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

**Hearing: Examining Consumer Credit Access Concerns,
New Products and Federal Regulations**

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Chairman Capito, Ranking Member Maloney, and Members of the Subcommittee:

Thank you for inviting me to testify on better understanding the regulatory regime for non-depository creditors, and my views on H.R. 6139, the "Consumer Credit Access, Innovation, and Modernization Act."

I currently serve as Vice President of Federal Affairs for the Center for Responsible Lending, a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth, by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution with a 30-year-track record of serving low-income, rural, women-headed, and minority families. Self-Help manages a total of $950 million in assets for approximately 90,000 families in North Carolina and California.

In my testimony today, I would like to emphasize the following three points:

- **H.R. 6139 would circumvent the carefully contemplated supervisory, enforcement, and rulemaking authority of the Consumer Financial Protection Bureau (CFPB or Bureau) over certain non-depository financial institutions.** The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) consolidated consumer protection statues and authorities that had previously been scattered among many different agencies. Dodd-Frank also significantly augmented federal consumer protection jurisdiction over non-depository institutions—such as mortgage services companies, private student lenders, and payday lenders—and sought to level the playing field by carefully vesting the CFPB with authority over these non-bank entities. In particular, Congress identified payday lenders as important non-depository creditors to be regulated under the Bureau's supervisory authority.

- **H.R. 6139 would expressly allow non-depositories to evade 230 years' worth of state consumer protection laws, licensing, and supervision that are essential to protecting vulnerable consumers from abusive financial practices.** Throughout the previous decade, the OCC has used national charters as a basis to preempt state consumer protection measures to the detriment of many borrowers. By obtaining a federal charter, qualifying non-bank creditors could evade state consumer protections, while availing

themselves of weaker standards that would be used in the federal chartering process. The bill would also permit federal charter holders to ignore state usury limits or rate caps on small loans that have been in existence for decades.

- **H.R. 6139 would roll back important federal credit protections for consumers.** The bill would undermine more than 40 years of established and accepted consumer protections under the Truth in Lending Act (TILA) by exempting lenders from annual percentage rate (APR) disclosure obligations on loans. Under the bill, for loans of one year or less in duration, credit companies would be required simply to disclose the cost of a loan as a dollar amount and as a percentage of the principal amount of the loan. This would make it much more difficult for borrowers to compare the true cost of different products.

1. **H.R. 6139 would circumvent the CFPB's carefully contemplated supervisory, enforcement, and rulemaking authority over certain non-depository financial institutions.**

The CFPB is the primary federal regulator with explicit supervisory, enforcement and rulemaking authority over large depository institutions and certain non-depository entities, including payday lenders. Title X of Dodd-Frank tasks the Bureau with consumer protection through rule writing, supervision, and enforcement to ensure that markets allow borrowers to gain access to—and choice among—financial products and services that are fair, transparent, and competitive.

In just one year, the CFPB has begun to create sensible rules of the road for financial markets through a balanced and level regulatory playing field for market participants. Without such evenhandedness, consumers would be exposed to a financial marketplace rife with the very kinds of abuses that led to the financial crisis. The CFPB's supervisory purview over non-depository entities is prudently designed to improve the quality of services in this sector and enforce federal consumer financial law.

H.R. 6139 poses a direct threat to the CFPB's ability to protect consumers. By enabling non-bank lenders to seek a federal charter under the OCC, the bill would hamper the Bureau's oversight of some of the riskiest and costliest financial service providers in the marketplace. For instance, under the bill, the OCC has the explicit authority to (1) review and approve financial products that charter holders plan to offer to consumers and (2) prescribe regulations containing standards regarding the product's approval. The bill directly conflicts with Section 1031 of the Dodd-Frank Act, which grants the CFPB express authority to prescribe rules to prevent creditors from engaging in unfair, deceptive, or abusive acts or practices (UDAAP). Under, H.R. 6139 financial products might be approved by the OCC could also violate Dodd-Frank's prohibition against UDAAP. Such a scenario would present both a confusing and an incongruent regulatory framework—resulting in both agencies butting heads in federal court, after protracted and

intense inter-agency litigation. In addition, such a structure would create unleveled playing field between non-depository consumer credit lenders who are chartered by the OCC and those chartered at the state level. One of the key goals in establishing the CFPB was to create uniform standards that apply to all consumer finance providers, irrespective of charter. H.R. 6139 would undermine that.

In addition, H.R. 6139's procedure for approving products tilts in favor of qualified chartered holders, with the OCC required to presume that a product was safe, unless it could demonstrate that the product would "significantly harm" borrowers. The OCC would have only 45 days to make such a determination.

H.R. 6139 would also require the OCC to conduct examinations and supervisory activities for its non-depository charter holders. This is, however, is not the OCC's primary mission, which is to safeguard depository financial institutions, not protect consumers from deceptive or abusive lending practices. Indeed, this limited mission focus of the OCC was a reason why Congress created the CFPB in Dodd-Frank.

As we saw in the mortgage crisis, the OCC and other federal regulators were not effective concerning consumer protection. We also saw that, in the long-term, measures that could have been put in place to protect consumers (such as restrictions on paying originators more for placing borrowers in costlier and more dangerous loans) would also have been better for lenders and for the larger economy. The CFPB was created largely because federal consumer protection functions were widely dispersed among multiple federal regulators that were charged with protecting institutional safety and soundness. This meant that regulators were not able to adequately protect consumers, or even properly regulate the industries they oversaw with a long-term outlook on safety and soundness.

While the CFPB's explicit mission is consumer protection, it is important to note that this focus is not inconsistent with the safety and soundness mission that other regulators have. Indeed, consumer protection and safety and soundness are flip sides of the same coin. CRL's recent research that examines marketing and pricing practices prevalent in the credit card industry before implementation of the CARD Act—and the connection between these practices and company performance during the recent economic downturn—illustrates that strategies of maximizing short-term revenue by using unfair or deceptive lending practices led to increased risk and lower profits during the downturn, undermining a bank's safety and soundness.[1] Common-sense curbs on unfair lending practices increase market transparency and bolsters firms' financial strength. Accordingly, this benefits customers, investors, shareholders, and ultimately taxpayers.

[1] Joshua M. Frank, Predatory Credit Card Lending: Unsafe, Unsound for Consumers and Companies," Center for Responsible Lending, May 2012, available at: http://www.responsiblelending.org/credit-cards/research-analysis/Unsafe-Unsound-Report-May-2012.pdf

H.R. 6139 also would establish a two-tiered financial regulatory system that would expose some households to risky, high-cost financial products offered by non-depository lenders that undermine their financial well-being, and could drive them out of the banking system, while consumers with access to mainstream banking services would enjoy the full protections of the CFPB. Both data and history tell us that communities of color, low-income and women-headed households are those who would disproportionately be targeted by these abusive financial practices. H.R. 6139 would harm, not help, the un- and under-banked, pushing them further to the economic margins, as discussed in further detail below.

2. **H.R. 6139 would expressly allow non-depositories to evade 230 years' worth of state consumer protection laws, licensing, and supervision that are essential to protecting vulnerable consumers from abusive financial practices.**

Under H.R. 6139, non-depository charter holders would be able to offer financial product terms that some states have either expressly prohibited or heavily regulated—for instance, high cost payday loans. Marketed as short-term relief for a cash crunch, payday loans carry annual interest rates of 400 percent and are designed to catch working people in a long-term-debt trap.[2] The structure (including high fees, short-term due date, single balloon payment, and collateral of access to a borrower's checking account) ensure that the vast majority of borrowers cannot pay off the loan when it is due without leaving a large gap in their budget. As a result, they are forced to take out new loans after paying the first one back. In fact, some payday lenders even offer a "free" no-fee loan to lure customers in, knowing that borrowers are so cash-strapped that most cannot afford to repay the principal in two weeks and will have to renew multiple times—paying multiple fees—in order to pay back the original loan. A 2009 CRL study found that typical payday borrowers remain in debt for much of the year, and the overall duration and amount of the debt increases over time.[3] Well over 90 percent of payday loans involve borrowers who had another loan that same month—and the debt trap of 400 percent interest drives 40 percent of borrowers to eventually default.

States are the traditional regulator of most small loan products, including payday loans, offered in the U.S. In fact, state limitations on interest rates have existed for over 200 years. However, since the mid-1990s, payday lenders affirmatively sought and were often granted special authority to charge over 300 percent APR on their loans. Since 2005, a counter-trend developed and no new state has granted payday lenders and other "short-term" lenders their needed exemption from traditional small loan laws and other regulations. In fact, several states that had once allowed the terms associated with a payday loan (triple-digit annual interest rates, short-

[2] Center for Responsible Lending, "Payday Loans Put Families in the Red," Research Brief, February 2009, available at http://www.responsiblelending.org/payday-lending/research-analysis/payday-loans-put-families-in-the-red.html.

[3] Uriah King and Leslie Parrish, "Payday Loans, Inc.: Short on Credit, Long on Debt," Center for Responsible Lending, March 2011, available at http://www.responsiblelending.org/payday-lending/research-analysis/payday-loan-inc.pdf.

term balloon payments) have since reversed their decision. These states join others that have never granted payday lenders authorizing legislation.[4] In addition, three states (Ohio, Arizona, and Montana) have, in recent years, approved ballot initiatives limiting interest rates on payday loans. All these initiatives passed by overwhelming margins.

HR 6139 sets out some limited standards for consumer credit authorized under the bill. Similar provisions, however, have been circumvented by lenders who structure their financial product so as to escape the statutory protections. Payday lenders have attempted to escape these consumer protections. For example, payday lenders have attempted to evade similar provisions by offering loans one day longer than the minimum term, structuring loans as open-end loans and taking fake liens on cars in order to evade limits while still putting borrowers in debt-trap loans.

And H.R. 6139 would also sanction online lending for charter holders by explicitly prohibiting any federal or state restrictions for internet lending. The bill also authorizes "rent-a-charter" arrangements, whereby charter companies can pass on their preemption to any affiliates and even third parties.

Despite the harmful impacts of payday lending and states' efforts to rein in the financial abuses associated with this form of small-dollar credit, H.R. 6139 would permit credit companies to circumvent state laws and would prohibit the federal financial consumer watchdog—the CFPB—from acting to protect borrowers from harmful products. By obtaining a federal charter, non-depositories could exploit strong state and federal regulation in favor of weaker standards used in the OCC's chartering and oversight process.

3. **H.R. 6139 would roll back important federal credit protections for consumers.**

Since 1969, TILA has required creditors to disclose finance charges and APRs before consumers sign a loan, as a baseline credit-cost comparison measure. Payday loans, for instance, are subject to TILA's credit disclosure requirements. As a result of TILA's disclosure obligation, consumers are afforded an accurate way to gauge true lending costs across products. H.R. 6139 upsets this longstanding federal consumer protection by exempting credit companies from TILA's APR disclosure to all lenders for loans of one year or less. For instance, take two loans—one two-weeks in duration, with 10 new renewal fees—as compared to another loan, 20 weeks in duration, with only one fee. Both loans could be advertised as charging 10 percent fees, though the two-week loan would be far more expensive for consumers. This would result in a significant market-wide roll back of federal credit law.

Conclusion

H.R. 6139 would directly harm vulnerable borrowers, particularly the underserved, and should be opposed. Indeed this legislation offers nothing beneficial for consumers; on the contrary, it

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[4] Other jurisdictions include New York, New Jersey, Connecticut, Maine, Pennsylvania, Georgia, Massachusetts, West Virginia, Vermont, and Maryland.

would lead to direct consumer harm—and its passage would set a precedent for many other companies to also seek to be excluded from the nation's consumer protection watchdog. As a result, we urge you to actively oppose the legislation.

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