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HOW THE HIDDEN COSTS OF FEDERAL REGULATIONS IMPACT SMALL BUSINESSES AND ECONOMIC GROWTH

FIELD HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MARCH 30, 2015

Printed for the Committee on Small Business and Entrepreneurship

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COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

ONE HUNDRED FOURTEENTH CONGRESS

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HOW THE HIDDEN COSTS OF FEDERAL REGULATIONS IMPACT SMALL BUSINESSES AND ECONOMIC GROWTH

MONDAY, MARCH 30, 2015

EAST BATON ROUGE PARISH
COUNCIL CHAMBER,
Baton Rouge, LA.

The Committee met, pursuant to notice, at 10:00 a.m., at the East Baton Rouge Parish Council Chamber, 222 St. Louis Street, Room 348, Hon. David Vitter, Chairman of the Committee, presiding.

Present: Senator Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, CHAIRMAN, AND A U.S. SENATOR FROM LOUISIANA

Chairman VITTER. Good morning. Thank you for joining me for the Senate Small Business Committee's Field Hearing to discuss how the hidden costs of federal regulations impact small businesses and economic growth. The most costly and complex regulations have come from laws that represent the largest federal takeover in two major industries: health care and banking.

Today we will focus our discussion on how ObamaCare and the Dodd-Frank "Too Big to Fail" regulations impact our communities and small businesses and the economy, as well as the actions I am taking in Congress to pass regulatory relief for small businesses.

During the ObamaCare debate, then House Speaker Nancy Pelosi was certainly correct when she said, "We have to pass the bill to find out what is in it." The 2,000-plus page bill has yielded more than 14,000 pages of regulations from the Department of Health and Human Services, Labor, Treasury, Social Security Administration, and more.

What's even more worrisome is that the unelected bureaucrats in Washington are the ones who issue these regulations as if the world is flat and people will just accept the growing demands of health care law, but these regulations have real consequences.

Louisianans constantly question if they can keep their health insurance coverage, doctor, and their job.

The 30-hour workweek is a prime example of an increased regulatory burden on businesses that hurts workers and hinders economic growth. Starting in 2015, employers with 100 or more full-time workers will be subject to the employer mandate using 2014 workforce data. In 2016, employers with 50 or more full-time workers will be subject to the employer mandate and all of the related reporting requirements.

The ACA defines a full-time employee as an individual who is employed an average of at least 130 hours per month (30 hours per week). Large employers must then offer minimum essential coverage to full-time employees and their dependents for a corresponding 6 to 12-month stability period if an employee averages full-time hours during the look-back measurement period.

If an employer chooses not to offer minimum coverage to full-time employees and their dependents, they will pay employer mandate penalties, which will be calculated monthly.

As a result, many businesses are cutting hours to prevent workers from going over the 30-hour workweek, laying folks off to stay under 50 employees or choosing not to hire more workers to prevent future employer mandate penalties.

In a previous hearing in Shreveport, I was alarmed to hear one of the witnesses say, for the first time in her lifetime, small businesses were choosing not to expand.

While Republicans in Congress fight for a full repeal of ObamaCare, and its burdensome mandates, we will also work to pass legislation that restores the 40-hour workweek. The "Forty is Full-time Act" will provide much needed relief for businesses by simplifying the reporting requirements and complex accounting measures that seek to raise compliance costs and taxes on job creators.

Another piece of legislation I have opposed was the Dodd-Frank "Too Big to Fail" legislation. Under the guise of painful financial crisis, Dodd-Frank became a huge taxpayer-funded bailout for large financial institutions, while community banks became too small to save, ignoring major issues community banks continue to face in a stagnant economy.

Not only does Dodd-Frank fail to effectively address the root problems that caused the crisis, but it has since increased legal and regulatory compliance burden and created more barriers for small community banks to continue providing niche services and generate loans for small businesses to access capital.

As you will learn in today's hearing, community banks provide most of the small business loans for our neighbors, and it comes as no surprise that lending went down as compliance costs went up during the enactment of Dodd-Frank.

I am fully invested in providing full regulatory relief for community banks. I have authored a bipartisan bill that would reduce major impediments for small banks and thrifts to raise capital or pay dividends. This will unleash community banks' ability to lend to small businesses so they can grow their businesses, offer more goods and services to the community, and grow the economy.

Small businesses are often on the front lines of seeing the impact of government regulations. They generally don't have highly paid, well-connected lobbyists fighting for back room deals in Washington.

That is precisely why, as Small Business Committee Chairman, I believe it is important we do these field hearings and bring Washington out of the beltway bubble in order to hear from hard working constituents we represent.

I look forward to today's discussion and plan on bringing their suggestions and reforms back to Washington to roll back the impact of government regulations on our community, businesses, and the economy.

I'm going to begin by introducing our first expert witness. That's Charlotte Johnston. Charlotte is the owner of 3South, a small business based here in Baton Rouge. Her business model provides research and equipment solutions for first responder clients in Louisiana and around the country so they can stay mission-focused, which is saving lives and protecting property in all of our communities.

Charlotte wrote into my office last year to discuss how ObamaCare has hurt her and her business with the cost of providing health care to her family first, and also by increasing the cost of expanding her business and hiring more workers.

Charlotte, welcome.

[The prepared statement of Chairman Vitter follows:]

Chairman David Vitter Hearing Summary Statement

U.S. Senate Committee on Small Business and Entrepreneurship

"How the Hidden Cost of Federal Regulations Impact Small Businesses and Economic Growth"

March 30, 2015

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Small businesses are often on the frontlines of seeing the impact of government regulations. They generally don't have highly paid, well connected lobbyist fighting for back-room deals in Washington. That is precisely why as Small Business Committee Chairman, I believe it important we do these field hearings and bring Washington out of the beltway bubble in order to hear from the hardworking constituents we represent. I look forward to today's discussion, and plan on bringing their suggestions and reforms back to Washington to roll-back the impact of government regulations on our community, businesses, and the economy.

STATEMENT OF CHARLOTTE JOHNSTON, OWNER, 3SOUTH COMPANIES, BATON ROUGE, LA

Ms. JOHNSTON. Good morning. David has already introduced me, but I started 3South in June of 2011. I've worked for large companies, Fortune 500 companies over the course of 20 years, all very good companies, but one of my clients approached me, several actually, approached me because they were frustrated. They weren't getting the attention or technical support that they needed after the sale, and these are folks like Office of Homeland Security, fire, police departments, et cetera.

So together with some of my manufacturers that I worked with, I found somebody who was willing to back me initially financially. I'm a single mom with two boys. I was a little nervous about going off on my own without that support.

So, began the company and did very well and kind of had in mind how I needed to grow the company once the sales dictated it. I did not realize just how expensive getting general liability insurance and health care insurance would be. I knew going into the private, you know, health care for my family what that would cost and, actually, I got a very similar product to what I had when I was with a larger company. It cost me about $687 a month. That would provide health care, life insurance, short-term, long-term disability, dental and vision. So it was very encompassing much like my prior plan had been. It was a little higher deductible, but still very reasonable.

But once I began to start my company, and get a little bit more into it, I knew that the Affordable Care Act was coming down the road and so I sat down and met with someone and talked to them from my health care company, Blue Cross Blue Shield, to find out what kind of impact that would have on my business.

Initially I was told, and as somebody who has worked really hard, I mean, there are times I might work 100 hours a week. If that's what it takes to get the grant money projected and worked out for my clients, that's what I'm going to do. Because I don't want them losing any grant money because of my lack of ability to time spend on the project.

But when I sit down and the first thing they tell me is, you know, if you need to, you can just get subsidies from the Federal government to pay your health care. And that was extremely frustrating to me because I thought, I'm not working 100 hours a week for somebody to bail me out. I mean, I either can make this business a success and pay my way or I can't, but I'm not going to get a subsidy. That's not why I work hard. I don't want to teach that to my kids, to look for somebody to help me out. Either I can make money in business or I can't.

And so when I asked about the impact, I said, let's say I don't take the subsidy, because I'm not going to, what is the impact on my business? They told me it would be, at the most, $200 more a month. I thought that's a lot of money. If I want to hire people, because I'm getting to the point where I'm starting to grow, now I'm going to bring somebody on, I have to come up with another 800 bucks for their family insurance. If I don't offer that, that's going to significantly eliminate a lot of people that might want to come out for the job to work with us.

When I got my actual premium, it was not $200 more, it was $990 for me and my family, and I was told if I brought anybody on, with family insurance, it would probably be about the same. That did not include—that included health care, did not include dental, did not include vision, did not include short-term and long-term disability, did not include life insurance. It was purely the health care portion. If I wanted to add dental or vision, that could be another 100 to $200.

So I realized at that point I was kind of at a stalemate. My company is growing. Clients come to me and recommend me to other people and I'm getting frustrated because I know I can only do 100 to 120 hours a week for so long. I can only get two and three hours of sleep. I need to add people to be able to continue to provide that customer service.

Right now I spend $1,000 on general liability and a $1,000 on health care. That's more than 50 percent of the cost of running my business. So how do I now add another $1,000 for each person? They would have to generate hundreds of thousands of dollars in sales for me to be able to justify that. It's very frustrating. I want to pay my way. I want to do what's right in my business. But if I thought that I was getting greater value, that would be one thing, but my deductible with that $687 policy was $300 for my family, $100 per person. For my business, I pay $2,500 deductible and $7,500 for my family.

I mean, I just don't know who can afford to be in a small business nowadays without taking that into account. It needs to be fixed. It just needs to be tweaked. You can't tell me there's not a way to repair it. I was in medical sales for 15 years prior to starting my business. I know just simple solutions that could happen.

So to me, if something is broken, sit down at a table and figure out where it needs to be tweaked. That's really what needs to happen.

[The prepared statement of Ms. Johnston follows:]

3south, llc
Charlotte Johnston
Small Business Owner

Senate Committee on Small Business and Entrepreneurship Field Hearing
Monday, March 30, 9:30 am, Council Chambers of East Baton Rouge Parish City Hall

Good morning, I'm Charlotte Johnston and I own 3south, a small business based in Baton Rouge. We began operations in June 2011 after several clients requested greater support than what they were getting from larger companies. Our business model provides research and equipment solutions to First Responder clients in LA and around the country so they can stay mission-focused, which is saving lives and property in their communities.

Our clients aren't a number to us; we know them and their needs well after 15 years in the industry. Whether it's personal protective gear for LA State Police Emergency Services Unit, gas detection for Lafayette Fire or gear for a SWAT team in Ft Worth, Bossier or Baton Rouge, we anticipate products to help them stay safe.

We named our company 3south because we believe in the power of 3, our clients, our manufacturers and us as a facilitator to bring them together. We also believe in the standard KISS method, for those of you unfamiliar with that term, keep it simple, stupid. Our business model is simple, we try to take care of the fundamentals for our clients at a reasonable price. It is a win for the taxpaying agency, the manufacturers we partner with and 3south. Every transaction should be a 3 way win.

We are in the best position to grow right now as our sales continue to increase and our clients recommend us to other agencies. However, the current healthcare system directly impacts our ability to grow as a company. We need to add 2 positions right away for customer care and service; we can't do it due to the current cost of healthcare.

My healthcare plan in prior positions gave better coverage, lower deductibles and cost about $687 per month for my family of 3. It included short and long term disability, life insurance, dental and vision, had a $300 per family deductible and paid 90% of doctor visits. With ACA, I now pay $990 per month for healthcare for me & my two sons. This is just healthcare, no dental, no vision, no disability, no life insurance. My deductible is $2500 per individual, $7500 for family and coverage is about 70% for doctor visits. The list goes on but basically the coverage isn't even close to what I had before. So tell us how is this system is better?

My boys see me every night working hard. Because 3south is growing, our lives are better than they were for the last 15 years. I am encouraged by my clients to grow but our service levels are falling because to grow, we need additional employees. That extra $320 a month in premiums and the additional out of pocket costs are killing my ability to grow as a small business. My recent bill for an annual xray, mammogram and doctor's visit out of pocket is $1200. How is this good insurance, tell us how is this system better?

After 5 years in medical sales and seeing the healthcare system up close, it needed to be repaired but there are other solutions, better solutions. Arguments for the current system, don't make sense. When something doesn't add up, you take the time to repair it. I'd like to hire more employees but until we remove unjustifiable costs, small companies will continue to sit on the precipice of growth, waiting for common sense from our legislators to help. Please help us and if you can't, be ready to tell us how this system is better.

Chairman VITTER. Thank you very much, Charlotte. Very compelling testimony. And Charlotte will be followed now by John Overton. John is the owner and CFO of Turn Key Solutions, a company in it's 16th year, headquartered here in Baton Rouge, serving the IT infrastructure, security, and business continuity needs of two big markets: health care and small business. John has 12 employees, and he will be discussing the impacts of ObamaCare on his business and the businesses he works with, as well as IRS regulations that hinder small business growth.

John, welcome.

STATEMENT OF JOHN OVERTON, PRESIDENT AND CO-FOUNDER, TURN KEY SOLUTIONS, BATON ROUGE, LA

Mr. OVERTON. Good morning, Chairman Vitter and also Congressman Graves. Thank you for inviting me here to testify. Big thanks also to all the other small business owners in the audience and employees of small business owners.

When the President infamously told the nation of small business owners that "You didn't build that," the National Federation of Independent Businesses, they responded in a lot of meaningful ways, but also in kind of a whimsical supportive message. They sent a bumper sticker out to all of the members and said, "I built my business." I'm not a bumper sticker guy, but I held on to that one. I thought that's good. That's good.

This Administration takes credit for a lot of the stuff that small business owners do with investing our heart and soul into our businesses, but the reality is that the Administration fails to take credit for a lot of the negative impacts of the mounting regulations. Regulations that have to be overcome just to stay in business let alone grow.

And so it got me thinking, when I looked at this bumper sticker, I thought maybe the Administration needs their own bumper sticker that says, "We killed your business." Because that's the reality. The cost of complying with regulations both in terms of time and money is crippling, like Charlotte related.

My father recently closed his clinic due to the impossibility of a small pediatric practice keeping up with the ever-growing Federal regulations while trying to serve his patients.

Another ominous impact of these regulations is on aspiring entrepreneurs. People with a dream, they have put together a team of like-minded people, they have built a business plan, but then when they realize the regulatory environment that they are going to start that business in, it kills their dream before it even gets a chance to come to life.

Just this weekend I spoke to a veterinarian who was really excited about starting his own practice, but then when he realized that with all the small business regulations and just the incredible cost of providing health care to the team that he wanted to recruit, he wouldn't be able to do it. So he decided to keep his job with the state.

So I thought, you know, there's another bumper sticker this Administration needs for their limos and, perhaps, for the golf carts is, "We aborted your business." So many businesses, before they even get a chance to get off the ground.

So according to David Burton, a Senior Fellow in Economic Policy at the Heritage Foundation, business exits now exceed new business formations. That's not my America. That's not the land of opportunity. There's something wrong here when we have more businesses closing their doors than we have businesses opening up. That's a sign that the American dream is going the wrong direction.

Here's some concrete examples of regulations that have affected me. The IRS Section 179, the big issue for small businesses is how do we plan capital expenditures, investing in the growth of our company when the Section IRS 179 limits on deducting capital expenditures were finally renewed just weeks before the end of the calendar year. How do you plan investing in the growth of your company when you're holding on to the last minute to see if, hey, is this limit going to be expanded again. I know a lot of fellow small business owners and small business clients found it very difficult.

Of course, there's ObamaCare. For many small businesses the cost of providing health care to our staff is in our top five expenses. For me, it's right behind the cost of paying my staff. Our rates right now are more than double what they were before this president took office. So you have got not only that, but then you have co-pays and deductibles that are several times higher. And our rates are also going to keep going up because we are subsidizing the Affordable Care Act.

The reality is where the rubber meets the road is I'm not paying my staff twice what I was in 2008, so where does an employee come up with an additional 8 to 12 grand a year to cover their family? Where does the small business owner like me, I cover 80 percent of my employees' portion of medical, dental, and vision, how do I make up my increased overhead? Can I put that on the back of my clients by increasing rates and still stay competitive with my regional or national competitors? And am I going to keep my employees if I don't offer coverage?

So, you know, when they said, "John, you have got 12 employees. You don't have to do that." I said, okay, I'm an IT company. I will just go tell my staff of technicians, "Good news, guys. We are under 50 full-time employees, so you can go out on the least secure website on the planet, you can put in all your personal private information out on the healthcare.gov and you can sign up there." And realize how difficult that would be for me with a staff of highly trained security and data security experts. So that went over like a ton of bricks.

So we can't measure our success in just turning back the clock, how far can we turn back the clock. Small business owners, we still want to take care of our staff. We still want the same thing, we want affordable health care that is quality coverage, and ObamaCare went the opposite direction.

So it's not just enough to get us back to where we were in 2007. We still need the same thing. So there are other things that vex small business owners like pretty much anything NLRB does, but these are two pretty good examples. Uncertainty hurts. ObamaCare hurts. These are things that put businesses out of business and keep new aspiring entrepreneurs from starting their business.

So in the spirit of entrepreneurship, if the NFIB wants my prototype bumper stickers, I'm happy to give them if they want to distribute those to a few folks in D.C. Don, I have got some prototypes for you. Thank you again for the opportunity.

[The prepared statement of Mr. Overton follows:]

Hearing: Senate Committee on Small Business and Entrepreneurship Testimony
Date: March 30, 2015
Name: John Overton
Title: Owner/Partner and CFO
Company: Turn Key Solutions, LLC

INTRODUCTION:

Good morning. Thank you to Chairman Vitter, and the members of the Senate Committee on Small Business and Entrepreneurship for inviting me to testify today on how the hidden cost of federal regulations impact small businesses and economic growth.

My name is John Overton. I am an owner and the CFO of Turn Key Solutions, a company in our 16th year, headquartered in Baton Rouge, serving the I.T. infrastructure, security and business continuity needs of two primary vertical markets: Healthcare and Small Business. Though we have a large footprint, we are truly a small business, with 12 employees. I also come from a family of small business owners; my father was one of the last private practice pediatricians in Hammond Louisiana.

I am pleased to be here representing not only my company, but also as a member of LABI, where I chair the Small Business Council, the NFIB where a serve as chairman of the Louisiana Leadership Council, and as a member of the SBAC. I have also twice served as chairman of the Baton Rouge Area Chamber's SBC, and am a current BRAC board member.

TESTIMONY:

NFIB responded to the infamous "You didn't build that!" affront to small business owners across the Nation in numerous ways, including sending members a whimsical but supportive bumper sticker that said "I built my business!"

This administration takes credit for a lot of good things that countless small business owners make happen by pouring our hearts and souls into what we do; but the reality is that the administration fails to take credit for the negative impact of mounting regulations--regulations that we must overcome just to stay in business, let alone aspire to grow.

Perhaps the administration needs their own bumper sticker, "We killed your business!" That is the reality. The cost of complying with the regulations both in terms of money and time is crippling.

My father recently closed his clinic due to the impossibility of a small private practice keeping up with ever-growing federal regulations while trying to serve patients. His colleagues regularly tried to talk him into following them to go work for large groups, but in his heart he was an entrepreneur to the end.

Also ominous is the effect of regulations on aspiring entrepreneurs—people with a dream, a team, a business plan, but . . . when they realize the prohibitive regulatory environment in which they would have to operate, their dream dies before it gets a chance to come to life. Another bumper sticker this administration needs on their limos is "We aborted your business!"

According to David Burton, a Senior Fellow in Economic Policy at the Heritage Foundation, Business exits now exceed new business formations.

Here are some concrete examples of crippling regulations:

- Section 179: How can a small business plan capital expenditures—investing in the growth of their company (if they're lucky enough to access capital) when the IRS Section 179 limits on deducting capital expenses were finally renewed just weeks before the end of the calendar year?! That puts small business owners waiting until the last minute to make major purchases and makes planning for capital expenditures almost impossible.

- Obamacare:
    - For many small businesses, providing healthcare benefits to our staff remains a top 5 expense, often right behind salaries! Our rates are more than double than what they were before the President took office—and not only that, but our co-pays and deductibles are 2-3x higher! And our rates will continue going up because we're subsidizing this failing plan called the ACA.
    - No, I'm not paying my employees twice as much, so where does an employee come up with the additional 8-12k more a year to cover their family? Where does the small business owner like me—who covers 80% of his employee's portion of medical, dental, vision make up that increased overhead? Can I put that on the back of my clients and still remain competitive with big national firms? If I want to keep my employees, I have to provide competitive coverage.
    - Maybe Mr. Gruber can tell me how a company of I.T. Professionals can say to his technicians, "Hey, good news! We don't have to provide healthcare coverage now because we're under the FTE equivalency number. You can now go put all your most personal, private information into one of the least secure websites on the planet and sign up for coverage at healthcare.gov!" That's a tough sell to anyone who is concerned about data security, let alone a team of experts.
    - We cannot measure our win by how far we turn back the clock. Small Business owners don't just want Obamacare repealed, we simply want to provide our staff with quality healthcare coverage that is affordable. Obamacare went the opposite direction. It simply will not be enough to repeal it. It must be replaced with something that works and is affordable!

There are other things that vex small business owners (like most of what the NLRB does), but these two examples are pretty simple. Uncertainty hurts. Obamacare hurts. These things put good businesses out of business and kill the dreams of aspiring small business owners.

Again, thank you to Chairman Vitter and Committee members for this opportunity to speak with you today. I am happy to address any questions you have for me.

Chairman VITTER. Great. Thank you very much, John. Now, Congressman Graves will introduce our next two witnesses.

Representative GRAVES. Next witness we have is J.H. Campbell, Jay Campbell, with Associated Grocers. He has been with Associated Grocers for more than four decades, as President and CEO for more than 20. They are located in Baton Rouge, and in May of this year will be celebrating their 65th year in business here in Baton Rouge.

The testimony that Mr. Campbell will be offering will be focused on retail and wholesale grocery business and the effects it has on the associated companies or grocery stores affiliated with his business, but also on the consumers that utilize those facilities.

Mr. Campbell.

STATEMENT OF J.H. CAMPBELL, Jr., PRESIDENT AND CEO, ASSOCIATED GROCERS, BATON ROUGE, LA

Mr. CAMPBELL. Thank you, Chairman Vitter, Congressman Graves. Thank you for inviting me to this field hearing.

Let me give you a little history about Associated Grocers. It was founded in 1950 by 17 individuals, and it has grown to a membership of over 200 retail outlets in three states, Louisiana, Texas, and Mississippi. But all of these businesses are family owned.

So family-owned businesses own Associated Grocers, and we have over 700 employees, and we remain committed to our mission, which is the support and success of the independent retail grocer.

Federal regulations and their compliance requirements are having a great financial impact on our company and their companies and our ability to fulfill our mission. With a targeted 1 percent net margin, every mandate and directive impacts our cost of operations and therefore consumer prices.

I'm going to go through a variety of Federal regulations for you to kind of give you an inkling of that. The first is Country of Origin Labeling, often referred to as COOL. When COOL was passed by Congress in 2002, the industry was already voluntarily engaged in extensive efforts to provide interested consumers with the origin information for the food items that they purchased.

The industry spent tens of millions of dollars in unnecessary compliance costs and yet Canada and Mexico brought a complaint to the WTO claiming that COOL violated our country's trade commitments, which it did, and they won.

Now wholesalers and retailers will once again spend resources necessary to change their systems to meet the new regulations. This program now means nothing to consumers. Absolutely nothing. And it will require us to tell consumers where their meat was born, raised, and slaughtered. You will have more DNA on your food products than you know probably about your family.

Second, in Louisiana, the WIC program. We have been, in Louisiana, under a moratorium that prevents any new stores or any stores who change in ownership to be eligible for a permit authorizing them to be a WIC food dealer. If you don't know what WIC is, it's for low-income individuals who have women, infants, and children. It's a very vital program for people. It's a safety net.

Government should not be penalizing stores and consumers who did nothing wrong, but should merely punish the violators in the system. Only three states in our country are affected by this moratorium, which was unilaterally put into place by the USDA, who is in charge of WIC.

Which means for us, plans for new stores, acquisitions of stores or outlets are being postponed or canceled right now. The placing of such an indefinite moratorium on new licenses without any notice of time frame makes it very challenging for anyone to plan for new locations or for low-income citizens to locate a store where they can easily redeem their benefits. There is also a significant need to automate the WIC program very similar with the EBT technology being used for SNAP benefits.

Now it's my turn to talk about the Affordable Care Act, which is not a cost containment act at all. It's a coverage act. It did nothing but cover people. It did nothing to make care affordable.

We are concerned about the definition of full-time employees and the mandatory auto-enrollment requirements. Full-time status should be defined as 40 hours per week and the means of verification and tracking employees should be made simple, and easy to comply.

The companies that are fully insured or the ones that are self-insured, like our companies, should be allowed to make needed plan changes without losing grandfathering status. You may not know, we cannot make any changes in our plan. If we do, we lose grandfathering.

The fact that our company and many others were providing coverage well prior to ACA for their employees should be proof that we were doing the right thing before ACA was passed.

Next is menu labeling. In the ACA act, in the Affordable Care Act of 2,000 pages, there were four words that were added that will cost the industry hundreds of millions of dollars. Those four words are "similar retail food establishments." Supermarkets with over 20 outlets will now have to create ways to display, analyze, and keep records on calorie count, complete nutritional information, and provide a succinct statement regarding how this is measured for a 2,000-calorie diet. All of these requirements have to be accomplished by December 1 of this year. Totally unworkable.

The Food Safety Modernization Act passed in the 111th Congress in 2011 is the largest piece of food safety legislation passed in over 70 years. The law makes expansive changes which includes new enforcement authorities, new program activities, and increased inspections.

On the screen, you should have for you that. That is the list of seven major proposed rules that we have to comply with for which the regulations have not been promulgated, and each of these has over 500 pages in length already.

Other concerns we have, that's on the next slide. The Fair Labor Standards Act and its various limitations which restrict our ability to provide incentives to hourly employees and the Department of Labor's desire to change the definition of primary duty, and the salary threshold.

The rule-making authority of the National Labor Relations Board and their attempts to make unionization easier. Truck driver hours of service, and the unrealistic and unpractical of nature of rules limiting the ability of drivers to work and to be behind the wheel. They have now come up with a BMI and a sleep apnea test.

Interchange and swipe fees. Our concern over the ever-increasing cost which raises the cost to consumers. GMO labeling, which is Genetically Modified Organisms, we need one definition for the country. Estate tax, the survival and transferability of privately owned businesses in America and the need for real corporate and individual tax reform.

In closing, the Federal government and its regulatory agencies assume that the regulated are guilty until proven innocent. I think that you know that is unlike our criminal justice system where you are innocent until proven guilty.

As you can tell, I went through this very quickly and I listed only a few of the regulations that we are concerned with. I will be happy to try to answer any questions you might have. Thank you.

[The prepared statement of Mr. Campbell follows:]

U.S. SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

"How the Hidden Cost of Federal Regulations Impact Small Businesses and Economic Growth"

March 30, 2015

Prepared Testimony of J.H. Campbell, Jr.
President and CEO, Associated Grocers, Inc.

Chairman Vitter, Congressman Graves, and Members of the Committees:

First, thank you for the opportunity to testify at this important field hearing on "How the Hidden Cost of Federal Regulations Impact Small Businesses and Economic Growth."

Associated Grocers, Inc. was founded in 1950 by 17 individuals, and has grown to a membership of over 200 independent retail outlets in Louisiana, Mississippi and Texas. We currently have approximately 700 employees in Louisiana, and are committed to our original mission of the "*support and success of the independent retail grocer*."

Achieving our mission has proven to be more challenging, and I can think of nothing that is currently having a greater financial impact on our company, and our mission, than federal regulations and federal compliance requirements.

With a targeted 1% net profit margin, every mandate and directive impacts our costs of operations and therefore consumer prices.

I will start by highlighting a few regulations that will be obvious to consumers, and then others that are more behind the scenes in their impact and effect.

First is Country of Origin labeling (often referred to as COOL). When COOL was passed by Congress in 2002, the industry was already voluntarily engaged in extensive efforts to provide "interested" consumers with "origin" information for the food items they purchased. The new law essentially short-circuited this market-driven approach, and forced the industry to spend tens of millions of dollars in unnecessary compliance costs. Despite the expense, COOL was put into place, and the industry achieved high compliance rates in inspections by USDA and state inspectors. However, Canada and Mexico brought a complaint in the World Trade Organization claiming COOL violated our country's trade commitments, and they won. USDA "rewrote" the rule implementing COOL in order to comply with the WTO's decision, and wholesalers and retailers once again spent the resources necessary to change their systems. The USDA's changes have, so far, been found to be insufficient to address the WTO's concerns, and wholesalers and retailers are once again going to be held responsible for additional changes to their systems and record keeping. This program, that now means nothing to consumers, will require us to tell consumers where their meat was born, raised, and slaughtered.

Second: In the state of Louisiana, I must mention WIC (also known as the Supplementary Nutrition Assistance Program for Women, Infants and Children) and the moratorium that is currently in place that prevents any new stores, or any stores who change ownership, to be an authorized WIC food retailer. This prevents WIC customers from shopping in a new store potentially opening in a food desert, or a store with better prices, or fresher offerings. Government should not penalize stores and consumers who did nothing wrong. There are only 3 states in the country affected by this moratorium, which was unilaterally implemented by the USDA regulators in charge of WIC. This "USDA-imposed" moratorium is directly affecting the viability of stores operating in Louisiana and hindering economic development. Plans for new stores and/or acquisitions of outlets are being postponed or cancelled altogether. The grocery business is very competitive, and placing an indefinite moratorium on new licenses, without any notice or timeframe, makes it challenging for retail food outlets to open new locations and for low-income citizens to find stores to purchase WIC food products. There is also a need to automate the WIC program, with the EBT technology used for SNAP benefits.

Next: The Affordable Care Act, and its definition of full time employees, and its mandatory auto enrollment requirements are problematic. Full time status should be defined as being 40 hours per week, and the means of verification and tracking should be made simple and easy to comply. The companies with fully insured and/or self-insured health plans should be allowed to make needed plan changes without losing "grandfathering" status. The fact that these companies offered coverages prior to the ACA for their employees should be proof that those companies were doing the right thing for their employees and should not be penalized.

Next is Menu Labeling. In the 2000+ page Affordable Care Act, "Four" words were added that will cost the industry hundreds of millions of dollars: Those four words are "similar retail food establishments." Because supermarkets do not generally have menus, or menu boards, and yet may have hundreds of "covered" items, they will have to create ways to display, analyze, and keep records on calorie content, complete nutritional information, and provide a succinct statement regarding how this is measured for a 2,000 calorie diet. If a product is not labeled, then it is considered misbranded and not allowed to be sold. All of these requirements have to be accomplished by December 1, 2015 – a totally unworkable timeframe.

The Food Safety Modernization Act

During the 111th Congress, lawmakers passed food safety legislation that authorized the most significant changes to U.S. food safety laws in over 70 years. The Food Safety Modernization Act -"FSMA" (P.L. 111-353) was signed into law on January 4, 2011, and was designed to improve and modernize the country's food safety system and provide the Food and Drug Administration (FDA) with the necessary tools and authorities to protect our food supply. The law makes expansive changes to the Federal Food, Drug, and Cosmetic Act, which includes new enforcement authorities, new program activities, and increased inspections. Our industry was supportive throughout the legislative process and worked to ensure that the statute would not impose unnecessary burdens on the industry. Now we are faced with seven major proposed rules under

FSMA:

1) Current Good Manufacturing Practice and Hazard Analysis, and Risk-Based Preventive Controls for "Human Food".
2) Current Good Manufacturing Practice and Hazard Analysis, and Risk-Based Preventive Controls for Food for "Animals".
3) Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.
4) Food Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals.
5) Sanitary Transportation of Human and Animal Food.
6) Focused Mitigation Strategies to Protect Food Against Intentional Adulteration.
7) Accreditation of Third-Party Auditors and Certification Bodies to Conduct Food Safety Audits and to Issue Certifications.

Each of these rules are close to 500 pages in length. I represent independent retailers who are trying to stock shelves and sell groceries, not read, understand, and implement rules longer than "War and Peace."

Other concerns –

1) The Fair Labor Standards Act and its various limitations and restrictions placed on providing incentives to hourly workers. Their desire to raise the salary threshold and make changes to the current "primary duty test".

2) The rule making of the National Labor Relations Board (NLRB) and their attempts to make unionization easier.

3) Trucking regulations and truck driver "hours of service", and the unrealistic and impractical nature of the rules limiting the ability of the driver to work and be behind the wheel (BMI/ Sleep Apnea testing particularly).

4) Interchange/Swipe Fees – concern over the ever-escalating costs and rate increases.

5) GMO labeling (Genetically Modified Organisms).

6) Estate Tax – the survival and transferability of private-owned business in America, and the need for real corporate and individual tax reform, in general.

In closing, the Federal Government, and its regulatory agencies, assume that the "regulated" are guilty until proven innocent, unlike in our criminal justice system where the guilt must be proven. Obviously, I have only highlighted a few of the big concerns, but we certainly appreciate your interest and focus on these very important areas and would be happy to try to answer any of your questions.

Chairman VITTER. Great. Thank you.

Representative GRAVES. Thank you, Mr. Campbell.

Last witness we have today is Preston Kennedy, who is the President and CEO of Bank of Zachary, a bank that was established in 1904 and has three offices in Louisiana today. The bank has about 46 employees, and importantly, their role is largely serving as a community bank, an entity that lends funds to other small businesses in the State of Louisiana.

Mr. Kennedy is going to be talking sort of from the community bank perspective, representing thousands of other community banks across the United States, and discussing the difficulties that community banks are having in complying with Dodd-Frank, which was the legislation designed to address banks "Too Large to Fail," and I think, without putting words in your mouth, perhaps the disproportionate compliance challenges associated with community banks under this Federal legislation. Mr. Kennedy, thank you for being here.

STATEMENT OF PRESTON KENNEDY, PRESIDENT AND CEO, BANK OF ZACHARY, ZACHARY, LA

Mr. KENNEDY. Congressman Graves, Chairman Vitter, members of the committee, thank you for having this hearing. I testify today on behalf of the Louisiana Bankers Association, as well as the Independent Community Bankers of America, and the more than 6,000 community banks that they represent nationwide.

With that said, I'd like to recognize you, Chairman Vitter, for your legislation to ensure community bank representation on the Federal Reserve Board. Thanks to your persistence, that legislation is now law. And you have also done important work on the problem of Too Big to Fail banks. On behalf of my bank and all community banks, thank you for that.

Bank of Zachary was founded in 1904. It's a $200,000,000 community bank. We have deep roots in Zachary and the other communities that we serve. As Congressman Graves said, we have 3 offices and 46 employees, and we are a small business, and we lend to other small businesses.

The Bank of Zachary is typical of more than 150 community banks across Louisiana. Community banking is a time-tested business model that built this country and has worked for generations. Community banks are prodigious small business lenders. Though we hold less than 20 percent of U.S. banking assets, we hold a much greater share of small business loans, 55 percent. The viability of community banks is linked to the success of our small business customers.

The partnership between community banks and small business is at risk today from the exponential growth of regulation. In a few short years, the nature of community banking has fundamentally changed from lending to compliance. Banks need more scale to accommodate the expense of compliance, which includes hiring, training, software, and other costs.

I believe new regulatory burden has contributed significantly to the loss of over 1,300 community banks since 2010. With fewer community banks, small businesses have less access to credit. The local bank may be replaced by an out-of-market bank less willing to make a loan. The good news is that there are readily available solutions to this pending crisis.

ICBA's Plan for Prosperity is a regulatory relief agenda that will allow Main Street to prosper. A copy of that plan is attached to my written remarks.

While the plan includes nearly 40 recommendations covering major threats to community banking, I want to focus my comments on the plan's mortgage reform provisions. New regulations are changing the economics of this line of business. What's more, there is a direct link between mortgage lending and small business. Home equity is often an entrepreneur's greatest source of capital, and they should be able to tap it to start or expand a business.

However, it is often hard for self-employed individuals to document their income as required by the CFPBs qualified mortgage or QM rule. QM is a safe harbor that shields a lender from new draconian litigation risk. For most community banks, QM effectively puts a tight box around underwriting and loan terms because it is inflexible and does not give a banker discretion to use his own judgment. QM is cutting off small business credit.

You hear the same story again and again from community bankers all over the country. We believe any mortgage a community bank holds in portfolio should be a qualified mortgage. When a lender is exposed to 100 percent of the credit risk in a portfolio loan, he has every incentive to ensure the loan is well underwritten and affordable to the borrower.

While we have other recommendations, this provision alone would go a long way toward repairing the damage of the new rules and helping small business owners. We're encouraged by the bills introduced in the Senate and House so far.

The senate bill that best represents the scope of the Plan for Prosperity is the CLEAR Act, S.812, sponsored by Senators Jerry Moran and John Tester. S.812 includes the portfolio QM provision that I described. It would also provide that any mortgage held in portfolio by a community bank is exempt from costly escrow requirements. Again, the portfolio lender holds all the risk. Last, it would exempt community banks from expensive and redundant internal control assessment mandate of Sarbanes-Oxley 404(b).

ICBA also support the Financial Institutions Examination Fairness and Reform Act, S.774, introduced by Senators Moran and Joe Manchin, and the Privacy Notice Modernization Act, S.423, introduced by Senators Moran and Heidi Heitkamp. We encourage you to co-sponsor these important bills, and we look forward to additional bills embodying plans for prosperity.

Thank you again for the opportunity to testify, and I look forward to questions.

[The prepared statement of Mr. Kennedy follows:]

INDEPENDENT COMMUNITY
BANKERS of AMERICA

Testimony of

Preston Kennedy
President and CEO
Of
Bank of Zachary
Zachary, LA

On behalf of the
Independent Community Bankers of America

Before the

United States Senate
Committee Small Business and Entrepreneurship

Field Hearing on

"How the Hidden Cost of Federal Regulations Impact Small Businesses and Economic Growth"

March 30, 2015
Baton Rouge, LA

Chairman Vitter, Congressman Graves, and members of the Committee, my name is Preston Kennedy, and I am President and CEO of the Bank of Zachary in Zachary, LA. I testify today on behalf of the Louisiana Bankers Association as well as the Independent Community Bankers of America and the more than 6,000 community banks they represent nationwide. Thank you for convening today's hearing on "How the Hidden Cost of Federal Regulations Impacts Small Businesses and Economic Growth."

The Bank of Zachary, founded in 1904, is a $200 million community bank with deep roots in Zachary and the other communities we serve. With three offices and 46 employees, we are a small business and we lend to other small businesses and small business owners. The Bank of Zachary is typical of more than 150 community banks across Louisiana and thousands more across the country. We are locally owned and make decisions locally. We are relationship lenders, as opposed to transactional lenders, and our customer relationships span generations. We rely on direct, personal knowledge of the borrower, local economic conditions, and other "soft data" to underwrite customized loans and other services tailored to the unique characteristics of our customers and communities. This is our competitive advantage over larger banks. We have a traditional business model and a straightforward capital structure. Finally, we are part of the fabric of our community. Our officers, directors and employees are actively involved in nearly every civic and charitable organization in our trade area. We played a critical role in the formation of the Zachary Community School System, which has grown into a model of success. Many other community banks have similar stories to tell.

At the outset of this statement, I would like to recognize you, Chairman Vitter, for your amendment to the Terrorism Risk Insurance Act to ensure community bank representation on the Federal Reserve Board of Governors. Thanks to your persistence, that amendment is now law. Federal Reserve Board representation will greatly improve monetary and regulatory policy. On behalf of my bank and all community banks, thank you.

Community Banks and Small Business Lending

Community banks are prodigious small business lenders. Though we hold less than 20 percent of U.S. banking industry assets, we hold a disproportionate market share of small business loans – 55 percent – supporting a sector responsible for more job creation than any other. We provide small business credit in good times as well as challenging times. Federal Reserve data shows that while overall small business lending contracted during the recent recession, lending by a majority of small community banks (those of less than $250 million in assets) actually increased, and small business lending by banks with asset sizes between $250 million and $1 billion declined only slightly. By contrast, small business lending by the largest banks dropped off sharply. The viability of community banks is linked to the success of our small business customers in the communities we serve, and we don't walk away from them when the economy tightens.

The type of small business lending community banks do simply cannot be duplicated by a bank based outside the community. As a recent study by scholars at Harvard's Kennedy School noted: "In certain lending markets, the technologies larger institutions can deploy have not yet proven effective substitutes for the skills, knowledge, and interpersonal competencies of many traditional banks." [1]

Regulatory Overkill Poses a Grave Threat to the Community Bank-Small Business Partnership

The exponential growth of regulation in recent years is suffocating community banks' ability to serve their small business customers. Compliance has become a major distraction for community bank managers. Any community banker will tell you that their job has fundamentally shifted from lending and serving customers to struggling to stay on top of ever-changing rules and guidance. Every aspect of community banking is subject to new regulation, but the impact is especially severe in the area of mortgage lending.

Banks need more scale to accommodate the increasing expense of compliance which includes hiring, training, software, and other costs. I believe this increase in regulatory burden has contributed significantly to the decrease of 1,342 community banks in the U.S. since 2010. The number of banks with assets below $100 million shrunk by 32 percent, while the number of banks with assets between $100 million and $1 billion fell by 11 percent.[2] A financial landscape with fewer, larger banks will reduce access to credit for small businesses.

Legislative Solutions Are Needed

The good news is that there are readily available legislative solutions to this pending crisis. Working with community bankers from across the nation, ICBA developed its Plan for Prosperity, a platform of legislative recommendations that will provide meaningful relief for community banks and allow them to thrive by doing what they do best – serving and growing their communities. Each provision of the Plan was crafted to preserve and strengthen consumer protections and safety and soundness. I encourage the members of this Committee to review the Plan, which is attached to this statement.

While the Plan contains nearly 40 separate legislative recommendations, they are organized around three pillars: Relief from mortgage regulation to promote lending; improved access to capital to sustain community bank independence; and reforming oversight and examination practices to better target the true sources of risk. Each of these pillars helps small businesses by preserving and strengthening the community banks that partner with them. I will note a few of the recommendations under each pillar.

Mortgage Reform for Community Banks

Every aspect of mortgage lending is subject to new, complex, and expensive regulations that are upending the economics of this line of business. In ICBA's 2014 Community Bank Lending Survey, which surveyed over 500 community banks nationwide, 44 percent of respondents said that they made fewer first lien residential mortgage loans in 2014 when the CFPB's qualified

[1] "The State and Fate of Community Banking," Marshall Lux and Robert Greene. Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School. February 2015.
[2] Parsons, Richard J. Bank Think. American Banker, Feb. 16, 2015.

mortgage rules were in effect than they made in 2013. The improved housing market should have created more loans, not fewer. More troubling, 73 percent of respondents said that regulatory burdens were preventing them from making more residential mortgage loans.

Small business owners often use home equity loans to finance their businesses. However, small business owners may have difficulty complying with the income documentation requirements under the ability-to-repay rule, despite their excellent credit. The underwriting requirements of the "qualified mortgage" (or QM) rule – which shields lenders from litigation under the ability-to-repay rule by defining mortgages that are deemed to comply with the rule – are inflexible and do not afford the lender discretion to use judgment or to weigh compensating factors such as high net worth in making credit decisions. You hear the same story again and again from community bankers all over the country.

Key provisions of the Plan for Prosperity are designed to keep community banks in the business of mortgage lending and to give them more flexibility in extending credit. Plan provisions include:

- "Qualified mortgage" status under the CFPB's ability-to-repay rules for any mortgage originated and held in portfolio for at least three years by a lender with less than $10 billion in assets.
- An exemption from any escrow requirements any first lien mortgage held in portfolio by a lender with less than $10 billion in assets.

The principal rationale for these provisions, and the reason they can be safely enacted, is they apply only to loans originated and held in portfolio by community banks. As relationship lenders, community bankers are in the business of knowing their borrowers and assessing their ability to repay a loan. What's more, when a community bank holds a loan in portfolio it holds 100 percent of the credit risk and has an overriding incentive to ensure the loan is well underwritten and affordable to the borrower. In a typical community bank portfolio, even a small number of defaults can put a bank at risk. Community bank portfolio lenders ensure they understand the borrower's financial condition and structure the loan accordingly. If the borrower has trouble making payments due to job loss or other unforeseen circumstances, a community bank portfolio lender will work with the borrower to restructure the loan and keep the borrower in their home. By the same token, portfolio lenders will protect their collateral by ensuring borrowers remain current on tax and insurance payments. For this reason, the escrow requirement, which must be outsourced at a relatively high cost by community banks with a low volume of mortgages, is an unnecessary burden when a loan is held in portfolio.

Access to Capital

The second pillar of the Plan for Prosperity is capital access and preservation for community banks. A number of the provisions are dedicated to strengthening community bank viability by creating new options for capital raising and capital preservation.

One such provision would provide relief for community banks under $1 billion in asset size from the internal control attestation requirements of Section 404(b) of the Sarbanes-Oxley Act. Since community bank internal control systems are monitored continually by bank examiners, they should not have to incur the unnecessary annual expense of paying an outside audit firm for attestation work. This provision will substantially lower the regulatory burden and expense for small, publicly traded community banks without creating more risk for investors.

Three capital provisions of the Plan for Prosperity would amend Basel III for banks with assets of $50 billion or less to restore the original intent of the accord which was intended to apply only to large, internationally active banks.

ICBA also recommends reforming Regulation D, which governs private offerings of shares, so that anyone with a net worth of more than $1 million, including the value of their primary residence, would qualify as an "accredited investor." The number of non-accredited investors that could purchase stock under a private offering should be increased from 35 to 70.

Reforming Bank Oversight and Examination to Better Target Risk

The third pillar of the Plan for Prosperity is improving the exam environment for community banks. This includes three provisions as described below.

Call Reports

The quarterly call report filed by community banks now comprises 80 pages of forms and 670 pages of instructions. Implementation of the new Basel III capital standards may add nearly 60 additional pages to the already burgeoning call report. In September, nearly 15,000 community bankers representing 40 percent of all community banks nationwide signed an ICBA petition to the regulatory agencies calling for more streamlined quarterly call report filings.
ICBA's recent Community Bank Call Report Burden Survey empirically demonstrates this problem. Eighty-six percent of survey respondents said the total cost of preparing the quarterly call report has increased over the last 10 years.[3] Thirty percent said it had increased significantly. A typical $500 million asset community bank spends close to 300 hours a year of senior level, highly-compensated staff time on the quarterly call report.

Only a fraction of the information collected is actually useful to regulators in monitoring safety and soundness and conducting monetary policy. The 80 pages of forms contain extremely granular data such as the quarterly change in loan balances on owner-occupied commercial real estate. Whatever negligible value there is for the regulators in obtaining this type of detail is dwarfed by the expense and the staff hours dedicated to collecting it. To put things in perspective, consider this contrast: some large credit unions filed a less than 30 page call report in the first quarter of 2014. Surely, regulators can supervise community banks with significantly less paperwork burden than they currently demand.

For this reason, ICBA is calling on the agencies to allow highly-rated community banks to submit a short form call report in the first and third quarters of each year. A full call report would be filed at mid-year and at year-end. The short form would contain essential data required by

[3] 2104 ICBA Community Bank Call Report Burden Survey.
http://www.icba.org/files/ICBASites/PDFs/2014CallReportSurveyResults.pdf

regulators to conduct offsite monitoring, including income, loan growth, changes in loan loss reserves, and capital position. In the recent survey noted above, community bank respondents overwhelmingly agreed that instituting a short-form call report in certain quarters would provide a great deal of regulatory relief. Seventy-two percent of respondents indicated the relief would be substantial.

Extended Exam Cycle

Under current agency rules, a bank with assets of less than $500 million that has a CAMELS rating of 1 or 2 is eligible for an exam cycle of 18 months. Banks that do not meet these criteria are examined on a 12 month cycle. The extended exam cycle allows examiners to focus their limited resources on the banks that pose the greatest systemic risk. In order to more fully of reap the benefit of risk-focused exams, the exam cycle can and should be further extended to 24 months and available to banks with assets up to $2 billion, provided they have a CAMELS rating of 1 or 2. Preparations for bank exams, and the exams themselves, distract bank management from serving their communities to their full potential.

Strengthen Accountability in Examinations

The trend toward oppressive, micromanaged regulatory exams is an ongoing concern to community bankers nationwide. ICBA believes that the best means of creating a more balanced exam environment is to create a workable appeals process. ICBA's Plan for Prosperity calls for the creation of an independent body to receive, investigate, and resolve material complaints from banks in a timely and confidential manner. The goal is to hold examiners accountable and to prevent retribution against banks that file complaints.

The current appeals process is arbitrary and frustrating. Appeals panels, or other processes, routinely lack the independence and market expertise necessary to reach a fair, unbiased decision.

Eliminate Burdensome Data Collection

The Plan for Prosperity calls for exempting banks with assets below $10 billion from the new small business data collection requirements. This requirement, which is in statute but has yet to be implemented by the CFPB, requires the reporting of information regarding every small business loan application. Adding to the complexity, records of applications must be kept separate from records of the responses to applications and must be kept separate from the underwriting process. In other words, the requirement creates a separate bureaucracy within the bank that cannot be integrated with lending operations. This is especially inefficient, and may not be feasible in organizations that are too small to accommodate fire wall structures. Further, data collected by community banks and subsequently made public by the CFPB could compromise the privacy of applicants in small communities where an applicant's identity may be easily deduced, despite the suppression of personally identifying information.

ICBA is grateful to Chairman Vitter and Senator Brown for including in the **Too-Big-To-Fail Act** of the last Congress a provision that would exempt banks with assets of $10 billion or less from the new small business data collection requirement.

ICBA hopes that the Plan for Prosperity will serve as a guide to this Committee and the Senate.

Introduced Legislation

The 114th Congress provides a unique opportunity to provide meaningful regulatory relief for community banks. ICBA urges this Committee and all Senators not to let this opportunity slip. We're encouraged by the bills that have been introduced in the Senate and House so far, several of which are noted below.

The Community Lending Enhancement and Regulatory Relief Act of 2015 (the "CLEAR Act", S. 812), introduced by Senators Jerry Moran and Jon Tester, advances three priority provisions of Plan for Prosperity: qualified mortgage status and an escrow exemption for any mortgage held in portfolio by a community bank with less than $10 billion in assets, and relief from the SOX 404(b) internal control assessment mandate for community banks with less than $1 billion in assets.

The **Financial Institutions Examination Fairness and Reform Act (S. 774)**, introduced by Senators Moran and Joe Manchin, would go a long way toward improving the oppressive examination environment by creating a workable appeals process. This legislation would improve the appeals process by taking it out of the examining agencies and empowering a newly created Independent Examination Review Director, situated in the Federal Financial Institutions Examination Council, to make final appeals decisions. Though we favor additional measures to bring a higher level of accountability to the regulators and their field examiners, we are pleased to support the provisions this legislation.

The **Privacy Notice Modernization Act of 2015 (S. 423)**, introduced by Senators Moran and Heidi Heitkamp, would eliminate redundant mailings of annual privacy notices when a financial institution's privacy policy has not changed. A similar bill introduced in the 113th Congress garnered a broad list of 75 bipartisan cosponsors. Under Gramm-Leach-Bliley, financial institutions are required to mail annual privacy notices to customers even when their policies have not changed. S. 423 would eliminate this requirement when no change in policy has occurred, while ensuring customers have continued access to their institution's current privacy policy. Annual notices, when no change in policy has occurred, do not provide useful information to customers and are often a source of confusion to them. What's more, they represent an unproductive expense for community banks that could be better directed toward serving consumers.

ICBA urges the members of this Committee to cosponsor the bills noted above.

Closing

Thank you again for the opportunity to testify today. ICBA hopes this testimony, while not exhaustive, gives the Committee a sense of the sharply increasing resource demands placed on community banks by regulation and examination and the destructive impact they have on small business lending. ICBA hopes to work with this committee to craft urgently needed legislative solutions.

ATTACHMENTS

- ICBA Plan for Prosperity

Chairman VITTER. Great. Thank you all very, very much for your testimony, and now we are going to go into discussion and questions and comments.

Let me kick that off by asking any or all of you about thoughts and any direct personal experience in terms of your companies with two key provisions of ObamaCare that we have talked about. One is the line of 50 employees or more. Once you cross that line, you have an employer mandate. So although certainly I take the point that John made, it's not like everybody below that line is somehow unaffected. You're certainly affected by cost increases. But in addition, above that line, you have all the employer mandates of ObamaCare. So what does that do to small businesses hovering right around that line?

Second issue that we have touched on is the 30-hour full-time workweek rule. So not to get into the weeds too much, but basically, the way ObamaCare counts full-time personnel, they define 30 hours or more as full-time, and that has clearly encouraged a lot of businesses to cut hours of a lot of people below 30 hours.

So in many cases, folks are being cut more than a quarter of their hours, more than a quarter of their take-home pay. If any or all of you have any personal experience with those two categories. Jay.

Mr. CAMPBELL. We have obviously, our company was well beyond the 50, but a lot of our owners had less than 50 or borderline to 50, and so the concern was, first of all, how do you calculate full-time equivalence? And the calculation was quite cumbersome. It still is quite cumbersome and very difficult. That's one of the comments I made. It needs to be made very easy, very simple, very straight-forward where anybody can understand either you are full-time or you're not. And that either you are in compliance or you're not or you have to be covered with the employer mandate.

So many of them were trying to just figure this thing out, and they had deadlines they had to meet to do the calculations. It was quite awkward to do. And so many of them just kind of threw up their hands and said, "We going to do coverage anyway," because they were providing coverage for most of their people anyway. It wasn't a real coverage issue as much as who is going to be covered, who is going to defined.

We have been of the opinion that the hourly determination of full-time 30 is too low. We believe 40 has been the standard that everybody talked about is 40 hours, which is 2,080 hours in a year. Now people are going to fall below that. So should they be penalized for that? Then you determine full-time equivalency. But something needs to be done to define that critically and make it easier to compute so it's not such a burdensome process.

More importantly, we should look at employers who before ACA were providing coverage to their employees anyway, they should be exempt from the mandate because they were doing it anyway.

Chairman VITTER. Right. Any other comments including about the 50 employee line?

Mr. OVERTON. I have less than 50 employees, but a lot of my clients are small businesses, and one of the challenges that they are looking at is, especially those who are right at that threshold, then they start to have to navigate, well, if we are going to grow, how do we grow without having to do a lot more research and spend a huge amount of time trying to figure out what an FTE is. And so it shifts some of that workforce to lesser quality jobs, to 1099 contractors, and everybody that I've ever interviewed for a job and has come from a position as a contractor, they just can't wait to become a full-time employee.

So you have a large part of the workforce that is being kind of pushed into contracting as opposed to full-time employees because of that limit.

Chairman VITTER. Right. Okay. Anybody else? Garret.

Representative GRAVES. Thank you. My first question, and I will go ahead and give you a heads up and talk for a minute and give you time to think about it. I'm curious, at the 100,000-foot level, if you're king for the day, in your unique businesses, if you had the ability, again, be king for the day, or perhaps President Obama, what is the one thing you would do that would allow you to hire more employees? I will give you a minute to think about it and talk about a few things.

It's interesting, in Louisiana, I noted earlier that we have nearly 900,000 jobs that are based upon small businesses in Louisiana. Yet in the first quarter of 2014, we had about 4,100 new small businesses that were established, yet 4,400 small businesses that shut down. That's obviously not the direction that we'd like to see the state or this country move into.

I noted earlier that compliance costs or regulatory compliance costs are somewhere in the $8 to $10,000 per employee for businesses in the United States. If those costs were lower, what would happen in regard to the ability to hire more employees?

And I will give one example. I was talking to a small business here in—I don't know if they are a small business or not, but I will say a business here in Louisiana that many of you know and talking to them about their business planning. They were telling me as a result of changes in overtime rules and the ACA, their costs, staffing costs were going to increase by 30 percent above their projected costs in the next years. How do you plan for a business if you're going to have that type of growth in your staffing cost?

And it's important, and in answering this question, keep in mind, the world has become much smaller. It's no longer a big deal to think about a company relocating to Mexico, to India, to Brazil, to China, or many other countries as opposed to the United States if the regulatory compliance costs are so high here and they can compete, have a competitive advantage by locating in another country. I hoped I filibustered long enough to give you time to think about it, but I'd like to hear your response.

Ms. JOHNSTON. Didn't take me long. For me, my business is so small, I'm well below John's company because it's me and I 1099 for the very reason he said because I can't afford to take on this type of health care yet, and really I feel like it's unnecessary. If we fix it correctly, I just think with some tweaks here and there, it would make it easier for small businesses to add folks.

But I guess to me, the key characteristics that make a small business so great, and it doesn't replace large business, it's just a good complement to it, is we tend to be a little more agile. Whereas large business tends to take them a little bit longer to move or make decisions, we tend to be a little bit more fast on our feet.

For me to be able to add somebody, as a full-time employee, I just need to know, kind of keep it simple, stupid. I grew up knowing that. If you make things fairly simple and transparent, then it's easier for a small business to plan. And I want to be able to know if I'm hiring somebody, that I don't really have a lot of confidence that that thousand will stay a thousand. I don't know if two years down the road the Affordable Care Act isn't going to cost me three times as much. I just don't have the confidence in it.

For me, you know, the IRS is a whole nother set of issues, but just focusing on the health care portion of this, I need to have the ability to add full-time employees because if there's a huge project, I can't gauge and say, that person is only going to have to work 40 hours this week. It might be 60 hours if we are on a major project. So I need a little bit of flexibility from the government when it comes to health care that let's say I can either 1099 or if somebody already has health care with their spouse that they can come on and if I end up growing to 50 employees and they don't—that that's not a mandate. That that person can be covered by their spouse. There just needs to be more flexibility for small business, I believe.

Representative GRAVES. Thank you.

Mr. KENNEDY. I appreciate your question, what one thing would you do. Banking is highly regulated. Unfortunately, there is no one thing that we could do. Last quarter alone there were 79 regulatory changes, and that was a light quarter. In the second quarter, it was 75, third quarter 85. Over 4,000 pages of regulation added in the fourth quarter of 2014 alone.

So it's not one thing that is crippling the community banks, it's death by a thousand cuts. It just comes in waves. And if there were any one thing that would make our lives easier, it would make, I know Bob Taylor, the CEO of Louisiana Bankers' job easier, because he could focus all his energies on that; however, it's so widespread, and it affects every aspect of our business.

So it's not the one thing, it's the attitude that exists that everything needs to be put in a box. Everything needs to be standardized, and everything needs to be made one size fits all that is really crushing the community banks.

Representative GRAVES. Thank you. Mr. Overton.

Mr. OVERTON. I think at the heart of every small business owner is to be the master of our own destiny. We treasure our staff. We treasure our clients. Those are our greatest assets and to be able to take care of them, to take our dream and run with it, and make an impact with it, whether you're the aspiring entrepreneur and getting into—just you're focusing on your idea and your team and putting together your business plan, but then to step into the harsh reality of, like Pres said, the death by a thousand cuts, the regulatory environment in which we have to operate our businesses is soul crushing.

It makes it where I spend so much of my time—got audited by the IRS. I was right. I didn't end up paying anything, but I spent hundreds of hours, instead of running my business, recruiting people, recruiting clients, providing reams of paperwork back years and years ago to prove that we didn't screw up.

And you know, that type of thing, the Affordable Care Act, the NLRB, the micro-unions, all these different things that are telling me how I have to run my business and it just takes it out of our heart and I can understand why people say, "Why would I go in business? I will work for the state. I don't want to deal with all that." So it really attacks the heart of what it means to be an entrepreneur, just the burden of regulations.

Representative GRAVES. Mr. Campbell, you want to add anything?

Mr. CAMPBELL. Well, since I would be king, I would have more than one thing I'd want to fix. You did say that, right?

Representative GRAVES. Correct.

Mr. CAMPBELL. On the health care front, there's no question about it, the way this was done was improper. The better way to do it is, say, define what a base health coverage is. If you're better than that, you can do whatever you want with the plan. Here's the base coverage we'd like to see for every American in this country. Here's the base coverage, and if a company provides better than that, so be it. But if you provide the base, then we can determine what the cost is going to be for people to allow people to make the change if they want, if it fits and suits their needs.

Access to capital for small business people is critical. When you have a dream, you need capital to make that dream come to fruition. But you also need a stable, predictable tax environment, which we do not have. It's a constantly changing thing with these budget rules. The last thing would be employment rules and regulations need to be consistent but realistic for the workforce so that you understand what the rules of the game are and they don't change halfway through the game.

Chairman VITTER. Great. Thank you all. Preston, let me ask you, moving to the banking sector and community banks. Since 2008, since Dodd-Frank, what do you think the overall compliance costs of Bank of Zachary have done? What sort of percentage growth, roughly?

Mr. KENNEDY. I have been asked this question before, so we have done some research into it. And a pretty accurate number, ours is about $10,000 a month that goes into strictly compliance. That's about one-and-a-half full-time equivalents. Since 2008, we—we have always had a compliance officer. That used to be a part-time job for somebody in a bank our size, then it became a full-time job. Now we added a risk manager whose job is not only compliance but all the other risks in our bank. So the cost grows just every day because, like I said, these 79 regulatory changes in one quarter. It requires everyone's attention to keep up with.

So to answer that question, in our case, about $10,000 per month. That is consistent with the industry.

Chairman VITTER. That's now?

Mr. KENNEDY. That's now, yeah.

Chairman VITTER. And what, roughly, would that figure have been before the crisis, before Dodd-Frank?

Mr. KENNEDY. Probably less than half that.

Chairman VITTER. So it's more than doubled.

Mr. KENNEDY. I have every confidence in saying it's more than double. And that is consistent throughout the industry. Typical bank, 350 million community bank, and they are spending about the same amount, $30,000 a quarter is the general figure we are—that's just our experience.

Chairman VITTER. Now, what really concerns me about that is we have a great system in America and pretty unique history of having a financial sector with all sorts of size players, including a lot of community banks. That's very different from Europe. That is very different from Canada historically. And it seems to me this crushing increase of a burden is a burden to everybody, but it's a heck of a lot bigger burden for a community bank because of your size compared to a Chase or a Citi.

And I've seen the numbers which are resulting from this, which is a big gobbling up of smaller institutions, big consolidation mergers, institutions being bought up. What is your general observation of that in Louisiana and how it's changing the landscape in Louisiana?

Mr. KENNEDY. Well, you're absolutely correct. We had, and I think Congressman Graves mentioned that in the remarks, how many banks we have lost. Just in my career, when I became a banker, there were 18,000. Then before Dodd-Frank, I think there were—or mid 2000s, around 8,000. And now we are down to less than 6,500 and certainly burden of regulation is the biggest driver with that because, like you said, it's harder and harder to keep up with.

And the people who are charged with doing that, they wear out. Boards of directors get worn out at community banks. Because the regulators come in and say, "If you don't do this, you're going to pay civil money penalties. You may even go to jail." And what we see on the Too Big to Fail level is they pay a fine and keep on going. So that alone, that sense of helplessness is helping to drive that consolidation.

And I have to say it's not from the predatory bigger banks coming in and saying, "I want to buy your institution." It's more from the institution saying, "Who can we sell to? We are tired. We have had enough. We want to get out." And that's just fed up since Dodd-Frank.

So what will that be? In a lot of small towns, there's only one community institution. If you take away that bank that probably founded the Chamber of Commerce in that town, probably is the President of the Rotary Club, donates to the Little League, they are always the go-to institution in that town, you take that away and make it a branch of another community bank, well, it's not their community bank and that community loses something.

The small businesses lose something because that banker used to be the guy sitting next to them at PTA meetings, or at church. Certainly not going to do anything that's not in their best interest because he's a neighbor. So that opportunity to go to that community member for the capital for your business is disappearing.

We fight to keep that from happening, but in those instances where ownership has just had enough and one too many examiners come in and said, you know, "You're going to go to jail because you—you're not overseeing the Bank Secrecy Act by one of your tellers," you know, they say, "This is just too much sugar for a dime. I'm out of here."

Chairman VITTER. Well, again, that clear trend really concerns me because the small town you're describing, the rural parish you're describing, is most of Louisiana. And, look, no offense to big banks, but you can't convince me that a branch of Chase has that same presence and impact or would have in the future that same presence and impact as the community bank founded there, lived there that you're describing, too. So that, I think, is a real worrisome trend directly related to this overregulation.

Garret.

Representative GRAVES. Mr. Campbell, getting a little more specific in this case. It's my recollection that the Department of Labor is scheduled to come up with a new overtime regulation in the spring. The US Department of Labor will be promulgating a new regulation pertaining to overtime.

Specifically in your industry, as I recall, it has the potential or is believed to actually define the duties of a store manager and potentially even salary and other parameters of that job.

Can you comment from an employer perspective in having the Department of Labor that intimately involved in your business and, perhaps, an alternative.

Mr. CAMPBELL. That is one of our very big concerns is the discussion is about changing the definition of the duties and responsibilities of the manager such that if they don't make a certain wage rate or a certain salary rate, they are going to have to be hourly and then be paid overtime. This would prohibit some people from even making manager status in a lot of retail supermarket business. If you really started making very possibly the bag boy or somebody in the store and they elevated themselves to be department manager, then maybe assistant manager to the store, and then a manager over all of the store. And when you become a salaried employee, and you have managerial responsibilities, which is hiring and firing, it's very clear that you can be a salaried individual.

They are talking about changing that and using an artificial dollar amount and saying if they don't make at least this dollar amount, then they can't be viewed as a salaried employee, they have to be an hourly employee, which does change the dynamic as it relates to overtime, calculation of overtime. And the problem you have with that is not only that, you can't incentivize an hourly worker without this extraordinarily elaborate calculation to put an incentive out there for hourly workers. The whole process the Department of Labor is looking at is really designed to control the working environment rather than letting the employer control the working environment.

We don't have sweat shops here in this country. It's absurd to even conclude that. There are other laws and mechanisms in place to protect workers and employers in that environment and in that relationship. But what they are trying to do is to artificially set and determine who can be a manager and who can't.

Representative GRAVES. Thank you.

Chairman VITTER. Okay. We are going to wrap up. First of all, I want to thank Congressman Graves for co-hosting this today.

Garret, thank you very, very much. And I want to thank our four witnesses. They provided exactly what I wanted, which is a real life, real world perspective from the small business sector about all of these challenges we are talking about of overregulation. So thank you all very much for your testimony.

I also want to thank the city and parish for hosting us here today and I want to thank all of you. Your direct participation, starting with your comments and questions, was absolutely essential as well. So thanks very much for that. We got to as many as we could. Obviously, we couldn't cover everybody's. If you have follow-up questions, concerns, suggestions, please get them to us.

In my case, you have a handout for today, and on the left-hand side of that handout is a blue column with all of my contact information, our website, which has a lot of good information on this and other topics. There's easy e-mail access through the website, and all of my state offices, including here in the capital region, with our phone numbers.

So please keep that handy and please use it, use it regularly to send me and my staff your comments and suggestions and questions. And we will certainly be following up with a lot of additional forums and town hall meetings like this.

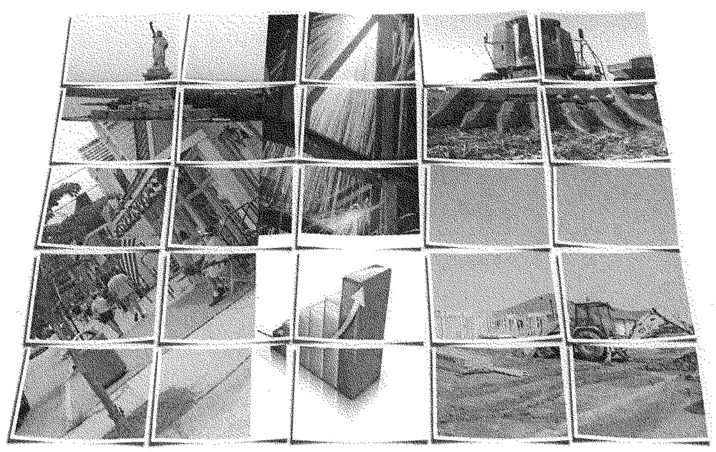
With that, thank you all very, very much. Have a great rest of the day.

[Whereupon, at 11:05 a.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

INDEPENDENT COMMUNITY
BANKERS of AMERICA
One Mission. Community Banks.

Plan for Prosperity



A Pro-Growth Agenda to Reduce the Onerous Regulatory Burden on Community Banks and Empower Local Communities
2015

Plan for Prosperity: An Agenda to Reduce the Onerous Regulatory Burden on Community Banks and Empower Local Communities

America's 6,500 community banks are vital to the prosperity of the U.S. economy, particularly in smaller towns and rural communities. Providing more than half of all small business loans under $1 million, as well as customized mortgage and consumer loans suited to the unique characteristics of their local communities, community banks serve a vital role in ensuring the economic recovery is robust and broad based, reaching communities of all sizes and in every region of the country.

In order to reach their full potential as catalysts for entrepreneurship, economic growth, and job creation, community banks must be able to attract capital in a highly competitive environment. An end to the exponential growth of onerous regulatory mandates is critical to this objective. Regulation is suffocating nearly every aspect of community banking and changing the very nature of the industry away from community investment and community building to paperwork, compliance, and examination. A fundamentally new approach is needed: Regulation must be calibrated to the size, lower-risk profile, and traditional business model of community banks.

ICBA's Plan for Prosperity provides targeted regulatory relief that will allow community banks to thrive by doing what they do best – serving and growing their communities. By reducing unsustainable regulatory burden, the Plan will ensure that scarce capital and labor resources are used productively, not sunk into unnecessary compliance costs, allowing community banks to better focus on lending and investing that will directly improve the quality of life in our communities. Each provision of the Plan was selected with input from community bankers nationwide and crafted to preserve and strengthen consumer protections and safety and soundness.

The Plan is a set of detailed legislative priorities positioned for advancement in Congress. A subset of these priorities is specifically dedicated to strengthening community bank viability by creating new options for capital raising and capital preservation. A number of regulatory relief measures would be tiered, with different thresholds for Consumer Financial Protection Bureau rules (generally $10 billion and under) and safety and soundness regulation (generally $50 billion and under). The recommended thresholds are based on existing levels and statutory provisions, which may vary by provision.

ICBA is committed to advancing and enacting the provisions of the Plan with all due vigilance and the aggressive use of every resource at our disposal. The Plan is a flexible, living document that can be adapted to a rapidly changing regulatory and legislative environment to maximize its influence and likelihood of enactment. Provisions are described below.

ACCESS TO CAPITAL: CREATING NEW OPTIONS FOR THE CREATION AND PRESERVATION OF COMMUNITY BANK CAPITAL

ICBA is proposing a set of options to strengthen community bank viability by enhancing access to capital.

Basel III Amendments: Restoring the Original Intent of the Rule. Basel III was originally intended to apply only to large, internationally active banks. ICBA proposes the following amendments for banks with assets of $50 billion or less.

- *Exemption from the capital conservation buffer.* The new buffer provisions impose dividend restrictions that have a chilling effect on potential investors. This is particularly true for Subchapter S banks whose investors rely on dividends to pay their pro-rata share of the bank's tax. Exempting community banks from the capital conservation buffer would make it easier for them to raise capital.
- *Full capital recognition of allowance for credit losses.* Provide that the allowance for credit losses is included in tier 1 capital up to 1.25 percent of risk weighted assets with the remaining amount reported in tier 2 capital. This change would reverse the punitive treatment of the allowance under Basel III. The allowance should be captured in the regulatory capital framework since it is the first line of defense in protecting against unforeseen future credit losses.
- *Amend risk weighting to promote economic development.* Provide 100 percent risk weighting for acquisition, development, and construction loans. Under Basel III, these loans are classified as high volatility commercial real estate loans and risk weighted at 150 percent. ICBA's proposed change would treat these loans the same as other commercial real estate loans and would be consistent with Basel I.

Additional Capital for Small Bank Holding Companies: Modernizing the Federal Reserve's Policy Statement. Require the Federal Reserve to revise the Small Bank Holding Company Policy Statement – a set of capital guidelines that have the force of law. The Policy Statement, which makes it easier for small bank and thrift holding companies to raise additional capital by issuing debt, would be revised to increase the qualifying asset threshold from $1 billion to $5 billion. Qualifying bank and thrift holding companies must not have significant outstanding debt or be engaged in nonbanking activities that involve significant leverage.

Relief from Securities and Exchange Commission Rules. ICBA recommends the following changes to SEC rules which would allow community banks to commit more resources to their communities without putting investors at risk:

- Provide an exemption from internal control attestation requirements for community banks with assets of less than $1 billion. The current exemption applies to any company with market capitalization of $75 million or less. Because community bank internal control systems are monitored continually by bank examiners, they should not have to sustain the unnecessary annual expense of paying an outside audit firm for attestation work. This provision will substantially lower the regulatory burden and expense for small, publicly traded community banks without creating more risk for investors.

- Due to an oversight in the 2012 JOBS Act, thrift holding companies do not have statutory authority to take advantage of the increased shareholder threshold below which a bank or bank holding company may deregister with the SEC. Congress should correct this oversight by allowing thrift holding companies to use the new 1,200 shareholder deregistration threshold as well as the new 2,000 shareholder registration threshold.
- Regulation D should be reformed so that anyone with a net worth of more than $1 million, including the value of their primary residence, would qualify as an "accredited investor." The number of non-accredited investors that could purchase stock under a private offering should be increased from 35 to 70.

TARGETED REGULATORY RELIEF

Supporting a Robust Housing Market: Mortgage Reform for Community Banks. Provide community banks relief from certain mortgage regulations, especially for loans held in portfolio. When a community bank holds a loan in portfolio, it has a direct stake in the loan's performance and every incentive to ensure it is properly underwritten, affordable and responsibly serviced. Relief would include:

- Providing "qualified mortgage" safe harbor status for loans originated and held in portfolio by banks with less than $10 billion in assets, including balloon mortgages.
- Exempting banks with assets below $10 billion from escrow requirements for loans held in portfolio.
- An exemption from the higher risk mortgage appraisal requirements for loans of $250,000 or less provided they are held in portfolio by the originator for a period of at least three years.
- New information reporting requirements under the Home Mortgage Disclosure Act should not apply to community banks.

Strengthening Accountability in Bank Exams: A Workable Appeals Process. The trend toward oppressive, micromanaged regulatory exams is a concern to community bankers nationwide. An independent body would be created to receive, investigate, and resolve material complaints from banks in a timely and confidential manner. The goal is to hold examiners accountable and to prevent retribution against banks that file complaints.

Reforming Bank Oversight and Examination to Better Target Risk. ICBA makes the following recommendations to allow bank examiners to better target their resources at true sources of systemic risk:

- A two-year exam cycle for well-rated community banks with up to $2 billion in assets would allow examiners to better target their limited resources toward banks that pose systemic risk. It would also provide needed relief to bank management for whom exams are a significant distraction from serving their customers and communities.
- Banks with assets of $50 billion or less should be exempt from stress test requirements.
- Community banks should be allowed to file a short form call report in the first and third quarters of each year. The current, long form call report would be filed in the second and fourth quarters. The quarterly call report now comprises some 80 pages supported by almost 700 pages of instructions. It represents a growing burden on community banks without being an effective supervisory tool.

Redundant Privacy Notices: Eliminate Annual Requirement. Eliminate the requirement that financial institutions mail annual privacy notices even when no change in policy has occurred. Financial institutions would still be required to notify their customers by mail when they change their privacy policies, but when no change in policy has occurred, the annual notice provides no useful information to customers and is a needless expense.

Balanced Consumer Regulation: More Inclusive and Accountable CFPB Governance. The following changes would strength CFPB accountability, improve the quality of the agency's rulemaking, and make more effective use of its examination resources:

- Change the governance structure of the CFPB to a five-member commission rather than a single Director. Commissioners would be confirmed by the Senate to staggered five-year terms with no more than three commissioners affiliated with any one political party. This change will strengthen accountability and bring a diversity of views and professional backgrounds to decision-making at the CFPB.
- The Financial Stability Oversight Council's review of CFPB rules should be strengthened by changing the vote required to veto a rule from an unreasonably high two-thirds vote to a simple majority, excluding the CFPB Director.
- All banks with assets of $50 billion or less should be exempt from examination and enforcement by the CFPB; and CFPB backup (or "ride along") authority for compliance exams performed by a bank's primary regulator should be eliminated.

Eliminate Arbitrary "Disparate Impact" Fair Lending Suits. Amend the Equal Credit Opportunity Act and the Fair Housing Act to bar "disparate impact" causes of action. Lenders that uniformly apply neutral lending standards should not be subject to frivolous and abusive lawsuits based on statistical data alone. Disparate impact forces lenders to consider factors such as race and national origin in individual credit decisions, which are specifically precluded by law.

Ensuring the Viability of Mutual Banks: New Charter Option. The OCC should be allowed to charter mutual national banks to provide flexibility for institutions to choose the charter that best suits their needs and the communities they serve.

Rigorous and Quantitative Justification of New Rules: Cost-Benefit Analysis. Provide that financial regulatory agencies cannot issue notices of proposed rulemakings unless they first determine that quantified costs are less than benefits. The analysis must take into account the impact on the smallest banks which are disproportionately burdened by regulation because they lack the scale and the resources to absorb the associated compliance costs. In addition, the agencies would be required to identify and assess available alternatives including modifications to existing regulations. They would also be required to ensure that proposed regulations are consistent with existing regulations, written in plain English, and easy to interpret.

Cutting the Red Tape in Small Business Lending: Eliminate Burdensome Data Collection. Exclude banks with assets below $10 billion from new small business data collection requirements. This provision, which requires the reporting of information regarding every small business loan application, falls disproportionately upon community banks that lack scale and compliance resources.

Preserve Community Bank Mortgage Servicing. The provisions described below would help preserve the important role of community banks in servicing mortgages and deter further industry consolidation, which is harmful to borrowers:

- Increase the "small servicer" exemption threshold to 20,000 loans (up from 5,000). To put this proposed threshold in perspective, the average number of loans serviced by the five largest servicers subject to the national mortgage settlement is 6.8 million. An exemption threshold of 20,000 would demarcate small servicers from both large and mid-sized servicers.
- For banks with assets of $50 billion or less, reverse the punitive Basel III capital treatment of mortgage servicing rights (MSRs) and allow 100 percent of MSRs to be included as common equity tier 1 capital.

Creating a Voice for Community Banks: Treasury Assistant Secretary for Community Banks. Economic and banking policies have too often been made without the benefit of community bank input. An approach that takes into account the diversity and breadth of the financial services sector would significantly improve policy making. Creating an Assistant Secretary for Community Banks within the U.S. Treasury Department would ensure that the more than 6,500 community banks across the country, including minority banks that lend in underserved markets, are given appropriate and balanced consideration in the policy making process.

Modernize Subchapter S Constraints. Subchapter S of the tax code should be updated to facilitate capital formation for community banks, particularly in light of higher capital requirements under the proposed Basel III capital standards. The limit on Subchapter S shareholders should be increased from 100 to 200; Subchapter S corporations should be allowed to issue preferred shares; and Subchapter S shares, both common and preferred, should be permitted to be held in individual retirement accounts (IRAs). These changes would better allow the nation's 2,200 Subchapter S banks to raise capital and increase the flow of credit.

Five-Year Loss Carryback Supports Lending During Economic Downturns. Banks with $15 billion or less in assets should be allowed to use a five-year net operating loss (NOL) carryback. The five-year NOL carryback is countercyclical and will support community bank capital and lending during economic downturns.

Risk Targeting the Volcker Rule. Exempt banks with assets of $50 billion or less from the Volcker Rule. The Volcker Rule should apply only to the largest, most systemically risky banks. Proposals to apply the rule to community banks carry unintended consequences that threaten to destabilize segments of the community banking industry.

The Independent Community Bankers of America®, the nation's voice for 6,500 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. For more information, visit www.icba.org.