



Testimony of

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On behalf of the

**Independent Community Bankers of America**

Before the

Congress of the United States

The House Financial Services

Subcommittee on Financial Institutions and Consumer Credit

Hearing on

**“Legislative Proposals to Improve the Structure of the Consumer  
Financial Protection Bureau”**

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Washington, D.C.

## Opening

Chairman Capito, Ranking Member Maloney, and Members of the Subcommittee, I am Noah Wilcox, fourth generation President and CEO of Grand Rapids State Bank and a member of the Executive Committee of the Independent Community Bankers of America. Grand Rapids State Bank is a state chartered community bank with \$236 million in assets located in Grand Rapids, Minnesota. I am pleased to represent community bankers and ICBA's nearly 5,000 members at this important hearing on "Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau."

The recent financial crisis showed us in dramatic fashion how broad the consequences of abusive consumer practices are. In addition to the direct harm they cause to individual consumers, abusive practices can put the entire financial system at risk. Poorly underwritten loans packaged into collateralized debt obligations and dispersed through the financial markets caused the credit markets to freeze up, shuttering businesses, destroying wealth, and causing levels of unemployment not seen in over a generation. This experience has appropriately raised the profile of consumer protection. Getting consumer protection policy right is one of the most important things we can do to prevent a repeat of the financial crisis of 2008-09. For that reason, we are pleased to have the opportunity to offer our views on proposals before the committee to amend the structure of the Consumer Financial Protection Bureau and to make additional suggestions of our own.

Community bankers are deeply rooted in the communities they serve. Because we cannot compete with the megabanks on margins or economies of scale, we focus instead on the individualized needs of our customers. We practice relationship banking, as opposed to one-off, transactional banking. Our customers are our friends and neighbors and any given loan or other service is part of a long-term relationship. Our reputations in our communities are paramount and a condition of our success. Community bankers have an overriding incentive to treat each customer well and earn their trust. We did not engage in the abusive practices that contributed to the recent financial crisis. No one has ever alleged otherwise. In addition to fundamental business incentives that deter consumer abuse, community banks have long been, and continue to be, subject to robust supervision and examination from our prudential regulators. We believe that the key to improving consumer protection is to focus on the "shadow" financial services industry that has been most responsible for victimizing consumers while avoiding serious regulatory scrutiny.

Because targeting of limited resources is essential to effective regulation, it is appropriate that the Dodd-Frank Act exempts banks with less than \$10 billion in assets from primary examination and enforcement by the CFPB. Community banks will continue to be examined by their prudential regulators, and the CFPB's resources will be focused where the risk is greatest. However, because community banks are subject to CFPB rules and to examination on a sampling basis, we have a keen interest in improving the structure and procedures of the Bureau and the

quality of the rules they issue. We are pleased to have the opportunity to offer our views on proposals before the committee to amend the structure of the Consumer Financial Protection Bureau and to make additional suggestions of our own.

## **ICBA VIEW OF LEGISLATIVE PROPOSALS**

### **Commission Governance**

We support Chairman Bachus' recently introduced bill, the "Responsible Consumer Financial Protection Regulations Act," which would restructure the new Consumer Financial Protection Bureau so that it is governed by a five member commission rather than a single director. Commissioners would be confirmed by the Senate to staggered, five-year terms, and no more than three commissioners would be affiliated with any one political party.

The new CFPB will have far reaching discretion in writing rules for all banks, including those exempt from primary CFPB examination, as well as non-bank financial services providers. Commission governance would allow for a variety of views and expertise on issues before the Bureau and thus build in a system of checks and balances that a single director form of governance simply can't match. The commission model, which has worked well for the FDIC, SEC, and FTC, would help ensure that the actions of the CFPB are measured, non-partisan and result in balanced, high quality rules and effective consumer protection.

### **Strengthening Review of CFPB Rules**

Consistent with our support for a commission structure, ICBA supports efforts to strengthen prudential regulatory review of CFPB rules, which is extremely limited under the Dodd-Frank Act. Prudential regulators have the ability to comment on CFPB proposals before they are released for comment and an extremely limited ability to veto regulations before they become final. This veto can only be exercised if, by a 2/3 vote, the Financial Stability Oversight Council (FSOC) determines that a rule "puts at risk safety and soundness of the banking system or the stability of the financial system," a standard that is nearly impossible to meet. A rule that doesn't meet this high standard could nevertheless do extraordinary harm to banks and consumers.

ICBA supports a legislative proposal before this committee that would change the voting requirement for an FSOC veto to a simple majority, excluding the CFPB Director, and change the standard to allow for a veto of a rule that "is inconsistent with the safe and sound operations of United States financial institutions." While this change would improve CFPB rulemaking, ICBA has proposed language that would further broaden the standard to allow FSOC to veto a rule that could adversely impact a subset of the industry in a disproportionate way. We believe that this standard would give prudential regulators a more meaningful role in CFPB rule writing.

## **A Confirmed Director Should Precede Transfer of Functions**

The CFPB's far reaching impact over the financial sector, consumers, and the economy should be matched by the highest standard of accountability. Ultimately, accountability for the actions of the CFPB resides with its Director, appointed by the President and confirmed by the Senate. This basic mechanism of good governance would be undermined if the CFPB were to be operative before its Director is confirmed by the Senate. For this reason, ICBA supports Chairman Capito's discussion draft that would postpone transfer of functions to the CFPB until its Director is confirmed.

## **Sampling Examination Authority**

The final discussion draft on which I will comment would prevent the CFPB from participating in the examination of large banks on a "sampling basis" before the transfer of functions to the CFPB. We appreciate your caution about CFPB exams. Though this legislation would not affect community banks such as mine, we agree that "sampling" exams are not an innocuous exercise and have requested relief from sampling exams of banks with less than \$10 billion in assets after the transfer of functions. The so-called "ride along" provision allows the CFPB, at their discretion and without the concurrence of the prudential regulator, to have input into every aspect of a small bank exam, acting as more of a full partner than a passive observer. The prudential regulator must consider the CFPB's input concerning the scope of the examination, the conduct of the examination, the contents of the examination report, and examination rating. The CFPB can also require the bank to provide reports in connection with the exam. There is no doubt that the CFPB's participation would significantly change the character of the exam and could upset the balance between consumer protection and safety and soundness, which the prudential regulators better know how to achieve. ICBA recommends that the Act be amended to delete the CFPB's sampling authority, a change which would be consistent with the exemption from primary examination. Eliminating this authority would allow the CFPB to focus its resources on the examination of entities that pose a greater risk to consumers.

## **ADDITIONAL RECOMMENDATIONS**

In addition to commenting on legislative proposals that have been introduced or are pending introduction, we would like to use this opportunity to recommend additional structural changes to the CFPB.

### **Joint Rulemaking**

As a more comprehensive solution to our concern about CFPB rules, we recommend that CFPB regulations be issued jointly with the federal banking agencies. Rule writing for banks should

not be the sole responsibility of the CFPB. With neither the institutional incentive, nor the expertise, to protect the safety and soundness of the lender, the CFPB runs the risk of promulgating rules that are unnecessarily burdensome or contrary to those issued by the prudential regulator. Joint rulemaking would obviate this concern.

### **Fair Lending Laws Belong with the Prudential Regulator**

Rulemaking and enforcement under the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act should be transferred back to the banking agencies. The Dodd-Frank Act left Community Reinvestment Act rulemaking and enforcement with the prudential regulators, acknowledging that it is best situated in the agencies that conduct safety and soundness examinations. Like CRA, ECOA and HMDA are fair lending laws with a direct relation to safety and soundness. ECOA and HMDA regulations are often reviewed and considered in conjunction with CRA. For consistency, efficiency, and to promote specialization, they should all reside with the same regulator.

### **Relief from Reporting and Data Collection**

The reporting and data collection requirements of the Act place a disproportionately high burden on community banks without commensurate benefit to consumers. As mentioned above, the CFPB may require any community bank to provide a report in connection with a “sampling” exam, or for the broader purpose of assessing and detecting risks. In addition to maintaining records of all credit applications received from small businesses, community banks are required to maintain records of applications from women-owned and minority-owned businesses of all sizes and a separate record of the responses to all such applications. Finally, these records are to 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 certain cases, 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.

The cost of these mandates will be very high for small institutions, including Grand Rapids State Bank, that simply do not have the extra resources available to comply. We support elimination of reporting requirements for community banks that do not appropriately balance costs and benefits.

### **Closing**

Thank you again for the opportunity to testify today. ICBA is fully committed to developing effective and practical consumer protection regulation for our customers, the customers of our competitors, and for safety and soundness of the financial system. Our recommendations will improve the operations of the CFPB by creating internal checks and balances, better focus its resources on the true sources of risk, and exempt community banks from requirements where the cost is disproportionate to any consumer benefit. We appreciate your consideration and look forward to working with this committee to enact these recommendations or others that are consistent with the principles we've outlined.

### United States House of Representatives Committee on Financial Services

#### "TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

Name		Organizational affiliations with a specific interest	
Noah Wilcox, President, CEO and Vice Chairman of Grand Rapids State Bank		Independent Community Bankers of America	
<p>Have you, directly or indirectly, received any financial benefit from any of the following organizations or individuals?</p> <p>[Redacted]</p>			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>Have you, directly or indirectly, received any financial benefit from any of the following organizations or individuals?</p> <p>[Redacted]</p>			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>Signature</p> <p> Noah Wilcox</p>			

Please attach a copy of this form to your written testimony.