industry's share of the small business lending market, which for the last two decades has been approximately 93% of the market.

Treat 1-4 Family Non-Owner Occupied Residential Loans as Residential Loans, Not Credit Union Business Loans

In addition to legislation to modernize credit union business lending, we encourage Congress to address a disparity in the treatment of certain residential loans made by banks and credit unions. When a bank makes a loan for the purchase of a 1-4 unit non-owner occupied residential dwelling, the loan is classified as a residential real estate loan; however, if a credit union were to make the same loan, it would be classified as a business loan and therefore subject to the cap on member business lending under the *Federal Credit Union Act*.

We support legislation to amend the *Federal Credit Union Act* to provide an exclusion from the cap for these loans. Last Congress, Representative Royce (R-CA) and Representative Huffman (D-CA) introduced H.R. 4226, which corrects this difference; we encourage its reintroduction. Doing so would not only correct this disparity, but it would enable credit unions to provide additional credit to borrowers seeking to purchase residential units, including low-income rental units. Credit unions would be better able to meet the needs of their members if this bill was enacted, and it would contribute to the availability of affordable rental housing.

It is also worth noting that in its recent risk-based capital proposal, NCUA treated these loans differently than commercial loans. Excluding these loans from the business lending cap would provide consistency with the agency.

Improve Credit Unions' Ability to Engage in Small Business Administration and Other Guaranteed Lending Programs

We encourage Congress to improve credit unions' ability to offer SBA and other government guaranteed loans. Specifically, Congress should exempt government guaranteed loans in their entirety from the member business lending cap; currently, only the guaranteed portion of the loan is exempt. Further, Congress should clarify that credit unions participating in Federal and state loan guarantee programs may include terms for such loans as permitted by the loan guarantee programs in both statute and regulations; this would allow credit unions to more fully participate in the SBA's 504 Loan Program.

Modernize Credit Unions' Loan Maturity Restrictions

We encourage Congress to consider legislation that eliminates references in the *Federal Credit Union Act* to loan maturities, leaving it to Federal credit unions to make their own business decisions about maturities of their various loans. As enacted in 1934, the *Federal Credit Union Act* specified a maximum loan maturity and this provision has continually been amended as new products emerge. There is no overall safety and soundness reason for these provisions to remain in the Act; NCUA should be able to address any particular concerns through general regulatory authority, but more likely through specific supervisory actions. National banks and state chartered credit unions in every state except Alaska, Louisiana and Oklahoma, are not subject to loan maturity limits.

Modernize Credit Union Investment Authority

The *Federal Credit Union Act* currently limits Federal credit unions' investment authority to loans, government securities, deposits in other financial institutions and certain other limited investments. The limitation curtails the ability of a credit union to respond to the needs of its members. We encourage Congress to permit Federal credit unions to purchase investments for their own accounts in bonds, notes, debentures or other instruments and other "investment securities" similar to those authorized for national banks.[24] Similar proposals have passed the House of Representatives in 2006 and 2008.[25]

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[24] Under 12 USC section 24 as implemented by 12 CFR 1.
[25] Section 303 of H.R. 3505, 109th Congress, which passed the House of Representatives on March 8, 2006; Section 101 of H.R. 6312, 110th Congress, which passed the House of Representatives on June 24, 2008.

Modernize Regulation of Federal Credit Union Bylaws

We encourage Congress to modernize outdated credit union governance restrictions to better address the evolving needs of Federal credit unions.

Although we believe that NCUA has this authority, we ask Congress to allow Federal credit unions to devise their own bylaws, which include permitting the boards of directors of Federal credit unions to impose term limits on members of the board and permitting credit unions to adopt policies related to the expulsion of members.

The bylaw provision in the *Federal Credit Union Act* was adopted many decades ago to address the needs of new credit unions. Based on that language, today NCUA issues standard bylaws which must be implemented by all Federal credit unions, regardless of size and complexity, unless individual credit unions seek NCUA approval to amend specific provisions. This is an unnecessarily archaic approach, and the Act needs to be altered to allow NCUA to address bylaws, in general, and to prepare model bylaw language that a Federal credit union can choose to use.

Federal credit union boards of directors should have the flexibility to establish term limits for members of the board in order to allow for a turnover of expertise and a broader representation as membership changes. Providing credit unions with this right does not raise supervisory concerns and should not, therefore, be regulated or restricted by government. We ask Congress to permit Federal credit union boards of directors to decide for themselves whether terms limits are appropriate.

The *Federal Credit Union Act* currently permits a member to be expelled by a two-thirds vote of the membership present at a special meeting, which can be costly to call. While the instances of credit union member expulsion are rare, there have been situations in the past where a more expedited expulsion process would have been warranted, including situations where a member was harassing personnel and creating concerns for the physical safety of staff and other credit union members. Under the current language, a Federal credit union has little latitude to address such situations efficiently and in a timely manner. We ask Congress to provide Federal credit union boards of directors additional flexibility to address these situations by allowing Federal credit unions to adopt and enforce an expulsion policy for just cause and nonparticipation by majority vote of their board of directors. Similar proposals passed the House of Representatives in 2006 and 2008.[26]

Address Credit Unions' Incidental Powers

We encourage Congress to enact legislation to establish the same incidental powers authority for Federal credit unions in the *Federal Credit Union Act* as exists for national banks in the *National Bank Act*.[27] As part of this proposal, NCUA should be directed to implement standards for incidental powers that are no more limited than those relied upon by the Comptroller of the Currency in approving new incidental powers activities for national banks and to consider additional incidental powers for credit unions whenever such powers are approved by the Comptroller.

Clarify Credit Unions' Ability to Offer Prepaid Cards

To ensure that credit unions are able to meet the evolving needs of their fields of membership, Congress should clarify that Federal credit unions can sell prepaid payment cards to persons within their field of membership, similar to existing authority to provide check cashing and remittances services to persons within their field of membership.

In addition, Congress may need to clarify the insurance coverage of prepaid cards issued by the credit union on behalf of a member to nonmembers within the field of membership. We would like to thank Representative Royce for the bill he

[26] Section 310 of H.R. 3505, 109th Congress, which passed the House of Representatives on March 8, 2006; Section 110 of H.R. 6312, 110th Congress, which passed the House of Representatives on June 24, 2008.
[27] 12 U.S.C. § 24.

introduced last Congress which became P.L. 113-252, the Credit Union Share Insurance Fund Parity Act. We believe this law provides the NCUA with authority to extend insurance coverage to funds in master accounts owned by nonmembers, and we have asked NCUA for clarification of this matter. If NCUA determines that it does not have the authority to extend insurance coverage to these types of accounts, Congress may need to amend the *Federal Credit Union Act* to provide such coverage. Doing so would be consistent with the coverage provided by the Federal Deposit Insurance Corporation.

Improve Analysis of NCUA Rulemakings and Require Public Hearings on the NCUA Budget

We encourage Congress to require NCUA to complete an extensive cost-benefit analysis before the agency proposes any rule and to provide this analysis with any proposal that is issued for comment. Credit unions fund NCUA and the National Credit Union Share Insurance Fund. It is reasonable that credit unions should be provided with an analysis of the cost and the benefit of proposals the regulator is proposing.

For the same reason, we encourage Congress to require the NCUA Board to conduct an annual public hearing on the agency's draft budget. While we appreciate the opportunity to discuss budgetary concerns with the Board in advance of action on the budget, it is fair and reasonable for the Board to take public comments for the record prior to taking action on a budget that relies on credit union member resources. Conducting such a hearing would represent a very modest burden on the agency and the Board – a handful of hours simply to listen to those whom they regulate – but it would be very meaningful to the credit unions that are responsible for funding the activities of the agency. Similar hearings were held for several years until they were discontinued in 2009. Until such time that a law can be enacted to compel the agency to provide such a forum for credit union stakeholders, we encourage the Committee to ask the Chairman of the NCUA to testify annually on the agency's budget.

Improve the Structure of the CFPB to Achieve Better Results for Consumers and Covered Entities

Since it was first proposed, CUNA has tried to take a reasonable approach to the Consumer Financial Protection Bureau (CFPB). During the legislative process that resulted in the creation of the Bureau, we maintained that a consumer agency *could* be a good way to achieve important protections for consumers, particularly consumers of products and services provided by then-unregulated entities. We also noted that credit unions did not in any way contribute to the financial debacle and their regulatory regime, coupled with their cooperative structure, protects against credit unions ever contributing to a financial crisis. We questioned the need for the Bureau's rules to apply to credit unions, for credit unions to be examined by the Bureau and for credit unions to have to pay for the operating expenses of the Bureau, because frankly, we didn't believe credit union members needed much protection from the credit unions that they own. We urged Congress to take steps to minimize the adverse impact the Bureau would have on credit unions' ability to serve their members. And, we were encouraged by the authority included in the legislation for the Bureau to provide exemptions to its rules for entire classes of entities, like credit unions; and we hoped the Bureau would use this to focus its efforts on the wrongdoers and those that abuse consumers.

Despite promises to "level the playing field" between regulated and unregulated financial product and service providers, the impact of many of the CFPB's rules has been to make it more difficult for credit unions to fully serve their members. In fact, many credit unions have limited or eliminated certain financial products and services traditionally provided to their members as a direct result of the CFPB's rules. Five years after enactment, Congress should seriously consider structural changes at the Bureau to ensure that it meets its mission without jeopardizing the good work that credit unions do to serve their members.

Expand and Specify the CFPB's Exemption Authority

Section 1022 of Title X of the *Dodd-Frank Act* and a number of the enumerated consumer laws expressly authorize the Bureau to provide exemptions from the requirements of statutes or implementing regulations generally or the requirements of certain provisions specifically. These various statutory provisions individually and together grant broad authority to the Bureau and constitute a strong legal framework to support the agency's reasonable use of its exemption authority. We believe that the Bureau should go much further than it has to exempt credit unions from its rule making, because credit unions, unlike other financial institutions, have not caused the abuse the Bureau is meant to address. The imposition of regulations designed to curb abuse elsewhere in the system reduces access to affordable products and services offered by credit unions. If the Bureau is unwilling to expand its perspective on the exemption authority that Congress has conveyed, Congress should state it more explicitly. We encourage the Committee to exercise significant oversight of the Bureau and press the agency on the impact its rules have on credit unions and their ability to provide their members access to credit and affordable financial products and services.

Install a Five-Person Board to Run the CFPB

CUNA encourages Congress to enact legislation to change the leadership structure at the Bureau from a single director to a five-person board. Expanding the Bureau's executive leadership to a five-person board will ensure that more voices contribute to the Bureau's rulemaking and it could help produce regulations that better balance the important mission of the Bureau and the impact the regulations have on the way products and services are provided to consumers.

We are not naïve: we know this is a highly politicized issue. Nevertheless, we encourage thoughtful consideration of this proposal now to ensure that the inaugural Board could be in place when Director Cordray's term expires, and we believe that the legislation proposed by Chairman Neugebauer, H.R. 1266, the *Financial Product Safety Commission Act of 2015*, accomplishes that goal.

Fund the CFPB through the Appropriations Process

We renew our call on Congress to place the CFPB under the appropriations process in order to provide an additional layer of supervision over the activities of the Bureau. As you know, today, the Bureau is funded through transfers from the Federal Reserve Board of Governors. Subjecting the Bureau to the appropriations process would give Congress a powerful tool to help ensure that the activities of the Bureau are consistent with its mission. Taking this step would help to ensure that the Bureau's rulemaking and supervisory activities do not harm consumers by making financial services less available and more expensive and do not erect unnecessary and overly burdensome barriers to credit unions and other providers of affordable financial products to consumers.

Substantially Increase the CFPB Examination Threshold

Senators Toomey (R-PA) and Donnelly (D-IN) recently introduced S. 482, the *Consumer Financial Protection Bureau Examination and Reporting Threshold Act of 2015*. This CUNA-supported legislation would increase the threshold for examination of banks and credit unions by the CFPB from $10 billion to $50 billion.

Raising the threshold would provide significant regulatory relief to the affected institutions and direct Bureau resources to previously unregulated entities, as well as to the examination of the institutions that serve the greatest number of consumers. While this change would not significantly change the number of institutions and percentage of assets presently subject to examination by the Bureau, it would allow the Bureau to more efficiently use its examination resources in the coming years. The number of financial institutions approaching $10 billion in total assets is increasing. As these institutions cross the threshold, the Bureau will be required to spend more of its resources examining these newly covered institutions at the expense of other important consumer protection activities.

Institutions that will be affected by S. 432 will continue to be subject to the Bureau's rules and regulations, and they would be examined for compliance with these rules by their prudential regulator. In addition, Section 1026 of the *Dodd-Frank Act* provides the Bureau authority to examine on a sampling basis credit unions, thrifts and banks for which it does not have examination authority and includes language directing coordination between the prudential regulators and the Bureau.

If the Committee decides to pursue this matter, we would encourage any legislation increasing the examination threshold to provide for future adjustments indexed for inflation.

Require Cost-Benefit Analysis of all CFPB Proposals

We urge Congress to enact legislation to require the CFPB to complete an extensive cost-benefit analysis before the agency proposes a rule and to provide this analysis to the public with any proposal issued. The burden should be on the Bureau to detail the costs and benefits of its proposals, not on regulated parties to prove that there is a burden. We appreciated the focus that Chairman Shelby and others gave to this issue during the hearing with regulators earlier this week.

In the 113th Congress, Chairman Shelby introduced the *Financial Regulatory Responsibility Act* (S. 450) which would have required agencies to compare quantified benefits with quantified costs. The bill also would have required agencies to provide all data and analysis to the public (in the preamble of the rule) so that they can analyze the agencies' conclusions. Further, the legislation would have provided a mechanism for judicial review. We support the reintroduction of this legislation and encourage its enactment.

Codify the Credit Union Advisory Council

Shortly after the CFPB was established, the Bureau's leadership announced the creation of a credit union advisory council (CUAC). This group, which CUNA strongly supports, advises the agency on the impact of the Bureau's proposals on credit unions. CUAC shares information, analyses, recommendations and the unique perspective of not-for-profit financial institutions with the agency director and staff. However, since CUAC is not required by law, it could be abolished at any time. We believe CUAC is an important resource for the agency and also provides a forum for credit union officials to provide direct feedback to the agency on how proposals and final rules will affect credit unions' operations. Representatives Robert Pittenger and Denny Heck have introduced H.R. 1195, the *Bureau of Consumer Financial Protection Advisory Boards Act,* which would codify the CFPB Credit Union Advisory Council as a legal requirement and require the CFPB to reimburse all CUAC members for their travel and lodging expenses incurred to attend meetings of the CUAC. We are strongly supportive of this legislation.

Require Small Business Regulatory Enforcement Fairness Act Panels for CFPB Rulemakings

As required by the *Dodd-Frank Act*, the CFPB has held *Small Business Regulatory Enforcement Fairness Act* (SBREFA) panels for several of its regulations, including the mortgage rules. These panels, which are conducted under the auspices of the Small Business Administration's Office of Advocacy, are invaluable for identifying concerns and shedding light on costs small businesses, including credit unions, will have to bear under new proposals. However, the CFPB has taken the view that it is not required to hold a SBREFA panel for rulemakings that involve regulations transferred from other agencies, such as the international remittance transfers regulation that was initiated by the Federal Reserve Board. We ask Congress to direct the CFPB to hold SBREFA panels for all significant regulations that the CFPB promulgates.

Improve the Definition of "Rural and Underserved Areas"

CUNA applauds Representative Barr for introducing H.R. 1259, the "Helping Expand Lending Practices in Rural Community's Act". H.R. 1259 would direct the CFPB to establish a process for determining whether an area should be designate as rural if the CFPB hasn't already done so.

The CFPB has taken steps to minimize the impact of its mortgage rules on certain small creditors, but these steps do not provide credit unions with sufficient relief because credit unions did not contribute to problem mortgages that fueled the financial crisis. We urge Congress to work with the CFPB to do much more to minimize the impact of the agency's rules on mortgage lending credit unions.

Currently, small creditors in rural and underserved areas can originate mortgage loans that exceed a debt-to-income ratio of 43% if the loans are held in portfolio, despite the qualified mortgage (QM) standards to the contrary. In addition, such creditors in rural or underserved areas can originate QMs with balloon payments, while other lenders may not under the QM provisions. Under the *Home Ownership and Equity Protection Act*, small creditors that operate predominantly in rural or underserved areas are allowed to originate high-cost mortgages with balloon payments. Under the escrow rule, eligible small creditors do not have to set up escrow accounts for higher-priced mortgages.

The CFPB has recently issued a new proposal with changes to the agency's Escrow, Ability-to-Repay and *Home Ownership and Equity Protection Act* rules, several of which are intended to alleviate regulatory burdens imposed on small mortgage lenders serving rural or underserved areas. For example, the proposal would exempt creditors that originate up to 2,000 first-lien mortgage loans, as opposed to the current level of 500; loans held in portfolio also would not be included in determining mortgage-level activity for purposes of the exemption.

While these provisions are appreciated, they simply do not go far enough in light of the fact that credit unions were not the cause of the financial crisis and have not been engaging in abusive mortgage lending practices.

The CFPB is not proposing to raise the $2 billion assets threshold test for small creditors at this time even though the agency has the statutory authority to do so under the *Dodd-Frank Act*. The agency does index the threshold, which now stands at $2.060 billion as of December 2014. However, for purposes of mortgage lending, this threshold is far too low and we urge the agency to raise it to at least $10 billion, also indexed for inflation. This step would not harm consumers as community financial institutions, such as credit unions, work hard to ensure their borrowers can repay their loans and understand their terms. Such an increase would be consistent with the *Dodd-Frank Act's* treatment of smaller institutions that are not subject to the CFPB's direct examination authority. Also, it would provide important regulatory relief to key institutions that support our economy. We do not believe there is any good public policy reason to maintain the small creditor exemptions at such an artificially low level. We urge Congress to review the cut-off and work with the CFPB to increase the exemption level.

The proposal would enlarge the definition of "rural" areas to include census blocks that are not in an urban area as defined by the Census Bureau. CUNA supports efforts to expand the definition of rural but cautions that this approach may not be as easy to implement as the CFPB suggests, without easy-to-use resources. The Federal Communications Commission has provided a list of census blocks eligible for rural broadband support. We urge the CFPB to work with the Census Bureau to provide a list or direct-link to a list from the Census Bureau of rural census blocks for purposes of determining whether properties are located in rural areas.

We also have concerns with the CFPB's treatment of underserved areas. The pending proposal would conform provisions regarding "underserved areas" to the proposals mentioned above, but it is not seeking comments on the definition of underserved areas at this time.

Regulation Z provides that an area is "underserved" during a calendar year if, according to *Home Mortgage Disclosure Act* (HMDA) data, no more than two creditors extend covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. We believe this approach is far too restrictive and we urge Congress to encourage efforts by the CFPB to develop a better, more inclusive definition of an underserved area that will benefit potential borrowers and communities that are underserved.

The CFPB is also proposing to cut the qualifying period for determining whether a creditor is operating predominately in a rural or underserved area from the three preceding calendar years to the preceding calendar year. CUNA opposes this proposed change.

Enact the Mortgage Choice Act

The QM rule sets the standard for consumer mortgages by providing significant compliance certainty to loans that do not have risky features and meet strict Federal requirements. A key requirement is that points and fees for a QM generally may not exceed 3% of the loan amount. The problem arises from the fact that, under current law and rules, what constitutes a "fee" or a "point" towards the cap varies greatly depending upon who is making the loan and what arrangements are made by consumers to obtain title insurance. If the consumer chooses a title insurance provider that is affiliated with the lender, the title insurance charges count, but if the insurance is purchased from an unaffiliated title agency, the title charges do not count. In addition, escrowed homeowners insurance premiums may count as "points and fees" due to ambiguous drafting in the law.

We encourage Congress to enact H.R. 685, the Mortgage Choice Act, to exclude from the points and fees calculation affiliated title insurance charges and escrowed homeowners' insurance premiums. Without these amendments, the inclusion of title insurance and escrowed homeowners' premiums will cause many loans, especially those to low- and moderate-income consumers, to fail this prong of the QM test. As a result, many otherwise qualified borrowers will not get access to safe and affordable mortgage credit.

Raise the Points and Fees Limit on Qualified Mortgages Greater than $100,000

We encourage Congress to raise the points-and-fees limit on qualified mortgage loans greater than $100,000 from 3% to 4%. For a loan to be a QM, the points and fees may not exceed the points and fees caps. This is a statutory cap contained within section 129C of the *Truth in Lending Act* (TILA), as amended by section 1411 of the *Dodd-Frank Act*. The CFPB recognizes that the points and fees caps should be higher for smaller loans, and using its discretionary rulemaking authority, provides higher limits for loans less than or equal to $100,000.

This amendment is important to ensure credit availability to qualified consumers, especially those attempting to obtain mortgage credit in high-cost areas across the country. A higher fee limit on mortgage loans greater than $100,000 will insure that fewer loans will be considered high cost mortgage loans subject to additional disclosures and limitations.

Standardize the Definition of Mortgage Originator

We encourage Congress to replace the definition of "mortgage originator" in the *Truth in Lending Act* with the *SAFE Act's* definition of "loan originator."

Under the *Dodd-Frank Act's* amendments to TILA, the term "mortgage originator" is overly broad and includes individuals who are not involved in the mortgage origination process, such as those who engage in advertising and promotional activities. On the other hand, the *SAFE Act's* definition provides an accurate representation of the limited duties a mortgage loan originator is required to perform, which are to take a residential mortgage loan application and offer or negotiate the terms of the residential mortgage loan for compensation or gain.

The definitions in both statutes should be aligned in order to reflect industry practice, facilitate the usage of standard terminology and definitions in the financial services industry's laws and regulations and reduce regulatory burden.

Deem Mortgages Held in Portfolio as Qualified Mortgages

We encourage Congress to amend the definition in Section 1412 of the *Dodd-Frank Act* to deem residential real estate mortgage loans made by credit unions and held in portfolio as "qualified mortgages." We support H.R. 1210, the Portfolio Lending and Mortgage Access Act, which was introduced by Representative Barr (R-KY) earlier this month and would accomplish just this goal.

CUNA strongly supports this provision that would help consumers have access to a wider array of loan products and terms. Credit unions and other financial institutions that hold residential mortgage loans on their balance sheets should generally have more flexibility in granting loans than financial institutions who make mortgage loans with the intention of selling them. Credit unions have demonstrated their responsible lending practices and have always adhered to the principle of ability-to-repay long before it was required by regulation. Credit unions enjoy low net charge off rates in their mortgage portfolios, which ultimately benefit consumers. Due to their proven performance history, these loans should be afforded qualified mortgage status at the time of loan closing.

Enact Examination Fairness Legislation

Concerns regarding credit union examinations increase during difficult economic times, but even as the economy recovers, credit unions continue to express concern with their examinations. CUNA recently conducted a survey of credit unions regarding satisfaction with their most recent examination. [28] Twenty

[28] CUNA/league affiliated credit unions received ongoing email correspondence from CUNA and their state league presidents inviting them to complete an on-line survey on their most recent exam. In addition, the survey was prominently featured on CUNA's website, in CUNA newsletters, and by leagues in a number of their communications with credit unions. The questionnaire was almost identical to one used in both 2012 and 2013. By September 10, 2014, we had received 447 responses, representing approximately 7% of all credit unions. On average, responding credit unions were

eight percent of credit unions reported dissatisfaction with their most recent exam. Excessive use of documents of resolution, applying "guidance" or "best practice" as if it was regulation, and examiners taking action to "cover" themselves stood out as the items that received the most negative ratings.

Credit unions support strong, fair and appropriate safety and soundness regulation and supervision to protect the financial resources of credit unions and their members and to minimize costs to the NCUSIF borne by all federally insured credit unions. Examinations should be based on the laws Congress enacts and the regulations that NCUA promulgates, not on examiner interpretation of "best practice" or guidance. Further, financial institutions need an examination appeals process that is independent and protects them from examiner retaliation.

In the last two Congresses, examination fairness legislation has been introduced (H.R. 1553 in the 113th Congress and H.R. 3461 in the 112th Congress). This legislation would have codified certain examination standards, provided an independent ombudsman to whom credit unions and banks could raise concerns about their exams and created an independent appeals process under which they could dispute determinations made in their exams. We would support the reintroduction of this legislation in the 114th Congress and encourage its enactment.

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once again somewhat larger than all US credit unions: For example, 37% of responding credit unions reported $25 millon or less in assets, while roughly 50% of all U.S. credit unions are this large. At the other end of the spectrum, 23% of responding credit unions have more than $250 million in assets compared to 11% of the population. In any case, there was strong response across all asset sizes. Because larger credit unions were more likely to respond, responses from single common bond credit unions were lower than the population, and community charters are more heavily represented. All totals reported in the survey will be weighted to the distribution of all credit unions by asset size when the final report is released, though doing so is unlikely to significantly change the observations found in this preliminary summary of findings.

Address Issues Related to Federal Home Loan Bank Membership Eligibility

Ensure FHLB Membership Eligibility Rules are the Same for Small Credit Unions and Banks

We are very concerned about the September 2, 2014, proposal from FHFA to revise the agency's rules regarding membership in a Federal Home Loan Bank (FHLB). FHLBs are critical sources of liquidity for many credit unions, and the proposed regulation would make it much more difficult for both new and existing credit unions to maintain access to the FHLB system. CUNA questions the need for the proposal and submitted a comment letter to the agency on January 12, 2015, that asked the agency to withdraw the proposal.[29]

This proposed rule, which is based on an advance notice of proposed rulemaking (ANPR) issued almost four years ago, creates two core requirements for financial institutions. First, the rule would require all financial institutions who are FHLB members to hold one percent of their assets in "home mortgage loans" on an ongoing basis. The proposed regulation suggests that FHFA is considering raising this requirement to as high as five percent in the future. While financial institutions currently must meet the one percent-of-assets threshold to become FHLB members, there is no requirement at this time that the member maintain it to remain a member.

Second, all FHLB-member credit unions—but, because of a statutory limitation in the *Federal Home Loan Bank Act*, only certain banks—would also be required to hold 10% of assets in "residential mortgage loans" on an ongoing basis. By statute, for initial membership, the *Federal Home Loan Bank Act*

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[29] Letter from Mary Mitchell Dunn, Deputy General Counsel, Credit Union National Association to Alfred Pollard, General Council, Federal Housing Finance Agency. Comments on Proposed Changes to Federal Home Loan Bank Membership Requirements/RIN 2590-AA39. January 12, 2015. (http://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Track_Regulatory_Issues/Pending_Regulatory_Changes/2014/FHLB_MembershipLetter_01122015.pdf)

exempts from the "10 percent" requirement any "community financial institution" or "CFI," as defined as FDIC-insured banks with less than $1 billion in average total assets (adjusted annually for inflation) over the preceding three years. Credit unions, generally insured by NCUA, are not eligible for this exemption. FHFA has proposed to maintain the "CFI" exemption without any variation for the purposes of *maintaining* membership, despite the fact that the agency has flexibility in this regard. FHFA should exercise its discretion and treat credit unions and banks equally if it moves forward with the proposal. CUNA also calls on Congress to amend the *Federal Home Loan Bank Act* to ensure credit unions are considered "community financial institutions" for the purpose of securing *initial* FHLB membership.

Beyond the issue of parity, we urge Congress to ask tough questions of FHFA regarding the need for this proposal as well as the details. Congress, not the regulator, should define who can be members of the FHLBs. FHFA is under no statutory obligation to impose these membership limits on an ongoing basis. Although we recognize FHFA has an interest in ensuring FHLB members maintain a commitment to housing finance, we believe this is a regulation in search of a problem. We are unaware of any financial institutions who can jump through the substantial regulatory hoops to become FHLB members, who are willing to buy stock in the FHLBs, and who meet the 10% requirement at the time of membership who are not committed to housing. This regulation will create another compliance task for credit unions, who will be forced to maintain a close watch over their balance sheet to ensure they meet an arbitrary requirement on an ongoing basis. FHFA acknowledges that the proposed regulation will put the existing FHLB membership for some credit unions in jeopardy. Loss of FHLB membership will limit access to the low-cost source of funding provided by the FHLBs, restricting credit at a time when our nation's housing recovery remains fragile.

FHLB liquidity was a critical resource during the last financial crisis, and the proposed regulation would limit its utility in a future crisis. We hope FHFA will reconsider this proposal.

Make Privately Insured Credit Unions Eligible to Join the Federal Home Loan Bank System

We also support H.R. 299, the "Capital Access for Small Community Financial Institutions Act of 2015", legislation introduced by Representatives Steve Stivers and Joyce Beatty which corrects a drafting oversight in the *Federal Home Loan Bank Act* that has resulted in a small number of privately insured credit unions being ineligible to join a FHLB.

In 1989, in the wake of the savings and loan crisis, the FHLB System was opened up for the first time to commercial banks and credit unions. Unfortunately, the bill was drafted in such a way to apply only to an "insured credit union" as defined under the *Federal Credit Union Act*. If the legislation had used a broader term in the 12 USC 1752 of the *Federal Credit Union Act* – such as "state credit union" or "state-chartered credit union", terms that are clearly defined, then privately insured credit unions would have the same opportunity for membership as other financial institutions. This is why, for many years, we have suggested that this was likely an oversight in drafting. Unfortunately, it has meant for over two decades, a small group of credit unions have been denied the right to even apply for membership in the FHLB System.

The House of Representatives has continuously recognized this as a problem. In 2004, 2006 and 2014, the full House passed corrective legislation. In 2008, as part of the *Housing and Economic Recovery Act of 2008*, Congress made a small change to permit privately-insured, state-chartered credit unions designated as a Community Development Financial Institution (CDFI) to apply for membership to the FHLBs; however, of the 127 privately insured credit unions, only two are CDFI certified.

We understand some policymakers have concerns regarding the existence of the private insurance option; however, this legislation would not expand that option for credit unions nor would it present an increased risk to the FHLB System, since this legislation only allows privately insured credit unions the option to apply for membership.

If enacted, privately insured credit unions would not be the only non-Federally insured institutions eligible for membership in the FHLB System. Currently, insurance companies, which are not federally insured, are members of the System. In fact, in terms of current outstanding advancements, 119 insurance companies are borrowing almost twice as much as 427 federally insured credit unions.[30]

It has never seemed reasonable to our small institutions that some of the largest banks in the world, insurance companies (which are not Federally insured) or a foreign bank's U.S. subsidiary can borrow billions of dollars from the FHLB System, but credit unions serving teachers in Ohio and Texas, firefighters in California, postal and county workers in Illinois and farmers in Indiana cannot.

Enact the Privacy Notification Modernization Act

We encourage Congress to enact the *Privacy Notice Modernization Act* H.R. 601 (S. 423) introduced by members of this Committee, Representative Luetkemeyerand Representative Sherman. This is an example of legislation that both reduces regulatory burden and improves consumer protection. The legislation would require financial institutions to send their customers privacy policy notifications only when the privacy policy is changed.

Under current law, financial institutions must send these notices on an annual basis regardless of whether the policy changes. This imposes a significant

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[30] According to the *Combined Financial Report of the Federal Home Loan Bank System for the Quarter ending on September 30, 2013.*

cost on credit unions and results in very little consumer benefit. Since 2001, credit unions have sent over 1 billion privacy notices to their members, averaging over 87,000,000 notices a year.

A voter survey conducted in 2013 showed that fewer than one-quarter of consumers read the privacy notifications they receive, and over three-quarters of consumers would be more likely to read them if they were only sent when the financial institution changed its policy. This suggests that the public policy goal of privacy notifications would be better achieved if the notices had more meaning to consumers. We believe that this legislation achieves this goal.

The legislation has passed the House of Representatives on a number of occasions, most recently in March 2013. The Senate bill in the last session enjoyed the co-sponsorship of 74 Senators. This is common sense legislation that should be enacted quickly.

Stop Merchant Data Breaches

Credit unions are subject to high data protection standards under the *Gramm-Leach-Bliley Act,* and they take their responsibility to protect their members' data seriously. Unfortunately, there is a weak link in the payments system that leaves consumers' financial data vulnerable to theft by domestic and international wrongdoers. The weak link is the absence of Federal data security standards for the merchants that accept payment cards.

There have been several very high profile merchant data breaches in the last few years, notably the breaches at Target in 2013 and Home Depot in 2014. Millions of credit union members were affected by these two breaches, which ultimately cost credit unions – and by extension their members – nearly $100 million. Despite the recovery efforts of payment card networks, no credit union has received a dime from the merchants whose security failure allowed the breach. Credit unions and their members are left on the hook.

These two breaches made headlines, but merchant data breach is a chronic issue. The endless string of breaches demonstrates clearly that those who accept payment cards need to be subject to the same Federal data standards as those who issue the cards.

It is important to recognize that the costs of a merchant data breach scenario on a small financial institution will be relatively greater than the costs of the same breach on large financial intuitions. For example, credit unions do not enjoy the economies of scale that national megabanks do. Therefore, the cost of everything, from replacing a debit card to monitoring suspicious activities, is greater.

Credit unions join with our colleagues in the banking industry to call on Congress to enact meaningful data security legislation that incorporates the following principles:

- Strong national data protection and consumer notification standards with effective enforcement provisions must be part of any comprehensive data security regime, applicable to any party with access to important consumer financial information.
- Banks and credit unions are already subject to robust data protection and notification standards. These *Gramm-Leach-Bliley Act* requirements must be recognized.
- Inconsistent state laws and regulations should be preempted in favor of strong Federal data protection and notification standards.
- In the event of a breach, the public should be informed where it occurred as soon as reasonably possible to allow consumers to protect themselves from fraud. Banks and credit unions, which often have the most direct relationship with affected consumers, should be

able to inform their customers and members about the breach, including the entity at which the breach occurred.

- Too often, banks and credit unions bear a disproportionate burden in covering the costs of breaches occurring beyond their premises. All parties must share in protecting consumers. Therefore, the costs of a data breach should ultimately be borne by the entity that incurs the breach.

There are a number of Congressional committees exploring remedies to merchant data breaches. Given the very direct and detrimental impact these breaches have on credit unions and banks, we ask the Committee to take a strong leadership role in these efforts.

Vendor Authority

We are deeply concerned that NCUA continues to urge Congress to convey to the agency supervisory authority over vendors and credit union service organizations (CUSOs). Further, we are troubled by their recent assertion that having such authority would represent regulatory relief for credit unions.[31]

CUNA opposes new statutory authority for NCUA to regulate and supervise directly Credit Union Service Organizations (CUSOs) or other third party entities that provide products and services to credit unions. Credit unions are already supervised for due diligence in third-party vendor relationships during their regular examinations. Giving NCUA additional authority to supervise third party vendors would increase the cost of the services these entities provide credit unions without providing any added benefit to the agency. We are also unconvinced that NCUA needs authority to regulate CUSOs inasmuch as CUSOs are generally owned by credit unions, subject to a statutory restriction that guards against concentration risk. The *Federal Credit Union Act* limits investment in a CUSO to 1% of a Federal

[31] Fazio. 15.

credit union's total assets. We encourage the Committee to reject NCUA's request for additional supervisory authority.

Interest Rate Risk

As part of its risk-based capital proposal, NCUA provided advance notice that it intends to consider a new proposal related to interest rate risk. While we will provide greater detail in our comment letter, we question whether a new rule on interest rate risk is necessary given the fact that NCUA presently has many supervisory tools that could be used to identify unreasonable interest rate risk at individual credit unions. We ask the Committee to explore with the agency whether a new rule is necessary or whether this might be better monitored through improvements in the supervisory process.

Conclusion

The length of this testimony and the breadth of the issues discussed herein are an indicator of just how many barriers credit unions face as they work to fulfill the mission that Congress has given them. We are confident that if barriers are removed, credit union members will be better off than they are today, because their credit unions will be spending less resources on complying with outdated, poorly focused and unreasonably burdensome regulation, and more time on meeting the financial services needs of their members. We stand ready to work with you to remove these barriers.

On behalf of America's 6,500 credit unions and their 102 million members, thank you very much for the invitation to testify at today's hearing.

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Finalized Federal Regulatory Changes Applicable to Credit Unions (Effective Dates on or after January 1, 2008)[32]

	Effective Date	Agency	Title of Final Rule	Pages in Federal Register
1	1/1/2008	FEMA	FEMA Flood Map Changes	2
2	1/1/2008	IRS	Annual Electronic Filing Requirement For Small Tax Exempt Organizations – Form 990-N	1
3	1/1/2008	IRS	IRS Form 990 Instructions - New Reporting Form	79
4	1/1/2008	IRS	IRS Redesign Form 990	28
5	5/29/2008	NCUA	Disclosures for Subprime Mortgage Loans	9
6	7/7/2008	FTC	CAN-SPAM Act Rules	27
7	10/1/2008	FHA	Hope for Homeowners Program for Subordinate Lienholders	6
8	10/10/2008	FASB	Use of Fair Value in an Inactive Market	7
9	10/22/2008	NCUA	Share Insurance Signs to Reflect Increased Limits	2
10	10/31/2008	NCUA	Official Advertising Statement	2
11	11/21/2008	NCUA	Incidental Powers	7

[32] Last updated: February 2015

12	12/15/2008	FASB	Amendments to the Impairment Guidance No. 99-20	44
13	12/31/2008	NCUA	PCA: Amended Definition of Post-Merger Net Worth	4
14	1/2/2009	NCUA	Criteria to Approve Service to Underserved Areas	5
15	1/7/2009	FHA	Interim Final Rule on Hope for Homeowners Program	6
16	1/16/2009	HUD	Final RESPA Rule	85
17	1/19/2009	FED	Unlawful Internet Gambling	31
18	4/3/2009	NCUA	Share Insurance Signs for Shared Branching	3
19	4/27/2009	NCUA	RegFlex Changes for Unimproved Land	1
20	5/14/2009	NCUA	Technical Changes to the FACT Act "Red Flags"	8
21	6/15/2009	FASB	Fair Value: Decrease in Market Activity/Transactions That Are Not Orderly	27
22	6/15/2009	FASB	Recognition and Presentation of Other-Than-Temporary Impairments	64
23	6/20/2009	FED	Restructuring of Fed's Check Processing : Districts 10, 11, and 12	2
24	7/2/2009	FED	Fed Rule Authorizing Excess Balance Accounts and Earnings on Balances	10
25	7/2/2009	FED	Fed Rule Authorizing Pass-through Accounts and Adjusting the Limitation on Savings Account Transfers	11
26	7/19/2009	FED	Restructuring of Federal Reserve's Check Processing : Districts 6 and 8	2
27	7/25/2009	FED	Restructuring of Federal Reserve's Check Processing : Districts 4 and 9	2
28	7/30/2009	FED	Revisions to Regulation Z Mortgage Loan Disclosures	17
29	9/1/2009	NCUA	Credit Union Reporting	3

30	9/12/2009	FED	Restructuring of Federal Reserve's Check Processing : Districts 4 and 7	2
31	9/14/2009	FED	Regulation Z Disclosures for Private Student Loans	63
32	9/21/2009	FED	Regulation Z Rule Implementing the CARD Act	26
33	10/1/2009	FED	Amendments to the Home Mortgage Provisions of Regulation Z	93
34	10/17/2009	FED	Restructuring of Federal Reserve's Check Processing : Districts 11 and 12	3
35	10/18/2009	FED	Restructuring of Federal Reserve's Check Processing : District 4	3
36	10/18/2009	FED	Restructuring of Federal Reserve's Check Processing : District 6	3
37	11/6/2009	FHFA	Election of Federal Home Loan Bank Directors	13
38	11/14/2009	FED	Restructuring of Federal Reserve's Check Processing : Districts 11 and 12	3
39	11/30/2009	NCUA	Share Insurance Coverage for Revocable Trust Accounts	9
40	11/30/2009	NCUA	Temporary Increase in SMSIA; Display of Official Sign; Coverage for Mortgage Servicing Accounts	10
41	12/12/2009	FED	Restructuring of Federal Reserve's Check Processing : District 3	2
42	12/24/2009	NCUA	Exceptions to the Maturity Limit on Second Mortgages	2
43	1/1/2010	FED	Overdraft Protection Disclosures	11
44	1/1/2010	FED	Revisions to Regulation S	4
45	1/1/2010	NCUA	Operating Fees	3
46	1/1/2010	NCUA	Truth in Savings Rule for Overdraft Protection and Electronic Disclosures	5

47	1/4/2010	NCUA	NCUSIF Premium and One Percent Deposit	7
48	2/4/2010	FHFA	Federal Home Loan Bank Membership to Include Non-Federally Insured CDFI Credit Unions	27
49	2/10/2010	FinCEN	Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity	11
50	2/14/2010	FED	Regulation Z Disclosures for Private Student Loans	63
51	2/22/2010	FED	Regulation Z Rule Implementing the CARD Act	268
52	2/27/2010	FED	Consolidation of Federal Reserve's Check-Processing	2
53	5/21/2010	NCUA	Interagency Policy Statement on Funding & Liquidity Risk Management	11
54	6/4/2010	FED	Establishment of Term Deposits at Federal Reserve Bank	6
55	6/18/2010	NACHA	Direct Access Registration Requirement	6
56	6/18/2010	NACHA	Risk Management and Assessment	4
57	7/1/2010	Education	Final Rules for Student Loans	35
58	7/1/2010	FED	Regulation Z Open-end Credit Final Rule	255
59	7/1/2010	FED	Regulation E Final Rule for Overdraft Protection Plans	8
60	7/1/2010	FTC	FACT Act Rules and Guidelines on the Accuracy of Credit Information	87
61	7/1/2010	NCUA	FACT Act Rules and Guidelines on the Accuracy of Credit Information	45
62	7/1/2010	NCUA	NCUA Final Rule on Unfair and Deceptive Practices for Credit Cards	3
63	7/6/2010	FTC	Disclosures for Non-federally Insured Credit Unions	7
64	7/26/2010	NCUA	Chartering and Field of Membership (FOM): Federal Credit Unions	9

65	8/2/2010	FED	FedACH SameDay Service	3
66	8/5/2010	NCUA	Low-Income Definition	2
67	8/16/2010	IRS	Payments Made in Settlement of Payment Card and Third-Party Network Transactions	16
68	8/22/2010	FED	Final Rule Implementing the CARD Act Provisions for Penalty Fees and Rate Reviews	68
69	8/22/2010	FED	Regulation E Rules for Gift Cards	43
70	9/2/2010	NCUA	Display of Official Sign; Permanent Increase in Standard Maximum Share Insurance Amount	3
71	9/7/2010	FED	Clarifications of Reg E and Reg DD Overdraft Rules	4
72	9/7/2010	NCUA	Clarifications on Reg DD Overdraft Protection Rules	4
73	10/1/2010	NCUA	SAFE Act	54
74	10/4/2010	HUD	FHA Risk Reduction Final Rule	4
75	10/18/2010	NCUA	Reverse Mortgage Guidance	12
76	10/25/2010	NCUA	Short-Term, Small Amount Loans	6
77	11/29/2010	NCUA	RegFlex Program Changes	4
78	11/29/2010	FED	Extension of CARD Act Effective Date for Gift Cards	5
79	12/23/2010	NCUA	Conversions of Insured CUs: Definition of Regional Director	2
80	12/31/2010	NCUA	Model Privacy Notices	105
81	1/1/2011	FED	FACT Act Risk-Based Notice Rule	61
82	1/1/2011	FED	Consumer Notification of Mortgage Loan Sales or Transfers	16
83	1/1/2011	FTC	Notice Regarding Charges Permitted Under the FCRA	1

84	1/1/2011	NACHA	Mobile ACH Payments	1
85	1/3/2011	FinCEN	Confidentiality of Suspicious Activity Reports	15
86	1/18/2011	NCUA	Corporate Credit Union Rule	4
87	1/20/2011	NCUA	IRPS 11-1 Supervisory Review Committee	4
88	1/27/2011	NCUA	Fiduciary Duties at Federal Credit Unions, and Mergers and Conversions of Insured Credit Unions	18
89	1/30/2011	FED	Interim Final Rule on Disclosures Required under the Mortgage Disclosure Improvement Act	8
90	1/31/2011	FED	Extension of CARD Act Gift Card Rules	1
91	3/14/2011	NCUA	Conversions of Insured Credit Unions: Definition of Regional Director	1
92	3/23/2011	NCUA	Corporate Credit Unions: Technical Corrections	1
93	3/23/2011	NCUA	PCA: Amended Definition of "Low-Risk Assets	2
94	3/24/2011	Treasury	Garnishment of Accounts Containing Federal Benefit Payments	24
95	3/28/2011	FinCEN	Amendment to BSA Regulations: Reports of Foreign Financial Accounts	1
96	3/28/2011	NCUA	IRPS: Chartering Corporate Federal Credit Unions	4
97	4/1/2011	FED	Interim Final Rule on Appraisal Independence	35
98	4/1/2011	FED	Loan Compensation and "Steering" of Loans	30
99	4/4/2011	FHA	Temporary Minimum Capital Increase for FHFA Regulated Entities	7
100	6/24/2011	NCUA	Technical Correction - Golden Parachute and Indemnification Payments	2
101	6/24/2011	NCUA	Temporary Unlimited Share Insurance for Noninterest-bearing Transaction Accounts	3

102	6/27/2011	NCUA	Golden Parachute and Indemnification Payments	12
103	7/21/2011	CFPB	Consumer Financial Rules to be Enforced by the CFPB	2
104	7/22/2011	CFPB	Regulation D Interim-Final Rule Implementing the Alternative Mortgage Transaction Parity Act	19
105	7/25/2011	NCUA	Sample Income Data to Meet the Low-income Definition	3
106	7/27/2011	NCUA	Remittance Transfers Interim Final Rule	2
107	8/10/2011	HUD	Technical Corrections & Clarifying Amendments to RESPA Regulations	4
108	8/15/2011	FED	Fair Credit Reporting Risk-Based Pricing (Credit Score Disclosures)	24
109	8/15/2011	FED	Regulation B - Equal Credit Opportunity Act (Credit Score Disclosures)	13
110	8/19/2011	FTC	Mortgage Acts & Practices - Advertising Rule	22
111	8/29/2011	HUD	SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities	38
112	10/1/2011	FED	CARD Act Clarifications	93
113	10/1/2011	FED	Debit Interchange Fee and Routing Regulations (Regulation II)	82
114	10/1/2011	FED	Federal Reserve Board's Interim Final Rule on the Interchange Fee Fraud-Prevention Adjustment	11
115	10/19/2011	Treasury	Indorsement and Payment of Checks Drawn on the United States Treasury	3
116	10/31/2011	NCUA	Net Worth & Equity Ratio	4
117	11/14/2011	Labor	Notification of Employee Rights under the National Labor Relations Act	44
118	11/30/2011	NCUA	NCUA Remittance Transfers Rule	2

119	12/2/2011	NCUA	Community Development Revolving Loan Fund (CDRLF) Access for Credit Unions	8
120	12/23/2011	NCUA	Low-Income Designation – Technical Amendment	1
121	1/1/2012	NCUA	Accuracy of Advertising and Notice of Insured Status	2
122	1/23/2012	NCUA	Corporate Credit Union Rule – Technical Amendment	3
123	4/19/2012	IRS	Guidance on Reporting Interest Paid to Nonresident Aliens	5
124	5/31/2012	NCUA	Corporate Credit Union Follow-up Rule	10
125	6/29/2012	CFPB	Rules of Practice for Adjudication Proceedings	44
126	6/29/2012	CFPB	Rules Relating to Investigations Final Rule	11
127	7/2/2012	NCUA	Regulatory Flexibility Program	12
128	7/2/2012	NCUA	Regulatory and Reporting Treatment of Troubled Debt Restructurings	12
129	7/12/2012	FED	Regulation J (Collection of Checks and Other Items by Federal Reserve Banks, Etc)	7
130	7/12/2012	FED	Regulation D (Reserve Requirements of Depository Institutions: Reserves Simplification)	8
131	8/16/2012	CFPB	Confidential Treatment of Privileged Information Final Rule	7
132	9/17/2012	CFTC	End-User Exemption to the Mandatory Clearing of Swaps	32
133	9/30/2012	NCUA	Interest Rate Risk Policy and Program Final Rule	12
134	10/1/2012	FED	Debit Interchange Fee and Routing Regulations (Regulation II) -Fraud	25
135	11/23/2012	CFPB	Delayed Implementation of Certain New Mortgage Disclosures	9
136	11/30/2012	FED	Reserve Requirements of Depository Institutions	2

137	12/13/2012	NCUA	Fidelity Bond	2
138	12/15/2012	FASB	Guidance on Troubled Debt Restructurings	27
139	1/18/2013	NCUA	Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government Final Rule	1
140	2/19/2013	NCUA	Acceptance Deadline - Low-Income Designation Final Rule	2
141	2/19/2013	NCUA	Definition of a "Small Credit Union" Final Rule	6
142	2/19/2013	NCUA	Definition of "Troubled Condition" Final Rule	3
143	3/18/2013	FHA	Implementation of the Fair Housing Act's Discriminatory Effects Standard Final Rule	23
144	3/26/2013	CFPB	Disclosures at Automated Teller Machines Final Rule - Reg E	4
145	3/28/2013	CFPB	Credit Card Limitations on Fees Final Rule - Reg Z	4
146	3/29/2013	NCUA	Investment and Deposit Activities (TIPS) Final Rule	2
147	4/1/2013	NCUA	Rural District Final Rule	3
148	5/31/2013	NCUA	Technical Amendments Final Rule	6
149	6/1/2013	CFPB	Escrow Accounts Final Rule - Reg Z	32
150	6/1/2013	CFPB	Escrow Accounts Amendments Final Rule - Reg Z	8
151	6/11/2013	NCUA	Alternatives to the Use of Credit Ratings Final Rule	9
152	6/28/2013	FMS	Garnishment of Accounts Containing Federal Benefits Final Rule	12
153	7/1/2013	FTC	COPPA Final Rule	43
154	7/25/2013	NCUA	Loan Participations Final Rule	12
155	10/28/2013	CFPB	Remittance Transfers 2012 Final Rule - Reg E	117

156	10/28/2013	CFPB	Remittance Transfers Safe Harbor, Preauthorized Transfers Final Rule - Reg E	46
157	10/28/2013	CFPB	Remittance Transfers 2013 Final Rule - Reg E	61
158	11/18/2013	NCUA	Federal Credit Union Ownership of Fixed Assets Final Rule	4
159	11/4/2013	CFPB	Consumer's Independent Ability to Pay Final Rule - Reg Z	22
160	12/19/2013	NCUA	Charitable Donation Accounts Final Rule	3
161	1/1/2014	NCUA	Electronic Filing of Financial and Other Reports Final Rule	2
162	1/3/2014	FinCEN	BSA Definitions - Definitions of Transmittal of Funds and Funds Transfer Final Rule	4
163	1/10/2014	CFPB	Mortgage Loan Origination Compensation Final Rule	148
164	1/10/2014	CFPB	Mortgage Servicing Final Rule - Reg X	203
165	1/10/2014	CFPB	Mortgage Servicing Final Rule - Reg Z	120
166	1/10/2014	CFPB	Ability to Repay / QM Final Rule	213
167	1/10/2014	CFPB	Ability to Repay / QM - Exemptions, Modifications, and Clarifications	15
168	1/10/2014	CFPB	QM and Mortgage Servicing Clarifications	42
169	1/10/2014	CFPB	HOEPA – "High-Cost Mortgage" Loans Final Rule	120
170	1/10/2014	CFPB	Homeownership Counseling Organizations Lists Interpretive Rule	2
171	1/18/2014	CFPB	Regulation B - Copies of Appraisals Final Rule	35
172	1/18/2014	NCUA	Interagency Higher-Priced Mortgage Appraisals Final Rule	80
173	1/18/2014	NCUA	Interagency Higher-Priced Mortgage Appraisals Supplemental Final Rule	69

174	3/3/2014	NCUA	Derivatives Final Rule	19
175	3/31/2014	NCUA	Liquidity and Contingency Funding Plans Final Rule	4
176	5/30/2014	NCUA	Capital Planning and Stress Testing	7
177	7/1/2014	IRS	FATCA- (Temporary Regulations under Chapter 4)	54
178	7/1/2014	IRS	FATCA - (Temporary Regulations under Chapters 3 and 61)	84
179	6/30/2014	NCUA	Credit Union Service Organizations (CUSOs) Final Rule	13
180	7/1/2014	IRS	FATCA Final Rule	123
181	7/17/2014	CFPB	Application of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-Interest	3
182	7/17/2014	CFPB	Policy Guidance on Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini-Correspondent Lenders	5
183	7/28/2014	NCUA	Voluntary Liquidation Final Rule	3
184	10/3/2014	NCUA	Unfair or Deceptive Acts or Practices; Technical Amendments	4
185	10/23/2014	CFPB	Compliance Bulletin and Policy Guidance—Mortgage Servicing Transfers	5
186	10/28/2014	CFPB	Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P)	26
187	11/17/2014	CFPB	Electronic Fund Transfers (Regulation E) (Remittances Temporary Exception)	26
188	1/10/2015	HUD	Federal Housing Administration (FHA): Adjustable Rate Mortgage Notification Requirements and Look-Back Period for FHA-Insured Single Family Mortgages	3
189	1/20/2015	NCUA	Appraisals; Appraisals; Availability to Applicants & Requirements for Transactions on Existing Extension of Credit	3

190	1/21/2015	HUD	Federal Housing Administration (FHA): Handling Prepayments: Eliminating Post-Payment Interest Charges	4
191	8/1/2015	CFPB	Integrated Mortgage Disclosures under TILA and RESPA Final Rule	1273
			Total Pages:	**5930**

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA

Testimony of

J. David Williams
Chairman and CEO
of
Centennial Bank
Lubbock, TX

On behalf of the

Independent Community Bankers of America

Before the

United States House of Representatives
Committee on Financial Services

Hearing on

"Preserving Consumer Choice and Financial Independence"

March 18, 2015
Washington, D.C.

Chairman Hensarling, Ranking Member Waters, and members of the Committee, my name is David Williams and I am Chairman and CEO of Centennial Bank in Lubbock, Texas. I am pleased to be here today to testify on behalf of the Independent Community Bankers of America and 6,400 community banks nationwide. Thank you for convening today's hearing on "Preserving Consumer Choice and Financial Independence."

I welcome this opportunity to share with you first-hand stories that illustrate the real world, punitive impact of new and accumulated regulation on consumers and small businesses served by community banks. Regulatory burden reaches the level of overkill when it injures the customer it was intended to protect. The stories I will share today, as well as the empirical research, clearly show that we have reached that point. Regulatory relief for community banks is critically important to ensuring continued access to the credit that supports the economic life of our local communities, helping customers purchase homes, save, start and grow businesses, and create jobs. ICBA's "Plan for Prosperity," which I will describe later and which is attached to this testimony, provides a road map for needed regulatory relief.

Centennial Bank, chartered in 1934, is a $740 million bank that serves rural and urban markets in the panhandle and central Texas. We are closely affiliated with another community bank in northeastern New Mexico. Real estate lending, including single family residential lending, accounts for over half of our loans. Commercial and industrial lending to small business and agricultural customers (both row crop production and livestock) accounts for 43 percent of our loans. Our business model is fairly typical of a community bank. Collectively, community banks provide nearly 50 percent of all small business loans in the country and 77 percent of all agricultural loans, according to a newly released study from Harvard's Kennedy School.[1] Our mission is to build successful and meaningful lifetime relationships with our customers. That's what we're about. Centennial's motto, "Your Bank for Generations," is more than a marketing slogan. Our focus is on creating enduring value for our customers, not short term earnings for our bank. This long-term culture, typical of thousands of community banks across the nation, is at risk today.

In recent years, Centennial Bank has experienced a sharply increasing regulatory burden. The nature of our business has changed from lending and investing in our communities to compliance with ever-changing rules and guidance. To give you an idea of the scope of regulatory burden we face today, I am attaching an 18 page "Scope of Services" document prepared by our outside compliance consultant, which details the daunting number of deposit and lending-related laws and regulations to which we are subject. This document does not include review of Fair Lending or Bank Secrecy Act rules, which are among the most difficult regulations to comply with. In the past 10 years our compliance costs have grown from approximately five percent of overhead to 15 to 20 percent today. I believe this increase in regulatory burden has contributed significantly

[1] "The State and Fate of Community Banking." Marshall Lux and Robert Greene. Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School. February 2015.

to the decrease of 1,342 community banks in the U.S. since 2010. The number of banks with assets below $100 million shrunk by 32 percent, while the number of banks with assets between $100 million and $1 billion fell by 11 percent.[2]

As costly and time consuming as it is for us to stay on top of this burden, I want to focus my testimony on the customer impact. Simply put, regulatory overkill is cutting off access to credit to credit worthy borrowers.

Customer Impact: Examples Abound

Let me share a few examples from my bank and other community banks that illustrate my point. In each of these cases, creditworthy individuals that we previously would have served are being turned away because new mortgage rules deny community bankers the flexibility to serve them or impose costs that make certain types of loans unprofitable.

- Customers who relocate for a new job often fail to satisfy the income verification requirements of the ability-to-repay rule. My bank recently had to decline a mortgage for a realtor with 30 years of experience in his field because he did not have enough paystubs from his new employer. This happens time and again with teachers, doctors, pharmacists, and other professionals who relocate to new towns. A credit worthy borrower shouldn't have to rent, and possibly be forced into a 12-month lease, because they don't have enough paystubs to qualify for a mortgage.
- In our New Mexico affiliate's market, regulatory barriers to mortgage lending are pushing would-be homeowners into the rental market and have actually driven up rents. In Clayton, NM, an average renter now pays $800 to $900 a month, though he or she could purchase a much nicer home for $80,000 with a monthly mortgage payment of $400. I believe the disparity between rents and mortgage payments is directly attributable to the overly stringent underwriting required by new mortgage rules.
- Again and again we have to deny mortgage credit to small business owners who cannot comply with the income documentation requirements under the ability-to-repay rule, despite their excellent credit. The underwriting requirements of QM are inflexible and do not afford the lender discretion to use judgment or to weigh compensating factors such as a high net worth in making credit decisions. You will hear the same story from community bankers all over the country.
- While CFPB rules provide special accommodations for "rural lenders," banks such as mine that serve both rural markets and "urban areas," as defined by the Census Bureau, are denied "rural" status. It doesn't matter that I am the only bank in some of my rural markets. Moreover, the "urban" areas I serve are what most people would call suburban or even exurban. In fact, 85 percent of the Texas population lives in an "urban area," under the

[2] Parsons, Richard J. "Bank Think," The American Banker (February 16, 2015).

Census Bureau definition. Any mortgage lender that serves both rural and "urban" markets is going to generate most of their volume and loan balances in their urban markets. Such lenders fail the CFPB's "rural lender" test, even under the agency's proposed expansion of the "rural" definition. Without "rural lender" status I cannot obtain QM status for balloon loans, a staple of rural lending that protects the lender from interest rate risk. While my bank will continue to make such loans, the vast majority of community banks will not assume the heightened legal liability of non-QM lending. Other "non-rural" community banks are deterred from mortgage lending because they cannot provide costly escrow services.

- Low dollar loans are typical in many parts of the country for purchase or refinance of residential properties. However, the fees on these loans, though low in absolute terms, often exceed the QM fee caps. A community banker from Ohio offers this example: a $75,000 loan with an 80 percent loan-to-value ratio and a cash-out feature. The closing fee for a QM loan in this dollar range is capped at $3,000, which is less than the lender's cost of underwriting and processing the loan. This is a credit worthy loan that will not be made because the lender is not willing to take a loss. Ironically, the loan could be made and transferred to Fannie Mae or Freddie Mac, thereby receiving automatic QM status, but their fee would exceed $4,000, in addition to the originator's fee. QM, far from protecting the customer, causes him to pay significantly more or be denied access to the loan altogether.

I hear these stories again and again from community bankers from Texas and around the country. These are not isolated anecdotes. Study after study, using statistical methods, has reached the same conclusions.

Surveys & Data Analysis Confirm Anecdotal Accounts

In ICBA's 2014 Community Bank Lending Survey, which surveyed over 500 community banks nationwide, 73 percent of survey respondents cited the regulatory burden of new rules and requirements as the most significant barrier to making more residential mortgage loans, more than any other factor including lack of borrower demand, competition from bank and non-bank lenders, or lack of qualified borrowers.[3] In a survey conducted by the Independent Bankers Association of Texas (IBAT), just before the ability-to-repay rules became effective in 2014, 13 percent of respondents said they would stop making mortgage loans in response to the new regulatory landscape, and 53 percent of respondents said they would limit the types of mortgages they offer.[4]

I would add, though this is not captured by the survey, that for many community banks mortgage lending is side product rather than a core component of their business. For example, they may

[3] ICBA 2014 Community Bank Lending Survey

[4] "Texas Community Bank Response to CFPB Mortgage Rules." Compiled by the Independent Bankers Association of Texas. 2014.

offer mortgage credit to strengthen their relationships with small business customers, originating 50 or fewer mortgages a year. It is these banks that are most likely to exit the mortgage business altogether in response to higher regulatory costs. Though they offer relatively few mortgages, their mortgage lending may be important to their local real estate market and critical to their relationship banking model. In the IBAT survey, 30 percent of respondents said that if they stopped or curtailed their mortgage activity, there were no other banks in their area to fill the void.

In a survey conducted by the Conference of State Bank Supervisors (CSBS), before the QM rule became effective, "15 percent of active mortgage lenders noted 80 percent or more of their 1-to-4 family mortgage loans would not meet QM requirements." The most frequently cited reasons for non-compliance were the DTI cap and the bar on balloon payment loans made by "non-rural" lenders.[5] At the same time, according to ICBA's 2104 Community Bank Lending Survey, only 25 percent of respondents are actively providing non-QM loans. These results indicate a significant unmet demand for non-QM loans. QM has effectively shrunk the credit box, stranding borrowers without access to credit. In the ICBA survey a majority of respondents, 57 percent, reported tighter underwriting in residential mortgage lending and 44 percent reported decreases in originations. A significant percentage of survey respondents, 15 percent, are considering an exit or have already exited this line of business.

Regulatory Overkill Does Most Harm to Rural Customers

The economic life of rural America depends on customized financial products and services that only community banks provide. Our bank serves primarily agricultural and related rural markets in the panhandle, South Plains, and Texas Hill Country. Residential properties in small and rural communities are typically unique. They may sit on a large plot of land, be mixed-use in nature, or irregular in other ways. They are frequently outside the city limits of the communities we serve. These are not suburban properties and for this reason they often lack adequate comparables and don't fit the inflexible requirements of the secondary market. In addition, the borrowers may be farmers or small business owners whose debt-to-income ratios fall outside of secondary market parameters, despite their personal net worth and means to repay the loan. Community banks specialize in serving such borrowers, often with balloon payment or other non-conforming loans held in portfolio. Balloon payments protect the lender from the significant interest rate risk of a 30 year, fixed rate loan. They have been made safely by community banks for decades.

Small business lending in rural communities presents a similar story. Community banks extend credit based on their first hand knowledge of the borrower, the community, and the local

[5] "Community Banking in the 21sth Century: Opportunities, Challenges and Perspectives." Federal Reserve System & Conference of State Bank Supervisors. September 2014.

economy. A bank based outside the community simply cannot match this type of underwriting. As the Harvard study noted, in certain lending markets, there is no effective substitute for the "skills, knowledge, and interpersonal competencies" of a community bank. Agricultural lending in particular is a very specialized form of lending that requires extensive knowledge of farming, crops, and local conditions.[6]

Community banks are disproportionately impacted by regulatory overkill because they have a much smaller asset base over which to spread regulatory costs. Without dedicated legal and compliance departments, we have to divert valuable staff from other duties, including serving customers, to implement new rules and other changes, a process that can take weeks or months depending on the complexity of the change and the bank processes impacted. If consolidation continues apace and rural community banks disappear under the weight of regulatory overkill, millions of rural customers – including farmers, small business owners, families and individuals – will be cut off from credit. As an FDIC Community Banking Study showed, in one out of every five counties in the United States, the only physical banking offices are those operated by community banks.[7]

How This Committee Can Help

The good news is that there are readily available legislative solutions to this pending crisis. Working with community bankers from across the nation, ICBA developed its "Plan for Prosperity," a platform of legislative recommendations that will provide meaningful relief for community banks and allow them to thrive by doing what they do best – serving and growing their communities. The Plan is organized around three broad themes: relief from mortgage regulation to promote lending; improved access to capital to sustain community bank independence; and reforming oversight and examination practices to better target the true sources of financial sector risk. Each provision of the Plan was crafted to preserve and strengthen consumer protections and safety and soundness. I encourage the members of this Committee to review the Plan, which is attached to this statement.

I want to acknowledge the important work that this committee has already done to bring relief to community bank customers. Several critical bills were passed at the end of the last Congress and the beginning of the current Congress. These include H.R. 3329, enacted at the end of the 113th Congress, which raised the qualifying asset threshold under the Federal Reserve's Small Bank Holding Company Policy Statement from $500 million to $1 billion. This law will provide significant relief for nearly 650 bank holding companies. Already in the 114th Congress, you passed legislation to ensure community bank representation on the Federal Reserve Board of Governors.

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[6] Ibid.
[7] FDIC Community Banking Study. December 2012.

And while many of the bills that passed the House Financial Services Committee and the House last Congress did not see action in the Senate, your work in the last Congress set the stage for enacting legislation in the current Congress. We're very encouraged by the bills that have been introduced in the House so far. Notably, Chairman Neugebauer has introduced the "Financial Products Safety Commission Act of 2015" (H.R. 1266), which would change the structure of the CFPB so that it is governed by a five member commission rather than a single director. Commission governance would allow for a variety of views and expertise on issues before the CFPB and thus build in a system of checks and balances that is absent in a single director form of governance. H.R. 1266 reflects a key plank of the Plan for Prosperity and ICBA strongly endorses it.

The CLEAR Relief Act (H.R. 1233)

I would particularly like to highlight the CLEAR Relief Act (H.R. 1233), introduced by Rep. Blaine Luetkemeyer, which contains seven provisions spanning all three pillars of ICBA's Plan for Prosperity: mortgage regulation relief; capital access; and reform of oversight and supervision. H.R. 1233 has been endorsed by 34 state community bank associations, including the Independent Bankers Association of Texas. The version of the CLEAR Relief Act introduced in the 113th Congress had over 175 bipartisan cosponsors. We hope that H.R. 1233 will exceed the success of the last CLEAR Relief Act and that its provisions will be enacted into law. The provisions of H.R. 1233 include:

Qualified Mortgage Status for Community Bank Portfolio Loans

The CLEAR Relief Act solution to compliance with the "ability-to-repay" rule is simple, straightforward, and will preserve community bank mortgage lending: QM status for loans held in portfolio by a financial institution, including balloon loans in rural and non-rural areas and without regard to their pricing. When a community bank holds a loan in portfolio it holds 100 percent of the credit risk and has every incentive to ensure it understands the borrower's financial condition and to work with the borrower to structure the loan properly and make sure it is affordable. Withholding safe harbor status for loans held in portfolio, and exposing the lender to litigation risk, will not make the loans safer, nor will it make underwriting more conservative. It will merely deter community banks from making such loans. Rep. Andy Barr's "Portfolio Lending and Mortgage Access Act of 2015" (H.R. 1113) includes the same provision.

Escrow Requirement Exemption for Community Bank Portfolio Mortgages

The CLEAR Relief Act would exempt community bank loans held in portfolio from new escrow requirements for higher priced mortgages. This exemption would also apply to all lenders with less than $10 billion in assets. Again, portfolio lenders have every incentive to protect their collateral by ensuring the borrower can make tax and insurance payments. For low volume lenders in particular, an escrow requirement is expensive and impractical and, again, will only deter lending to borrowers who have no other options.

Small Servicer Exemption

The CLEAR Relief Act would raise the CFPB's small servicer exemption threshold from 5,000 loans to 20,000. Community banks are deeply concerned about the impact of servicing standards that are overly prescriptive with regard to the method and frequency of delinquent borrower contacts. These rigid standards reduce community banks' flexibility to use methods that have proved successful in holding down delinquency rates. Examples of difficult and unnecessary requirements include new monthly statements; additional notices regarding interest rate adjustments on ARM loans; rigid timelines for making contacts that leave no discretion to the servicer; and restrictions on forced placed insurance. Community banks' small size and local presence in the communities we serve make many of these requirements unnecessary.

A higher exemption threshold would preserve the role of community banks in mortgage servicing, where consolidation has clearly harmed borrowers. Community banks above the 5,000 loan threshold have a proven record of strong, personalized servicing and no record of abusive practices. To put the 20,000 threshold in perspective, consider that the five largest servicers hold an average servicing portfolio of 6.8 million loans[8] and employ as many as 10,000 people each in servicing alone.

"Stop and Study" for Basel III Mortgage Servicing Assets Rule

To obtain the full benefit of lifting the small servicer exemption threshold to 20,000 loans, the CLEAR Relief Act would also provide relief from Basel III's punitive capital treatment of mortgage servicing assets (MSAs). Basel III provides that the value of MSAs that exceed 10 percent of a bank's common equity tier 1 capital must be deducted directly from its regulatory capital. In addition, MSAs that are below the 10 percent threshold must be risk weighted at 250 percent once Basel III is fully phased in. Expressed in terms of capital ratios, MSAs will shrink the numerator (when they exceed the 10 percent threshold) and inflate the denominator, resulting in a lower regulatory capital ratio. The Basel III MSA provision would have a significant impact on key measures of regulatory capital adequacy. The Basel III rule is a drastic change from the current rule which allows a bank to hold MSAs up to 100 percent of tier 1 capital (and broader measure of capital) and risk weight MSAs at 100 percent. Regulators have not presented any evidence that community banks' level of MSAs held in portfolio made any contribution to the financial crisis of 2008 and 2009.

[8] Source: Office of Mortgage Settlement Oversight (www.mortgageoversight.com).

The CLEAR Relief Act would require the Federal banking agencies to undertake a joint study of the appropriate capital requirements for MSAs for nonsystemic banking institutions. It would delay the Basel III MSA rule for nonsystemic institutions for up to 18 months and ensure that the eventual rule is well considered.

If community bank servicers don't get relief from the Basel III rule, a small servicer threshold of 20,000 loans will serve little purpose. It makes sense to pair these provisions in the same bill.

Appraisal Exemption for Smaller Mortgages

The CLEAR Relief Act would allow for in-house appraisals for higher priced mortgages of $250,000 or less provided they are held in portfolio. New appraisal standards have forced many community banks to hire appraisal management companies that frequently use appraisers from outside the area and produce lower quality appraisals than could be produced in-house. Not only does this slow down the transaction, but it results in increased costs for the customer. Portfolio lenders have every incentive to ensure appraisals are accurate.

Modernize the Federal Reserve's Small Bank Holding Company Policy Statement

The CLEAR Relief Act requires the Federal Reserve to revise the Small Bank Holding Company Policy Statement – a set of capital guidelines that have the force of law. The Policy Statement, which makes it easier for small bank holding companies to raise additional capital by issuing debt, would be revised to increase the qualifying asset threshold from $1 billion to $5 billion. Qualifying bank and thrift holding companies must not have significant outstanding debt or be engaged in nonbanking activities that involve significant leverage. This will help ease capital requirements for small bank and thrift holding companies. As noted above, ICBA thanks Congress for raising the threshold from $500 million to $1 billion. The CLEAR Relief Act of the 113th Congress, in both the House and Senate versions, set the threshold is $5 billion. We believe this is an appropriate and safe level to accommodate more community bank and thrift capital opportunities.

Short Form Call Report and Extended Exam Cycle

Banks with a CAMELS rating of 1 or 2 would be eligible to file a short form call report in the first and third quarter of each year. A full length call report would be filed in the second and fourth quarters. Banks that meet these criteria would also be eligible for a 24 month examination cycle.

The quarterly call report filed by community banks now comprises 80 pages of forms and 670 pages of instructions. Implementation of the new Basel III capital standards adds nearly 60 additional pages of instructions to the already burgeoning call report. Only a fraction of the information collected is actually useful to regulators in monitoring safety and soundness and conducting monetary policy. The 80 pages of forms contain extremely granular data such as the quarterly change in loan balances on owner-occupied commercial real estate. Whatever negligible value there is for the regulators in obtaining this type of detail is dwarfed by the expense and the staff hours dedicated to collecting it. Surely, regulators can supervise community banks with significantly less paperwork burden than they currently demand.

Under current agency rules, a bank with assets of less than $500 million that has a CAMELS rating of 1 or 2 is eligible for an exam cycle of 18 months. Banks that do not meet these criteria are examined on a 12 month cycle. The extended exam cycle allows examiners to focus their limited resources on the banks that pose the greatest systemic risk. In order to more fully reap the benefit of risk-focused exams, the exam cycle can and should be further extended to 24 months and available to banks with assets up to $2 billion, provided they have a CAMELS rating of 1 or 2. Preparations for bank exams, and the exams themselves, distract bank management from serving their communities to their full potential. ICBA will pursue legislation in the 114th Congress to create an extended exam cycle as described above.

Eliminate Redundant Privacy Notices

The CLEAR Relief Act provides that a financial institution is not required to mail an annual privacy notice to its customers if it has not changed its privacy policies. Most community banks do not have the scale to automate the annual privacy notice mailings. For these banks, the mailings are a manual, labor intensive process. Eliminating this requirement when a bank has not changed it privacy policies, will conserve resources without putting consumers at risk or reducing their control over the use of their personal data.

Additional Regulatory Relief Bills Before the Committee

ICBA also supports additional bills pending before this committee, including:

- The CFPB-IG Act (H.R. 957), introduced by Reps. Steve Stivers and Tim Walz, would create a dedicated, independent, Senate-confirmed inspector general (IG) for the CFPB. This will greatly improve the accountability of an agency with broad authority and the power to fundamentally reshape the financial services industry. This bill passed this Committee in the last Congress.
- Portfolio Lending and Mortgage Access Act of 2015 (H.R. 1113), introduced by Rep. Andy Barr, would provide QM status to any residential mortgage held in portfolio by the originator. This bill passed the Committee in the last Congress.
- The HELP Rural Communities Act (H.R. 1259), also introduced by Rep. Barr, would create a process in which individuals could petition the CFPB to have the rural status of a county reassessed. H.R. 1259, together with the CFPB proposal to expand the definition of rural,

would help ensure continued access to mortgage credit. This bill passed the House last Congress.

- The Consumer Financial Protection Safety and Soundness Improvement Act (H.R. 1263), introduced by Rep. Sean Duffy, would allow the Financial Stability Oversight Council to stay or set aside any CFPB rule if a majority of the Council, excluding the Director of the CFPB, finds that it is "inconsistent with the safe and sound operations" of U.S. financial institutions. Current law requires a vote of two thirds of the Council and a finding that the rule puts the banking or financial system at risk. ICBA believes that this is an impossibly high standard that does little to strengthen CFPB rulemaking.

All of these bills, among others before the Committee, are part of the solution to regulatory burden.

New Capital Options for Community Banks

We look forward to the introduction and adoption of additional bills that embody unaddressed aspects of the Plan for Prosperity. These include the provisions of the Plan designed to improve capital access and preservation for community banks. The Plan calls for relief for community banks under $1 billion in asset size from the internal control attestation requirements of Section 404(b) of the Sarbanes-Oxley Act. Since community bank internal control systems are monitored continually by bank examiners, they should not have to incur the unnecessary annual expense of paying an outside audit firm for attestation work. This provision will substantially lower the regulatory burden and expense for small, publicly traded community banks without creating more risk for investors.

Three capital provisions of the Plan for Prosperity would amend Basel III for banks with assets of $50 billion or less to restore the original intent of the accord which was intended to apply only to large, internationally active banks. ICBA also recommends reforming Regulation D so any person with a net worth of more than $1 million, including the value of their primary residence, would qualify as an "accredited investor." The number of non-accredited investors that could purchase stock under a private offering should be increased from 35 to 70. These Regulation D amendments have not previously been put into legislation. These provisions were newly added to the Plan for Prosperity for the 114th Congress based on community banker feedback after reviewing and planning implementation of the new rule. None have yet been included in legislation.

Reforming Bank Oversight and Examination

In addition to capital access and mortgage regulation reform a third major theme of the Plan for Prosperity is improving the exam environment for community banks. The trend toward oppressive, micromanaged regulatory exams is an ongoing concern to community bankers nationwide. I've already discussed the short form call report and extended exam cycle provisions of H.R. 1233. ICBA's Plan for Prosperity also calls for the creation of an independent body to receive, investigate, and resolve material complaints from banks in a timely and confidential manner. The goal is to hold examiners accountable and to prevent retribution against banks that file complaints. The current appeals process is arbitrary and frustrating. Appeals panels, or other processes, routinely lack the independence and market expertise necessary to reach a fair, unbiased decision.

The Financial Institutions Examination Fairness and Reform Act, introduced in the last Congress by then-Rep. Shelley Moore Capito and Rep. Carolyn Maloney, would go a long way toward improving the oppressive examination environment by creating a workable appeals process and consistent, commonsense standards for classifying loans. This legislation would improve 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 intent of this legislation.

Additional Plan for Prosperity Provisions

Cost-Benefit Analysis of Proposed Rules

The financial regulatory agencies should be barred from issuing notices of proposed rulemaking unless they first determine that quantified costs are less than benefits. The analysis must take into account the impact on the smallest banks which are disproportionately burdened by regulation because they lack the scale and the resources to absorb the associated compliance costs. In addition, the agencies would be required to identify and assess available alternatives including modifications to existing regulations. They would also be required to ensure that proposed regulations are consistent with existing regulations, written in plain English, and easy to interpret.

ICBA is grateful to Chairman Garrett for introducing H.R. 1060 in the last Congress, which focused on SEC rulemakings passed the House. Such bills would offer welcome relief to community banks by putting a reasonable check on new regulations and ensuring that they do not jeopardize community banks' viability by imposing costs that outweigh any benefit.

Eliminate Burdensome Data Collection

The Plan for Prosperity calls for exempting banks with assets below $10 billion from the new small business data collection requirements. This requirement, which is in statute but has yet to be implemented by the CFPB, requires the reporting of information regarding every small business loan application. Think of it as HMDA for small business lending. Adding to the complexity, records of applications must be kept separate from records of the responses to applications and must be kept separate from the underwriting process. In other words, the requirement creates a separate bureaucracy within the bank that cannot be integrated with lending operations. This is especially inefficient, and may not be feasible in organizations that are too small to accommodate fire wall structures. Further, data collected by community banks and subsequently made public by the CFPB could compromise the privacy of applicants in small communities where an applicant's identity may be easily deduced, despite the suppression of personally identifying information.

ICBA supported the Right to Lend Act, introduced in the 113th Congress by Rep. Pittenger, which would repeal the small business data collection requirement.

New Charter Option for Mutual Banks

Mutual community banks are among the safest and soundest financial institutions. They remained strong during the financial crisis and continued to provide financial services to their customers. The Plan for Prosperity calls for the creation of a new OCC charter for mutual national banks. This option would provide flexibility for institutions to choose the charter that best suits their needs and the communities they serve.

The Mutual Bank Choice and Continuity Act, introduced in the 113th Congress by Rep. Rothfus would have provided a national charter option for mutual banks, among other provisions.

Risk Targeting the Volcker Rule

The Plan for Prosperity calls for exempting banks with assets of $50 billion or less from the Volcker Rule. The Volcker Rule should apply only to the largest, most systemically risky banks. Approximately one year ago today we saw a vivid example of the unintended consequences of applying the Volcker Rule to community banks. The final Volcker Rule, issued December 2013, required, in most instances, community banks to divest their holdings of collateralized debt obligations (CDO) TruPs by July 2015. This provision was unanticipated. Community banks would have been required to sell their investments at fire sale prices. Accounting standards require community banks to recognize immediately an impairment of their investments. Left unaddressed, this implementation of the Volcker Rule would have caused a significant and permanent loss of capital to hundreds of community banks. ICBA is grateful to this Committee for your support in persuading the agencies to reverse course on the Volcker Rule CDO Trups provision. This episode should convince all parties that banks with assets of $50 billion or less should be completely exempt from the Volcker Rule.

Closing

Thank you again for the opportunity to testify today. I hope this testimony, while not exhaustive, gives the Committee a sense of the sharply increasing resource demands placed on community banks by regulation and examination and the adverse impact on consumers and small businesses.

We urge that ICBA's Plan for Prosperity – as well as the CLEAR Relief Act and the other bills embodying Plan provisions – serve as a guide to this committee. ICBA encourages you to reach out to the community bankers in your districts and states. Ask them about the current regulatory environment, the customer impact, and needed reforms. ICBA looks forward to working with this Committee to craft urgently needed legislative solutions.

ATTACHMENTS

- ICBA Plan for Prosperity. January 2015
- "Scope of Services." Centennial Bank Regulatory Compliance Consulting Report. November 2014.

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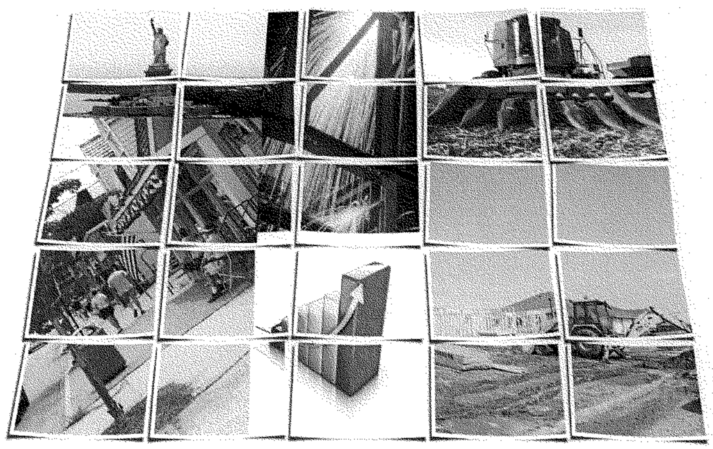
Plan for Prosperity



A Pro-Growth Agenda to Reduce the Onerous Regulatory Burden on Community Banks and Empower Local Communities

2015

Plan for Prosperity: An Agenda to Reduce the Onerous Regulatory Burden on Community Banks and Empower Local Communities

America's 6,500 community banks are vital to the prosperity of the U.S. economy, particularly in smaller towns and rural communities. Providing more than half of all small business loans under $1 million, as well as customized mortgage and consumer loans suited to the unique characteristics of their local communities, community banks serve a vital role in ensuring the economic recovery is robust and broad based, reaching communities of all sizes and in every region of the country.

In order to reach their full potential as catalysts for entrepreneurship, economic growth, and job creation, community banks must be able to attract capital in a highly competitive environment. An end to the exponential growth of onerous regulatory mandates is critical to this objective. Regulation is suffocating nearly every aspect of community banking and changing the very nature of the industry away from community investment and community building to paperwork, compliance, and examination. A fundamentally new approach is needed: Regulation must be calibrated to the size, lower-risk profile, and traditional business model of community banks.

ICBA's Plan for Prosperity provides targeted regulatory relief that will allow community banks to thrive by doing what they do best – serving and growing their communities. By reducing unsustainable regulatory burden, the Plan will ensure that scarce capital and labor resources are used productively, not sunk into unnecessary compliance costs, allowing community banks to better focus on lending and investing that will directly improve the quality of life in our communities. Each provision of the Plan was selected with input from community bankers nationwide and crafted to preserve and strengthen consumer protections and safety and soundness.

The Plan is a set of detailed legislative priorities positioned for advancement in Congress. A subset of these priorities is specifically dedicated to strengthening community bank viability by creating new options for capital raising and capital preservation. A number of regulatory relief measures would be tiered, with different thresholds for Consumer Financial Protection Bureau rules (generally $10 billion and under) and safety and soundness regulation (generally $50 billion and under). The recommended thresholds are based on existing levels and statutory provisions, which may vary by provision.

ICBA is committed to advancing and enacting the provisions of the Plan with all due vigilance and the aggressive use of every resource at our disposal. The Plan is a flexible, living document that can be adapted to a rapidly changing regulatory and legislative environment to maximize its influence and likelihood of enactment. Provisions are described below.

ACCESS TO CAPITAL: CREATING NEW OPTIONS FOR THE CREATION AND PRESERVATION OF COMMUNITY BANK CAPITAL

ICBA is proposing a set of options to strengthen community bank viability by enhancing access to capital.

Basel III Amendments: Restoring the Original Intent of the Rule. Basel III was originally intended to apply only to large, internationally active banks. ICBA proposes the following amendments for banks with assets of $50 billion or less.

- *Exemption from the capital conservation buffer.* The new buffer provisions impose dividend restrictions that have a chilling effect on potential investors. This is particularly true for Subchapter S banks whose investors rely on dividends to pay their pro-rata share of the bank's tax. Exempting community banks from the capital conservation buffer would make it easier for them to raise capital.
- *Full capital recognition of allowance for credit losses.* Provide that the allowance for credit losses is included in tier 1 capital up to 1.25 percent of risk weighted assets with the remaining amount reported in tier 2 capital. This change would reverse the punitive treatment of the allowance under Basel III. The allowance should be captured in the regulatory capital framework since it is the first line of defense in protecting against unforeseen future credit losses.
- *Amend risk weighting to promote economic development.* Provide 100 percent risk weighting for acquisition, development, and construction loans. Under Basel III, these loans are classified as high volatility commercial real estate loans and risk weighted at 150 percent. ICBA's proposed change would treat these loans the same as other commercial real estate loans and would be consistent with Basel I.

Additional Capital for Small Bank Holding Companies: Modernizing the Federal Reserve's Policy Statement. Require the Federal Reserve to revise the Small Bank Holding Company Policy Statement – a set of capital guidelines that have the force of law. The Policy Statement, which makes it easier for small bank and thrift holding companies to raise additional capital by issuing debt, would be revised to increase the qualifying asset threshold from $1 billion to $5 billion. Qualifying bank and thrift holding companies must not have significant outstanding debt or be engaged in nonbanking activities that involve significant leverage.

Relief from Securities and Exchange Commission Rules. ICBA recommends the following changes to SEC rules which would allow community banks to commit more resources to their communities without putting investors at risk:

- Provide an exemption from internal control attestation requirements for community banks with assets of less than $1 billion. The current exemption applies to any company with market capitalization of $75 million or less. Because community bank internal control systems are monitored continually by bank examiners, they should not have to sustain the unnecessary annual expense of paying an outside audit firm for attestation work. This provision will substantially lower the regulatory burden and expense for small, publicly traded community banks without creating more risk for investors.

- Due to an oversight in the 2012 JOBS Act, thrift holding companies do not have statutory authority to take advantage of the increased shareholder threshold below which a bank or bank holding company may deregister with the SEC. Congress should correct this oversight by allowing thrift holding companies to use the new 1,200 shareholder deregistration threshold as well as the new 2,000 shareholder registration threshold.
- Regulation D should be reformed so that anyone with a net worth of more than $1 million, including the value of their primary residence, would qualify as an "accredited investor." The number of non-accredited investors that could purchase stock under a private offering should be increased from 35 to 70.

TARGETED REGULATORY RELIEF

Supporting a Robust Housing Market: Mortgage Reform for Community Banks. Provide community banks relief from certain mortgage regulations, especially for loans held in portfolio. When a community bank holds a loan in portfolio, it has a direct stake in the loan's performance and every incentive to ensure it is properly underwritten, affordable and responsibly serviced. Relief would include:

- Providing "qualified mortgage" safe harbor status for loans originated and held in portfolio by banks with less than $10 billion in assets, including balloon mortgages.
- Exempting banks with assets below $10 billion from escrow requirements for loans held in portfolio.
- An exemption from the higher risk mortgage appraisal requirements for loans of $250,000 or less provided they are held in portfolio by the originator for a period of at least three years.
- New information reporting requirements under the Home Mortgage Disclosure Act should not apply to community banks.

Strengthening Accountability in Bank Exams: A Workable Appeals Process. The trend toward oppressive, micromanaged regulatory exams is a concern to community bankers nationwide. An independent body would be created to receive, investigate, and resolve material complaints from banks in a timely and confidential manner. The goal is to hold examiners accountable and to prevent retribution against banks that file complaints.

Reforming Bank Oversight and Examination to Better Target Risk. ICBA makes the following recommendations to allow bank examiners to better target their resources at true sources of systemic risk:

- A two-year exam cycle for well-rated community banks with up to $2 billion in assets would allow examiners to better target their limited resources toward banks that pose systemic risk. It would also provide needed relief to bank management for whom exams are a significant distraction from serving their customers and communities.
- Banks with assets of $50 billion or less should be exempt from stress test requirements.
- Community banks should be allowed to file a short form call report in the first and third quarters of each year. The current, long form call report would be filed in the second and fourth quarters. The quarterly call report now comprises some 80 pages supported by almost 700 pages of instructions. It represents a growing burden on community banks without being an effective supervisory tool.

<u>Redundant Privacy Notices: Eliminate Annual Requirement.</u> Eliminate the requirement that financial institutions mail annual privacy notices even when no change in policy has occurred. Financial institutions would still be required to notify their customers by mail when they change their privacy policies, but when no change in policy has occurred, the annual notice provides no useful information to customers and is a needless expense.

<u>Balanced Consumer Regulation: More Inclusive and Accountable CFPB Governance.</u> The following changes would strength CFPB accountability, improve the quality of the agency's rulemaking, and make more effective use of its examination resources:

- Change the governance structure of the CFPB to a five-member commission rather than a single Director. Commissioners would be confirmed by the Senate to staggered five-year terms with no more than three commissioners affiliated with any one political party. This change will strengthen accountability and bring a diversity of views and professional backgrounds to decision-making at the CFPB.
- The Financial Stability Oversight Council's review of CFPB rules should be strengthened by changing the vote required to veto a rule from an unreasonably high two-thirds vote to a simple majority, excluding the CFPB Director.
- All banks with assets of $50 billion or less should be exempt from examination and enforcement by the CFPB; and CFPB backup (or "ride along") authority for compliance exams performed by a bank's primary regulator should be eliminated.

<u>Eliminate Arbitrary "Disparate Impact" Fair Lending Suits.</u> Amend the Equal Credit Opportunity Act and the Fair Housing Act to bar "disparate impact" causes of action. Lenders that uniformly apply neutral lending standards should not be subject to frivolous and abusive lawsuits based on statistical data alone. Disparate impact forces lenders to consider factors such as race and national origin in individual credit decisions, which are specifically precluded by law.

<u>Ensuring the Viability of Mutual Banks: New Charter Option.</u> The OCC should be allowed to charter mutual national banks to provide flexibility for institutions to choose the charter that best suits their needs and the communities they serve.

<u>Rigorous and Quantitative Justification of New Rules: Cost-Benefit Analysis.</u> Provide that financial regulatory agencies cannot issue notices of proposed rulemakings unless they first determine that quantified costs are less than benefits. The analysis must take into account the impact on the smallest banks which are disproportionately burdened by regulation because they lack the scale and the resources to absorb the associated compliance costs. In addition, the agencies would be required to identify and assess available alternatives including modifications to existing regulations. They would also be required to ensure that proposed regulations are consistent with existing regulations, written in plain English, and easy to interpret.

<u>Cutting the Red Tape in Small Business Lending: Eliminate Burdensome Data Collection.</u> Exclude banks with assets below $10 billion from new small business data collection requirements. This provision, which requires the reporting of information regarding every small business loan application, falls disproportionately upon community banks that lack scale and compliance resources.

Preserve Community Bank Mortgage Servicing. The provisions described below would help preserve the important role of community banks in servicing mortgages and deter further industry consolidation, which is harmful to borrowers:

- Increase the "small servicer" exemption threshold to 20,000 loans (up from 5,000). To put this proposed threshold in perspective, the average number of loans serviced by the five largest servicers subject to the national mortgage settlement is 6.8 million. An exemption threshold of 20,000 would demarcate small servicers from both large and mid-sized servicers.
- For banks with assets of $50 billion or less, reverse the punitive Basel III capital treatment of mortgage servicing rights (MSRs) and allow 100 percent of MSRs to be included as common equity tier 1 capital.

Creating a Voice for Community Banks: Treasury Assistant Secretary for Community Banks. Economic and banking policies have too often been made without the benefit of community bank input. An approach that takes into account the diversity and breadth of the financial services sector would significantly improve policy making. Creating an Assistant Secretary for Community Banks within the U.S. Treasury Department would ensure that the more than 6,500 community banks across the country, including minority banks that lend in underserved markets, are given appropriate and balanced consideration in the policy making process.

Modernize Subchapter S Constraints. Subchapter S of the tax code should be updated to facilitate capital formation for community banks, particularly in light of higher capital requirements under the proposed Basel III capital standards. The limit on Subchapter S shareholders should be increased from 100 to 200; Subchapter S corporations should be allowed to issue preferred shares; and Subchapter S shares, both common and preferred, should be permitted to be held in individual retirement accounts (IRAs). These changes would better allow the nation's 2,200 Subchapter S banks to raise capital and increase the flow of credit.

Five-Year Loss Carryback Supports Lending During Economic Downturns. Banks with $15 billion or less in assets should be allowed to use a five-year net operating loss (NOL) carryback. The five-year NOL carryback is countercyclical and will support community bank capital and lending during economic downturns.

Risk Targeting the Volcker Rule. Exempt banks with assets of $50 billion or less from the Volcker Rule. The Volcker Rule should apply only to the largest, most systemically risky banks. Proposals to apply the rule to community banks carry unintended consequences that threaten to destabilize segments of the community banking industry.

The Independent Community Bankers of America®, the nation's voice for 6,500 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. For more information, visit www.icba.org.

V. Scope of Services

Review: Lending-related Laws and Regulations

We will conduct a review of lending-related laws and regulations on a functional basis whereby certain categories of transactions or functions of the Bank will be reviewed for the various laws, regulations and requirements that are applicable.

Regulatory Compliance Review

Lending-related Laws and Regulations

We will conduct a review of lending-related laws and regulations on a functional basis whereby certain categories of transactions or functions of the Bank will be reviewed for the various laws, regulations and requirements that are applicable.

Closed-end Mortgage Loan Originations

We will review a sample of closed-end mortgage loans to evaluate the Bank's compliance with certain provisions of the following laws and regulations, as applicable:

12 CFR Part 339 – Loans in Areas Having Special Flood Hazards

- 12 CFR 339.6 – Required Use of Standard Flood Hazard Determination Form

12 CFR Chapter X Part 1002 – Equal Credit Opportunity (Regulation B)

- 12 CFR Chapter X 1002.7 – Rules Concerning Extensions of Credit
- 12 CFR Chapter X 1002.13 – Information for Monitoring Purposes
- 12 CFR Chapter X 1002.14 – Rules on Providing Appraisal Reports

12 CFR Chapter X Part 1022 – Fair Credit Reporting (Regulation V)

- 12 CFR Chapter 1022.72 – Requirements for Risk-based Pricing Notices
- 12 CFR Chapter 1022.73 – Content, Form and Timing of Risk-based Pricing Notice
- 12 CFR Chapter 1022.74 – Exceptions to Risk-based Pricing Notice

12 CFR Chapter X Part 1003 – Home Mortgage Disclosure (Regulation C)

- 12 CFR Chapter X 1003.4 – Compilation of Loan Data

12 CFR Chapter X Part 1026 – Truth-in-Lending (Regulation Z)

- 12 CFR Chapter X 1026.18 – Content of Disclosures
- 12 CFR Chapter X 1026.19 – Certain Residential Mortgage and Variable Rate Transactions
- 12 CFR Chapter X 1026.22 – Determination of Annual Percentage Rate
- 12 CFR Chapter X 1026.23 – Right of Rescission
- 12 CFR Chapter X 1026.32 – Requirements for Certain Closed-end Home Mortgages
- 12 CFR Chapter X 1026.34 – Prohibited Practices Related to High Cost Mortgage Loans
- 12 CFR Chapter X 1026.35 – Requirements for Higher-priced Mortgage Loans

V. Scope of Services

- 12 CFR Chapter X 1026.36 – Prohibited Practices in Connection with Credit Secured by Principal Dwellings
- 12 CFR Chapter X 1026.43 - Minimum Standards for Transactions Secured by a Dwelling

12 CFR Chapter X Part 1024 – Real Estate Settlement Procedures

- 12 CFR Chapter X 1024.6 – Special Information Booklet
- 12 CFR Chapter X 1024.7 – Good Faith Estimate
- 12 CFR Chapter X 1024.8 – Use of HUD-1 or HUD-1A Settlement Statements
- 12 CFR Chapter X 1024.15 – Affiliated Business Arrangements
- 12 CFR Chapter X 1024.17 – Escrow Accounts
- 12 CFR Chapter X 1024.20 – List of Homeownership Counseling Organizations
- 12 CFR Chapter X 1024.33 – Mortgage Servicing Transfers

Fair Credit Reporting Act

- Section 609 – Disclosures to Consumers

Consumer Loan Originations

We will review a sample of consumer loan originations to evaluate the Bank's compliance with certain provisions of the laws and regulations listed below.

12 CFR Chapter X Part 1002 – Equal Credit Opportunity (Regulation B)

- 12 CFR Chapter X 1002.7 – Rules Concerning Extensions of Credit
- 12 CFR Chapter X 1002.13 – Information for Monitoring Purposes
- 12 CFR Chapter X 1002.14 – Rules on Providing Appraisal Reports

12 CFR Chapter X Part 1022 – Fair Credit Reporting (Regulation V)

- 12 CFR Chapter X 1022.72 – Requirements for Risk-based Pricing Notices
- 12 CFR Chapter X 1022.73 – Content, Form and Timing of Risk-based Pricing Notice
- 12 CFR Chapter X 1022.74 – Exceptions to Risk-based Pricing Notice

12 CFR Chapter X Part 1026 – Truth-in-Lending (Regulation Z)

- 12 CFR Chapter X 1026.18 – Content of Disclosures
- 12 CFR Chapter X 1026.22 – Determination of Annual Percentage Rate
- 12 CFR Chapter X 1026.46 – Special Disclosure Requirements for Private Education Loans

12 CFR Part 227 – Unfair or Deceptive Acts or Practices (Regulation AA)

- 12 CFR 227.14 – Unfair or Deceptive Practices Involving Cosigners

V. Scope of Services

Preservation of Consumers Claims and Defenses

12 CFR Part 343 – Consumer Protection in Sales of Insurance

- 12 CFR 343.40 – What a Covered Person Must Disclose

Commercial Loans Originations

We will review a sample of commercial loan originations to evaluate the Bank's compliance with certain provisions of the laws and regulations listed below.

12 CFR Part 339 – Loans in Areas Having Special Flood Hazards

- 12 CFR 339.6 – Required Use of Standard Flood Hazard Determination Form

12 CFR Part 202 – Equal Credit Opportunity (Regulation B)

- 12 CFR 202.7 – Rules Concerning Extensions of Credit, including spousal signatures
- 12 CFR 202.13 – Information for Monitoring Purposes
- 12 CFR 202.14 – Rules on Providing Appraisal Reports

Fair Credit Reporting Act

- Section 615 – Requirements on Users of Consumer Reports

Denied Loan Applications

We will review a sample of the Bank's denied loan applications for compliance with certain provisions of the following laws and regulations, as applicable:

12 CFR Chapter X Part 1002 – Equal Credit Opportunity (Regulation B)

- 12 CFR Chapter X 1002.7 – Rules Concerning Extensions of Credit
- 12 CFR Chapter X 1002.9 – Notifications
- 12 CFR Chapter X 1002.13 – Information for Monitoring Purposes

12 CFR Chapter X Part 1003 – Home Mortgage Disclosure (Regulation C)

- 12 CFR Chapter X 1003.4 – Compilation of Loan Data

12 CFR Chapter X Part 1026 – Truth-in-Lending (Regulation Z)

- 12 CFR Chapter X 1026.18 – Content of Disclosures
- 12 CFR Chapter X 1026.19 – Certain Residential Mortgage and Variable Rate Transactions

12 CFR Chapter X Part 1024 – Real Estate Settlement Procedures

- 12 CFR 1024.7 – Good Faith Estimate
- 12 CFR 1024.21 – Mortgage Servicing Transfers

V. Scope of Services

Fair Credit Reporting Act

- Section 609 – Disclosures to Consumers
- Section 615 – Requirements on Users of Consumer Reports

Home Mortgage Disclosure Act Review

This review is conducted to evaluate the Bank's compliance with the reporting requirements of the Home Mortgage Disclosure Act (Regulation C). We will review a sample of real estate-related loans and applications and the Bank's HMDA Register to assess the Bank's compliance with the following two aspects of its HMDA reporting obligation:

- Identification of HMDA Reportable Applications
- Accuracy of Reported Applications

Additionally, we selected a sample of loans from new loan reports that were not on the Register to determine if such loans were appropriately excluded from the Register.

Flood Insurance Review

Adequacy of Flood Insurance Coverage

We will request a list of all positive determinations from each of the flood determination providers utilized by the Bank. Using this information, we will select a sample of loans secured by property located within special flood hazard areas (SFHA) to evaluate whether the Bank has appropriate coverage in place considering the following:

- Does the flood insurance equal the lesser of the current loan balance or the value of the insurable improvements?
- If the property securing the loan is cross-collateralized with other loans at the Bank, does the Bank have flood insurance coverage equal to the lesser of the aggregate loan balance or the value of the insurable improvements located within the flood hazard area?
- If the property is secured by a subordinate lien, is sufficient coverage in place to cover all prior liens?
- If the loan is secured by contents within a structure located in an SFHA, does the Bank have sufficient flood insurance coverage on the contents?
- If the property located within the SFHA includes multiple structures, does the Bank have a separate insurance policy on each of the structures as required?
- If the loan is secured by a condominium unit, does the Residential Condominium Building Association Policy cover the replacement cost value of the condominium complex? If not, does the condominium unit have a separate flood policy in place to cover the amount of any Residential Condominium Building Association Policy shortage?
- If the loan was originated within the previous 12 months, was there sufficient coverage in place at the time of closing?

V. Scope of Services

- Is there a current, unexpired flood insurance policy in effect?
- Did the flood insurance policy reflect the same flood zone as indicated on the SFHDF?
- Was the Bank reflected as a first or subordinate lienholder, as applicable, on the flood insurance policy?

If any lapses in flood insurance coverage were observed within the previous 12 months, did the Bank:

- Send a 45-day letter to the borrower informing them of the need to obtain or increase the flood insurance coverage?
- Force-place flood insurance after the 45-day period has ended?

Use of Standard Flood Hazard Determination Forms

We will review the sample of loans secured by property located in an SFHA to assess whether:

- A SFHDF was obtained for each loan secured by improved real property, as applicable.
- The SFHDF was obtained prior to closing.
- If the SFHDF was obtained within the past 12 months, it included the Bank's lender identification number.
- If the SFHDF was obtained within the past 12 months, whether the form was complete and accurate.

Flood Notifications

We will review the sample of loans secured by improved property located within an SFHA that were made, increased, extended or renewed within the previous 12 months to assess whether:

- A flood notification was observed within the loan file.
- The flood notification included the following information:
    - A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in an SFHA.
    - A description of the flood insurance purchase requirements set forth in Section 102(b) of the Flood Disaster Protection Act of 1973.
    - A statement, where applicable, that flood insurance coverage is available under the National Flood Insurance Program and may also be available from private insurers.
    - A statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

V. Scope of Services

- The flood notification was provided to the borrower in a reasonable period of time prior to closing.
- The flood notification was signed by the borrower.

Other Flood Insurance Issues

If the Bank has established an escrow account for the payment of property taxes and/or hazard insurance, were the flood insurance premiums also escrowed?

If the Bank is relying on a third party to perform flood determinations, does the service also include life of loan coverage?

If the servicing rights of any loans secured by a building or mobile home located in or to be located within an SFHA have been transferred to the Bank, has the Bank notified the insurance provider, in writing within 60 days after the effective date of the change, as applicable?

Through discussion with appropriate Bank personnel, assess whether the Bank has reviewed its third-party flood determination provider's practices to ensure that they rely on the Community Status Book (CSB) when determining community status information for the determinations. If the Bank performs its own flood determinations, determine whether it also relies on the CSB when determining community status information for determinations.

Other Lending-related Requirements

Periodic Statements-Closed-end Mortgage Loans (12 CFR Chapter X 1026.41) – If the Bank does not meet the "Small Servicer" definition, we will review a sample of periodic statements for the Bank's mortgage loans to evaluate whether the periodic contain the disclosures required by Section 1026.41 of Regulation Z.

Periodic Statements (12 CFR Chapter X 1026.7 and 1026.8) – We will review a sample of periodic statements for the Bank's HELOC and POLOC plans to evaluate whether the periodic statements reflect consistency with the terms of the agreements and contain the disclosures required by Sections 1026.7 and 1026.8 of Regulation Z.

Billing Rights (12 CFR Chapter X 1026.9(a)) – If the Bank does not include a statement of billing rights with each periodic statement, we will evaluate whether a statement of billing rights is furnished on an annual basis as required by Section 1026.9(a).

ARM Adjustments – We will review a sample of adjustable rate mortgage loans to assess whether the interest rate adjustments were consistent with the terms of the note and disclosed in accordance with the requirements of Section 1026.20 of Regulation Z.

Supplemental Credit Devices (12 CFR Chapter X 1026.9(b)) – We will inquire as to whether the Bank issues supplemental credit access devices after originating an open-end line of credit plan, and if so, we will evaluate whether the Bank provides the additional disclosures required by Section 1026.9(b).

V. Scope of Services

Changes in Account Terms for Home Equity Plans (12 CFR Chapter X 1026.9(c)) – We will inquire as to whether the Bank has changed any account terms on its home equity plans within the previous 12 months, and if so, we will evaluate whether the Bank has provided an appropriate and timely notification as required by Section 1026.9(c)(1).

Crediting of Payments (12 CFR Chapter X 1026.10) – We will discuss the Bank's practices for posting payments on HELOCs and overdraft protection lines of credit with an appropriate representative to evaluate whether payments are posted in a manner that is consistent with the requirements of Section 1026.10 of Regulation Z.

Billing Error Notices (12 CFR Chapter X 1026.13) – We will request and review a sample of billing error resolution files received by the Bank within the previous 12 months and evaluate whether the disputes were resolved in accordance with the provisions of Section 1026.13.

Servicing of Loans Secured by Primary Dwellings (12 CFR Chapter X 1026.36(c)) – We will review the Bank's practices for servicing loans secured by a consumer's principal dwelling to evaluate whether the Bank refrains from the following prohibited practices:

- Failing to credit a payment to the consumer's loan account as of the date of receipt
- Imposing on the consumer any late fee or delinquency charge when the only delinquency is attributable to late fees or delinquency charges assessed on earlier payments
- Failing to provide, within a reasonable time after receiving a request from the consumer, an accurate statement of the total outstanding balance for payoff purposes

Mortgage Transfer Disclosures (12 CFR Chapter X 1026.39) – We will inquire as to whether the Bank has become the owner of existing mortgage loans secured by a consumer's principal dwelling by acquiring legal title through purchase, assignment, or other transfer during the past 12 months. If so, we will assess whether the Bank has provided the appropriate mortgage transfer disclosures required by Section 1026.39 of Regulation Z before the 30th calendar day following the acquisition date.

Appraiser Independence (12 CFR Chapter X 1026.42) – We will review the Bank's policies, procedures, and practices with respect to obtaining or performing appraisals on loans secured by a consumer's principal dwelling to test whether they are consistent with the independence requirements of Section 1026.42 of Regulation Z.

Loan Originator Compensation (12 CFR Chapter X 1026.36) – We will review the Bank's policies, procedures and practices, as well as any compensation agreements the Bank has with its MLOs to evaluate the Bank's compliance with the provisions of Section 1026.36(d) of Regulation Z regarding prohibited payments to loan originators.

Annual Escrow Account Disclosures (12 CFR Chapter X 1024.17) – We will review a sample of annual escrow account statements to evaluate the accuracy of the calculations and whether the required information was disclosed in accordance with the provisions of Section 2400.17 of the RESPA regulation.

V. Scope of Services

RESPA Kickback Provisions(12 CFR Chapter X 1024.14) – Based on inquires with Bank personnel and review of relevant documentation, we will test whether any relationships maintained by the Bank or Bank personnel that relate to settlement services involving federally related mortgage loans, are consistent with the requirements of Section 2400.14 of the RESPA regulation pertaining to kickbacks and unearned fees.

Forced-placed Hazard Insurance (12 CFR Chapter X 1024.37) – If the Bank force-placed hazard insurance on any RESPA covered loan within the previous 12 months, we will review procedures, documentation and notification letters to evaluate if the Bank complied with the provisions of Section 1024.37.

Error Resolution Notices and Information Requests (12 CFR Chapter X 1024.35 and 1024.36) – If the Bank had any error resolution notices or information requests on any RESPA covered loan within the previous 12 months, we will review procedures, documentation and written responses to evaluate if the Bank complied with the provisions of Sections 1024.35 and .36.

Loss Mitigation Procedures (12 CFR Chapter X 1024.41) – Based on inquiries with Bank personnel and review of relevant documentation, we will test to ensure the Bank has not made the first notice or filing required to foreclose on any mortgage loan in first lien position secured by the consumer's principal residence unless the loan is more than 120 days delinquent and that the Bank has not moved for foreclosure or order of sale or conducted a foreclosure sale if consumer is performing pursuant to the terms of a loss mitigation agreement.

Additionally, if the Bank does not meet the "Small Servicer" definition, we will review the documentation for any delinquent mortgage loan in first lien position secured by the consumer's principal residence to evaluate whether they meet the requirements.

Written Procedures (12 CFR Chapter X 1024.38) – If the Bank does not meet the "Small Servicer" definition, we will we will review the written Servicing Procedures for Regulation X to evaluate whether they meet the content requirements.

Early Intervention with Delinquent Borrowers (12 CFR Chapter X 1024.39) – If the Bank does not meet the "Small Servicer" definition, we will review the documentation and written notices for any delinquent mortgage loan in first lien position secured by the consumer's principal residence to evaluate whether they meet the requirements.

Continuity of Contact with Delinquent Borrowers (12 CFR Chapter X 1024.40) – If the Bank does not meet the "Small Servicer" definition, we will review the documentation for any delinquent mortgage loan in first lien position secured by the consumer's principal residence to evaluate whether they meet the requirements.

Servicemembers Civil Relief Act (SCRA) Exercise of Rights – Based on discussion with Bank personnel and a review of relevant documentation, we evaluate whether the Bank refrains from taking adverse action on a servicemember based on the servicemember's exercise of rights under the SCRA.

SCRA Transaction Testing – We will review a sample of consumer and residential loans, for which the Bank was provided written notice of the borrower's military service, to evaluate the Bank's compliance with Section 207 of the SCRA related to the "maximum rate of interest on debts incurred before military service."

V. Scope of Services

Homeownership Counseling Notice – We will review the Bank's process for providing the Homeownership Counseling Notice to borrowers that are more than 45 days late on loans secured by their principal residence, pursuant to Section 106(c)(5) of the Housing and Urban Development Act of 1968.

Secure and Fair Enforcement for Mortgage Licensing Act Review

We will conduct the following procedures to evaluate the Bank's compliance with 12 CFR 1007 pertaining to Registration of Residential MLOs.

- *Review of Written Policies and Procedures* – We will review the Bank's written policies and procedures to assess whether they are appropriate to the nature, size, complexity and scope of mortgage lending activities and whether they meet the minimum requirements established in Section 1007.104
- *Review Process for Identifying MLOs* – We will discuss the Bank's process for identifying the individuals required to be registered as MLOs with appropriate personnel to evaluate whether the process used was likely to identify those individuals meeting the definition of an MLO as defined in Section 1007.102.
- *Review of Registration of MLOs* – We will request a list of the individuals involved in the mortgage loan function as well as the job descriptions of these individuals, to the extent available. We will compare this list of individuals with those registered under the Bank in the Consumer Access site of the Registry to assess whether all persons meeting the definition of an MLO have been registered appropriately as required by Section 1007.103.
- *Review of Information Submitted by or on Behalf of Registered MLOs* – We will request a print-out of the NMLS MU4R form data submitted by or on behalf of a sample of MLOs and compare the information submitted with the information contained within the Bank's records for accuracy.
- *Designated Registry Contact Persons* – We will review the names and job descriptions of the individuals that have been granted authority to enter information on the Registry and to delegate this authority to others to test that the names and other required information of these individuals has been submitted to the Registry, that the information submitted remains current and that these individuals do not meet the definition of an MLO as required by Section 1007.103.
- *Confirmation of MLOs* – For each individual that has been registered as an MLO, we will request documentation that the Bank has submitted confirmation to the Registry that it employs the registrant.
- *MLOs Leaving Bank Employment* – We will compare a listing of current employees with a listing of the individuals registered as MLOs to test whether the Bank has updated the registry within 30 days after a particular registrant ceased to be an employee of the Bank.

Use of Unique Identifier – We will review the policies and procedures established by the Bank for use by MLOs of the unique identifying number obtained through the Registry as required by Section 1007.105.

V. Scope of Services

Advertising Requirements

We will request the Bank's advertising records for the previous 12 months and conduct a review of a judgmental sample of advertisements for compliance with certain provisions of the laws and regulations identified below. We will also review the Bank's website for these same provisions.

<u>12 CFR Chapter X Part 1026 – Truth-in-Lending – Subpart C (Regulation Z)</u>

- 12 CFR Chapter X 1026.16 – Advertising of Open-end Credit
- 12 CFR Chapter X 1026.24 – Advertising of Closed-end Credit

<u>12 CFR Part 338 – Fair Housing</u>

- 12 CFR 338.3 – Nondiscriminatory Advertising

<u>Section 5 of the Federal Trade Commission Act</u>

Loans to Insiders (Regulation O) Review

We will review the Bank's policies and procedures to determine if extensions of credit made to insiders are made on substantially the same terms as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the Bank with other bank customers. We will review the underwriting practices of extensions of credit to insiders to determine whether they involved more than the normal risk of repayment or presented other unfavorable features.

We will review extensions of credit originated in the past 12 months to determine that lending limits had not been exceeded and that applicable approval from the Board of Directors had been obtained as specified by Section 215.4 of Regulation O.

We will review the Bank's list of overdrafts for executive officers and directors to determine if the Bank's procedures for handling overdrafts were consistent with Section 215.4(e) of Regulation O.

We will evaluate whether the Bank identified, through an annual survey, all insiders of the Bank and maintains records of all extensions of credit to insiders, including the amount and terms of each such extension of credit.

We will evaluate whether the Bank maintains records of extensions of credit to insiders of the Bank's affiliates, if any.

We will evaluate if the Bank's most recent quarterly Report of Condition and Income (Call Report) included all extensions of credit made by the Bank to its executive officers, directors, principal shareholders and their related interests as of the report date.

We will inquire whether there were any extensions of credit to executive officers and directors that were secured by shares of the Bank. If so, we will determine whether the extensions of credit had been reported annually to the Board of Directors as required by Section 215.10 of the Regulation.

V. Scope of Services

We will inquire whether the Bank had received any written requests from the public for information concerning outstanding loans to executive officers and principal shareholders. If applicable, we will evaluate whether the Bank had responded to such a request, as required by Section 215.9 of Regulation O.

We will review previous examination reports and findings to evaluate whether the Bank corrected any findings or deficiencies identified during the reviews.

Fair Credit Reporting Act and FACT Act

Obtaining Consumer Reports

Controls Over Access to Obtaining Consumer Reports – Based on a review of written policies and procedures and discussion with Bank personnel, we will assess whether each business unit whose employees have access to consumer reports have appropriate procedures and controls for ensuring that consumer reports are only obtained for permissible purposes.

Documentation of Permissible Purpose – We will request a listing of consumer reports obtained by the Bank for a specified period of time and request documentation to support the permissible purpose for obtaining the report.

Prescreened Solicitations – If the Bank requested a pre-screened list from a consumer reporting agency for purposes of making any solicitation, we will evaluate whether the resulting offer to consumers met the following requirements of Section 604(c) of the FCRA:

- Consisted of a "firm offer of credit" as defined in Section 603(l) of the FCRA.
- Contained a clear and conspicuous statement that: Information contained in the consumer's consumer report was used in connection with the transaction. The consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness under which the consumer was selected for the offer. If applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not continue to meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral. The consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer and the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under Section 1681b(e) of this title [15].
- Included the address and toll-free number of the appropriate notification system.
- Included the model format prescribed by the FTC including the sample short notice and the sample long notice.

V. Scope of Services

Duties of Furnishers

Policies and Procedures Regarding Accuracy and Integrity of Furnished Information – We will review the Bank's written policies and procedures regarding the accuracy and integrity of the information that it furnishes to consumer reporting agencies. We will evaluate whether the written policies and procedures:

- Are appropriate to the nature, size, complexity, and scope of the Bank's activities
- Incorporate the guidelines from the regulation that are appropriate to the Bank
- Incorporate procedures regarding the resolution of direct disputes

Bank Practices Regarding Accuracy and Integrity of Furnished Information – Based on discussion with Bank personnel and a review of available documentation, including relevant system parameters, we will evaluate whether the Bank:

- Refrains from furnishing any information relating to a consumer to any consumer reporting agency if it knows, or consciously avoids knowing, that the information is inaccurate.
- Promptly notifies a consumer reporting agency if it determines that it furnished information that was not complete or accurate, provides to the consumer reporting agency any corrections or additional information necessary to correct any reported information found to be incomplete, and refrains from thereafter reporting any of the information that remains incomplete or inaccurate.
- Notifies consumer reporting agencies of the month and year of the commencement of delinquency on an account that immediately preceded the account being placed for collection, charged to profit or loss, or subject to any similar action.
- Reports information as "disputed," to the extent the completeness or accuracy of the information was disputed by the consumer, even if the results of a direct dispute investigation demonstrate otherwise.

Testing the Resolution of Direct Disputes – We will review a sample of disputes received by the Bank regarding the accuracy or integrity of information contained in a consumer report regarding an account or other relationship that the Bank has or had with the consumer to evaluate whether:

- The Bank conducted a reasonable investigation, to the extent required, including a review of all relevant information provided by the consumer, and reported the results of the investigation to the consumer within 30 days of receiving the dispute.
- To the extent the investigation finds that the information reported was inaccurate, the Bank promptly notified each consumer reporting agency to which it provided inaccurate information and provided any correction to that information to make it accurate.
- To the extent the dispute is considered "frivolous or irrelevant," the Bank notified the consumer of this determination no later than five business days after making the determination.

Credit Reports for Employment – We will review a sample of employment files where applicants for employment were denied based on information contained within a consumer report to evaluate that the Bank was in compliance with the pertinent sections of the FCRA.

V. Scope of Services

Identity Theft Red Flag Procedures

We will review the Bank's written Identity Theft Prevention Program (Program) to evaluate whether it meets the criteria as shown below.

Identifies relevant Red Flags for the covered accounts that the financial institution offers from each of the following categories:

- Alerts, notifications or other warnings received from consumer reporting agencies or service providers such as fraud detection services.
- Presentation of suspicious documents.
- Presentation of suspicious personal identifying information.
- The unusual use of, or other suspicious activity related to, a covered account.
- Notices from customers, victims of identity theft, law enforcement authorities or other persons regarding possible identity theft.
- Addresses how the institution will detect Red Flags in connection with both the opening of new covered accounts and the maintenance of existing covered accounts.
- Provides for appropriate responses to each of the Red Flags the financial institution has identified that are commensurate with the degree of risk posed.
- Provides for the updating of the program periodically to reflect changes in risks to customers or to the safety and soundness of the financial institution from identity theft.

We evaluate whether the board of directors, a committee of the board or a designated employee at the level of senior management has provided for the oversight, development, implementation of the program by:

- Assigning responsibility for the Program's implementation to a specific employee or employees of the financial institution.
- Reviewing annual reports prepared by staff regarding compliance by the financial institution with the requirements of the program.
- Approving material changes to the Program as necessary to address changing identity theft risks.

We will evaluate whether the financial institution has developed a training program that has provided or will provide for, the following:

- Initial training for all appropriate personnel on the aspects of the program that apply to their job function.
- Incorporation of the program's requirements into the training provided to all new financial institution personnel.
- On-going training for financial institution personnel on an annual or otherwise reasonable periodic basis.

V. Scope of Services

We will evaluate whether the financial institution has developed an appropriate method for the exercise of oversight over service provider arrangements by using one of the following methods:

- If the Bank has elected to monitor service provider arrangements by relying on guidelines in its Information Security Policy (ISP), request and review the ISP as well as a sample of three service provider contracts entered into since November 1, 2008. We will determine whether the ISP adequately addresses service provider contracts and is the content of the contracts consistent with the ISP requirements.
- If the Bank has stated, within its program or otherwise, that it will require special contract provisions within service contracts, request and review a sample of three service provider contracts entered into since November 1, 2008. We will determine if the contracts contain the language required by the Bank's written Program.
- If the Bank uses another method to exercise oversight over service provider arrangements, we will determine if the method selected is consistent with the provisions of the Bank's program and with the requirements of the regulation.

We evaluate whether a report on the financial institution's compliance with its Identity Theft Protection Program has been made to the board of directors, an appropriate committee of the board, or a designated member of senior management on an annual basis.

We will review the most recent report submitted on the Bank's Identity Theft Prevention Program and evaluate whether the report addressed the following elements:

- The effectiveness of the financial institution's policies and procedures in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts.
- Service provider arrangements.
- Significant incidents involving identity theft and management's response.
- Recommendations for material changes to the Program

We will evaluate whether the Bank has developed and implemented reasonable policies and procedures for furnishing consumer reporting agencies with an address for consumers that the Bank has reasonably confirmed is accurate when the Bank receives a notice of address discrepancy.

We will evaluate whether the Bank has established and implemented reasonable policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and within a short period of time afterwards receives a request for an additional or replacement card.

Other Requirements

We will review a sample of employment files where applicants for employment were denied based on information contained within a consumer report to evaluate that the Bank was in compliance with the pertinent sections of the FCRA.

V. Scope of Services

We will review any written credit policies and procedures utilized by the Bank to test whether these policies and procedures reflected appropriate treatment of consumer medical information.

We will evaluate the Bank's training and other appropriate guidance it provides loan officers and other pertinent personnel on how to identify and respond to fraud and active duty alerts contained within a consumer credit report.

We will evaluate the Bank's procedures for providing consumers with the required notice that negative information may be reported to a consumer reporting agency.

We will review the Bank's practices for sharing non-transaction and experience information with its affiliates, to evaluate whether the Bank provides consumers with adequate notice of their right to opt-out of this information sharing.

We will evaluate whether the Bank had reasonable policies, procedures and processes to administer the opt-out requests of customers that did not want information being shared with affiliates.

We will review the Bank's information sharing practices to ensure they are consistent with the FCRA restrictions on the sharing of medical information.

We will evaluate the adequacy of the Bank's policies, procedures, and processes to test if they comply with the requirement to provide application and business transaction records to victims of identity theft.

We will evaluate the appropriateness of the Bank's policies, procedures and processes to test electronically generated receipts from ATMs and POS terminals or other machines do not contain more than the last five digits of the card number and do not contain the expiration dates.

V. Scope of Services

Review: Deposit-related Laws and Regulations

12 CFR Chapter X Part 1030 – Truth-in-Savings (Regulation DD)

Initial Disclosures – We will review the Bank's initial deposit account disclosures to test the Bank's compliance with the requirements of Section 1030.4 of Regulation DD. We will also compare the Bank's initial deposit account disclosures to its system parameters to test whether the disclosures are consistent with the actual terms in effect at the time of review.

Time Deposit Maturity Notices – We will review a sample of the Bank's certificate of deposit maturity notices to test their compliance with the requirements of Section 1030.5(b) of Regulation DD.

Periodic Statements – We will review a sample of periodic statements for the Bank's interest bearing consumer deposit accounts to test their consistency with the requirements of Section 1030.6, Section 1030.7 and Section 1030.11(a) of Regulations DD.

Change in Terms – We will inquire as to whether any change in terms have occurred that would have required notice pursuant to Section 1030.6 of Regulation DD and whether consumers were provided notification of such changes consistent with the regulations.

12 CFR Chapter X Part 1005 – Electronic Funds Transfers (Regulation E)

Unsolicited Access Devices – We will inquire about the Bank's practices for issuing unsolicited access devices to test whether these practices are consistent with the requirements of Section 1005.5 of Regulation E.

Initial Disclosure – We will review the Bank's initial deposit account disclosures to test the disclosure's compliance with the requirements of Section 1005.7 of Regulation E.

Change in Terms – We will inquire as to whether any change in terms have occurred that would have required notice pursuant to Section 1005.5 of Regulation E and whether consumers were provided notification of such changes consistent with the regulations.

ATM Receipts – We will review a sample receipt from 15 of the Bank's automated teller machines to test their consistency with the requirements of Section 1005.9(a) of Regulation E.

EFT Disputes – We will review a sample of 10 EFT disputes submitted by consumers to test whether they were resolved in a manner consistent with the requirements of Sections 1005.6 and 1005.11 of Regulation E.

ATM and Debit Card Overdraft Opt-in – We will review a sample of consumer deposit accounts that have incurred overdraft charges for ATM or debit card transactions to test whether the Bank has complied with the provisions of Section 1005.17 of Regulation E. We will also review the Bank's overdraft protection program in relation to guidance provided by the FDIC.

Periodic Statements – We will review a sample periodic statement for a consumer deposit account to test whether the statement contains the information required by Section 1005.9(b) of Regulation E.

V. Scope of Services

Foreign Remittance Transfer Rules – As applicable, we will review for compliance with the provisions of Sections 1005.30-36 of Regulation E.

12 CFR Part 229 – Expedited Funds Availability (Regulation CC)

Initial Disclosure – We will review the Bank's initial deposit account disclosures to test the disclosure's compliance with the requirements of Section 229.16 of Regulation CC.

Hold Notices – We will review a sample of 10 hold notices provided to consumers to evaluate whether the holds were placed and disclosed in accordance with the requirements of Sections 229.10, 229.12, 229.13 and 229.16(c) of Regulation CC.

Substitute Check Disclosure – We will inquire as to the circumstances in which the Bank provides consumer customer's with the substitute check disclosure to evaluate whether the Bank's practices are consistent with the requirements of Section 229.57 of Regulation CC.

12 CFR Part 233 – Prohibition on Funding of Unlawful Internet Gambling (Regulation GG)

We will review the written policies and procedures established by the Bank to identify and block or otherwise prevent or prohibit restricted transaction related to unlawful Internet gambling to test their compliance with the requirements of Section 233.6 of Regulation GG.

If the Bank uses due diligence procedures at the time a customer relationship is established to comply with the requirements of Regulation GG, we will review new account documentation for a sample of 15 accounts to test whether the Bank is complying with its written policies and procedures.

We will review the Bank's procedures for providing commercial customers with notification that restricted transactions related to unlawful Internet gambling are prohibited as required by Section 233.6(b)(3) of Regulation GG.

We will inquire if the Bank has had actual knowledge that a commercial customer has engaged in restricted transaction since the effective date of the regulation (June 1, 2010). If so, we will test whether the Bank responded to this knowledge in accordance with its written policies and procedures.

Advertising and Website Compliance Review

We will request the Bank's advertising records for the previous 12 months and conduct a review of a judgmental sample of advertisements for compliance with Sections 1030.8 and .11 of Regulation DD.

If applicable, we will review the Bank's rate board located at the main banking facility to evaluate the Bank's compliance with Section 1030.8 of Regulation DD.

We will review each page of the Bank's website to evaluate whether it contained the official advertising statement, *i.e.*, "Member FDIC," if required.

We will assess whether any web pages that promote nondeposit investment products refrained from including "Member FDIC," to the extent prohibited by Section 328 of the FDIC's rules and regulations.

V. Scope of Services

We will review the website's home page, and each page that promotes housing-related loans, to evaluate whether they included the equal housing lender legend and logotype in accordance with the Fair Housing Act's advertising requirements.

We will review the links to third-party websites and evaluate whether each link contains a disclosure that the Bank is not responsible for the content of the third-party website, as recommended by the Interagency Guidance on Weblinking.

We will evaluate whether the website refrains from promoting products or services in a manner that could be considered unfair or deceptive in any respect, as prohibited by Section 5 of the Federal Trade Commission (FTC) Act.

We will review the Bank's website to evaluate whether it is free of any discriminatory content.

We will review the Bank's website to determine if it promotes the Bank's overdraft protection program and, if so, evaluate whether:

- Any reference to the overdraft protection program adheres to the requirements of Section 1030 of Regulation DD.
- The Bank included the appropriate overdraft fee disclosures required by Section 1030.11(b) of Regulation DD.

If the website contains a residential loan application, we will evaluate whether:

- The information requested on the application is consistent with the requirements of Regulation B.
- The application appropriately requests government-monitoring information, if necessary.
- The website includes the adjustable rate mortgage program (ARM) disclosure and the Consumer Handbook on Adjustable Rate Mortgages (CHARM booklet), in an appropriate manner, as necessary.

If the website contained a Home Equity Line of Credit (HELOC) application available online, we will evaluate whether:

- The information requested on the application is consistent with the requirements of Regulation B.
- The application refrains from requesting government monitoring information, as required by Section 1002.5 of Regulation B.
- The website provides consumers with the HELOC application disclosure and the home equity brochure prior to providing access to the application, as required by Section 1026.5b of Regulation Z.

If the website allows accounts to be opened online, we will evaluate whether all required disclosures are being appropriately provided in accordance with the following regulations:

- Regulation E – Electronic Funds Transfers

V. Scope of Services

- Regulation CC – Expedited Funds Availability
- Regulation DD – Truth-in-Savings
- Privacy of Consumer Financial Information
- E-Sign Act

If the website provides credit card applications, solicitations or advertisements, we will evaluate whether appropriate disclosures are provided in accordance with Sections 1026.5a and 1026.16 of Regulation Z.

If the website promotes any insurance products, we will evaluate whether the disclosures required by the Consumer Protection in Sales of Insurance regulation were provided.

If the website contains open-end credit triggering terms, we will evaluate whether the required disclosures were appropriately provided, as outlined in Section 1026.16 of Regulation Z.

If the website contains closed-end credit triggering terms, we will evaluate whether the required disclosures were appropriately provided, as outlined in Section 1026.24 of Regulation Z.

If the website discloses a rate of return or an annual percentage yield, we will evaluate whether the advertising disclosures required by Section 1030.8 of Regulation DD were provided.

Branch Signage Review

We will review the Bank's official advertisement of membership signs displayed in the main Banking facility to evaluate the Bank's compliance with Section 328.2 of the FDIC Rules and Regulations.

We will review the Bank's funds availability notice posted in the main banking facility to evaluate the Bank's compliance with Section 229.18 of Regulation CC.

We will review the Bank's Equal Housing Lender Poster displayed at the main banking facility to evaluate the Bank's compliance with Section 338 of the FDIC's regulations.

We will review the Community Reinvestment Act (CRA) public file located at the main banking facility to evaluate the Bank's compliance with Section 345.43 of the FDIC's regulations.

We will review the CRA notice displayed at the main banking facility to evaluate the Bank's compliance with Section 345.44 of the FDIC's regulations.

We will review the automated teller machine (ATM) located at the main banking facility to evaluate the Bank's compliance with Section 229.18 of Regulation CC.

We will review the ATM located at the main banking facility to evaluate the Bank's compliance with Section 1005.16 of Regulation E.

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TESTIMONY OF HILARY O. SHELTON

Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy

Before the Committee on Financial Services of the
U.S. House of Representatives

On

"Preserving Consumer Choice and Financial Independence"

Wednesday, March 18, 2015

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Before the Committee on
Financial Services
U.S. House of Representatives

Wednesday, March 18, 2015

Good morning, Chairman Hensarling, Ranking Member Waters, and esteemed members of this committee. Thank you so much for inviting me here today to testify and for soliciting the input of the NAACP on this very important topic.

I applaud the convening of this hearing, to review the impact of regulation on the financial services industry and hear from industry stakeholders. I would hope, however, that at some point in the very near future you will convene a similar hearing to enable committee members the opportunity to hear from and encourage a variety of consumers, so that you may assess our needs and the impact these regulations are having on us.

Founded more than 105 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 1,200 active membership units across the nation, with members in every one of the 50 states as well as units on overseas military bases. In addition to our regular adult units, we also have youth and college units in any number of communities and schools across the country as well as units in prisons.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have served as the Director of the NAACP Washington Bureau, our Association's federal legislative and political advocacy arm, for over 17 years.

INTRODUCTION

Financial empowerment and the economic security of the communities served and represented by the NAACP has, since our inception, been a cornerstone of our agenda. "Economic Sustainability" continues to be a priority for the NAACP in that it is one of the five "game changers" (along with criminal justice, education, health, and civic participation / voting rights) outlined in the most recent NAACP strategic plan, designed to carry us through our second century in fighting against racial bias and racial and ethnic inequality. To that end, in addition to being very active legislatively on issues from supporting an increase in the federal minimum wage to opposing predatory lending of all sorts in our communities, the NAACP currently has a "Financial Freedom Center," whose purpose is to enhance the capacity of racial and ethnic minority Americans, and other underserved groups, through financial economic education; to promote diversity and inclusion in business hiring, career advancement and procurement; and to monitor financial banking practices and promote community economic development.

THE HISTORY AND THE SITUATION TODAY FACING TOO MANY RACIAL AND ETHNIC MINORITIES

In recent times, the concentration of wealth in fewer and fewer hands has become an important subject of national debate. In 1982, the highest-earning 1% of families received 10.8% of all pretax income, while the bottom 90% received 64.7%. Three decades later, in 2012, the top 1% received 22.5% of pretax income, while the bottom 90%'s share had fallen to 49.6%[1]. For the past five years, wages have risen for the wealthiest Americans while barely floating above inflation for most people[2]. Furthermore, wealth inequality is even greater than income inequality. While the highest-earning fifth of U.S. families earned 59.1% of all income, the *richest* fifth held 88.9% of all wealth[3].

Unfortunately, the crisis of the racial wealth divide has still yet to be adequately discussed. The difference in median household incomes between white Americans and African Americans has grown from about $19,000 in 1967 to roughly $27,000 in 2011 (as measured in 2012 dollars). Median African American household income was 59% of median white household income in 2011; yet as recently as 2007, black income was 63% of white income[4].

[1] Saez, Emmauel, "Striking it Richer: The Evolution of Top Incomes in the United States" U.C. Berkley, September 3, 2013.
[2] Clark, Meagan "Rising US Income Inequality Is Hurting State Tax Revenues" Standard & Poor's, September 15, 2014
[3] Wolff, Edward N. "The Asset Price Meltdown and the Wealth of the Middle Class" The National Bureau of Economic Research, November 2012
[4] Desilver, Drew "Five Facts About Economic Inequality" Pew Research Center, January 7, 2014

The wealth gap, when combined with the disparate impact of the recession of 2008, has further caused severe, disproportionate, damage to the communities served and represented by the NAACP. As was quantified in a released just this last Monday by Standard & Poor's, states are struggling to meet the demands of funding programs including education, highways, and social programs such as Medicaid[5]. This lack of state funds most hurts those who can least afford it, neighborhoods and communities which are still reeling from the recession of 2008.

The recession of 2008 was tough on most Americans, but particularly and disproportionately rough on racial and ethnic minority communities. While White Americans made up the majority of the 2.5 million foreclosures completed between 2007 and 2009 -- about 56 percent -- minority communities had significantly higher foreclosure rates.

While about 4.5 percent of white borrowers lost their homes to foreclosure during that period, African American and Latino borrowers had 7.9 and 7.7 percent foreclosure rates, respectively. That means that African Americans and Latinos were more than 70 percent more likely to lose their homes to foreclosure during that period.

Overall, African Americans lost about 240,020 homes to foreclosure, while Latinos lost about 335,950, according to an analysis of government and industry data on millions of loans issued between 2005 and 2008 -- the height of the housing boom[6].

So that brings us to today. Too many Americans, and especially racial and ethnic minority Americans, have lost their homes as well as their access to affordable and sustainable credit. As a result of the economic crisis of 2008, Congress passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. This seminal legislation addressed many of the abuses and problems which led to the 2008 crisis, including putting an end to some of the most problematic predatory mortgage lending abuses. This vital legislation also created the Consumer Financial Protection Bureau ("CFPB"), the only agency which is devoted entirely to the protection of consumers as we navigate the often confusing world of financial services.

While the 2010 law was effective, there are still too many people within the communities served and represented by the NAACP who are suffering as a result of being frozen out of the financial services market due to the lack of capital, a bad credit history, or a blanket mistrust of the financial services industry.

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[5] Boak, Josh "Wealth Gap Hurts State Budgets" *Washington Post*, September 15, 2014, p. A13

[6] Center for Responsible Lending, "Foreclosures by Race and Ethnicity: The Demographics of a Crisis" June 18, 2010 www.responsiblelending.org/.../foreclosures-by-race-and-ethnicity.html#sthash.geo75K3a.dpuf

One direct result of being frozen out of the "traditional" banking system is more of a reliance on "nontraditional," or alternative sources of capital. By "nontraditional," I am referring to check cashers, title lenders, and payday lenders, among others, which usually lend relatively small amounts of money for the short term.

The problem with many of these loans is that they end up being expensive, and even predatory, often trapping the consumer in a cycle of debt when they are already having difficulties making ends meet. Check cashers, for example, typically charge up to four percent of the face value of a check – or $20 for a $500 check[7]. And a typical payday loan borrower is indebted for more than half of the year with an average of nine payday loan transactions at annual interest rates over 400%[8].

THE ROLE OF THE CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

One key component of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* was the creation of the Consumer Financial Protection Bureau (CFPB). The NAACP has been a strong and steadfast supporter of the CFPB since its inception, as it is the only agency within the federal government whose primary charge is the protection of the American consumer.

Since its inception the CFPB has taken great steps to limit the potential harm which financial tools and companies can impart on Americans. Over the past three year the CFPB has taken dramatic steps to halt the financial abuse of American consumers by financial companies. In many cases, the victims of these abuses are people of low and moderate income (LMI). Since 80% of African American families fall into this definition, the NAACP has worked closely with and monitored the impact of the CFPB on the communities served and represented by the NAACP since its creation over three years ago.

In its first three years, the CFPB has yielded aggressive, yet at the same time measured, results. Specifically, looking at the numbers alone:

$4.6 Billion: Money ordered in relief to consumers by CFPB enforcement actions
15 Million: Consumers who will receive relief because of CFPB enforcement actions
$150 Million: Money ordered to be paid in civil penalties as a result of CFPB enforcement actions
$75 Million: Monetary relief provided to consumers as a result of CFPB supervisory actions

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[7] Kim, Anne "CFED Fact File", The Corporation for Economic Development, November 2012
[8] Center for Responsible Lending See more at: http://www.responsiblelending.org/payday-lending/#sthash.6i1AGboi.dpuf

775,000: Consumers who will receive remediation because of CFPB supervisory actions
400,000: Number of complaints CFPB has received as of July 2014[9]

More recently, we greatly appreciate that the CFPB has been very active in the area of educating consumers and policy makers of problems associated with forced arbitration clauses; of helping people who are struggling with extreme student debt; and by proposing several changes to its mortgage rules to facilitate responsible lending by small creditors, particularly in rural and underserved areas. If finalized, the proposal issued in early February of this year would increase the number of financial institutions able to offer certain types of mortgages in rural and underserved areas, and help small creditors adjust their business practices to comply with the new rules.

In addition to congratulating the agency and its employees on a job well done to date, I would be remiss if I did not also give a shout out and high commendations to the Director of the CFPB, Rich Cordray. Under Rich Cordray's leadership, the CFPB has grown in size and responsibility and it now has a staff of over 1,350 employees and is one of the most effective federal agencies in town.

RECCOMENDATIONS

As the CFPB continues to mature and define its role in the regulatory space, the NAACP hopes that they will take a stronger look at the structural racism inherent in the provisioning of credit and capital to people of color and its impact. Higher cost credit, or the lack of any credit, in the communities of color widens the racial wealth gap and concentrates African American and Latino families into areas of concentrated poverty. The NAACP feels that the CFPB, as the only federal regulator solely focused on protecting the needs of the consumer, can play a key role in helping to shrink the unacceptable wealth divide.

Regarding the availability of credit and the availability of financial services from both deposit and non-bank lenders there continues to be seen a disparate lack of access to safe and affordable credit products in communities of color. The NAACP strongly urges the CFPB to study this phenomenon and to make recommendation for its rectification.

We need to rid our neighborhoods of predators and stop the proliferation of abusive predatory lending products that strip, rather than build, financial health and wealth in our communities. While the CFPB cannot implement a nation-wide cap on interest rates (we strongly support

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[9] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau: By the Numbers" July 21, 2014 http://files.consumerfinance.gov/f/201407_cfpb_factsheet_by-the-numbers.pdf

legislation which mandates an interest rate of no more than 36% APR), the Bureau can take affirmative steps to curb abusive lending or at least expose it.

In short, the CFPB has an obligation to bring meaningful reform to the marketplace. At the same time, the CFPB must take steps to allow legitimate, non-exploitative, non-predatory credit to remain viable and readily available in every community.

Another consequence endured by families who lack access to traditional bank branches and bank accounts is the reduction of their credit profile. Credit scoring favors consumers who currently have and have had access to traditional forms of credit, such as auto and home loans, credit cards, and personal loans. Thus, once again, racial and ethnic minorities are at a disadvantage when credit scoring and credit reports are increasingly used from everything from renting an apartment to getting a job.

Finally, the NAACP pledges to continue to work with the CFPB and any other entity to ensure that credit is accessible, affordable, and sustainable to all Americans, regardless of their race, ethnicity, gender, age, or any other unique characteristic or where they live.

Thank you again Chairman Hensarling and Ranking Member Waters for calling this hearing and looking into credit access and availability. This is an extremely serious topic for the NAACP, and thus I welcome your questions or comment on this statement. Most of all, I look forward to working with you to increase the access and availability of credit in areas served and represented by the NAACP.

blueharbor bank

March 18, 2015

Congressman Richard Pittenger
224 Cannon House Office Building
Washington, DC 20515

Dear Congressman Pittenger,

Thank you for your interest in our business and in the challenges of the recent, additional, regulatory burdens.

Our general challenge is complexity. Small Banks COULD provide portfolio mortgages that would increase the credit available to all Borrowers and strengthen our communities with the resulting economic growth. However, due to the overwhelming complexity of the laws, rules and regulations we are unable to provide a wide range of portfolio products. For instance, at blueharbor bank we do not attempt to provide "non-QM" mortgages, and this significantly limits what products we can provide.

This is the scope of the complexity:

The CFPB has provided "Small Entities Guides." These have been very helpful, and I appreciate their efforts. The first one that small banks must review is the "Ability to Repay and Qualified Mortgage Rule." This guide is 56 pages. The first four pages are changes made since the guide was published. So if you read and understood the Guide originally, you now need to know the additional four pages of changes. In addition, the Guide notes:

"The guide summarizes the ATR/QM rule, but it is not a substitute for the rule. Only the rule and its Official Interpretations (also known as Commentary) can provide complete and definitive information regarding its requirements. The discussions below provide citations to the sections of the rule on the subject being discussed. Keep in mind that the Official Interpretations, which provide detailed explanations of many of the rule's requirements, are found after the text of the rule and its appendices. The interpretations are arranged by rule section and paragraph for ease 12 CONSUMER FINANCIAL PROTECTION BUREAU of use. The complete rule, as issued on January 10, 2013 and the Official Interpretations are available at http://www.consumerfinance.gov/regulations/Ability-To-Repay-and-qualifiedmortgage-standards-under-the-truth-in-lending-act-regulation-z/. Additionally, CFPB issued three final rules to amend and clarify provisions in the January 2013 Final Rule: the June 2013 ATR/QM Concurrent Final Rule, July 2013 Final Rule, and the October 2013 Final Rule."

The "Final Rule" is 185 pages long. It refers to "the Act" which is several thousand pages long.

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If you want to provide incentive pay, and most Mortgage Originators are paid on incentive, then you also need to read and understand the "2013 Loan Originator Rule Small Entity Compliance Guide." This is 80 pages, and also notes that it summarizes the rule but is not the rule.

If you provide certain types of mortgages, you must provide an escrow service for taxes and insurance. If you do so, then you must review the "TILA RESPA Integrated Disclosure Rule Small Entity Compliance Guide." This is 91 pages.

There are multiple, additional "Small Entity Guides."

When we ask our third party compliance vendors, they constantly tell us that the rules are evolving and that they are not certain of all of the rules.

Realistically, we would need a full time compliance person just for the mortgage rules to **attempt to** provide a full service portfolio program. The economics of this are not good. We are significantly limited in the mortgages that we can provide with **the Bank's owns funds and capital.**

We understand that the Wall Street securitizations, with their implied government guarantees from Fannie and Freddie, abused consumers and cost the taxpayers millions. This may be happening again with FHA guarantees. However, letting Small Bank's use their portfolio lending to increase the funds available to purchase homes only risks the FDIC's money (which comes from Bank's dues not the taxpayers.) It also increases the funds available for Borrowers to purchase homes.

If Community Banks are simply allowed to make **portfolio** mortgage loans under the extensive pre-CFPB regulatory rules, this will significant increase our ability to grow our communities and assist our customers.

Thank you again for your interest. If I or Blueharbor Bank can be of any assistance, please do not hesitate to contact me.

Sincerely,

Ira M "Don" Howe, Jr.
Chief Credit Officer

Page 73 insert for Ms. LaMascus in response to Rep. Sherman

The items NAFCU would like to see addressed in any comprehensive data security bill include:

- **Payment of Breach Costs by Breached Entities:** NAFCU asks that credit union expenditures for breaches resulting from card use be reduced. A reasonable and equitable way of addressing this concern would be to require merchants to be accountable for costs of data breaches that result on their end, especially when their own negligence is to blame. The entity that is best situated to mitigate the risk to sensitive data should be the liable party when a breach occurs.
- **National Standards for Safekeeping Information:** It is critical that sensitive personal information be safeguarded at all stages of transmission. Under Gramm-Leach-Bliley, credit unions and other financial institutions are required to meet certain criteria for safekeeping consumers' personal information. Unfortunately, there is no comprehensive regulatory structure akin to Gramm-Leach-Bliley that covers retailers, merchants, and others who collect and hold sensitive information. NAFCU strongly supports the passage of legislation requiring any business entity responsible for the storage of consumer data to meet standards similar to those imposed on financial institutions under the Gramm-Leach-Bliley Act.
- **Data Security Policy Disclosure:** Many consumers are unaware of the risks they are exposed to by providing their personal information. NAFCU believes that this problem can be alleviated by simply requiring merchants to post their data security policies at the point of sale if they take sensitive financial data. Such a disclosure requirement would come at little or no cost to the merchant, but would provide an important benefit to the public at large.
- **Disclosure of Breached Entity:** NAFCU believes that consumers should have the right to know which business entities have been breached. We urge Congress to mandate the timely disclosure of identities of companies and merchants whose data systems have been violated, so consumers are aware of those that place their personal information at risk.
- **Enforcement of Prohibition on Data Retention:** NAFCU believes it is imperative to address the violation of existing agreements and law by merchants and retailers who retain payment card information electronically. Many entities do not respect this prohibition and store sensitive personal data in their systems, which can be breached.
- **Notification of the Account Servicer:** The account servicer or owner is in the unique position of being able to monitor for suspicious activity and prevent fraudulent transactions before they occur. NAFCU believes that it would make sense to include entities such as financial institutions to the list of those to be informed of any compromised personally identifiable information when, associated accounts are involved.
- **Burden of Proof in Data Breach Cases:** In line with the responsibility for making consumers whole after they are harmed by a data breach, NAFCU believes that the evidentiary burden of proving a lack of fault should rest with the merchant or retailer who incurred the breach. These parties should have the duty to demonstrate that they took all necessary precautions to guard consumers' personal information, but sustained a violation regardless. The law is currently vague on this issue, and NAFCU therefore asks that this burden of proof be clarified in statute.