EXAMINING LEGISLATIVE PROPOSALS TO REDUCE REGULATORY BURDENS ON MAIN STREET JOB CREATORS

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

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EXAMINING LEGISLATIVE PROPOSALS TO REDUCE REGULATORY BURDENS ON MAIN STREET JOB CREATORS

Wednesday, October 21, 2015

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Randy Neugebauer [chairman of the subcommittee] presiding.

Members present: Representatives Neugebauer, Pearce, Lucas, Posey, Luetkemeyer, Stutzman, Mulvaney, Pittenger, Barr, Rothfus, Guinta, Tipton, Williams, Love, Emmer; Clay, Meeks, Hinojosa, Scott, Maloney, Sherman, Delaney, Heck, Sinema, and Vargas.

Ex officio present: Representatives Hensarling and Waters.

Also present: Representatives Hultgren, Stivers, Messer, and Green.

Chairman NEUGEBAUER. The Subcommittee on Financial Institutions and Consumer Credit will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Today's hearing is entitled, "Examining Legislative Proposals to Reduce Regulatory Burdens on Main Street Job Creators."

Before I begin, I would like to thank the witnesses for traveling to 2128 Rayburn, and making yourselves available for our questions. I also ask unanimous consent that any members of the full Financial Services Committee who are not members of the subcommittee be allowed to participate in today's hearing.

Without objection, it is so ordered.

I now recognize myself for 3 minutes to give an opening statement.

Good morning. Today, we continue the subcommittee's focus on providing regulatory relief for Main Street job creators. Throughout this Congress, we have seen examples and heard testimony about how regulatory impediments prohibit job creation, cause consolidation of community financial institutions, and decrease the choices for our consumers.

Some of the proposals we have already considered have received bipartisan support. Many of the bills before this subcommittee today are no different. For example, Representative Stivers introduced H.R. 2121, the SAFE Transitional Licensing Act, which will ensure that workers who originate mortgages at depository institutions are able to move to nondepository institutions with a minimal amount of work disruption. This bill has very broad bipartisan support on the committee and in the House.

H.R. 2473, introduced by Ranking Member Clay and I, will ensure that small credit unions are able to more easily access the secondary mortgage market to ensure their members get competitive prices and robust credit availability. This bill is especially important in light of the Federal Housing Finance Agency's (FHFA's) proposed rule changing the membership requirements of the Federal Home Loan Banks.

While not yet bipartisan, H.R. 3340, from Representative Emmer, is another important bill to be considered today. It would provide much needed congressional control over the budget of the Financial Stability Oversight Council (FSOC). While I may not always agree with FSOC, it is perfectly positioned to help coordinate multi-agency regulatory issues. I have become increasingly disappointed that FSOC has failed to provide that coordination and has instead become dominated by the Treasury and the Federal Reserve.

Some will argue that this bill will undercut FSOC's work, but that is really not the case. H.R. 3340 preserves the funding stream for FSOC in the Office of Financial Research (OFR), but requires congressional approval on how they spend the money.

Several other great bills are before our committee today to demonstrate the hard work of several of our members, and I look forward to hearing from our witnesses about how these bills will work from a mechanical standpoint, and how they will also help us achieve the policy objective of reducing regulatory burdens for our job creators.

I now recognize the ranking member of the subcommittee for as much time as he may consume.

Mr. CLAY. Thank you, Mr. Chairman.

And thank you to each of the witnesses for your insight and for your testimony today.

Much of our work in this subcommittee has been dedicated to finding common ground on regulatory relief. We have been partially successful in doing so, and today's hearing includes a number of proposals that provide real relief for Main Street, including H.R. 2473, as the chairman mentioned, a proposal that we have cosponsored.

I would caution my colleagues against proposals that have failed to attract bipartisan support and that undermine the implementation of the Dodd-Frank Act, like H.R. 2896 and H.R. 3340, or like H.R. 2287, which seeks to pressure the National Credit Union Association (NCUA) into shrinking its budget just as credit unions become more complex. Regulatory relief is a worthy objective, but it should always be balanced against broader considerations, such as ensuring the safety and soundness of our financial system, protecting the independence of our financial regulators, and supporting the implementation of Dodd-Frank.

Thank you again to each of today's witnesses. And I yield back the remainder of my time.

Chairman NEUGEBAUER. I thank the gentleman.

And now, the Chair recognizes the gentleman from Colorado, Mr. Tipton, for 2 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. I would like to thank the ranking member for holding this hearing.

Reducing the regulatory burden for Main Street job creators like small banks and credit unions is certainly an important topic and should continue to be a consistent bipartisan goal of this committee. I would like to thank our witnesses for taking the time to appear before the committee today as well.

I ask for unanimous consent to enter into the record letters from the American Bankers Association, the Independent Community Bankers of America, the Credit Union National Association, and the National Association of Federal Credit Unions supporting the Taking Account of Institutions with Low Operational Risk (TAILOR) Act.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. TIPTON. H.R. 2896, the Taking Account of Institutions with Low Operational Risk, or the TAILOR Act, which I introduced with Representative Barr, is a legislative relief effort designed to give financial regulators the ability to appropriately tailor regulations to fit a bank or credit union's business model and risk profile.

Banks and credit unions are currently regulated under a one-size-fits-all approach, regardless of the size or risk profile. This means that regulations designed and intended for big banks are also applied to small community and independent banks or credit unions imposing compliance regimens and costs that many of them find unbearable. This legislation has the support of 37 cosponsors and over 55 State bank and credit union associations.

Additionally, several regulatory agencies recognize that banks and credit unions which engage in traditional banking activities should have their regulatory burden eased. That is exactly what this legislation is intended to do. FDIC Chairman Thomas Hoenig noted that for the vast majority of commercial banks that stick to traditional banking activities, and conduct their activities in a safe and sound manner, with sufficient capital reserves, the regulatory burden should be eased.

Tailoring regulations to account for the business model, risk profile, and cumulative impact ensures a strong regulatory model that minimizes burdensome regulations. Research has also shown that one-size-fits-all regulations have made it harder for community banks' customers to obtain loans, as well as making banking and credit services more expensive for small businesses, those living in rural communities like the Third District of Colorado which I represent, and millions of American consumers and businesses that are more challenging to reach or more expensive for larger banks to service.

This legislation will reverse that trend and help small banks and credit unions focus on their communities again so that Main Street can access the credit it needs for sustainable economic growth.

Thank you, and I yield back my time.

Chairman NEUGEBAUER. I thank the gentleman.

I will now introduce our panel. Dr. Paul Kupiec serves as a resident scholar at the American Enterprise Institute. Dr. Kupiec's work focuses on the study of systemic risk and the management of and regulations of banks and financial markets.

Mr. Oliver Ireland serves as a partner in the law firm of Morrison & Foerster. Mr. Ireland's practice focuses on retail, financial services, and bank regulatory issues.

And Mr. Marcus Stanley serves as policy director at Americans for Financial Reform. Dr. Stanley's work focuses on all aspects of financial regulations with a focus on Dodd-Frank law.

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.

Dr. Kupiec, you are recognized for 5 minutes.

STATEMENT OF PAUL H. KUPIEC, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE

Mr. KUPIEC. Chairman Neugebauer, Ranking Member Clay, and distinguished members of the subcommittee, thank you for convening this hearing. It is an honor for me to testify here today.

My testimony will consider the merits of seven separate bills that are currently under consideration. In my opinion, none of these bills will magnify financial sector risks, nor will any of these bills dilute the Dodd-Frank Act's requirement for heightened supervision and regulation of systemically important financial institutions (SIFIs).

Many of these bills propose commonsense improvements to existing legislation. For example, the SAFE Transitional Licensing Act of 2015 creates a 120-day grace period during which a licensed mortgage loan originator may continue originating loans while changing jobs and applying for a new license.

The National Credit Union Administration Budget Transparency Act will approve accountability and management of the NCUA by requiring public disclosure and soliciting comments as part of the annual budgeting process.

The Community Bank Capital Clarification Act amends Section 171 of the Dodd-Frank Act so that all bank holding companies with less than $15 billion in consolidated assets will be exempt from the Dodd-Frank Act mandatory holding company leverage and risk-based capital regulations. Bank holding companies below the $15 billion threshold as of December 2009 were exempted in the Dodd-Frank Act because they were not seen as a threat to financial stability. I do not see why similarly sized institutions would pose a threat today.

The Preserving Capital Access and Mortgage Liquidity Act of 2015 allows credit unions under a billion dollars to join the Federal Home Loan Bank (FHLB) System without meeting the FHFA's proposed mortgage threshold rules. This amendment would merely put the FHLB membership requirements for credit unions on par with those of small banks.

The Financial Stability Oversight Council Reform Act places the Office of Financial Research under the normal congressional appropriations and oversight process. The OFR should have been subject to these procedures from the beginning.

Two proposed bills are more involved and require a bit more explanation. The TAILOR Act of 2015 requires bank regulatory agencies to modify their supervision and regulation practices so that they are appropriate for the risk profile of smaller institutions. There is a legitimate concern in Congress that the Dodd-Frank Act includes new heightened standards for supervision and regulation that were intended for larger institutions but instead are being applied to all regulated depository institutions.

The TAILOR Act requires regulators to modify their one-size-fits-all approach to regulation and reduce regulations and processes that are burdening smaller institutions with unnecessary and unproductive compliance costs. Regulators must explicitly recognize the need to tailor regulations and supervisory processes and reflect this tailoring in their examination manuals and notices of proposal rulemaking.

The final bill I will discuss, H.R. 2209, requires the banking agencies to amend their Liquidity Coverage Ratio (LCR) rule to give low-risk, highly liquid, State and municipal bond obligations treatment that is consistent with their liquidity characteristics. The LCR requires large banks and bank holding companies to hold a sufficient quantity of highly liquid assets (HQLA) to enable them to survive a hypothetical month-long bank run. The LCR has specific requirements that determine which bank assets count as HQLA. The final LCR rule does not recognize State or municipal bonds as HQLA, so they have no value toward satisfying the LCR requirement.

Many public comment letters recommended that investment grade liquid, State, and municipal securities be included in HQLA. The reasons for counting State and muni securities in HQLA include the fact that many of these bonds are at least as liquid as the corporate bonds that are eligible for HQLA treatment, many have higher ratings and better liquidity than some of the foreign bonds that are also eligible for Level 1 and Level 2 assets in the HQLA, and many asset-specific characteristics for the Level 2 and Level B requirements are met by many State and municipal bonds.

There is concern that the exclusion of State and municipal bonds from the definition of HQLA will damage muni market liquidity as banks will no longer favor holding these issues. In May 2015, the Federal Reserve Board proposed amending its LCR rule to recognize State and municipal bonds as Level 2 assets, which would count as HQLA.

H.R. 2209 will require the Federal banking agencies to revise the final LCR rule to include qualifying State and municipal bonds as Level 2A assets in the definition of HQLA. This change is appropriate and consistent with the public interest. I would go further and recommend that State and municipal bonds that satisfy the characteristics required by Level 2B assets should also be recognized in HQLA.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Kupiec can be found on page 50 of the appendix.]

Chairman NEUGEBAUER. Thank you.

Mr. Ireland, you are recognized for 5 minutes.

STATEMENT OF OLIVER IRELAND, PARTNER, MORRISON & FOERSTER LLP

Mr. IRELAND. Thank you, Chairman Neugebauer, Ranking Member Clay, and members of the subcommittee. I am pleased to be here today. My name is Oliver Ireland. I am a partner in the financial services practice at Morrison & Foerster here in town and previously was an Associate General Counsel with the Federal Reserve Board. I was with the Federal Reserve System for 26 years before joining private practice. I currently have more than 40 years experience dealing with bank regulatory issues.

Today, the subcommittee is considering seven different proposals that cover a broad range of issues. My testimony will touch on each of them. I look forward to questions and to drilling down on details at the subcommittee's pleasure.

The TAILOR Act, H.R. 2896, would address the problem of regulatory burdens on smaller institutions due to requirements designed for larger and more complex institutions. Many of the provisions of the Dodd-Frank Act tried to differentiate between larger and smaller institutions, some of them in the statute, some of them in the regulations, but there is nevertheless a trickle-down effect on smaller institutions.

Smaller institutions remain subject to some very complex rules, including things such as the Volcker Rule, and while in practice it shouldn't apply to any of their activities, they still have to understand the Rule in order to be sure that it doesn't. So I think the TAILOR Act is another step to try to address regulatory burden on smaller institutions. I think it is an important step.

H.R. 2987, the Community Bank Clarification Act, would expand the grandfather for capital instruments for under-$15 billion institutions. This is a technical change to the current statute. Drafting legislation, particularly in a response to a crisis such as the recent financial crisis, and creating the Dodd-Frank Act is hard work. There are bound to be technical issues. This is one of the technical issues, it is a cleanup, and I can't see why there should be any controversy with respect to that provision.

H.R. 2473, Preserving Capital Access and Mortgage Liquidity, expands credit unions' access to Federal Home Loan Bank membership and Federal Home Loan Bank borrowing and should promote credit union lending to smaller businesses, smaller farms, and community development organizations, and I think that is also desirable.

H.R. 2121 is the SAFE Transitional Licensing Act and deals with mortgage originator licensing under the SAFE Act and facilitates the movement of mortgage originators, individuals, from depository institutions to nondepository institutions and between States. I understand that there is perhaps a subsequent discussion draft of that bill, and there may be technical issues that need to be worked out, but I think the thrust of the proposal is good and will improve competition among mortgage originators, and competition improves quality.

H.R. 2287 deals with budgetary transparency for the NCUA. I understand that bank regulators don't necessarily like to have their budgets scrutinized. I lived as a bank regulator for a long time, and I think at least the bank regulatory budget ought to be something that people are aware of and understand the purposes of and understand what is going on, and I am for budgetary transparency.

H.R. 2209 deals with municipal obligations under the Liquidity Coverage Ratio. I think that the failure to include municipal obligations as high-quality liquid assets in the current rules will adversely affect the liquidity of those obligations and will almost inevitably adversely affect the pricing of those obligations, making it more difficult and more expensive for States and municipalities to raise funding going forward. And as my colleague Dr. Kupiec pointed out, the risks of expanding high-quality liquid assets to pick up these assets are minimal.

The Financial Stability Oversight Council Reform Act again is budgetary transparency and budgetary accountability for the Office of Financial Research. I think the people of the United States have a right to know how their money is being spent and oversight over that money, unless there are serious issues that the political process will impair those functions, which I don't see here.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Ireland can be found on page 42 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman.

Now, Mr. Stanley, you are recognized for 5 minutes.

STATEMENT OF MARCUS STANLEY, POLICY DIRECTOR, AMERICANS FOR FINANCIAL REFORM (AFR)

Mr. STANLEY. Thank you. Chairman Neugebauer, Ranking Member Clay, and members of the subcommittee, thank you for the opportunity to testify before you today.

AFR opposes H.R. 2287, H.R. 2896, and H.R. 3340. We also have some concerns regarding H.R. 2209. We have no views on the other bills under consideration today.

The TAILOR Act would mandate that Federal banking regulators tailor regulations to the risk profile of regulated institutions. We view the specific requirements in this legislation as unnecessary, as regulators are already scaling rules to the business model of affected institutions.

We also view several of the provisions in this bill as potentially harmful. H.R. 2896 requires Federal financial regulators to limit the regulatory impact costs and burdens to regulated institutions. This broad and vague mandate prioritizes reducing the cost of regulation over the offsetting benefits gained for consumers and the general public. It would apply to all regulated entities and is not limited to community banks.

While the requirements in H.R. 2896 sound reasonable in the abstract, their practical effect would be to layer additional requirements on an already lengthy and cumbersome rulemaking process and to create numerous litigation opportunities for the financial industry to challenge regulation in court based on the extremely broad and vague mandates in this legislation.

H.R. 3340 would eliminate the independent funding for the Financial Stability Oversight Council and its research arm, the Office of Financial Research, and also require that the OFR provide an advance comment period prior to issuing any report.

The FSOC and the OFR were created as a direct response to the grave weaknesses in the financial regulatory system that were revealed in the 2008 financial crisis. The inability to provide unified and coherent oversight of nonbank financial institutions, as well as the financial system as a whole, contributed directly to the financial crisis of 2008 and its disastrous impact on the U.S. and world economy.

Political independence is crucial to the work of the FSOC and the OFR. While there are many checks and balances built into the process of FSOC designation, including multiple appeal opportunities and the ability to challenge FSOC designation in court, the potential micromanagement of financial risk assessment through the congressional appropriations process should not be one of them.

The importance of impartial risk assessment is the reason why all of our major bank regulators, including the FDIC, the OCC, the Federal Reserve, and the CFPB, are independently funded outside of the congressional appropriations process.

The bill's requirement that the OFR solicit public comment prior to issuing reports on financial risk would also limit the independence of the agency and its ability to objectively assess risk, free of outside pressures.

H.R. 2287 would require the National Credit Union Administration to make drafts of their agency budget publicly available for comment and to respond to or incorporate such public comments in their final agency budget. We believe the budgetary requirement in H.R. 2287 is inappropriate for a public regulatory entity. The NCUA has the crucial role of safeguarding the taxpayer guarantee of publicly insured credit union deposits. It requires independence from those it regulates.

While credit unions certainly did not cause the 2008 crisis, it is still important to remember that significant public action was required during that period to rescue the credit union system. This included the seizure and closure of several large credit unions and the issuance of over $30 billion in government-guaranteed bonds to stabilize the system.

H.R. 2209 would mandate that banking regulators classify investment grade municipal debt obligations as liquid assets under the Liquidity Coverage Ratio. AFR shares concerns regarding the treatment of municipal debt in the LCR rule and raised similar concerns in our comment to regulators. However, we believe that given existing regulatory efforts to address this issue, and the apparently quite limited impact of the LCR rule on the municipal debt market, it is more appropriate to leave this issue to regulatory action rather than act through statute.

In relation to the FSOC, which is related to the H.R. 3340 bill being discussed today, I would also like to mention another piece of legislation, H.R. 1550, that while not included in today's legislation, may also be marked up by the committee soon. This legislation would at least double the time it takes for the Council to designate a large financial firm from the current 2 years to at least 4 years, and it could create a situation where a large financial firm that is skilled at manipulating the process could delay increased regulatory oversight almost indefinitely.

FSOC designation is already a multiyear process that includes some 10 major steps and multiple opportunities for appeal. Given the importance of the FSOC, Congress should reject legislation like H.R. 1550 that would bog down operations even further.

Thank you.

[The prepared statement of Mr. Stanley can be found on page 58 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman.

I will now recognize myself for 5 minutes for questions.

I want to go to H.R. 2209, the municipal securities as high-quality liquid assets. It was mentioned that in the current rule that high-quality investment grade municipals would not be HQLA. And so I think one of the questions that comes from that is—and I will start with you, Dr. Kupiec—what are the consequences to these municipals and to States if these investment grade municipals are not allowed to be high-quality liquid assets?

Mr. KUPIEC. Thank you. Any rule that limits a large set of financial institutions' ability to hold these kind of instruments cannot be a good thing for the State muni bond markets. It has to increase the rates they pay on new issues. The liquidity rules singling out types of instruments that can't be used to satisfy a liquidity requirement is like a feedback loop. If you can't buy the bonds, banks aren't going to buy the bonds, and the liquidity in the bond market will go down. There will be ramifications.

The bill under consideration—all it asks for is that if the bonds actually satisfy the specifications in the rule that would make them eligible for Level 2A or 2B status, they ought to be recognized. The rule is very explicit about the liquidity criteria. So if the bonds meet the liquidity criteria, why aren't we recognizing them? It seems to me a fairly straightforward way to improve the Liquidity Coverage Ratio.

Chairman NEUGEBAUER. Mr. Ireland, you said in your testimony that the demand for these securities generated by the designation would create liquidity and result in lower cost of funding. Can you also elaborate, then, on how this designation can increase the demand by the banks for these municipal securities?

Mr. IRELAND. I think a key feature is looking at the market liquidity and banks' investment incentives under the Liquidity Coverage Ratio in conjunction with other rules. For example, the leverage ratio in the capital rules, and particularly the supplemental leverage ratio for larger institutions, to the extent that it is binding, tends to discourage institutions from holding lower-yielding high-quality bond assets because it places the same capital charge on those assets as it places on higher-yielding loan assets, for example.

So as you are looking at your balance sheet, the larger banks are discouraged, essentially, from holding municipal securities because of some of the capital rules, and they will have an incentive, however, to hold securities that satisfy the Liquidity Coverage Ratio rules, and things that are similar but aren't listed in the Liquidity Coverage Ratio rules will suffer significantly. And I think you are going to start to see a cliff effect at the line between those eligible high-quality liquid assets and things that aren't. And so you are making the market through the rules, and if you leave the munis out of the rules, I think it is inevitable, as Dr. Kupiec has said, going to cost municipalities and States money and their funding.

Chairman NEUGEBAUER. It appeared to me that there were really kind of two losers, and that one is the States and municipalities, but also the banks. In this very-low-interest rate environment, a few basis points makes a big difference. And obviously, the municipals have two advantages to them, one a little bit higher yield, and the other is the tax consequences of not being taxable also enhance that yield a little bit.

Mr. IRELAND. I think it adversely affects everybody concerned.

Chairman NEUGEBAUER. Mr. Stanley, you mentioned in your testimony that there were some important safeguards in H.R. 2209 that you were complimentary of, so would you elaborate a little bit on those?

Mr. STANLEY. Yes. Dr. Kupiec mentioned those safeguards, that the legislation does specify that in order to be eligible muni bonds would have to satisfy the rules for liquidity, marketability, and being investment grade. And I thought it was good that that was specified in the statute.

Chairman NEUGEBAUER. I thank the gentleman. I don't really have enough time for another question, so I am going to recognize the gentleman from Missouri, the ranking member of the subcommittee, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Stanley, could you describe the regulatory capture concerns that are created by a process where credit unions are shaping their regulators' budget?

Mr. STANLEY. Yes. The concern is that the regulated entities, in this case credit unions, would have an incentive to take risks with insured deposits, and the NCUA, of course, is in a supervisory role to ensure that they don't do that. So there are differing interests there. And if regulated entities could effectively punish their regulator for stringent supervision, for preventing them from taking risks that might profit the credit union but risk those insured deposits, then they could use the budget process to do that.

Mr. CLAY. So H.R. 2287, if adopted, sets a dangerous precedent for other prudential regulators?

Mr. STANLEY. Absolutely. These are not self-regulatory bodies. They are public regulatory bodies protecting the public interest and protecting potential taxpayer exposure on insured deposits, and it is very important to keep that line clear.

Mr. CLAY. What lessons did we learn from the financial crisis concerning the dangers of captive regulators and excessive industry influence on the budgets of prudential regulators?

Mr. STANLEY. I think there were many, many lessons. Regulators clearly ignored a massive buildup of systemic risk throughout the financial system. There appears to have been this kind of bidding process between different regulators where agencies like the Office of Thrift Supervision let it be known that they were more lenient as regulators in order to get the budgetary advantages of supervising particular entities.

And in retrospect, the failures of risk management and the failures of regulators to spot these risks building up in the system were just egregious, and there is a lot in Dodd-Frank instructing and requiring regulators to take stronger action, and we need to not roll that back.

Mr. CLAY. Is there any reason to believe that the credit union industry won't seek the same kinds of reductions in the NCUA supervisory resources that they sought from 2001 to 2009 when the NCUA held predecisional budget hearings?

Mr. STANLEY. Yes, that is a great example. I was speaking more broadly about the financial crisis, but in the specific case of credit unions, the NCUA actually had fewer supervisors in 2009 than they did in the year 2000, despite the growth of the financial sector, and we had a major crash of the credit union system in 2009 and 2010 which required large-scale public intervention. So that is a lesson we need to learn from.

Mr. CLAY. All right. At this point, Mr. Chairman, I have no further questions and I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

I recognize the gentleman from New Mexico, the vice chairman of the subcommittee, Mr. Pearce, for 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman.

I appreciate each of you and your testimony.

Now, one of the things that we have been wrestling with in our State is that the Dodd-Frank regulations were intended for the large institutions but they bleed down to the smaller ones because it's impossible in the mindset of regulators to have two different mindsets when you walk in, so they are going to hold to the tighter regulations.

Mr. Kupiec, are you familiar with any of the effects that this is having on financial institutions in the smaller rural States, ones without the big megabanks?

Mr. KUPIEC. I am familiar with the general process you described, having worked for a bank regulatory agency for many years. I am not particularly familiar with anything that is going on in any particular institution.

Mr. PEARCE. Thank you.

Mr. KUPIEC. The process, though, is kind of very natural. Within the bank supervisory community, the supervisors who are in charge of the largest institutions are generally thought to be sort of the best and the brightest. They are the top of the class, the ones who get promoted, the ones who move up in the agencies. And this sort of creates this standard that all the other examiners want to do exactly what the guys in the big institutions and women in the big institutions are doing.

There is this very natural process where the regulations imposed on the—the most complicated regulations are the ones that everybody wants to use because it sort of promotes the examiner's career path. So there is a real sort of social force here that makes the more complex regulations feed down into the smaller institutions. It is pervasive in the way the examination process works.

Mr. PEARCE. If you have been inside the room doing the process, then maybe I would like to hear your observation on Mr. Stanley's assertion that tailored rules will limit the regulatory compliance impact, cause liability, other budgets, and it will mandate the prioritization of the cost of regulations to financial institutions over the offsetting benefits to the consumers.

Because I see that playing out exactly the opposite way. There is nobody from a big institution in New York who is going to come out and give a loan for a mobile home in my district, and 50 percent of the houses in my district are mobile homes. And so, there are people like Mr. Stanley who would say, no, they all have to come by the same rule, and it is not really unfair to the small people. Banks are closing at an alarming rate in the smaller States, in the smaller rural communities, and there is nobody coming from Washington, D.C., to give small business loans and to lend money for trailer houses.

So I would like your observations on his comments that that would somehow disenfranchise the consumers out there. It looks like putting them under the bigger regulatory standards of the big institutions is actually what is disenfranchising the consumers. Would you like to comment?

Mr. KUPIEC. I would say a good example of this is the rules that were promulgated by the Consumer Financial Protection Bureau (CFPB) on the mortgage underwriting standards, where small bankers in small towns have to adopt what were essentially the same practices that the largest banks would use to document all kinds of processes when, in fact, in a small town those things may not be the right way to underwrite mortgages, that they took basically a computer-driven underwriting standard that would apply in the largest shops and forced those standards to be reflected in the smaller banks. So that is exactly the kind of problem that these rules cause, and it does force smaller banks out of the business.

Mr. PEARCE. But you as a former regulator confirm that your observation is that the people who percolate to the top in the regulatory field are going to be the ones who come from the big institutions, and they have that bias towards everyone following the same rule, and so you are confirming that.

Mr. Stanley, I would love to hear your observation as to why we in the small community shouldn't be screaming at the process which is eliminating our access to capital. The poor people in New Mexico are not going to be able to get a loan off of Wall Street, believe me. When you succeed, and people with your viewpoint succeed in shutting us down, we have nothing else. So I would appreciate your observations.

Mr. STANLEY. Let me say, first of all, to take the case of the CFPB, the CFPB did provide extensive exemptions for small banks and banks in rural communities from those underwriting provisions, the qualified mortgage provisions that Dr. Kupiec refers to. And I would also say, if our concern is, say, banks under a billion dollars, which make up a very substantial portion of community banks and are, I think, the community banks where we have the economic issues, let's limit these bills to banks under a billion dollars; let's put size limitations on these bills.

Mr. PEARCE. Mr. Chairman, before I yield back, and I appreciate that, but those safeguards that were put into the bill you hear are being routinely ignored because the bias inside the agency says so.

Again, I yield back. And I appreciate your response, sir.

Chairman NEUGEBAUER. The gentleman's time has expired.

I now recognize the gentleman from Texas, Mr. Hinojosa, for 5 minutes.

Mr. HINOJOSA. Thank you, Chairman Neugebauer and Ranking Member Clay, for holding this hearing.

And thank you to those distinguished panel members for your appearance and testimony here today.

Small businesses and Main Street are the lifeblood of our economy. We should be doing everything we can to ensure that Main Street America is able to prosper.

Sadly, however, this Congress is going down a path fundamentally hurtful to Main Street. While this committee examines legislative proposals aimed at helping Main Street, the House today considers H.R. 692, the Pay China First Act. This H.R. 692 is nothing but default by another name. Moreover, adding insult to injury, H.R. 692 mandates that we pay foreigners instead of American servicemembers and veterans.

Rather than acting responsibly, this Congress prefers to play Russian roulette with our economy and the lives of millions of Americans. Raising the debt ceiling does not increase the deficit nor authorize new spending. It merely pays the bills this Congress has already authorized. Raising the debt ceiling is the only responsible thing to do, in my opinion.

My first question goes to Paul Kupiec. H.R. 2209 would consider muni bonds that are liquid and readily marketable, as well as investment grade to be treated as Level 2A liquid assets. The banking regulators appear to have been unable to fairly or effectively differentiate between municipal securities.

So by skirting the regulatory process, is Congress essentially picking winners and losers between financial asset holdings for banks and financial institutions?

Mr. KUPIEC. Thank you very much for the question.

I don't think that Congress is necessarily stepping in to pick winners and losers. What I think they are doing is stepping in to encourage the bank regulators to actually pay attention to this problem.

As I mentioned, in May the Federal Reserve Board introduced a notice of proposed rulemaking to allow munis to be considered as Level 2B assets, even though they passed the final rule the prior October and didn't permit muni assets in. So, the Federal Reserve Board has started to rethink the rule and change the rule. And what the committee has merely said was, this is a good idea, speed it up, but if they qualify as Level 2A assets, why aren't you counting them as 2A assets then?

Mr. HINOJOSA. Let me ask you then, of the more than 90,000 municipal insurers—that includes States, cities, schools, and hospitals—which municipalities do you think would qualify as liquid, readily marketable, and investment grade? Give me a few examples.

Mr. KUPIEC. I couldn't give you names right off, but I am sure that you want me to say it is the larger municipalities and States, and I would have to agree, that is probably the case.

Mr. HINOJOSA. Those in small communities like mine and that of the former speaker, I think that we are very concerned that the small ones would be hurt.

Let me ask you this last point. NCUA, did they voluntarily between 2001 and 2009 lead to a substantial reduction in the NCUA budget during that period and leave the agency insufficiently resourced to respond to the credit union failures during that 2008 financial crisis?

Mr. KUPIEC. I am not versed in what happened internally in the NCUA over that time, but I would say that all of the financial regulators were unable to respond to the crisis. So I don't think it was particularly a unique situation in NCUA, and I am not sure just allowing budgets to be produced without any public accountability or with public knowledge fixes the problem.

Mr. HINOJOSA. Mr. Oliver Ireland, the TAILOR Act would require the Federal regulators to engage in additional—is my time up? I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

The gentleman from Missouri, the chairman of our Housing and Insurance Committee, Mr. Luetkemeyer, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

I would like to start out with talking about H.R. 2987, the Community Bank Capital Clarification Act, and I think basically it is kind of a unique piece of legislation, because I think it addresses a unique problem here from the standpoint that within Dodd-Frank, there is a problem that has arisen with regard to trust-preferred securities that are used as Tier 1 capital or count toward it.

Dodd-Frank stuck in there a date of any bank holding company that is $15 billion or more at that point in time goes into a separate set of rules and those under don't. And what happens if the institution gets rid of its Tier 1 trust-preferred securities is they get to fall back, and there is no provision for that to allow to happen, so they are kind of stuck in limbo here, is my understanding.

And so, Mr. Ireland, I want to ask you if my interpretation of that is correct, and what kind of institutions are going to benefit from this bill?

Mr. IRELAND. First of all, I think your interpretation is correct. I think it is basically a drafting glitch in the original Dodd-Frank Act. And an institution that downsized since 2009, the 2009 grandfather date in the bill, and was above $15 billion in the holding company before that and became below $15 billion afterwards because perhaps they sold off some of their units or for other reasons, they are now a smaller institution, but they don't get the same treatment as other smaller institutions. And I just don't see the logic to that difference.

Mr. LUETKEMEYER. Mr. Stanley, is there any meaningful advantage to examine the bank's capital adequacy at a date back in time like this?

Mr. STANLEY. Excuse me, I didn't quite hear the question.

Mr. LUETKEMEYER. Is there a meaningful advantage to examining a bank's capital adequacy going back in time to a historic date like this?

Mr. STANLEY. We don't have views on this legislation and we don't have an objection to it, I don't think.

Mr. LUETKEMEYER. You realize then it is a glitch, and we need to fix the problem so that those banks which are inadvertently caught in this trap can get this thing fixed?

Mr. STANLEY. I think that $15 billion line is one example of many, many places in Dodd-Frank where there was an attempt to restrict the impact of these new rules and regulations to larger banks. And if you have a bank that is now legitimately a smaller bank, I think that it makes sense not to apply it.

Mr. LUETKEMEYER. I appreciate your support. Thank you.

I know that the gentleman from Colorado has a great bill I think here, the TAILOR Act, and I don't want to steal his thunder, but I do have one comment about this bill because I think it is extremely important that, in my judgment, what he is trying to do here is within 3 years, have the agencies revisit the rules that they have implemented since the passage of Dodd-Frank. And to me, this is just common sense.

Any time you do anything in the business world, you are constantly reviewing to make sure that the decisions you made are accurate, the decisions you made actually work. In this situation, what we are trying to do is take a commonsense approach to these rules and have the regulators go back and take a look at them. Maybe they need to be strengthened. Maybe they need to be weakened because they are too tough. But we won't know unless we review them and find out the impact, because none of these rules were created with an impact statement, with any sort of cost-benefit analysis, they were all just thrown out there in this bill. And it has been 5 years, so let's stop and think about this.

So I know, Mr. Kupiec and Mr. Ireland, both of you had some very positive statements to say about the TAILOR Act. I wonder if you would like to, Dr. Kupiec, make a couple more judgments on it?

Mr. KUPIEC. I just think it is a good idea to move forward, to put the regulatory agencies on notice that you do expect the rules to reflect the risk profile. And I can't see why this isn't a good idea.

Mr. LUETKEMEYER. It is interesting, because I think the regulators, when they go in and examine, they are going to require that the banks review their loan files, their loan documents, on a regular basis, so why shouldn't the regulars go back and look at the rules on a regular basis? It makes sense to me.

Your opinion, Mr. Ireland?

Mr. IRELAND. This is an old problem. We have had this for decades that the regulatory system focuses on the larger bank problems, the burdens trickle down to the smaller banks, and the regulators, trying to solve the bigger problem, don't adequately adjust for the impact on smaller banks. There are numerous examples of legislation trying to fix the problem, but it is still here and we haven't fixed it. And I think everything Congress does to draw attention to it is beneficial to small banks, small businesses, and the customers they serve.

Mr. LUETKEMEYER. Thank you. And I yield back the balance of my time, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

And now, the Chair recognizes the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you very much, Mr. Chairman.

These seven legislative proposals that we are considering today serve, in my opinion, as a positive step to help reduce many of the regulatory burdens. But I am particularly supportive of H.R. 2287, which would require the National Credit Union Administration Board to submit a detailed draft of their budget to the Federal Register for comment and hold public hearings.

Now, I think it was about a month or so ago that NCUA Chair Debbie Matz appeared before this committee and gave us some very interesting testimony. But the record will reflect that her testimony revealed a very severe need for our particular legislation, because our legislation would simply have the NCUA be held accountable for its budget and would allow the credit unions that they represent to take a more active role in its budget decisions.

And I believe that our bill, with Representative Mulvaney providing the leadership, will do just that. It is very necessary, from her testimony, to really show how crucial it is to do this so that we can build a more positive relationship between the NCUA and the credit unions that it represents.

And so I wanted to make that clear, Mr. Chairman, because this is one time that a hearing has produced a great need for legislation, and this committee has, under the leadership of Representative Mulvaney, provided just that leadership, and I am proud to work with him on it.

Mr. Ireland, I am concerned about smaller banking institutions and the larger banking institutions. Could you explain more about the stratification that smaller banking institutions experience regarding trying to implement risk-based models compared to our larger banking institutions?

Mr. IRELAND. Sure. The problem, and we have seen this now, we have seen constant consolidation in the banking world. Banks keep getting bigger over time. One of the things driving this is the regulatory cost of being a bank and doing compliance. And if you are a smaller bank, you have to understand the regulations you have to comply with and you have to put in place compliance programs, and that is even if the rules, like the Volcker Rule, are designed for much larger banks, you are still not completely exempt. And then you have to spread the cost of that regulatory compliance effort over a much smaller base, and so it drives up the cost to the smaller banks and makes it less economic for them to operate.

A $500 million bank can't proprietary trade under the Volcker Rule. How can a $500 million bank tell whether or not it is proprietary trading, since it doesn't have the money to sit down and read that 800-page Federal Register notice and sort out the 2,500 or 3,000 footnotes in it? So the burden on smaller banks is disproportionate to the burden on larger banks.

Mr. SCOTT. And there is another bill that I think is also very important, and that is Representative Stivers' H.R. 2121 concerning the difficulties that loan originators face when moving to another State or seeking a license. Could you give me some examples of those difficulties, Mr. Ireland or Mr. Kupiec or Mr. Stanley, any of you?

Mr. IRELAND. I would be happy to address that. One of the problems is that you have to become licensed as a loan originator if you are not in a bank. You have to be registered if you are in a bank. So if you are in a bank, if you work for a bank as a mortgage loan officer and you want to move to a nonbank, you have to become licensed, and there is going to be a delay in that process. And what this bill would do is provide a 120-day transition period so you can work while you get the license as you move to the nonbank provider, and the same kind of things work in moving from one State to another.

Fostering mobility among individual loan originators, people who work in the business, fosters competition and is going to make the system work better. And so I think this kind of thing makes a lot of sense. There are in this bill and in the other bills some details that may need to be worked out, but I think moving in this direction is something that the committee wants to do.

Mr. SCOTT. Thank you, Mr. Ireland.

Chairman NEUGEBAUER. I now recognize the gentleman from South Carolina, Mr. Mulvaney, for 5 minutes.

Mr. MULVANEY. I thank the chairman and the ranking member. I also thank Mr. Scott for his input on H.R. 2287, which I want to review very briefly. I wish Mr. Hinojosa was still here. He had asked a question earlier about the NCUA budget from 2001 through 2009, and I think he implied in his question that the budget had gone down to the point where the NCUA was not able to deal with the financial crisis.

I am looking at the numbers from 2002 through 2009, and they didn't go down, and I haven't heard anybody here claim that they were unable to deal with the financial crisis. In fact, everything I have heard about the credit unions is they weren't really part of the financial crisis to begin with, that they may have faced some challenges that came with the larger overall declining economy, but certainly they were not at the epicenter of the difficulties.

I wish that he was here to hear that because I think that concern—and the reason he raised it, by the way, for those of you who follow H.R. 2287, is that the NCUA is now claiming that if we have to go back to the system we had between 2001 and 2009, they won't have enough money, that additional insight and oversight by the folks who pay the bills will effectively drive the regulator out of business.

That is simply not the case with the historical numbers from the period of time when they used to do that. They used to have that type of oversight, from 2001 to 2009, and when Chair Matz came in, she stopped that process. So just to set the record straight, we don't have a problem historically. There is no correlation between oversight and participation and the NCUA not being able to do its job.

Now with that, there is another complaint, Mr. Ireland, that Chair Matz is making now, which is that if you go back to the old system it will cause the agency to—will jeopardize the agency's policy independence. How would you respond to that, sir?

Mr. IRELAND. I don't think transparency without control jeopardizes their independence. So if what you are saying is you are going to make your budget public, you are going to solicit comments on your budget, and you are going to respond to your budget, that puts you through a discipline to justify what you are doing. It doesn't cede control of the budget to somebody else. It doesn't mandate reductions in the budget. I think that adds discipline to the budgetary process, and I think the NCUA and, quite frankly, the rest of the bank regulators in their bank supervisory activities can only benefit from that kind of discipline.

Mr. MULVANEY. And again for people who are not familiar with the issue, the money to run the NCUA right now comes from the credit unions. Since credit unions are owned by their members, it is actually the members' money that is going to fund the oversight. And without the participation of the credit unions, there is actually nobody there watching after the members' money. Not us and not them. It is sort of the reason we have introduced H.R. 2287.

I do want to point out for the record that Chair Matz has offered to have a public hearing. She just announced it this past Friday. But I understand she will not be publishing the budget before that hearing. Even though she said she would welcome questions about the budget, she is not going to publish it.

By the way, when she was here last time, she promised us that would be on the website, and I don't know how you reconcile those two things. If it is not available before the meeting, I am not sure what the meeting is. I also understand that at least one board member was not made aware of that meeting. And that is the type of atmosphere that I think is unhealthy when we have Federal regulation.

Mr. Stanley, I will press you on one issue, because you have checked in on the other side of this issue, which is you think the NCUA should be outside of what you call—should be free from politics, I think were your words. If I am misstating that, please let me know, but that is what I have in your testimony, that it should be free from politics.

Let me ask you a question. Let's put FSOC and NCUA aside. What other Federal agencies would you like to see free from politics?

Mr. STANLEY. I am not sure it was free from politics exactly, but I think the issue is that the entities that an agency regulates are only a small portion of the entire public interest. They are just one aspect of our economy and of our public. And there is often—there is a broader public interest. For example, the NCUA has oversight over insured deposits, and there may be exposure to the U.S. Treasury if there are sufficient losses on those insured deposits. So, there is a public interest that is different there.

Mr. MULVANEY. I am not disagreeing with you, but how would more transparency and participation in the budget process put that in jeopardy?

Mr. STANLEY. I think there is already extensive transparency in the NCUA budget. They put up a very extensive justification of their budget and all the details of their budget numbers on their website. I think what this bill seems to call for is the involvement of regulated entities.

Mr. MULVANEY. It is not available to the folks before this meeting next week. How can you say that?

Mr. STANLEY. I think that when they finalize their budget, it is available. People can see what that budget is and what that justification is, and certainly they can raise an issue. I think the issue is bringing regulated entities into the process of setting the budget in advance.

Mr. MULVANEY. Fair enough. We are a regulated entity. We represent the taxpayers, and we bring the taxpayers into the process of looking at their regulators' budgets every single day. It seems to have worked for the last 240 years. Not well all the time, but it does seem to work.

With that, I will yield back the balance of my time. Thank you.

Chairman NEUGEBAUER. I thank the gentleman.

The Chair recognizes the ranking member of the full Financial Services Committee, the gentlewoman from California, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much.

I would like to pose a question to Mr. Stanley.

Mr. Stanley, H.R. 3340 would eliminate the independence of the Financial Stability Oversight Council and the Office of Financial Research by subjecting their budgets to the appropriations process. In your opinion, what would be the effect of this legislation? What are the benefits of having an independent counsel to monitor systemic risk as well as an independent research office to support that mission?

Mr. STANLEY. I think this kind of relates to the previous question that was asked. I think we have all seen in Washington, D.C., that there can be a narrow interest with money at stake that can hire lobbyists to influence the process and have an untoward influence on the process. And those narrow insider interests can come to dominate processes like financial regulation.

I think the benefit of having some independence for these financial regulatory agencies is that they can make their own calls on the risks to the broader public, the potential risks to the broader financial system and the public, including risks to people who maybe are not the insiders here in Washington, D.C., who don't have the ability to hire lobbyists to monitor all these issues constantly. And these regulators need the independence to make the right call for the public interest even if it could cost a regulated entity some money over the short term.

And we saw in the lead-up to the financial crisis the price we pay when that doesn't happen, including for entities like credit unions. Five of the major corporate credit unions failed, and there was $30 billion in U.S. Government bonds put out to support them.

So I think FSOC independence is very important to make those calls.

Ms. WATERS. Would you agree, Mr. Stanley, that FSOC is an extremely important part of Dodd-Frank reforms? It is in Title I. And you have just alluded to the management of risk. Would you agree that this agency should be absolutely independent and not be interfered with again by special interests or politics, that if we are to deal with the subprime meltdown and the crisis that was created, that we absolutely need to have FSOC being able to identify a risk and to deal with it?

Mr. STANLEY. Yes. I do think the FSOC is one of the absolutely central elements of Dodd-Frank, because when you look at so many of the entities that were involved in the financial crisis, they were not traditionally regulated commercial banks. They were investment banks who were following a capital markets model who at that time were not regulated as commercial banks. They were insurance companies like AIG.

And as our financial sector morphs and evolves, free of the limits that were once put on it by Glass-Steagall, you get a lot of lending and financial activities taken over by nonbanks, and it is crucial to be able to monitor that process and spot emerging risks. Regulators fell far, far behind in that process, and we can't let it happen again.

Ms. WATERS. Thank you.

And I would also like to ask another quick question. H.R. 3340 would also require the OFR to first solicit public comment before issuing a proposed report, rule, or regulation. Are you aware of any agency that is required to first seek public comment on the substance of a report they haven't yet published? What would be the effect of imposing this requirement on the OFR? Is there any harm in allowing the OFR to first publish a proposed report prior to seeking comment?

Mr. STANLEY. I am not familiar with any requirement that reports be somehow pre-cleared with interested parties before even putting that report out to the public. A report is not a regulation. A report is something that is an attempt to inform the public and inform the public debate. And if people disagree with that report, they are perfectly free to contend with it after it is out there in the public and produce new information and data. And we have seen that happen with OFR. And I think to some degree the idea that you are going to preclear these reports would impoverish the public debate. It is almost an attempt to allow that it could result in censorship of information before it reaches the public, and I think that is a problem.

Ms. WATERS. I thank you very much.

And I yield back the balance of my time.

Chairman NEUGEBAUER. I thank the gentlewoman.

The gentleman from North Carolina, Mr. Pittenger, is recognized for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

And I thank each of you for being with us today.

I would like to thank Congressman Emmer for his role on the FSOC reform bill, particularly as it relates to the budget process or lack thereof and the need for greater transparency and accountability.

Dr. Kupiec, do you believe that there is any limitation at all in the funding opportunities for FSOC and OFR?

Mr. KUPIEC. Limitation. So in terms of the—

Mr. PITTENGER. Could they, for example, double their budgets every year if they wanted to?

Mr. KUPIEC. I think they have a revenue stream, so I am not sure of the size of their budget relative to their revenue stream at the moment.

But in terms of the FSOC and the OFR, this notion that they are independent is insane, as far as I can tell, because the Secretary of the Treasury is the head of the FSOC. And the head of the OFR has an office in the Treasury and meets with the Secretary of the Treasury all the time. I don't know how that would be considered independent in any world that I am aware of.

So this whole notion that they are completely independent of politics and their budget must be completely independent of politics doesn't make any sense to me. They are part of the political system, very much so, and the notion that their budget should be outside the regular government appropriations is strange to me.

My understanding is the proposed bill would not affect the way that financial institutions have to fund the OFR, but it would affect how much of those resources the OFR were allowed to spend, it would be subject to the normal congressional process. And I don't see why they have any particular role or are absolved from politics in any way at all and shouldn't be subject to the congressional budgetary process and oversight.

Mr. PITTENGER. How about disclosures? Do they disclose less information than comparable entities like the Fed?

Mr. KUPIEC. I am mostly familiar with OFR studies that they put out and comment on them, and many of them have been very political in nature. And I think part of the reaction in this bill is, in fact, that before an OFR study becomes final, that people should be able to weigh in and claim foul if they think the OFR is producing political research instead of dispassionate research. And I think that is my opinion about the reaction to this, and it is exactly because the OFR and the FSOC are not independent agencies.

Mr. PITTENGER. Mr. Ireland, would you like to comment?

Mr. IRELAND. I think on the report issue, there was an example where the OFR put out a report on asset managers, and the SEC subsequently went to the lengths to solicit public comment on it. You only got public comments through the SEC, and there were valuable comments submitted. I think there were a lot of misunderstandings in that report and perhaps some factual errors.

I would also point out that the members of the FSOC all have their own budgets. We are not talking about the FSOC members having their budgets cut or the actual regulators having their budgets cut. We are talking about transparency and the appropriation process for a research arm that supports essentially the Secretary of the Treasury. And Federal Reserve Chair Yellen has her own research people who can research FSOC issues and do research FSOC issues.

So you are not really impairing the operation of FSOC. You are dealing with part of the Treasury, and putting part of the Treasury in the appropriations process like most of the rest of the Treasury.

Mr. PITTENGER. How about openness as it relates to public notice of meetings? Are they required to give any public notice?

Mr. IRELAND. Their meetings are generally not public, and there is substantial litigation by one of the entities that has been designated as systemically important based on the reasonableness of the process that we have gone through, and I think some transparency into that process would be beneficial for all concerned going forward.

Mr. PITTENGER. Mr. Kupiec, do you have any comments?

Mr. KUPIEC. I agree with Mr. Ireland. The FSOC meetings, there is a closed portion and sometimes an open portion that is available for the public. I am not aware if the law requires them to be announced ahead of time or not. I am not that familiar with the details of that part of it.

Mr. PITTENGER. Thank you very much. My time has expired.

Chairman NEUGEBAUER. I thank the gentleman.

Now, the gentleman from New York, Mr. Meeks, is recognized for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman.

Mr. Chairman, we often speak of providing regulatory relief for small banks, and I think if we are serious about it we should start by making quick fixes wherever possible where we can offer some immediate relief. So I introduced H.R. 2987 along with Representative Maloney, Representative King, and Representative Luetkemeyer, to provide a technical correction to Section 171 of Dodd-Frank to allow small banks with less than $15 billion in assets to be able to continue to use their trust-preferred status as part of their Tier 1 capital.

The intent of this section of Dodd-Frank was to make sure that the large banks have high-quality capital while providing an exemption for smaller banks with assets under $15 billion. But I believe it was a mistake to set in law a fixed date of December 31, 2009, as a permanent judgment date for determining which banks had less than $15 billion in assets to qualify regardless of what happened to the size of the institutions in the future.

This is inconsistent with other legislation that uses asset thresholds like the CFPB's $10 billion threshold or the SIFIs $50 billion threshold. All these thresholds are based on the size of the institution today. It is also unfair to institutions that are currently as small as $6 billion today but are still regulated like large banks with over $15 billion.

This bill would allow banks that have assets of less than $15 billion today to be treated fairly and therefore be eligible for the exemption that was meant to be available for such small institutions. And in this bill we make sure that the intent of Dodd-Frank is entirely preserved, so if the bank's assets go back to above $15 billion, then they lose that exemption. So this bill would provide relief for institutions that go below $15 billion for as long as they remain below that level.

This is a simple fix, Mr. Chairman, and is also logical, and these banks need the relief, and they need relief now.

Mr. Chairman, I hope we can have this included in our next markup and approve this legislation as soon as possible. And I am pleased that this is one of the pieces of legislation that we were able to do in a completely bipartisan manner. We have over 40 cosponsors, about half and half: 50 percent Republicans; and 50 percent Democrats. And I want to thank my colleagues on both sides of the aisle for their hard work on this legislation.

Lastly, I believe that high-quality municipal bonds, some of which are more liquid and less risky than highly rated corporate bonds, should be included in the definition of Level 2A high-quality liquid assets in the LCR. This is critically important for cities like my little City—New York, a little, small City on the coast—and is another important improvement that we need to approve.

So in the time I have left, I will just ask to the witnesses whether or not you think that banks should be regulated today based on the size of their assets back in 2009, or do any of the witnesses believe that banks under $15 billion pose a systemic risk to the financial services industry?

Gentlemen?

Mr. KUPIEC. I agree with your statements. It makes a whole lot of sense that the $15 billion is changed not to reflect a given date in the past.

Mr. MEEKS. Mr. Ireland?

Mr. IRELAND. I would agree. I think that the $15 billion should be an ongoing number, and if you are below $15 billion, you get the benefits, and if you are above $15 billion, you don't. And I am hard-pressed to think of a $15 billion institution as systemic.

Mr. MEEKS. Mr. Stanley?

Mr. STANLEY. We don't have a position on this bill. We do feel there were a lot of problems in the trust-preferred securities market, and it is positive that regulators took action. But it is possible that certain banks are caught up inappropriately in that. We haven't examined the issue closely enough.

Mr. MEEKS. We want you to research it and come back and give the same answer as Mr. Ireland and Mr. Kupiec.

I yield back the balance of my time, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. And I would like to thank our panel again for taking time to be here.

One of the primary concerns I hear out of my district from small, locally-owned banks and credit unions is the cost of compliance.

Dr. Kupiec, you mentioned in your testimony the tendency for banking regulators to apply best practice supervision on supervised institutions. If you would speak to, how does this impact those institutions. And as well, the TAILOR Act will require regulators to examine potential unintended impacts of examination manuals or other regulatory directives, and that works in conflict with tailoring the regulatory actions. Will this alleviate some of that impact?

Mr. KUPIEC. Yes. Thank you.

The tendency for a large bank, the examination and regulation of the largest banks, is really to adopt a very data-intensive approach where you have large databases and comb through the data and use models and apply all kinds of fancy statistical techniques which may or way not work. But we have a tendency to like to do that in the largest institutions, to create very complex regulations.

And this permeates down through the examination team of examiners. If you want to move up in the world, you want to be a big bank examiner, not a small bank examiner. And what is the best way to do that? You try to learn what the big bank examiners are doing, and you try to impose it on the banks you are examining so that you get experience in the field, you get recognized.

I think it is a natural problem with the system. And then it starts imposing more and more data requirements, more and more data processing, the need for more and more vendor models, all kinds of things for small banks that probably really aren't necessary and don't have a benefit.

So that is my experience working in a bank examination agency.

Mr. TIPTON. Essentially, Mr. Stanley had asserted that there were exemptions that were created for small banks. You are stating that is not really the reality. We are seeing the unintended consequences of regulations that are impacting small banks, and just having regulations that the TAILOR Act would require that are going to be sculpted for those institutions would make good common sense?

Mr. KUPIEC. I think what Mr. Stanley says is technically correct. There are lots of places in the law that differentiate between the size of the institutions. However, there is never a clean break between a certain size and another size. It depends on the business practices and what kinds of loans they are making and what kind of area it is. There are all kinds of considerations.

And I think the TAILOR Act speaks more to a duty and requirement of the regulators to pay attention to these differences, whereas the very sharp limits in the current law are really not up to the task of differentiating between risk profile and the best public interest of what is really required.

Mr. TIPTON. Thank you.

One of the frustrations that we hear—I have had the opportunity to be able to serve on a small local bank and used to be able to make what were called "character loans," knowing the people that you actually work with. And I would like to be able to give you one example from my district.

I have a small business in Vail, Colorado. It is a ski and bike rental shop. I have had it for over 20 years. This gentleman applied to refinance his primary residency, but based on a 2-year average of his 2013–2014 tax returns, he didn't qualify. His 2015 profit, however, P&L statement, showed that his net income was in excess of the 2014 tax return, but it could only be used to be able to support the 2-year average unless he paid thousands of dollars to be able to have an accountant review his 2015 financials. In the end, he had to be able to pay off a couple of auto loans that he had to his detriment in order to be able to qualify.

This signals to me the loss of that relational banking that I think is so important in our community banks. Mr. Ireland, will tailoring regulations to community banks and credit unions—would this model enable these institutions to increase consumer and commercial access to credit?

Mr. IRELAND. It should. I think that is the intent, and if the regulators respond appropriately to it, they should lessen the burdens on smaller institutions, and character loans should come back. We saw this problem in the 1990s in response to the thrift crisis, that character loans dried up. We are seeing it again. The regulators try to do things risk-based, but risk-based often means we are going to increase the scrutiny on the bigger guys, we are not going to reduce the scrutiny on the smaller guys.

And the scrutiny trickles down. It just does. We tell banks to look sort of one layer up in the regulatory tiers in doing their own planning just to be safe, because that is what the examiners tend to do. That is the standards they tend to hold them to.

Mr. TIPTON. Thank you. My time has expired.

Chairman NEUGEBAUER. I thank the gentleman.

The gentlewoman from New York, Mrs. Maloney, is recognized for 5 minutes.

Mrs. MALONEY. I want to thank you for holding this hearing on these important bills. And I have two that I am particularly concerned about.

I would like to ask Paul Kupiec about H.R. 2209, which Mr. Messer and I introduced earlier this year, that would level the playing field for our cities and States by requiring the banking regulators to treat certain municipal bonds as liquid assets, just like corporate bonds. And as a former city council member, I know the importance of muni bonds to allow States and cities to finance infrastructure and schools, and to pave roads.

Unfortunately, in the banking regulators liquidity rule, which requires bank to hold a minimum amount of liquid assets, the regulators chose to allow corporate bonds to qualify as liquid assets but completely excluded municipal bonds, even municipal bonds that are just as liquid as corporate bonds. And this makes no sense and threatens to raise borrowing costs for municipalities across this country.

The Fed has already recognized this error and is amending its rule to allow certain muni bonds to count as liquid assets, but the OCC is still refusing to amend its rule and insists on favoring corporations over municipalities.

So I would like to specifically ask you, Mr. Kupiec, if you considered two identical bonds, same size, same maturity, same everything, both bonds are liquid enough to satisfy all of the liquidity criteria in the OCC's rule, but one bond was issued by a corporation, and one was issued by a local government, and under the OCC's rule the corporate bond would be considered a high-quality liquid asset, but the muni bond would not, even though they had the exact same liquidity, do you think that is a fair outcome?

Mr. KUPIEC. No, I support the law.

There is another issue here that the Fed is considering Level 2B treatment, which is pretty limiting. You are only allowed to count 50 percent of the market value of the bond and only up to 15 percent of your total LCR requirement.

So the Fed's proposal, which they haven't put out any final information on, they just put out a notice of proposed rulemaking, would still limit muni treatment for those that satisfy at least Level 2B criteria to Level 2B. But there are many muni bonds and State bonds that satisfy Level 2A criteria, and the bill under consideration would require the regulators to recognize those liquidity characteristics. I do not.

I think the LCR rule has a lot of issues with it. It is causing a lot of difficulties in a lot of places, including large banks not wanting to take deposits anymore. So I think that it certainly is a rule that merits some attention from Congress, and I think this is a good idea.

Mrs. MALONEY. Thank you.

I would like to ask Mr. Ireland if you would comment on the Community Bank Capital Clarification Act, which I have cosponsored with Mr. Meeks in several Congresses. In Dodd-Frank we allowed community banks with less than $15 billion in assets to keep counting certain securities they had already issued as capital. For some reason, Dodd-Frank said that in order to qualify for this relief, you had to be less than $15 billion in assets on December 31, 2009, even though we didn't pass Dodd-Frank until 6 months later in 2010. And I can tell you that was not intentional. We did not update that date to reflect it then.

So this bill simply states that for banks that were only briefly above $15 billion in assets on December 31, 2009, but have fallen below that threshold and continue to be below that threshold, that they should be treated like other banks below that threshold as community banks.

I would like to ask you if you think there is any reason why we shouldn't treat banks that are currently under $15 billion, and will continue under $15 billion, as community banks for capital purposes?

Mr. IRELAND. I can't identify any.

Mrs. Maloney. Pardon me?

Mr. IRELAND. I can't identify any reason why you wouldn't adopt this provision.

Mrs. MALONEY. Why we would adopt it?

Mr. IRELAND. Why you wouldn't adopt it.

Mrs. MALONEY. Why we wouldn't. I agree. I think it is just common sense.

Mr. IRELAND. It is just common sense. I can't see why you wouldn't do this.

Mrs. MALONEY. Thank you. Thank you for that statement. And we have many Members of Congress who feel very, very much the same way.

I would like to follow up, Mr. Kupiec, with you. The OCC has been able to distinguish between liquid corporate bonds and illiquid corporate bonds. Do you think it would be possible to distinguish between liquid and illiquid municipal bonds as well to be able to distinguish as the Fed has proposed? In other words, why don't we treat the municipal bonds fairly?

Mr. KUPIEC. My understanding is that the public comments on the rule have done analysis and identified many State municipal bonds that are more liquid than the corporate bonds that are given Level 2B treatment now. So the answer is that you can distinguish, and I think they should include them.

Mrs. MALONEY. My time has expired, and I thank you for your wisdom and your comments and your support for these bills. Thank you.

Chairman NEUGEBAUER. I thank the gentlewoman.

The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And thanks to all our witnesses for being here today.

I am a small business owner in Texas. I am a car dealer. And you can imagine what I think of the CFPB and how they are issuing laws and so forth. But also it is quite evident that they have largely ignored congressional intent.

As a member of this subcommittee, I am proud to have cosponsored many of the proposals we are discussing today, including H.R. 2121, H.R. 2897, and H.R. 3340. All of these proposals will help reduce the regulatory burdens facing so many families and small businesses in America today, and again speaking of Main Street.

I want to take a second to focus on H.R. 3340, sponsored by my good friend, Congressman Emmer. His proposal, which ultimately brings the budgets for the Financial Stability Oversight Council and the Office of Financial Research under appropriations, will no doubt provide for greater transparency where it is sorely needed. My first question to you, Mr. Kupiec, is the following: Has the FSOC been transparent through the process of designating MetLife, Prudential, General Electric Capital, and American International Group as nonbank SIFIs?

Mr. KUPIEC. No, I don't think they have been.

Mr. WILLIAMS. Mr. Ireland, what do you think about that?

Mr. IRELAND. I would agree with Dr. Kupiec. I don't think they have been transparent either.

Mr. WILLIAMS. Mr. Stanley?

Mr. STANLEY. They provided a public justification of their decision that was fairly extensive, and I believe the FSOC process provides extensive transparency to the companies that are being designated. A lot of that information and that process is not made public because there can be trade secrets involved.

Mr. WILLIAMS. Next question to you, Mr. Kupiec and Mr. Ireland, how has the nontransparent designation process for nonbank SIFIs been harmful to consumers and taxpayers?

Mr. KUPIEC. I think any process where you can impose new sweeping regulations with no justifiable cause creates two problems. It could create the impression that the government has decided that these nonbank SIFIs are truly too-big-to-fail and they will get special assistance should they get into trouble. The people who passed Dodd-Frank say, no, that would never happen. I disagree. I think it creates a class of institutions that are identified as being different and more important than the other institutions, which isn't a good idea.

And the other thing is the extra regulations involved are costly and problematic. MetLife has spent huge resources trying to defend itself against this case. The FSOC has the unlimited resources of all the agencies on board, including the New York Federal Reserve and the Federal Reserve Board and their staff of economists, to create arguments and ideas, and MetLife has to defend itself against that. It is tremendously expensive.

Mr. WILLIAMS. Mr. Ireland, can you add something to that?

Mr. IRELAND. Yes, let me add one other point here. By being designated a SIFI, you become regulated by the Federal Reserve Board, which is a bank regulator and understands the bank regulatory model. And whether that model is appropriate for GE, a large, diversified company, or an insurance company, of which there have been a number of designations, is really debatable. The expertise and the usefulness of that model for that purpose, I think is questionable, and I think that FSOC would have been better served to think more carefully about the tools it has and the classes of people it designated rather than going through the sort of ad hoc designation process that they have used.

So I think greater transparency in the overall process would be better for the designation process and provide more certainty to market participants and give them more confidence in going forward in the economy.

Mr. WILLIAMS. A final question to again Mr. Kupiec and Mr. Ireland, have these SIFI designations made the American economy safer?

Mr. KUPIEC. Definitely not. One of the unfortunate aspects of SIFI designation is we are designating nonbank SIFIs before there are any rules or regulations that have been written to suggest how they are going to be regulated. What is the regulation that is actually needed by their SIFI designation? We are designating them first, and there is no standard for regulation that has been put out yet.

Another issue that is significant is that in Section 600 in the Dodd-Frank Act, there is a power that gives the Federal Reserve Board the right to draft prompt corrective action rules for the components of designated SIFIs. So the Federal Reserve Board, right now there is—prompt corrective action applies to banks. There is no prompt corrective action per se by any Federal regulator for an insurance company, or for a broker-dealer. The SEC has rights there. But one of the sections of the Dodd-Frank Act gives the Federal Reserve Board the power to draft prompt corrective action rules over these nonbank SIFIs it regulates.

So it comes back to Ollie's point of what expertise does the Federal Reserve Board have in exercising prompt corrective action rules and judgments over things that it really hasn't regulated over time?

Chairman NEUGEBAUER. The time of the gentleman has expired.

Mr. WILLIAMS. Thank you for your testimony.

I yield back.

Chairman NEUGEBAUER. The Chair now recognizes the gentleman from California, Mr. Sherman, for 5 minutes.

Mr. SHERMAN. Thank you, Mr. Chairman.

We have a lot of bills under discussion today, and most of them are pretty good. The first is the Community Bank Capital Clarification Act, and I think that the importance of this bill, its fairness, could be illustrated by the fact that if you had two $14 billion institutions even 10, 20 years from now, they just happened to be at $14 billion apiece, and one of them would have one rule, but the other would have a different rule because back in 2009 it was $16 billion.

Obviously, we ought to treat identical banks identically, and if the bank is below the threshold it ought to be below the threshold. The idea that you would have a mark—I don't know what the mark would be on the forehead of the bank—because it was over the threshold decades ago would treat identical institutions in a nonidentical manner.

I have cosponsored the National Credit Union Administration Budget Transparency Act because I think it does make sense for an organization to publish its budget and to hear from folks who comment on it. There is some concern that all of the comments will be to tell the NCUA to do less regulation. People who raise that fear have never met anyone from the ICBA, but I am confident that the ICBA will have comments about the Credit Union Administration's budget.

I think the witnesses have already talked about the importance of allowing mortgage professionals to move from one job to another and to bring their skills. It is the unskilled mortgage professionals that can get us into trouble, and that is why I think Mr. Stivers has a good bill, the Safe Transitional Licensing Act of 2015.

Let's see, a fourth bill is Preserving Capital Access and Mortgage Liquidity. The FHFA says we need to fix this problem, we need to extend parity for credit unions under a billion dollars in assets, and I look forward to cosponsoring that bill.

And I would go on at length about H.R. 2209, Mr. Messer's bill to require the Federal banking agencies to treat certain municipal obligations as Level 2A liquid assets, but the gentlelady from New York did such an excellent job of explaining the importance of that bill that I don't have to.

I will ask the witnesses whether they have any comments on those four bills, and if not, I may shock my colleagues and yield back my time before I have gone over time.

Mr. KUPIEC. I have one comment on H.R. 2209. I would also recommend that the committee consider Level 2A and 2B treatment, that the ones that qualify for 2A as the bill is written should be allowed as 2A. I don't understand why you wouldn't also want things that qualify as Level 2B assets to be recognized as Level 2B assets. If they meet the standard, why not recognize them?

Mr. SHERMAN. Maybe that is something we will do in this bill. Maybe it is something we will do later. I look forward to working with the author on that and deciding whether we try to get it all done in one bill or not.

And seeing no further comments from our distinguished witnesses, I yield back with over a minute left.

Chairman NEUGEBAUER. I thank the gentleman.

And now, the gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

With respect to H.R. 3340, Mr. Emmer's Financial Stability Oversight Council Reform Act, of which I am a cosponsor, and I appreciate the leadership of Mr. Emmer on this important transparency measure, my question to the witnesses is in response to Mr. Stanley's argument for the need for political independence. I believe Mr. Stanley's phrase was the reason why FSOC's funding is not subject to the appropriations process or congressional review of how these fees are used is the need for political independence.

Of course in the Declaration of Independence, Thomas Jefferson talked about the fact that governments are instituted among men deriving their just powers from the consent of the government. And I think Mr. Jefferson as a Founder of our country would be troubled to find that so many of the regulatory agencies in our country are not instituted among the American people based on the consent of the governed, but instead on this principle of the need for political independence. That, to me, resembles more the institutions that we saw in the Soviet Union instead of a democratic society where governing entities are subject to the consent of the people.

I would be interested to hear from the witnesses about Mr. Stanley's argument for the need for political independence and why more transparency is not a good idea.

Dr. Kupiec?

Mr. KUPIEC. Yes. First of all, I am not going to comment on your comparison of the FSOC to a Soviet-style agency. I will leave that one alone.

The FSOC is not an independent agency. It is chaired by the Secretary of the Treasury, who is—I think he works for the President, last time I checked. The head of the OFR has an office in the Treasury, meets with the Secretary of the Treasury by his own volition all the time in regular meetings. It is essentially functioning as a research arm of the Treasury. I do not see this as an independent agency the way it is run, so I think this argument of independence holds no water.

And I share your concern about this notion that some of the banking agencies' budgets should be completely off limits from public scrutiny because they have to be independent. I think they work for the public. The public has a right to know things about the budget and what things cost, and I think that is all part of the process.

Mr. BARR. Mr. Ireland?

Mr. IRELAND. I agree with Dr. Kupiec. I would add that the Secretary of the Treasury is not just the Chairman of FSOC. The Secretary of the Treasury's vote is required for many of FSOC's actions. The Secretary of the Treasury is a head of an Executive Branch agency and is subject to removal by the President for policy disagreement. So the idea that FSOC is some sort of wholly independent agency, I just don't think is true.

And I would agree with the thrust of your comments. I think there may be places—I came out of the Federal Reserve and would be a little bit concerned about lack of budgetary independence for monetary policy because I think there is some potential abuses there. But I don't think that same argument applies, for example, to the Federal Reserve's bank supervisory functions or the other bank supervisory functions. It is nice for them to be independently funded, but for them to justify why they are spending their money or maybe they should be spending more money on other things that would be evident to the public process, I think is probably in the public interest.

Mr. BARR. Mr. Stanley, why is it that the American people shouldn't expect accountability to them through their elected Representatives in Congress?

Mr. STANLEY. If I could just defend myself against the charge of Soviet tyranny, I do believe that the American people should expect accountability, and I do believe—I may not have expressed myself as well as I could have in my written testimony—because I do believe that everything we do here in Washington, D.C., does have a political component to it and appropriately does have a political component to it.

But the question is, how do we design our political institutions so that the public interest is respected as opposed to a narrow special interest? And in the world of financial regulation there is enormous amounts of money at stake and there are narrow special interests with a lot of money at stake. So we try to insulate, to provide some insulation from those—

Mr. BARR. Thank you, Mr. Stanley.

Since my time is expiring, if the witnesses could also speak to Mr. Stanley's argument with the TAILOR Act as to his assertion that the existing regulations already tailor, and what about the inadequacy of those existing tailoring efforts by the regulators?

Dr. Kupiec?

Chairman NEUGEBAUER. I am going to have to ask the gentleman to ask the witnesses to respond—

Mr. BARR. My time has expired. I'm sorry. We won't be able to get to that question.

Thank you. I yield back.

Chairman NEUGEBAUER. I now yield to the gentleman from Minnesota, Mr. Emmer, for 5 minutes.

Mr. EMMER. Thank you, Mr. Chairman.

And I especially thank the panel for being here today.

I am sure that most of us on this committee can agree that financial regulators play an important role. I expect that most of us will also agree that financial regulations are best administered when there is the appropriate and necessary balance between Congress, the industry, and regulators. As one of you has testified, "Significant disruptions to our banking system almost always trigger legislation designed to address the problems that led to those events as they are perceived at the time. Later on, with the benefit of hindsight, it often becomes apparent that our bank regulatory system has become unnecessarily complex and constraining, whether due to the remedial legislation or to the normal evolution of banking services and markets."

In fact, as elected Representatives, we should not only be doing anything within our constitutional authority to address any issues that can trigger serious disruptions to our banking system, but we should also be doing everything in our power to prevent bailouts with taxpayer dollars.

The Financial Stability Oversight Council, also known as the FSOC, and the Office of Financial Research, more commonly known as the OFR, were created by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The question for our hearing today is how we can improve the function and the ability of the FSOC and the OFR to achieve their statutory mission by enacting reform that recognizes the importance of congressional oversight to enhance transparency and accountability of these government-created entities to allow for better stakeholder participation.

If we agree that this committee should be working with both the financial services industry and regulators to prevent future crises and bailouts, and most importantly, to better protect consumers and taxpayers, we should also be able to agree that minor changes at the FSOC and the OFR will not only enhance their ability to perform, but would create a more open environment where the benefits and the costs of FSOC's actions can be examined and debated in the open.

H.R. 3340, the FSOC Reform Act, reaffirms the constitutional principle of checks and balances. Congress has and should have responsibility for oversight of government-created institutions to ensure that the regulation these institutions put in place actually help and not harm Americans.

FSOC and OFR are no exception. I believe the FSOC Reform Act will provide am important and necessary check and balance, and with appropriate congressional oversight and enhanced transparency, the FSOC and the OFR will be better able to perform for our financial industry and for our consumers.

And with that, I would ask Dr. Kupiec, it is a very simple bill, can you tell me, going to this argument about independence—which, by the way, we are dealing with an organization that we have just heard testimony, you have the Secretary of the Treasury who sits on it, sits on the FSB. You literally have every one of these heads of these agencies, the 10 voting members are appointed by the President, and I expect they are card-carrying Democrats. So I don't know how you take the political aspect out of this institution.

Dr. Kupiec, if the OFR is still going to be able to collect the assessments, how would this impact, if we are not talking about budgetary constraints, we are just talking about an appropriations process, how would this impact, if at all, the independence, the so-called independence of this agency to do its job?

Mr. KUPIEC. I think the independence argument is kind of a bogus argument. I think what the bill would do would be to put the OFR budget under oversight and supervision where it belongs. The Congress would have a say. I do not think, since the OFR budget funds the FSOC, the notion is somehow this would squeeze the FSOC's budget. I very much doubt that. And for one reason, the FSOC is staffed in large part by staff of places like the Federal Reserve Board and the New York Fed who can second people there and pay them Federal Reserve Board salaries and Federal Reserve Board benefits.

So the FSOC is not going to be starved for talent by this. It is merely the process that government agencies should be put under. Congress should appropriate their budgets. My understanding is that the assessments would still accumulate. It is just that Congress would decide how much of those they can spend and for what reasons through a process, a give-and-take process. So I don't really see a big problem with it. I think it is a big step forward.

Mr. EMMER. Thank you.

My time has expired. I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

Now the gentleman from Pennsylvania, Mr. Rothfus, is recognized for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman. I appreciate the conversation we are having about regulatory relief for our local Main Street institutions.

I would like to turn a little focus, Mr. Ireland, if I could—when you appeared before this committee in June, we had the opportunity to discuss a piece of bipartisan legislation that I had introduced, H.R. 1660, the Federal Savings Association Charter Flexibility Act. As you may recall, the bill permits a Federal savings association to elect to operate subject to supervision by the Office of the Comptroller of the Currency with the same rights and duties of a national bank.

You spoke favorably about the bill, stating that it would save time and money, streamline our regulatory system, and would appropriately balance caution and restraint with the ability to innovate and to provide financial services to consumers and businesses. Am I correct in understanding that you still hold those views?

Mr. IRELAND. You are correct.

Mr. ROTHFUS. Thank you.

Today, I would like to continue that discussion about thrifts and mutual institutions and talk about the regulatory burdens that these institutions face and their ability to grow to meet the needs of their local communities. On a basic level, can you please describe how mutual banks differ from other types of financial institutions and how they are going to raise capital?

Mr. IRELAND. Mutual organizations derive their funding from their customers and build their capital base through retained earnings, and stock organizations obtain their capital by issuing securities into the markets. The growth of capital in a mutual organization is a much slower process, and to adjust to significant capital changes, for example, as have been flowing out of Basel III, is more difficult for a mutual organization.

In addition, I think that many of the capital rules are designed to deal with problems as they were observed in stock companies—and this particularly goes to the capital instruments issue that I think you are referring to—and how those rules affect mutuals, I think is a separate question.

And the assumptions you make about the market effect of Tier 1 capital, Tier 1 common equity capital, in a stock company simply may not apply to a mutual. You may not have the same kinds of concerns in the mutual that you have in the stock company. And I think tailoring capital rules to mutuals is something that ought to be done and the regulators ought to look at that very, very seriously.

Mr. ROTHFUS. I am glad you raised that, because I have introduced another commonsense bipartisan piece of legislation, H.R. 1661, the Mutual Bank Capital Opportunity Act of 2015, which would provide mutual institutions with the option of issuing a mutual capital certificate to raise additional capital without sacrificing their structure. By statute, the certificates would qualify as Tier 1 common equity capital and share many of the same qualities as preferred stock. Do you have any comments about this proposal?

Mr. IRELAND. I would support that proposal. I think that there could be details that need to be worked out as you go forward, but I think that something needs to be done to accommodate the mutual organizations. Otherwise, ratcheting up Tier 1 capital may simply strangle them and put them out of business.

Mr. ROTHFUS. Dr. Kupiec, at a recent roundtable discussion in Pittsburgh, one of my local community bankers stated that the current regulatory environment is "as harsh as it has ever been. Harsher." Another local banker described the Federal regulatory environment as, "death by a thousand cuts," and pleaded that community institutions—and he emphatically said this—need help now.

In this Congress, the committee has already marked up a long list of bills that would help fix this, and we are considering more good bills today. In your opinion, what is the one proposal that

Congress could pass tomorrow that would make the most difference?

Mr. KUPIEC. Of these seven?

Mr. ROTHFUS. Or any of the bills that we have done to date, these seven.

Mr. KUPIEC. I wouldn't have all of them off the top of my head, right? So—

Mr. ROTHFUS. Would you agree with the assessment that the environment is harsh?

Mr. KUPIEC. Yes, I would, and I think the bills asking for relief, or requiring relief, are fully appropriate.

Mr. ROTHFUS. And do you see the same kind of urgency for regulatory reform that this community institution would have been telling me about?

Mr. KUPIEC. I think they are telling you the truth.

Mr. ROTHFUS. Mr. Ireland, do you have any idea on what one proposal that Congress could pass tomorrow that would make the most difference for community institutions?

Mr. IRELAND. I don't have the time to list them all. I can't get it down to one. I think you have very serious problems right now.

Mr. ROTHFUS. I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

The gentleman from New Hampshire, Mr. Guinta, is recognized for 5 minutes.

Mr. GUINTA. Thank you, Mr. Chairman.

I would also like to thank the panel for the discussion today of these legislative initiatives.

I have two areas of focus, one very quickly on H.R. 2987 for Mr. Ireland. Can you specifically state how many institutions H.R. 2987 will benefit at present?

Mr. IRELAND. I haven't had the time to go back and examine the historic call report or reports—it is not call reports, it is the holding company reports that you would have to look at—to identify those. I understand that there are at least two of them. And I don't think the number is what really matters. I think the statute is just drafted wrong, and you want to fix that glitch in the statute. That is not the way you ought to draft grandfathers.

They have grandfathered the instruments. They don't want new trust-preferred issued. But the institutions that have issued them, whether they are above or below $15 billion is a completely separate issue and doesn't promote in any way evasion of the purposes of the capital rules.

Mr. GUINTA. Okay. Thank you.

I want to move on to a different issue now, on H.R. 2287. The NCUA operates independent of the congressional appropriations process. Their annual operating budget is used to carry out a list of duties, such as examination and supervisory authority. However, a substantial portion of the NCUA operating budget is funded by a fee from federally-insured credit unions across the Nation. This fee is based upon the prior year asset balance and rates that are set internally by the board.

Our Federal agencies, I think, need to be transparent. They need to be accountable. I don't see much problem with that. I also took a look at the budgeting over the last decade, and it appears for the most part that the budget has gone up.

I took a look at the testimony earlier this year, on July 24th, I think it was, by Chair Matz, and I want to talk about that testimony a little bit. And I want to talk to Mr. Stanley about this.

Back on that date, she testified, and I believe the gentleman from Georgia, Mr. Scott, was asking the questions, and she made a statement, and the statement was this: "I don't believe that the credit unions necessarily represent the members, and if they did, they wouldn't be asking us to cut our budget because I think the members would like us to protect their life savings and would like us to have the resources that we need to do that adequately."

That was her statement. I, in full disclosure, am a member of a credit union. I wonder if I could first ask you one question. Do you know a woman by the name of Barbara Cunningham?

Mr. STANLEY. I do not.

Mr. GUINTA. Do you think Chair Matz knows Barbara Cunningham?

Mr. STANLEY. I couldn't say, but possibly not.

Mr. GUINTA. I will tell you who Barbara Cunningham is. I know her. She is the loan officer at St. Mary's Bank, which is the oldest credit union in the Nation, that helped my wife and I get into our home. I trust her. I don't trust a faceless bureaucracy in Washington.

So I have significant problems with that one statement that Chair Matz made, because it suggests that the bureaucracy in Washington cares more about me than the person who lives in my community, who works with me to try to find a way to get a mortgage for a home for my wife and my two children. That is the fundamental problem I have with this notion that Washington knows better than people back home.

I served as a State representative, I served as a mayor, I served as a city alderman. I have known the people that I do business with for years, and I have a relationship with them. That is the fundamental obligation and responsibility that I think people feel when they, as customers, go into a credit union and have that direct relationship.

So when your statement earlier suggested that the transparency is not necessary, I find that hard to believe would be problematic in order for NCUA to do their job. I think they can do their job, they can show the public how they are spending their money, and the consumer also can have a relationship, and a good one, with their credit union.

So, unfortunately, my time has expired, and I can't get your response, but I will send you a written letter and ask for your response, because I do want to give you the opportunity to respond.

And I yield back.

Mr. STANLEY. Absolutely. Thank you.

Mr. NEUGEBAUER. I thank the gentleman.

And now, I recognize the gentleman from Indiana, the chairman of the Republican Policy Committee, Mr. Messer, for 5 minutes.

Mr. MESSER. Thank you, Mr. Chairman.

I want to join the chorus of support for H.R. 2209. I thank Mrs. Maloney for her work on this legislation. I want to thank both

Chairman Neugebauer and Chairman Hensarling for their willingness to bring this bill forward. Others have talked about it, so I won't repeat the statements made by others, but the bill is aimed at this remarkable situation that we have where Federal banking regulators have excluded all American municipal bonds from being treated as high-quality liquid assets under the LCR rule, creating the remarkable situation where not only corporate bonds, but certain foreign subsovereign bonds qualify for liquid assets when American municipal bonds don't qualify.

By the way, I should apologize for my voice. I was part of the 12th man at the Colts-Patriots game this week. We are proud of our Colts, and obviously disappointed in the outcome.

That approach, as others have testified, doesn't make any sense. These are great assets. They are among the safest investments in the world. They are often not traded because people want to keep them once they invest in them, but they are highly liquid in the sense that in times of financial crisis, folks can flip them, if needed, as others have also testified, by discouraging these bonds from being treated in the way that reflects their true value. It drives up the cost of borrowing, which doesn't make any sense.

I want to direct my question to Mr. Kupiec and potentially Mr. Ireland, not to go over what others have said, but maybe to make sure we get it on the record. Do you see any reason why these assets should be discounted or why the Fed, for example, should—because, as you know, the Fed has come up with this rather Byzantine way of looking at it—do you see any reason why those assets should be discounted or should they be treated as face value?

Mr. KUPIEC. No. I think if you set a specific criteria that the liquidity of the asset has to meet to qualify as a Level 1, Level 2A, or 2B asset, if they meet those requirements, they ought to be counted.

And I would differ a little bit. The Federal Reserve is the only agency that has actually made a movement towards including some municipal bonds, so I think they are ahead of the rest of the regulatory agencies in at least realizing the problem.

But I think the bill points in the right direction. If they qualify, if they have all the characteristics of a Level 2A asset, why aren't you counting them as a Level 2A asset? And I would add, if another segment of them qualifies as Level 2B, then count them as Level 2B.

Mr. MESSER. I appreciate that advice and I will actually try to work with the committee and Mrs. Maloney to see if we can include that.

I will get back to Mr. Ireland in just a second. I want to just follow up with Mr. Kupiec very quickly. Could you comment just for a second about the problem with the Fed, the OCC, and the FDIC having different approaches to these kinds of bonds?

Mr. KUPIEC. The Federal Reserve rule would apply to any Federal Reserve bank that they supervise and holding companies. And so it would apply at the holding company level, whereas the OCC would apply at the bank level. So you might have a situation where if the rules don't all agree, the bank might have to have a different set of liquid assets than would count at the holding company level, which would just be unnecessarily complex.

So I think it is better that the rules all agree, which is why this bill is also important. It tells all the agencies to come with this solution, and I think it is the right one.

Mr. MESSER. Mr. Ireland, do you have anything else to add?

Mr. IRELAND. I would agree with Dr. Kupiec. If the assets meet the tests for liquidity and quality, they ought to get treated in the appropriate category. And it makes absolutely no sense and will just distort markets and cause all kinds of problems to have different rules for different institutions. You need a consistent rule here, and picking and choosing by issuer as opposed to character of the asset, I think is inappropriate.

Mr. MESSER. Thank you. I yield back.

Mr. NEUGEBAUER. I thank the gentleman.

The gentleman from Ohio, Mr. Stivers, is recognized for 5 minutes.

Mr. STIVERS. I thank the chairman for allowing me to sit in on this panel. I am not on this subcommittee, so I appreciate the opportunity to be here.

I appreciate the witnesses for sticking with us for a long time and a lot of questioning. I think the bills today are a lot of commonsense bills. Something Dr. Kupiec just said really made me think, as we were talking about H.R. 2209.

Dr. Kupiec, why do we have one set of accounting principles?

Mr. KUPIEC. So we can compare across companies, if they are comparable.

Mr. STIVERS. Inside a company and across companies and compare apples to apples. Is that an appropriate way of saying it?

Mr. KUPIEC. Sure. You want every yardstick to have the same length, yes.

Mr. STIVERS. So shouldn't that also apply here when you are talking about across companies and inside companies with regard to assets, and if something meets the characteristics of a certain type of asset, shouldn't it be included in the asset and shouldn't we have consistency so that we can compare inside a bank holding company at the bank level and across companies?

Mr. KUPIEC. I think it makes a lot of sense to have one rule, yes.

Mr. STIVERS. So that is the kind of commonsense stuff we have here. One of my bills that two of you have talked about, and I think it is possible that Mr. Stanley does not have a position on it because he didn't mention it, is H.R. 2121, the SAFE Transitional Licensing. I think Mr. Ireland did a great job of explaining it to one of the other Members of Congress who asked a question. I appreciate that.

We are continuing to work with interested parties, and we have a new discussion draft that I think even makes the bill better. Instead of just a straight 120-day period, the new bill basically says the application or the transitional authority—and we make it an authority, not a license so that the regulators actually can clamp down on folks if they need to—but it is good until the application is approved, denied, or withdrawn, or in the event that it is incomplete, the limit is 120 days if the application is incomplete.

We also create the ability for the regulators to deal with bad actors. We make sure that we allow the regulators to require a background check if they want one. There is already something that says if you have been convicted of a felony, if you have been subject to a cease-and-desist order, or you have been denied or revoked or suspended for your license, this process wouldn't apply. And I think Mr. Ireland talked about it pretty well.

But, Dr. Kupiec, do you want to talk about why we need the ability for folks in labor markets to move from employer to employer or State to State, if they need to, and how that is good for consumers?

Mr. KUPIEC. I think, historically, one of the features of the mortgage business in the United States has been its ability to sort of expand quickly when it needs to and contract quickly when it needs to. Mortgage banking is—the business is volatile. And this may or may not be a good thing, but sometimes real estate is more in fashion than others, and these people need to change jobs and move States. And my understanding of the law is, in order to be under this 120-day grace period or however you may improve that in the new bill, that you actually have to be on the national registry.

Mr. STIVERS. That is correct.

Mr. KUPIEC. And consumers would have access to your information on that registry while you were waiting for your new license.

So to the extent that the information is for consumer protection, my sense of this is that the consumers would have access to that underwriter's originator's information on the national registry.

Mr. STIVERS. Exactly.

Mr. Ireland, do you want to talk a little bit about how this is an unintended consequence of a two-tiered system. So we had a tiered system for State-regulated folks who had to have a license, and then the other folks who are at a bank who didn't need to have a license. And so when you want to change between them, you have to get licensed, but it was kind of an unintended consequence that people then, if they want to change from a bank entity, a federally-regulated entity to a State-regulated entity, wouldn't be able to work for a number of months. That is pretty hard for most people to feed their family on, and it is clearly an unintended consequence.

Mr. IRELAND. Oh, I think so. I think it makes it very hard to move from a bank to a nonbank, and provides a very great deterrent in that regard and cuts down on competition between banks and nonbanks. And I think this is in the interests of the originators. I think it is also in the interests of the efficiency of the market.

Mr. STIVERS. And the consumers.

Mr. IRELAND. And the consumers.

Mr. STIVERS. Mr. Stanley, you didn't have a position on this bill. Do you like what you hear?

Mr. STANLEY. I like what I heard in the last 5 minutes, but since I have 200 members in my organization, freelancing on endorsements is tough.

Mr. STIVERS. I didn't ask you to endorse anything. I asked you if you liked what you heard.

Thank you. I yield back the balance of my time.

Mr. NEUGEBAUER. I thank the gentleman.

The gentleman from Indiana, Mr. Stutzman, is recognized for 5 minutes.

Mr. STUTZMAN. Thank you, Mr. Chairman. And I appreciate the witnesses being here today. I apologize for being late and catching up here on a couple of things.

But I want to talk a little bit about—I don't know if you all talked about the municipal bonds already, but if you have, I will move over to H.R. 2473, the Preserving Capital Access and Mortgage Liquidity Act of 2015. Can some of you talk a little bit about why H.R. 2473 is necessary and related to the community financial institution definitions, if any of you could be able to discuss that a little bit?

Mr. KUPIEC. I think the issue is that the Federal Housing Finance Agency has issued rules about how large the mortgage activity has to be in an institution before you can gain Federal Home Loan Bank membership and be able to use Federal Home Loan Bank loans pledging collateral. And I think this bill, there is a carve-out, I believe, for small banks under a billion dollars, and I think the new rulemaking by the Federal Housing Finance Agency would not allow credit unions to have the same access to the Federal Home Loan Bank as small banks. And I think my impression is this rule just kind of levels that playing field, so that if a small bank had access to the Federal Home Loan Bank, then a credit union would have access too if they are under a billion dollars.

Mr. STUTZMAN. Do you think there is a sound policy reason for not including credit unions in that definition?

Mr. KUPIEC. No, I think credit unions are appropriately, if they do mortgage business and they have mortgage collateral, I think the Home Loan Bank, that is their mission, to provide liquidity. And in a lot of places, credit unions are becoming more and more important. We heard earlier that they gave some of the members their mortgages, and I think small credit unions would benefit from accessing the consumers as well.

Mr. STUTZMAN. Mr. Ireland or Mr. Stanley, would you like to comment on that?

Mr. IRELAND. I would just like to point out that I think the effect of this legislation goes beyond mortgage loans. I think it goes to small business loans and agricultural loans and community development loans as well and those activities of credit unions. And I think it is strongly in the interests of the credit unions and the communities that they serve that they have access to the additional source of funding through the Home Loan Banks.

Mr. STANLEY. I have no comment.

Mr. STUTZMAN. All right. Thank you.

Could any of you mention or discuss a little bit about the possibility that the lack of exemption for small credit unions increases the possibility that current members in good standing will risk having their membership involuntarily terminated?

Mr. KUPIEC. I think if you had a credit union, and it was a member of the Home Loan Bank and it had loans from the Home Loan Bank, and for some reason during the year its business activity, its membership didn't want the loans or the mortgage loans that would meet the limit, they would—I think they have 2 years, it actually has to be an average over 2 years—but if the membership stopped providing a service, even though the Federal Home Loan Bank lending may have been an important part of funding the credit union, they could face being cut out of the Home Loan Bank access.

Mr. STUTZMAN. Has the cap on asset size for community financial institutions been increased before?

Mr. KUPIEC. In my preparation, I looked back at the old laws, and there is a 1999 amendment to the Federal Home Loan Bank law that for the community investment institutions, there was a $500 million cap and it was indexed to inflation. And so there is that limit, but I think the limit that this particular bill is trying to address is one that is being imposed by a proposed Federal Housing Finance Agency regulation and not a Federal Home Loan Bank legal rule.

Mr. STUTZMAN. Do you think Congress is the best place to address this issue?

Mr. IRELAND. I think this is a necessary change to the statute. Aside from the Federal Housing Finance Agency's actions, I think if you look at the statute, this looks like it makes sense.

Mr. STUTZMAN. Thank you, Mr. Chairman.

Mr. NEUGEBAUER. I thank the gentleman.

And I would like to thank our witnesses for their testimony today.

Without objection, I would like to submit the following statements for the record: the Credit Union National Association; and the National Association of Federal Credit Unions. Without objection, it is so ordered.

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.

With that, this hearing is adjourned.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

APPENDIX

October 21, 2015

Testimony

of

Oliver Ireland

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

United States House of Representatives

Committee on Financial Services

Examining Legislative Proposals to
Reduce Regulatory Burdens on Main Street Job Creators

October 21, 2015

Chairman Neugebauer, Ranking Member Clay, and members of the Subcommittee, my name is Oliver Ireland. I am a partner in the financial services practice of the firm Morrison & Foerster LLP here in Washington DC. I have more than forty years' experience as lawyer in the area of the regulation of banking institutions. I spent more than twenty-five years as an attorney in the Federal Reserve System, including fifteen years as an Associate General Counsel at the Board in Washington, working on a wide range of issues. Since leaving the Federal Reserve, I have spent fifteen years in private practice representing banks and other financial institutions. I am pleased to be here today to address legislative proposals to improve our system for regulating banking institutions.

In this hearing, the Subcommittee is considering seven different proposals that cover a broad range of issues. My testimony will focus first on the most significant proposals where I believe that I can offer the most value to the Subcommittee, but I will address all of the proposals and will be happy to answer questions on any of the proposals to the best of my ability. First, however, I would like to express my support for the Subcommittee's continued efforts to examine the bank regulatory system at this time. It is important to seek improvements as the economy heals, as well as in times of stress. Significant disruptions to our banking system almost always trigger legislation designed to address the problems that led to those events as they are perceived at the time. Later on, with the benefit of hindsight, it often becomes apparent that our bank regulatory system has become unnecessarily complex and constraining, whether due to the remedial legislation or to the normal evolution of banking services and markets.

The most recent financial crisis was followed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was enacted more than five years ago. Although that Act is still in the process of implementation, it is not too early to look again at our regulatory system to see whether we have appropriately balanced caution and restraint with the ability to innovate and to provide financial services to consumers and businesses.

The proposals that the Subcommittee is considering today include proposals dealing with lessening regulatory burdens on smaller banking institutions, streamlining the registration of mortgage loan originators, providing greater transparency and oversight into the budgetary processes of the National Credit Union Administration and the Office of Financial Research, and fine tuning the new liquidity rules applicable to banks. As is the case with virtually all financial services legislation, the details of individual proposals could raise technical issues that need to be worked out, but I believe that the purpose of these proposals is constructive. In light of where we are in the legislative process, I will focus on the policy issues raised by these proposals, although I will be happy to discuss the details.

Turning to the individual proposals, H.R. 2896, the Taking Account of Institutions with Low Operation Risk Act of 2015, or the TAILOR Act, would require the Federal financial institution regulatory agencies with jurisdiction over banking organizations to take the risk profiles and business models of the institutions subject to regulatory actions into consideration in taking regulatory action, including issuing proposed and final rules as well as guidance and interpretations. Today, our banking system has evolved so that the business models of banking institutions have become increasingly varied and more specialized. While community financial institutions continue to focus on taking deposits and making loans in their communities, other, often far larger, financial institutions provide highly automated, nationwide services and provide complex financial products that their sophisticated business customers demand.

The result is that regulatory requirements have become increasingly complex and difficult for smaller institutions to understand and implement. Congress has repeatedly sought to address the issue of regulatory burden, particularly the burden on smaller institutions, through legislation such as the Paperwork Reduction Act, which was originally adopted in 1980, and the Economic Growth and Regulatory Paperwork Reduction Act of 1996, or EGRPRA. Regulators, too, have tried to implement risk-based requirements, but the burdens on smaller financial institutions continue to increase and to threaten both the economic viability of the small bank business model and access to financial services that meet the needs of the consumers and businesses that these institutions serve. Although Congress made conscious efforts to differentiate between the business models of small institutions and larger institutions in the Dodd-Frank Act, the end result does not leave smaller institutions unscathed. For example, smaller institutions that do not engage in activities regulated by new requirements, such as the Volcker Rule, may nonetheless have to understand the new rules in order to confirm that the rules do not apply to them. The need to review hundreds, or thousands, of pages of *Federal Register* publications cannot help but divert resources from serving main street customers. In addition, the costs of compliance efforts that are relevant to these institutions are spread over a relatively smaller base and, therefore, the burden of the regulatory requirements is relatively higher. It is the customers of these institutions that ultimately bear the burden of new regulatory requirements. The TAILOR Act is another effort to raise regulators' awareness of these burdens, and it should be adopted.

H.R. 2987, the Community Bank Capital Clarification Act, would refine the grandfathering provisions of the Collins Amendment in Section 171 of the Dodd-Frank Act. As one of the provisions of the Dodd-Frank Act that sought to lessen the potential burden that the provision would create on smaller institutions, the Collins Amendment, which set minimum capital requirements and disallowed certain instruments from consideration as capital, grandfathered capital instruments issued before May 19, 2010 for depository institution holding companies with total consolidated assets of less than $15 billion as of December 31, 2009. H.R. 2987 would extend the grandfathering provision to holding companies with assets that were in excess of $15 billion on December 31, 2009, but that fell below that level at a later date. H.R. 2987 does not change the date of the issuance of the original instruments and, therefore, does not open the door to evasion of the original requirement. This is a common-sense refinement of the original grandfathering provisions, and it demonstrates how attention to detail can have significant benefits for individual smaller institutions.

H.R. 2473, the Preserving Capital Access and Mortgage Liquidity Act, would amend the Federal Home Loan Bank Act to broaden the membership criteria to allow credit unions to become members of the Federal Home Loan Banks, even if the credit unions do not meet the requirement that residential mortgages represent at least ten percent of the credit unions' assets. H.R. 2473 would also broaden the collateral on which long-term advances could be made by Federal Home Loan Banks to credit unions to include secured loans to small businesses, agriculture and community development activities. The combined effect of these changes would be to expand the availability of Federal Home Loan Bank credit to fund loans for small businesses, small farms and community development. Access to additional sources of funding for loans for these purposes can only promote small businesses, small farms and community development.

H.R. 2121, the SAFE Transitional Licensing Act of 2015, would amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide that a registered loan originator shall be deemed to be state licensed for a transitional 120-day period when moving from a depository institution, a depository institution subsidiary or an institution regulated by the Farm Credit Administration to a nonbank originator or from one state to another state. Making it easier for mortgage originators to change jobs should make the job of mortgage originator both more attractive and more competitive. I understand that discussions among interested parties may suggest revisions to ensure that H.R. 2121 achieves its intended purpose. I urge the subcommittee to consider any appropriate changes.

H.R. 2287, the National Credit Union Administration Budget Transparency Act, would provide greater transparency in the National Credit Union Administration's budgeting process. While the National Credit Union Administration is an independent agency and is self-funded, greater transparency can provide discipline from public accountability, without jeopardizing the agency's policy independence.

H.R. 2209 would amend the Federal Deposit Insurance Act to clarify that municipal obligations that are liquid, readily marketable and investment grade are considered to be Level 2A assets for purposes of the Liquidity

Coverage Ratio rules. The Liquidity Coverage Ratio rules require larger banks to calculate outflows and inflows of funds under specified assumptions over a thirty-day period. A covered bank is required to hold high-quality liquid assets to meet any outflows that are not offset by inflows under the rules. High-quality liquid assets are divided into three classes—Level 1 assets, Level 2A assets and Level 2B assets. Level 2A and Level 2B assets are both discounted and capped out of concern that they will represent less reliable sources of liquidity than Level 1 assets.

At larger banking institutions, the Supplementary Leverage Ratio discourages the holding of high-quality liquid assets, which yield a relatively low return, because it imposes the same capital charge on those assets as it imposes on less liquid, but higher yielding, assets. Conversely, the designation of assets as high-quality liquid assets under the Liquidity Coverage Ratio rules encourages the holding of the designated high quality liquid assets. Therefore, the designation of assets as high-quality liquid assets may significantly improve the demand for, and hence the marketability of, those designated assets and reduce the costs to issuers of those assets. Municipal obligations are not considered to be high-quality liquid assets under the current Liquidity Coverage Ratio rules. The Board of Governors of the Federal Reserve System has proposed to include some municipal obligations as Level 2B high-quality liquid assets subject to specific limitations.

H.R. 2209 would short cut the agency rule writing process and provide municipal obligations with more favorable treatment than has been proposed. Although the precise characterization of assets within all tiers created by the Liquidity Coverage Ratio rules is, in part, a factual question based on market conditions and historical performance of the assets, there is also something of a self-fulfilling prophecy component to the designation process. The demand generated by the designation itself may create liquidity, and result in a lower yield on these assets and lower-cost funding to the governmental entities issuing them. Accordingly, in order to assure an efficient market for municipal obligations, it is important that those obligations receive the appropriate classification in the rules, taking into account the benefits in marketability and liquidity that will flow from the designation of those assets as high-quality liquid assets.

Finally, H.R. 3340, the Financial Stability Oversight Council Reform Act, would subject the Office of Financial Research in the Department of the Treasury, which was established by the Dodd-Frank Act in conjunction with the Financial Stability Oversight Council in order to provide support to the Council, to the appropriations process and would subject any rule writing by the Office to notice and comment for not less than 90 days. The powers of the Council are broad, and Congressional control over the Council is limited at best. Subjecting the Office of Financial Research to additional oversight and public accountability could help provide accountability for actions of the Council in the vital area of financial stability and could help avoid precipitous actions in the name of financial stability that could have adverse consequences that outweigh the benefits.

* * *

Thank you for your attention. I would be happy to address any questions that you may have.

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American Enterprise Institute
for Public Policy Research

Statement for the United States House of Representatives, Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit

"Examining Legislative Proposals to Reduce Regulatory Burdens on Main Street Job Creators"

Paul H. Kupiec

Resident Scholar

American Enterprise Institute

October 21, 2015

The views expressed in this testimony are those of the author alone and do not necessarily represent those of the American Enterprise Institute.

Examining Legislative Proposals to Reduce Regulatory Burdens on Main Street Job Creators

Chairman Neugebauer, Ranking Member Clay, and distinguished members of the Subcommittee, thank you for convening today's hearing and for inviting me to testify.

My name is Paul Kupiec and I am a resident scholar at the American Enterprise Institute. My research interests focus on banking, banking regulations, risk measurement and financial stability. To satisfy committee requirements, I have included my resume as an appendix to this testimony. The following remarks represent my own personal views on the bills that the subcommittee is examining today. It is an honor for me to be here and testify before this distinguished subcommittee.

In my testimony, I consider the merits of seven separate bills that are currently under consideration. Four of these bills seek to rectify specific shortcoming in existing legislation. Two bills attempt to improve government administrative processes. And the final bill instructs bank regulatory agencies to change an existing regulation.

To the extent that I correctly understand what each of these bills are attempting to accomplish, in my judgment, none of them will magnify existing financial sector risks. Nor will any of these bills contravene the Dodd-Frank Act's requirement for heightened supervision and regulation of systemically important financial institutions.

H.R. 2121, the "SAFE Transitional Licensing Act of 2015," creates a 120-day grace period during which a licensed mortgage loan originator (MLO) retains the right to continue mortgage loan originations when they change jobs.[1] The amendment is necessary because of the administrative delay in processing new license applications. The grace period allows an MLO in good standing to remain employed as a MLO while he or she applies for a new license. A new license may be required when an MLO movers to a new institution or a new state.

[1] The 120-day grace period begins when: (i) a state-licensed MLO who has not been required to register with the Nationwide Mortgage Licensing System and Registry registers with the Registry and reflects the new employer; or (ii) when the new licensed employer of an MLO already registered in the National Mortgage Licensing System and Registry records the MLO's new place of employment in the Registry.

These amendments to the SAFE Act remedy unnecessary job mobility restrictions on MLOs that have been created unintentionally by existing legislation. Since the required MLO information must be available on the National Mortgage Licensing System and Registry during the full 120-day grace period, I do not see any negative consequences associated with this legislation.

H.R. 2287, the ''National Credit Union Administration Budget Transparency Act'' seeks to improve the public accountability and management of the National Credit Union Administration (NCUA). This bill would require the annual NCUA budget process to include as part of the preparation process: (1) a "detailed business-type" annual budget; (2) the publication of this detailed budget in the Federal Register; (3) a public hearing to receive public comments on the NCUA's proposed budget; and, (4) the requirement to modify the proposed budget to account for public comments. The amendments proposed in this bill seem reasonable and appropriate. Aside from the additional time this will add to the NCUA budget process, I do not see any downside from increasing the public accountability of the NCUA.

H.R. 2987, the "Community Bank Capital Clarification Act," changes the Dodd-Frank Act § 171 small institution exemption. Section 171 imposes minimum leverage and minimum risk-based capital requirements on Bank Holding Companies (BHCs).[2] The current language in § 171 exempts BHCs from these requirements if an institution had less than $15 billion in consolidated assets as of December 31, 2009. H.R. 2987 proposes to amend the § 171 exemption to include all BHCs with less than $15 billion in consolidated assets at the end of a reporting quarter, not just those with less than $15 billion in consolidated assets as of December 31, 2009.

The Community Bank Capital Clarification Act would create an incentive for some BHCs larger than the $15 billion threshold to shrink in order to avoid the additional regulations imposed by § 171 regulations. BHCs under $15 billion in consolidated assets were not seen as a threat to financial stability by Congress and they were explicitly excluded from BHC minimum leverage and risk-based capital requirements at the time the Dodd-Frank Act was drafted. This proposed amended exemption is fully consistent with the original intent of the Dodd-Frank Act.

H.R. 2473, the "Preserving Capital Access and Mortgage Liquidity Act of 2015'' will allow credit unions under a certain asset size limit, as measured by the institution's average assets over

[2] These capital requirements also include a phase out of the use of hybrid capital instruments.

the prior three years, to join the Federal Home Loan Bank System.[3] I have no issue with this amendment. It is consistent with the mission of the Federal Home Loan Banking System.

H.R. 3340, the "Financial Stability Oversight Council Reform Act," would place the Office of Financial Research and the staff of the Financial Stability Oversight Council under the Congressional appropriations process. The proposed law would also require the Office of Financial Research to file quarterly reports to various committees and subcommittees handling oversight of federal agencies in the House of Representatives and the Senate.

There is no reason that the Office of Financial Research should be an off-budget agency. Its budget and expenditures should be approved by Congress through the normal appropriations process. There is absolutely no downside risk in passing this legislation. It will promote transparency and oversight of Office of Financial Research budget and expenditures.

H.R. 2896, "Taking Account of Institutions with Low Operation Risk Act of 2015", or the "The TAILOR Act of 2015," will require the bank regulatory agencies to modify their supervision and regulation practices so that they are appropriate for the risk profile of an institution. In particular, there is a legitimate concern that the Dodd-Frank Act includes new heightened standards for supervision and regulation that are being applied unnecessarily to all regulated depository institutions, regardless of their risk profile.

The TAILOR Act of 2015 will require bank regulatory agencies to,

> "[T]ailor such regulatory action applicable to such institutions or class of institutions in a manner that limits the regulatory compliance impact, cost, liability risk, and other burdens as is appropriate for the risk profile and business model involved."

When "tailoring" regulations, the banking agencies must not consider a specific regulation in isolation, but instead must consider the impact of the regulation in the context of all the other regulations placed on small institutions. The cost of new regulations and processes created by the Dodd-Frank Act may not be justified by the financial system risk posed by smaller institutions.

[3] I have been unable to find any credit union size limit explicitly mentioned in law. I have seen reports that claim that credit unions up to a size limit is $1 billion in average assets are eligible for FHLB membership as community investment institutions. However, the only limit I have been able to find in existing law is a $500 million asset size limit set in legislation passed in 1999. This size limit was indexed to the consumer price index. Based on the 1999 size limit and the subsequent changes in the CPI, credit unions up to approximately $710 million in average assets would be eligible to join the FHLB.

Banking agencies must assess the financial stability benefits of a regulation against its impact on an institution's ability to meet customer needs. Regulators must explicitly recognize the need to "tailor" regulations and supervisory processes in their examination manuals and notices of proposed rulemakings.

The TAILOR ACT also requires, within the next three years, that agencies revisit the rules they have implemented since the passage of the Dodd-Frank Act. They must amend these rules to reflect this new "tailoring" requirement. Banking agencies and the Federal Financial Institutions Examination Council will be required to report to Congress annually on the progress they have made in meeting these new requirements.

The goals of H.R. 2896 are fully appropriate. There is a pressing need to modify the one-size-fits all regulations and processes that are burdening smaller institutions with unnecessary and unproductive compliance costs. There is an inherent tendency for banking regulators to apply so-called "best practice" supervision and regulation—the rules and processes designed for the largest institutions—to all the institutions they supervise. The complex solutions used in the largest banks are implicitly encouraged by examination processes and procedures even when simpler, more cost-effective solution are available.

Consumers, businesses, and bankers have much to gain if Congress can eliminate the waste created by over-regulation of smaller financial institutions. Regulators must be required to move toward simpler, "tailored" supervision and regulation that is better aligned with the magnitude of the risk typically posed by a modestly-sized depository institution.

H.R. 2209 requires the banking agencies to amend the Liquidity Coverage Ratio (LCR) rule to give low risk, highly liquid municipal bond obligations more favorable treatment. The LCR is a post-crisis regulation that requires large banks and BHCs to hold a sufficient quantity of liquid assets to enable them to survive a bank "run" lasting roughly 30 days.[4] Each covered bank and BHC must estimate the volume of short-term liabilities that might "run" in a 30-day crisis period.

[4] The LCR must be satisfied by: (1) BHC with consolidated assets greater than $250 billion; (2) BHCs with more than $10 billion in on balance sheet foreign exposure; bank subsidiaries with more than $10 billion in consolidated assets that are owned by BHCs that satisfy condition (1) or (2); nonbank financial institutions designated by the FSOC for Federal Reserve Board (FRB) supervision for which the FRB has determined must meet the LCR.

The bank must hold enough high quality liquid assets (HQLA) so that the bank or BHC can sell these assets and use the proceeds to replace the funding shortfall caused by the "run."

The LCR has specific requirements that determine which assets count as HQLA. These requirements include value limits on the types of assets that can be included in HQLA, and limits on the share of specific asset carrying values that can be counted as HQLA.

Level 1 assets, the most liquid classification,[5] can be used to satisfy the LCR without limit at full market value without any "haircut." Level 2A assets[6] can be used to satisfy the LCR, but they must be valued at 85 percent of their market value (a 15 percent haircut), and may only be used in limited amounts. Level 2B assets[7] can be used to satisfy the LCR in limited amounts, but they must be valued at 50 percent of their market value (50 percent haircut).

The two specific limits that apply to Level 2A and Level 2B assets are: (1) no more than 15 percent of the required LCR may be met using Level 2B assets (after the 50 percent haircut); and, (2) no more than 40 percent of the required LCR may be met using Level 2A and Level 2B assets (after the appropriate haircuts).

Level 2A assets must exhibit certain characteristics. These include: (i) the market price of the security must not decline by more than 10 percent during a 30-day calendar period of significant stress; (ii) the market haircut demanded by lenders in repurchase or securities lending transactions must be less than 10 percent during any 30-day calendar period of significant stress; and, (iii) the security is not an obligation of a financial sector entity or subsidiary of a financial sector entity.

Level 2B assets must exhibit the following characteristics: (i) they must be a corporate debt security that is investment grade (under 12 CFR part 1); (ii) the market price of the security must not decline more than 20 percent during a 30-day calendar period of significant stress; (iii) the

[5] Level 1 assets include: balances at the Federal Reserve; foreign central bank reserves that can be withdrawn; all securities issued with principle and interest guaranteed by the US government; high quality liquid debt issued by sovereigns, international organizations and multilateral development banks.
[6] Level 2A assets include assets issued by US government sponsored enterprises and debt issued by sovereigns and multilateral developments banks that are not included in Level 1 assets.
[7] Level 2B assets include investment grade corporate bonds and equity shares of publically traded companies that are included in the Russell 1000 Index or included in a foreign stock index with specific liquidity characteristics specified in the final LCR rule.

market haircut demanded by lenders in repurchase or securities lending transactions must be less than 20 percent during any 30-day calendar period of significant stress; (iv) the security is not an obligation of a financial sector entity or subsidiary of a financial sector entity; or, (v) the security is a publicly traded common stock included in the Russell 1000 Index or a foreign stock index that meets specific requirements described in the final rule.

The final LCR rule does not recognize state or municipal bonds as HQLA, so they have no value toward satisfying the LCR requirement. Many public comment letters recommended that investment grade liquid state and municipal bonds be included in the definition of HQLA. The reasoning behind the public comments recommending inclusion were many including:

- State and municipal bonds are at least as liquid as corporate bonds that are eligible as Level 2B HQLA
- Many states and some municipalities have far higher ratings and better liquidity than some of the foreign bonds that are eligible as Level 1 and Level 2A assets
- There are many liquid investment grade state and municipal bond issues that meet the specific characteristics specified for Level 2A and Level 2B assets.
- Many foreign countries are implementing the Basel LCR regulation and allowing the securities equivalent to their domestic state and municipal bonds to qualify as HQLA
- The exclusion of state and municipal bonds from the definition of HQLA will damage their market liquidity as banks will no longer favor holding these issues.

In May 2015, the Federal Reserve Board (FRB) issued a Federal Register Notice of Proposed rulemaking[8] to amend the LQR rule which applies to FRB-supervised institutions. The proposed amendment would allow state and municipal bonds that meet the specific characteristics required for Level 2B assets to be included in the definition of HQLA as Level 2B assets. Public comments were requested by late July.[9]

The bill under consideration, H.R. 2209, would require the Federal banking agencies to revise the final LCR rule to include state and municipal bonds in the definition of HQLA. Specifically, it would require that investment grade (under the definition in 12 CFR part 1) state and municipal bonds that exhibit the specific characteristics required by Level 2A assets (listed above) be recognized as Level 2A assets in the definition of HQLA. The bill would give the

[8] Federal Register, Vol. 80, No. 102, May 28, 2015, pp. 30383-30389.
[9] I am not aware of any additional FRB public information since the NPR.

Federal banking agencies 3 months to amend their individual LCR rules to recognize this change.

The change mandated by H.R. 2209 is appropriate and consistent with the public interest. There is no reason why high quality liquid bonds issued by US states and municipalities should receive a lower standing than foreign sovereign debt with equivalent (or even lesser) credit quality and market liquidity. Moreover, I would argue that US state and municipal bonds that are investment grade and also satisfy the liquidity characteristics required by Level 2B assets should also be required to receive recognition as Level 2B HQLA as proposed by the FRB. As many public comment letters have noted, numerous state and municipal bonds issues are more liquid than some investment grade corporate bonds, and therefore better suited for Level 2B HQLA.

Thank you, and I look forward to your specific questions.

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TESTIMONY OF MARCUS STANLEY, AFR POLICY DIRECTOR

HOUSE FINANCIAL SERVICES COMMITTEE FINANCIAL INSTITUTIONS SUBCOMMITTEE, OCTOBER 21, 2015

Chairman Neugebauer, Ranking member Clay, and members of the Committee, thank you for the opportunity to testify before you today on behalf of Americans for Financial Reform.

AFR opposes HR 2287 (NCUA Budget Transparency Act), HR 2896 (the TAILOR Act), and HR 3340 (the Financial Stability Oversight Council Reform Act). We also have concerns regarding HR 2209 (requiring the treatment of certain municipal debt obligations as level 2A assets under liquidity rules). We have no view on the other bills under consideration today.

I will also briefly discuss two other pieces of legislation, HR 1309 and HR 1550, that while not on today's hearing agenda, are related to bills discussed today and we understand may be marked up by the Committee soon.

HR 2896

This legislation would mandate that Federal banking regulators 'tailor' regulations to the risk profile and business model of regulated institutions. The specific requirements in this legislation are unnecessary, as regulators are already scaling rules to the size and business model of financial institutions. They would also be harmful. HR 2896 does not simply require that regulators tailor their rules to the business model of affected institutions. It also requires that such rules be tailored "in a manner that limits the regulatory compliance impact, cost, liability risk, and other burdens". This deregulatory mandate prioritizes the costs of regulations to financial institutions over the offsetting benefits to consumers and the general public. The retroactive and future application of these vague and sweeping mandates would likely lead to a flood of litigation seeking to reverse financial protections.

Regulators are Already 'Tailoring' Their Rules Based on Financial Institution Characteristics

The failure of large regional commercial banks such as Countrywide, Washington Mutual, and Wachovia was at the center of the 2008 financial crisis. Congress responded in the Dodd-Frank Act by mandating that the Federal Reserve institute a tailored, size-appropriate regime of enhanced prudential controls for banks over $50 billion in size. This mandate is well designed to ensure that regulators will maintain an appropriate focus on potential risks at the largest few dozen commercial banks in the country.

It is crucial to understand that this Dodd-Frank mandate *already* requires the Federal Reserve to tailor its prudential requirements to the size and business model of the regulated bank. Section 165(a)(1) of the Dodd-Frank Act requires that the Federal Reserve institute prudential standards for banks over $50 billion that are both *more stringent* than the standards applying to banks under $50 billion, and also *increase in stringency* based on the size and business activities of the financial institution. This requirement clearly mandates a scaled 'ladder' of prudential regulations that grow stronger as banks grow in size and risk.

In case there is any doubt of regulatory authority to scale prudential standards appropriately, Section 165(a)(2) explicitly grants the authority to differentiate among companies based on individual-specific risk factors, and to raise the size threshold for most banking prudential standards above the $50 billion line if regulators feel it is appropriate.

The Federal Reserve has in fact scaled its prudential requirements very significantly based on bank size. The most stringent prudential requirements apply only to eight U.S. banks designated as global SIFIs (Systemically Important Financial Institutions), while the full range of crucial rules like liquidity requirements and the leverage ratio apply only to fourteen 'advanced approaches' banks that have $250 billion or more in assets or practice particularly complex business models. In addition to this effort to tailor bank rules to bank size and risk, a recent speech by Federal Reserve Governor Tarullo also indicates that upcoming Federal Reserve rules on non-bank financial institutions such as insurance companies will be tailored to the liability structure and business model of those institutions.[1]

Proponents of changes in Dodd-Frank have often failed to recognize the considerable steps that regulators have already taken to scale regulations to bank size and business model. In some cases this has led to proposals which threaten to cripple the Dodd-Frank mandate to improve regulation of large bank holding companies, and thus reverse much of the progress made toward better risk controls since the crisis. One example of such legislation is HR 1309, not under consideration by the Subcommittee today but due to be marked up next week.

HR 1309 would in effect eliminate Dodd-Frank Title I requirements for all but the eight US banks designated by international regulators as global SIFIs. These requirements could only be restored if regulators went through a cumbersome multi-year process of designation for each bank to be subjected to enhanced prudential standards. The changes in HR 1309 would not only eliminate key Dodd-Frank requirements to improve risk controls at large banks, but would likely weaken bank oversight even as compared to its pre Dodd Frank level. The HR 1309 requirement

[1] Tarullo, Daniel. "Capital Regulation Across Financial Intermediaries". Speech at the Banque De France Conference Financial Regulation – Stability Vs Uniformity, September 28, 2015.

that the Federal Reserve get approval from two-thirds of financial regulators before full oversight of even a bank holding company would be unprecedented in the history of banking law.

The Federal Reserve is far from the only banking regulator that seeks to tailor its regulations carefully based on financial institution size and business model. To take just one other example, the Consumer Financial Protection Bureau has granted exemptions from various mortgage rules for smaller community banks that hold loans on portfolio, as well as banks in rural areas.

The Sweeping Deregulatory Mandate in HR 2896 Would Be Harmful

HR 2896 does not simply call for regulators to scale rules to the characteristics of regulated entities. It also requires Federal financial regulators to limit regulatory impact, cost, and burdens to regulated institutions in any rule they promulgate. This broad mandate prioritizes reducing the costs of regulation to financial institutions over the offsetting benefits gained for consumers and the general public. It would apply to all regulated entities, and is not limited to community banks. HR 2896 also requires various additional cost-benefit type analyses in which regulators would be required to assess the impact that regulations have on the ability of financial institutions to serve customer needs

In addition, HR 2896 would impose a new statutory requirement for regulators to consider the 'necessity, appropriateness, and impact' of rules for each type of financial institution affected, and also mandates a comprehensive reexamination of all rules passed in the last five years in light of these sweeping new mandates. This requirement is in many ways duplicative of existing statutory requirements under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) which require regulators to review their rules every 10 years to determine whether they are outdated, unnecessary, or unduly burdensome.

While the requirements in HR 2896 may sound reasonable in the abstract, their practical effect would be to layer additional requirements on an already lengthy and cumbersome rulemaking process and to create numerous litigation opportunities for the financial industry to challenge regulations in court based on the extremely broad and vague mandates in the legislation. Since compliance with all regulatory analyses and mandates under HR 2896 would become part of the rulemaking record, any of them could become grounds for a lawsuit based on the contention that the general terms in the legislation had been violated.

Over the past five years, financial regulators implementing the Dodd-Frank Act have conducted an enormous notice and comment rulemaking effort, which has included thousands of meetings with affected institutions and the consideration of many thousands of public comments. It is plainly evident from the existing rulemaking record that regulators have already put large efforts into considering the 'necessity, appropriateness, and impact' of their rules. To pass a broad and sweeping new statutory requirement that regulators reconsider these issues again, and do so in a manner that 'limits' regulatory impact and burdens, is not an effort to improve Dodd-Frank rules.

It is an effort to turn back the clock and restart the process under terms that would be more favorable to industry.

Regulatory unwillingness to address risks and abuses in the financial sector was a major contributor to many past financial crises, including the 2008 financial crisis. Passing HR 2896 would sending a dangerous signal that Congress wished to weaken financial regulation, not strengthen it. And it would give regulated institutions a new set of tools to delay or prevent regulations required by Congress and necessary to protect the public.

HR 3340

HR 3340 would eliminate the independent funding for the Financial Stability Oversight Commission (FSOC) and its research arm, the Office of Financial Research (OFR), subjecting the budget for these agencies to the appropriations process. It would also require that the OFR provide a 90 day notice and comment period prior to issuing any report or rule.

The FSOC and OFR were created as a response to the grave weaknesses in the U.S. system of financial regulation and oversight that were revealed in the 2008 financial crisis. After the Gramm Leach Bliley Act repealed the Glass-Steagall divisions between banking, insurance, and trading markets, the financial system became more highly interconnected, allowing for the rapid transfer of risk between insurance companies, commercial banks, broker-dealers, and large hedge funds.[2] Problems emerging in any one of these sectors can easily impact the others, and if the risks involved are large enough they can threaten the stability of the entire financial system. But even as the financial system grew more deeply interrelated, our regulatory system continued to rely on over a half a dozen separate and siloed financial regulators that often did not share information and failed to spot critical emerging risks.

This problem contributed directly to the financial crisis of 2008 and its disastrous impact on the U.S. and world economy. Commercial and investment banks transferred hundreds of billions of dollars in mortgage risk to an insurance company, AIG, escaping the supervision of banking and securities regulators. AIG eventually received the largest government bailout in U.S. history. Broker-dealers which were not commercial banks, such as Bear Stearns, Lehman Brothers, Morgan Stanley, and Goldman Sachs, were at the center of the Wall Street network that created and distributed the 'toxic assets' central to the crisis. Hedge funds were also key intermediaries in the distribution and structuring of these toxic assets.[3] The failure of a single money market mutual fund, the Reserve Primary Fund, triggered a massive run on prime money funds followed by a government bailout of the entire sector.

[2] See for example Billio, Monica & Getmansky, Mila & Lo, Andrew W. & Pelizzon, Loriana, 2012. "Econometric Measures of Connectedness and Systemic Risk in the Finance and Insurance Sectors," Journal of Financial Economics, Elsevier, vol. 104(3), pages 535-559.
[3] For one example, see Eisinger, Jesse and Jake Bernstein, "The Magnetar Trade: How One Hedge Fund Helped Keep the Housing Bubble Going", ProPublica, April 9, 2010.

In the Dodd-Frank Act, Congress took a measured approach to addressing the fragmentation of the regulatory system. The Dodd-Frank Act eliminated only one financial regulator (the Office of Thrift Supervision). The other nine financial regulators were directed to coordinate their efforts to address threats to the financial system through a new joint council, the FSOC. To assist the FSOC in its work and also to serve as an early warning system regarding emerging financial risks, the legislation also created the OFR, which has the mandate of independent risk research and oversight.

Based on the input of all ten participating financial regulators, the FSOC has the power to designate large non-banks that play a crucial role in the financial system for heightened oversight by the Federal Reserve. Such oversight applies only to specified financial activities of companies so designated, and may or may not be 'bank like' in nature, depending on what type of supervision is appropriate for a specific company.

The question of exactly which non-banks should be designated as systemically significant and how such institutions should be regulated is a complex and institution-specific question. However, given the central role of non-banks in both the financial crisis and in the modern financial system, the general need for a designation power is clear. Furthermore, the role of the FSOC and OFR in scrutinizing the financial sector for emerging risks, including gathering the necessary information to do so, should not be controversial. Without such a central point for the gathering and analysis of data, the fragmentation of our regulatory system could lead to a repetition of past failures to 'connect the dots' of financial risk.

It should be clear that political independence is crucial to the work of the FSOC and OFR. Without the freedom to scrutinize the financial system for emerging risks, these agencies will not be able to perform their functions properly. While there are many checks and balances built into the process of FSOC designation – including multiple appeal opportunities and the ability to challenge FSOC designation in court – the potential micromanagement of financial risk assessment through the Congressional appropriations process should not be one of them. The importance of impartial risk assessment is the reason why all of our major bank regulators, including the FDIC, OCC, Federal Reserve, and CFPB, are independently funded outside of the Congressional appropriations process. The FSOC and OFR should not be an exception.

The bill's requirement that the OFR solicit public comment prior to issuing reports on financial risk would also limit the independence of the agency and its ability to objectively assess financial risk free of outside pressures from financial institutions that may have a stake in the outcome of OFR research.

In relation to the FSOC's work, I would also like to mention another piece of legislation that, while not explicitly on today's agenda, may also be marked up by the Committee soon.. This is HR 1550, which would create dramatic changes in the process by which FSOC designates major financial entities for enhanced oversight. This legislation would at least double the time it takes for the Council to designate a large financial firm, from the current two years to at least four years. The legislation formally codifies several requirements that the FSOC assess a company-provided re-structuring plans both prior to designation and on an annual basis post-designation. These and other requirements in the bill could create a situation where a large financial firm that is skilled at manipulating the process could delay increased regulatory oversight almost indefinitely. FSOC designation is already a multi-year process that includes some ten major steps and multiple opportunities for appeal. Given the importance of the FSOC's work, Congress should reject legislation like HR 1550 that would bog down FSOC operations even further.

HR 2287

HR 2287 would require the National Credit Union Administration (NCUA) to make drafts of their agency budget publicly available for comment, and to respond to or incorporate such public comments in their final agency budget.

This requirement goes well beyond budgetary transparency, which the NCUA already provides. We believe the budgetary requirement in HR 2287 is inappropriate for a public regulatory entity. The NCUA has the crucial role of safeguarding the taxpayer guarantee of publicly insured credit union deposits. It is not a self-regulatory body, and requires a reasonable degree of independence from those it regulates.

While credit unions certainly did not cause the 2008 crisis, it is still important to remember that significant public action was required during that period to rescue the credit union system. This included the seizure and closure of several large credit unions and the issuance of over $30 billion in government guaranteed bonds to provide resources to stabilize the system.[4] Cuts in NCUA resources and staffing between 2000 and 2009, in part due to pressure from regulated entities, apparently contributed to failures in oversight of the credit union system. It is clear that there is a strong public stake in the proper regulation of credit unions. As the provider of that regulation the NCUA must serve the broader public and not simply regulated entities that may have a stake in taking inappropriate risks using publicly insured deposits.

HR 2209

HR 2209 would mandate that banking regulators classify investment grade, readily marketable municipal debt obligations as level 2A liquid assets under the Liquidity Coverage Ratio (LCR) rule. Outside of cash and Treasuries, this is the safest and strongest liquidity categorization available under the rule.

When the LCR rule was passed, many commenters raised questions as to the regulatory classification of municipal debt obligations under the rule. AFR shares those concerns. In our comment we questioned whether it was appropriate to treat municipal bonds differently than

[4] Maremont, Mark and Victoria McGrane, "Credit Unions Bailed Out", Wall Street Journal, September 25, 2010.

investment grade corporate bonds, and advised regulators to reconsider whether there was some subset of municipal debt obligations which could be treated similarly to investment grade corporate bonds under the rule.

HR 2209 does include several important safeguards, including specifying that municipal debt must comply with regulatory standards defining 'liquid' and 'readily marketable', and must also be investment grade. These safeguards provide some protection against problems that could arise if banks were permitted to include illiquid municipal debt obligations in their liquidity pool. However, despite these safeguards and our concerns regarding the treatment of municipal debt in the initial LCR rule, we are concerned that HR 2209 goes too far in directly mandating regulatory treatment of municipal debt as Level 2A liquid assets.

As a general matter, we have concerns about micromanaging regulators as regards this kind of detail in important rules. This is particularly true given that in this case the Federal Reserve has acted already to improve the treatment of municipal debt under the LCR rule. Earlier this year, the Federal Reserve proposed to reclassify investment grade and readily marketable municipal debt as a Level 2B liquid asset, equivalent to investment-grade corporate bonds.[5] This is similar to AFR's recommendation in our comment to regulators.

Adding to our concern about micromanagement, the effect of the LCR rule on the municipal debt market appears to be limited. The LCR rule went into effect at the beginning of this year. Year to date, the return on municipal debt has averaged 3.66 percent. This would represent the lowest annual average return (and therefore the highest valuation) for municipal debt in some 50 years, since the mid 1960s.[6] While this is admittedly a rough metric, it is difficult to see that the advent of the LCR rule has significantly impacted the market. According to data from the Office of the Comptroller, banks hold less than 10% of municipal debt and banks fully affected by the LCR rule hold less than 5%, making it plausible that the LCR rule has limited market impact.

Thank you for the opportunity to testify. I am happy to answer further questions, and in the future can be contacted at marcus@ourfinancialsecurity.org or (202) 466-3672.

[5] Federal Reserve System, "Liquidity Coverage Ratio: Treatment of U.S. Municipal Securities as High Quality Liquid Assets", RIN 7100 AE-32, Federal Register, Vol. 180 No. 102, Thursday May 28, 2015.
[6] Based on the Bond Buyer GO 20-Bond Municipal Bond Index Weekly Data, as of October 15, 2015, available at https://research.stlouisfed.org/fred2/series/WSLB20/ .

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October 19, 2015

The Honorable Randy Neugebauer
Subcommittee Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Lacy Clay
Subcommittee Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Subcommittee Chairman Neugebauer and Ranking Member Clay:

On behalf of the Credit Union National Association (CUNA), thank you for holding this week's hearing on legislative proposals to reduce regulatory burdens. CUNA represents America's credit unions and their more than 100 million members.

We appreciate the efforts of the Committee to remove barriers so that credit unions can more fully serve their members. When a credit unions' elected board of directors and managers – not government bureaucrats – are making decisions about how to provide services, the member-owners of the credit union benefit. The legislation under consideration at tomorrow's hearing take steps in the right direction toward removing barriers that have a detrimental impact on a credit unions' ability to serve their members.

One of the most important steps that Congress can take to help keep the economy on the correct track for a full recovery is to identify ways in which laws and regulations construct a barrier to the availability of credit for consumers, and then remove those barriers that impede marketplace growth. Since the beginning of the year, the Financial Services Committee and this subcommittee have held several hearings and approved dozens of bills aimed at ensuring credit unions and other community based financial institutions are able to more fully serve their members or customers. Today's hearing continues that track record. We applaud your efforts.

Today, we offer our support for H.R. 2473, H.R. 2287, and H.R. 2896. Each of these bills are rooted in sound policy that when enacted will decrease regulatory burden on credit unions, increase the availability of capital to our members and benefit countless communities.

H.R. 2473, the Preserving Capital Access and Mortgage Liquidity Act of 2015

CUNA supports H.R. 2473, the Preserving Capital Access and Mortgage Liquidity Act of 2015, which will extend parity for credit unions under $1 billion in assets wanting to join the Federal Home Loan Banks (FHLB) System. And, we thank you for introducing this bipartisan bill.

FHLBs are reliable, low-cost sources of liquidity for financial institutions. During the recent financial crisis they served as a key liquidity source for credit unions, ensuring that member service went uninterrupted. In the current low-interest rate environment, they represent a safe and reliable access point for credit unions to the secondary mortgage market.

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Currently, the Federal Home Loan Bank Act (FHLB Act) treats similarly sized credit unions and community banks differently with respect to eligibility to join the FHLB System. Under the FHLB Act, "Community Financial Institutions" are exempt from a requirement that 10 percent of assets must be dedicated to residential mortgage loans in order to access the liquidity provided by FHLBs. Instead, only 1 percent of assets must be directed to mortgages or mortgage related products for these institutions. However, the FHLB Act limits the definition of "community financial institutions" to FDIC-insured banks with less than $1 billion in average total inflation-adjusted assets.

Most credit unions are insured by the National Credit Union Share Insurance Fund (NCUSIF), not the FDIC, which prevents them from being considered "Community Financial Institutions" under the FHLB Act definition. It does not make sense that credit unions must meet more rigorous standards to join the system simply because they were not included in the original FHLB Act definition. Enacting H.R. 2473 could offer real relief to small credit unions throughout the country. Currently, there are almost 3,500 credit unions under $1 billion in assets that are not FHLB members and offer mortgage products.

H.R. 2473 would correct the disparity in the FHLB Act definition by providing credit unions parity with comparable sized banks by amending the Act to include credit unions in the definition of "Community Financial Institutions." There is no sound policy reason that a similarly sized credit union and bank should be treated differently for the purposes of FHLB membership.

H.R. 2287, the National Credit Union Administration Budget Transparency Act

H.R. 2287, the National Credit Union Administration Budget Transparency Act, introduced by Representatives Mick Mulvaney (R-SC) and Kyrsten Sinema (D-AZ), would bring transparency and accountability to the National Credit Union Administration (NCUA) budgeting process by requiring the agency to hold a public hearing and allow for an open comment period where stakeholders can submit comments. CUNA strongly support this legislation.

The National Credit Union Administration Budget Transparency Act would direct the NCUA to establish a process by which the public, including members of the credit union community, may examine and comment on the agency's proposed annual budget prior to adoption. Additionally, this legislation would ensure that members of the NCUA Board, who must vote to adopt the annual budget, have adequate opportunity to review specific expenditures and overall methodology in order to make an informed decision as to whether the budget as proposed accurately reflects the needs of the agency. This process would increase transparency and accountability at the agency, and engender public trust, thereby strengthening and supporting the agency's mission.

In July 2015, this subcommittee held a hearing with NCUA Chairman Debbie Matz on the agency's budget process. During the hearing members of the subcommittee repeatedly pointed to a lack of transparency, bloated budgets, and dissatisfactory explanations from NCUA as a reason that passage of H.R. 2287 is necessary.

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Credit union member resources are used to fund nearly all of NCUA's budget. It is not too much to ask for the members of the NCUA Board to conduct an open hearing and provide stakeholders an opportunity to offer feedback to the agency.

H.R. 2896, Taking Account of Institutions with Low Operation Risk (TAILOR) Act of 2015

H.R. 2896, Taking Account of Institutions with Low Operation Risk (TAILOR) Act of 2015, introduced by Representative Scott Tipton (R-CO), will reduce regulatory burden for financial institutions with lower risk profiles relative to systemically significant institutions by requiring financial regulators to take risk into account when promulgating regulations. CUNA believes credit unions are precisely the type of institutions for which this legislation is designed to help because they are well-capitalized, with a low risk profile and a long history of meeting their members' credit needs– in good times and bad.

This legislation cuts to the heart of the problem that credit unions face in the aftermath of the financial crisis with respect to regulatory burden. Policymakers from across the political spectrum acknowledge that credit unions and small banks were not responsible for the financial crisis, but the public policy response to the crisis without question fails to recognize this seemingly indisputable fact. Credit unions have been subjected to tens of thousands of pages of new regulations in the last seven years; just last Thursday, the NCUA and the CFPB finalized more than 1,000 pages of new regulations for credit unions. This must stop.

Constant regulatory changes present a challenge for small depository institutions because the fixed costs 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.

Overregulation 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 6,000 today. For the last several years, the rate of regulatory and compliance driven credit union consolidation has led to the loss of one credit union per day, on average. When there are fewer credit unions for Americans to turn to for safe and affordable financial services, consumers are increasingly forced to turn to providers that are more concerned with their bottom line than the borrower's needs, like the too-big-to-fail financial institutions whose activity caused the financial crisis or nonbank providers, like payday lenders and check cashers, who are known to abuse consumers. Failure to address the regulatory and compliance crisis facing small financial institutions jeopardizes credit unions' ability to serve your constituents and threatens Americans' financial opportunity.

Credit unions appreciate the acknowledgment offered by those who would say they did not cause the financial crisis; while that is true, credit unions would prefer to see the wave of new regulations end, and a serious discussion of how to reduce regulatory burden commence. H.R. 2896 is a step in that direction.

On behalf of America's credit unions and more than 100 million credit union members, we strongly urge the Subcommittee to support: H.R. 2473, H.R. 2287, and H.R. 2896. Thank you for your consideration of our views.

Sincerely,

Jim Nussle
President & CEO

NAFCU

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National Association of Federal Credit Unions | www.nafcu.org

October 20, 2015

The Honorable Randy Neugebauer
Chairman
House Financial Services Committee
Subcommittee on Financial Institutions & Consumer Credit
United States House of Representatives
Washington, D.C. 20515

The Honorable William Lacy Clay
Ranking Member
House Financial Services Committee
Subcommittee on Financial Institutions & Consumer Credit
United States House of Representatives
Washington, D.C. 20515

Re: Tomorrow's Hearing: "Examining Legislative Proposals to Reduce Regulatory Burdens on Main Street Job Creators"

Dear Chairman Neugebauer and Ranking Member Clay:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the federal interests of our nation's federally-insured credit unions, I write regarding tomorrow's legislative hearing, "Examining Legislative Proposals to Reduce Regulatory Burdens on Main Street Job Creators." NAFCU appreciates the subcommittee's review of these important measures, many of which would impact credit unions and their members.

Of particular interest to credit unions, tomorrow the subcommittee will discuss bipartisan legislation, the *National Credit Union Administration Budget Transparency Act* (H.R. 2287), introduced by Representatives Mick Mulvaney and Kyrsten Sinema. NAFCU strongly supports this important commonsense legislation that would require the National Credit Union Administration (NCUA) to hold a public hearing on its annual budget and publish a draft of the budget for public consumption in the *Federal Register*. Given that credit unions fund the agency through various assessments, NAFCU supports gaining a clear picture of the agency's expenditures through this simple act of transparency. Importantly, holding a public hearing on the budget was standard practice at NCUA until 2009. It is also worth noting that nothing in this measure would prevent NCUA from obtaining the funds necessary to carry out its mission to, through regulation and supervision, provide a safe and sound credit union system.

Additionally, while NAFCU is appreciative that NCUA Chairman Debbie Matz recently announced a public forum on October 30, 2015, where she will take questions on any issue before the agency, we would note that this falls short of the public hearing on the budget stipulated in the legislation in that the agency does not plan to release a copy of its budget proposal prior to this forum.

NAFCU also strongly supports your legislation, the *Preserving Capital Access and Mortgage Liquidity Act of 2015* (H.R. 2473). This important legislation would update the definition of a community financial institution in the *Federal Home Loan Bank Act*. Currently, that act provides for an exemption from certain membership requirements for community financial institutions, but unfortunately it only defines them as FDIC-insured banks under $1 billion in assets (adjusted for inflation). Federal home loan banks are playing an increasingly important role for credit unions, and NAFCU believes this discrepancy needs to be addressed to ensure an even playing field between all financial institutions, including credit unions, on this matter.

We would also like to express our strong support for the *Taking Account of Institutions with Low Operation Risk* (TAILOR) *Act of 2015* (H.R. 2896), introduced by Representatives Scott Tipton and Andy Barr. This legislation will provide relief to credit unions by ensuring that NCUA and other regulators do not regulate with a one-size-fits-all approach and consider more factors when tailoring new regulations. Of particular importance, the bill would require NCUA (and other regulators) to consider the aggregate impact a new rule will have along with existing regulations. As you are aware, many regulations are promulgated without this consideration, resulting in the current regulatory environment where smaller institutions are unable to keep up with the onslaught of regulations in the wake of the *Dodd-Frank Act*. Additionally, this legislation will provide for greater accountability by requiring individual agencies to report to Congress on their specific actions relating to the tailoring of regulations.

Again, thank you for your continued focus on regulatory relief for community based financial institutions including credit unions. We look forward to continuing to work with the subcommittee on these important pieces of legislation and other issues as the 114th Congress continues. If my staff or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact myself, or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

Carrie R. Hunt
Senior Vice President of Government Affairs and General Counsel

cc: Members of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit

American Bankers Association

Building Success. Together.

Frank Keating
President and CEO
202-663-5111
fkeating@aba.com

July 6, 2015

The Honorable Scott Tipton
218 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Tipton:

The American Bankers Association (ABA), representing the breadth of the banking industry, wishes to commend you for your introduction of HR 2896, the "Taking Account of Institutions with Low Operation Risk Act of 2015" (the "TAILOR Act of 2015"). The ABA strongly supports this important legislation and urges quick action be taken on it.

It is clear that legislation is needed to address the mounting burdens of regulation that, in the aggregate, have stifled the ability of our nation's financial institutions to serve the needs of consumers and small businesses, as well as local and regional economies. While regulation is often a fact of life for such institutions, the indiscriminate application of many of these rules to institutions whose business models and risk levels do not warrant it adds little to overall safety and soundness and much to the costs of financial products in this country. And, at its extreme, such over-regulation threatens the viability of many smaller institutions that act as the lifeblood of communities across this country.

H.R. 2896 stands as a balanced approach to addressing this problem. It simply directs Federal bank and credit union regulators, when taking a regulatory action, to consider the risk profile and business model of an institution or class of institution involved. If taking that regulatory action is not necessary or appropriate for the institution(s) given the costs and complexity involved, the regulator is directed to "tailor" that regulatory action to limit its compliance impact, cost and other burdens. In its simplest terms, H.R. 2896 merely directs regulators to exercise common sense, applying rules (and the burdens that come with them) only where appropriate while cutting back those burdens where it does not.

The ABA strongly supports H.R. 2896. It offers the possibility of real and targeted relief for banking institutions facing the avalanche of new regulations coming out of the financial crisis while rolling back none of the important protections recently put in place. We stand ready to work with you and your colleagues to move this important legislation forward.

Sincerely,

Frank

Frank Keating

cc: Members of the U.S. House of Representatives

INDEPENDENT COMMUNITY BANKERS *of* AMERICA®

October 21, 2015

ICBA Statement on Legislative Proposals before the Financial Institutions Subcommittee

On behalf of the more than 6,000 community banks represented by ICBA, thank you for convening today's hearing entitled: "Examining Legislative Proposals to Reduce Regulatory Burdens on Main Street Job Creators." Many of the bills before the Committee today reflect provisions of ICBA's Plan for Prosperity community bank regulatory relief agenda. ICBA is pleased to submit this statement for the record and set forth our views the following bills:

The TAILOR Act (H.R. 2896). ICBA strongly supports H.R. 2896, introduced by Rep. Scott Tipton. H.R. 2896 would promote tiered regulation of the financial industry by requiring the federal financial institutions regulatory agencies to tailor regulatory actions based on the risk profile and business model of affected institutions in order to limit the compliance impact, cost, liability risk, and other burdens without compromising regulatory or statutory objectives. The bill includes a five-year look-back, which would sweep in some of the most burdensome regulations on the books, as well as measures to ensure agency accountability. Tailoring or tiering would ultimately benefit consumers by promoting a competitive financial services landscape and ensuring that community banks have flexibly to meet their credit needs.

The Community Bank Capital Clarification Act (H.R. 2987). ICBA strongly supports H.R. 2987, introduced by Reps. Greg Meeks, Peter King, Carolyn Maloney, and Blaine Luetkemeyer. This bill would make a non-controversial amendment to the grandfather provision of the so-called Collins Amendment of the Dodd-Frank Act.

The Collins Amendment provides that a bank with assets of more than $15 billion may no longer treat the proceeds of Trust Preferred Securities (TruPS) as tier 1 capital. Community banks with assets of less than $15 billion are grandfathered from this restriction, provided the TruPS were issued prior to May 19, 2010. Tier 1 capital treatment is critical to the value of TruPS, as a bank's tier 1 capital defines the level of credit it may lend in its community. Unfortunately, the Collins Amendment uses an arbitrary date, December 31, 2009, to determine a bank's asset value and eligibility for the grandfather. What's more, a bank that drops below $15 billion cannot become eligible for the grandfather; it's a one-time determination. Many banks deleveraged following the financial crisis, with the encouragement of their regulators. If deleveraging brought them below $15 billion, they now find themselves at a competitive disadvantage. This is not the consistent with the purpose of the exception. Other provisions of Dodd-Frank, by contrast, use a "floating" asset threshold. This is appropriate, as the relevant consideration is the bank's *current* asset value, not its historical value on a specific, arbitrary date.

H.R. 2987 provides that when a community bank drops below $15 billion in assets, it is treated as if it had less than $15 billion in assets on December 31, 2009, but only for so long as it remains below $15 billion. H.R. 2987 will allow for more equitable application of the grandfather provision of the Collins Amendment and allow community banks to deploy more credit to support community development and job creation.

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H.R. 2209. ICBA supports H.R. 2209, introduced by Rep. Luke Messer, which would allow certain municipal bonds to be considered high quality liquid assets for the purposes of the liquidity coverage ratio (LCR) rule. H.R. 2209 would promote a strong municipal bond market, which is vital to the prosperity of communities served by community banks.

The Preserving Capital Access and Mortgage Liquidity Act (H.R. 2473). ICBA is concerned about the impact of H.R. 2473, which could allow credit unions to become "Community Financial Institutions," a special of class of Federal Home Loan Bank (FHLB) membership currently reserved for FDIC insured banks with assets less than $1.1 billion. Community Financial Institution status could allow tax-exempt credit unions to pledge small business and agricultural loans as collateral for FHLB advances (secured loans). Small business and agricultural borrowers are already well served by community banks, according to recent surveys.

The National Credit Union Administration (NCUA) has issued a proposed rulemaking which could significantly weaken a series of prudential restrictions on member business lending. Viewed in the context of the NCUA proposal, H.R. 2473 could facilitate funding for business loans made possible by looser prudential restrictions, thereby creating more risk for the Share Insurance Fund, and ultimately taxpayers.

Thank you again for holding this hearing and for the opportunity to submit this statement for the record.