Statement of

Charles G. Kim

On Behalf of the

Consumer Bankers Association

Before the

House of Representatives

Committee on Financial Services
Financial Institutions and Consumer Credit Subcommittee

Regarding

Regulatory Relief

April 16, 2013

CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

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Madam Chairman, Ranking Member Meeks, and members of the subcommittee, my name is Charles G. Kim and I am Executive Vice President and Chief Financial Officer (CFO) of Commerce Bancshares, Inc. whose principal bank subsidiary is Commerce Bank. Commerce Bank is a $22 billion super-community bank founded in Kansas City in 1865. Our strong Midwestern culture and engaged workforce of 4,700 serves customers through 204 branches and 400 ATMs in Missouri, Kansas, Illinois, Oklahoma and Colorado. Commerce Bank is focused on serving our customers and we are guided by our Customer Promise: **"We ask, listen and solve."**

Commerce is counted among the best capitalized banks in the country and we did not contribute to the economic crisis by originating any sub-prime products. Commerce is one of seven banks in the country to hold Moody's highest assigned Bank Financial Strength rating. For the fourth year in a row, Commerce Bank was ranked among the top ten on Forbes' list of America's Best Banks. Commerce ranked ninth on the list which came out in December, 2012.

I am also a member of the Consumer Bankers Association (CBA) Government Relations Council, which is the association's public policy making group of senior executives. For more than 90 years, CBA has been the recognized voice on retail banking issues in the nation's capital. Member institutions are leaders in all areas of consumer financial services and small business lending. Commerce Bank and CBA both recognize the retail banking industry is built on customer relationships and it is our focus to make sure we are helping consumers meet their financial needs.

I appreciate the opportunity to appear before you today and we thank the Subcommittee for holding this hearing to look at the current regulatory environment to ensure it is allowing banks to serve customers in their communities. CBA would like to thank the Subcommittee for its work over the past year on several important issues.

First, we applaud Chairwoman Capito, and other members of the Subcommittee for highlighting concerns with the CARD Act and how it unfairly impacts the ability of spouses to qualify for credit cards. These efforts have moved us closer to a resolution as we await the CFPB's final to correct this unintended consequence. This is an example of how regulations can unintentionally harm consumers and families, and impact banks' ability to provide financial products, and we are grateful that Members of Congress have helped encourage action to correct this

In addition, I'd like to thank Congressman Luetkemeyer, from my home state, and others for their leadership in the last Congress for helping to remove the duplicative ATM disclosure requirement. This bi-partisan effort to eliminate an unnecessary requirement ended legal claims by bad actors, while still ensuring consumers have the information they need when conducting ATM transactions.

We have seen significant regulatory changes with the passage of the Dodd-Frank Act, the creation of the Consumer Financial Protection Bureau (CFPB) and new rules impacting the banking industry and the customers we serve. A number of these new rules were needed, and welcomed, to protect consumers and ensure we have a healthy banking industry that drives economic growth and recovery. However, as with any major regulatory overhaul, there will be some unintended consequences of varying degree. Policy makers and stakeholders can work together along the way to reevaluate and make continued improvements to the regulatory climate, allowing banks to offer superior products to fulfill customers' needs.

As this Subcommittee takes a deeper look at this evolving regulatory environment, CBA would like to highlight several specific issues and themes that it believes can ultimately allow banks to better serve their customers and communities.

Measuring the Cost of Regulation

First we want to stress that regulations can be critical in ensuring safe and sound banking and consumer protection, such that consumers and businesses are confident in dealing with the financial services industry. But it is also important that the regulation be assessed for its benefits against its costs to the financial institutions and, ultimately to the consumers. If costs are not in proportion to benefits, the consumer will pay more for financial services or will find valuable services in short supply. When an agency conducts a cost benefit analysis when looking at a particular issue, in addition to weighing the impact of a new rule on consumers, smaller financial institutions and rural communities, we would encourage the analysis take into account these other important considerations:

- The one-time cost of implementation, with accompanying IT systems changes, training, legal, compliance, printing, mailing, and other ancillary expenses, sometimes made more difficult by the inadequate time needed to comply;
- The ongoing costs of the rule, with annual compliance, litigation, printing, mailing, and other costs; and
- The impact on new product development and the disincentive to enter markets or engage new products or services due to enhanced risk or costs.
- Relief for banks that are caught in the middle between those with asset sizes which protect them from certain new regulations (less than $10 billion in assets as outlined by sections of Dodd-Frank) and those banks with economies of scale advantages. An example of this is the Durbin amendment which requires debilitating income reductions in the form of reduced interchange for the banks in the middle, like Commerce Bank.

It is also important for the agencies to consider the relationship of the regulation to other regulations. This requires the consideration of at least the following:

- Conflicting or inconsistent requirements among different regulations which can create an uneven playing field and provide unfair advantages to certain players. For example, we experience that with the varying state rules for short-term small dollar loan products. As there are no 'safe harbors,' we can be restricted from offering good solutions at competitive pricing while a competitor 'right next door' does not have the same restrictions;
- Inconsistent definitions among regulations, unless necessary to fulfill different requirements. Conflicting requirements from regulatory bodies as well as the uncertainty of changing rules that can be retroactively applied create a disadvantage for the consumer as it makes banks either not offer a solution or not want to spend time thinking of ways to provide new solutions. For instance, consumers want and need access to funds for short-term gaps and will find ways to get it. Limitations can either cause consumers to be penalized with restrictions they do not want, or to look elsewhere for more punitive and expensive solutions from less palatable sources; and
- The need to continue to comply with obsolete regulations that no longer fulfill their original requirement or are superseded by new regulations.

At times, the burden of regulation is created or made more extreme by the accretion of numerous regulations, each of which alone does not create a huge problem but all together are excessively burdensome. One example of accretion may turn out to be the mortgage rules being issued by the CFPB combined with the qualified residential mortgage rule emerging from the bank regulatory agencies and the potential for a new Basel III. Depending on how these are finalized, it is possible they will create an excessive regulatory framework without adding sufficiently on the customer benefit side of the equation.

Regulatory Clarity & Enforcement by Regulation

The absence of regulatory clarity combined with overly complex laws and regulations is sometimes a cost that is difficult to quantify but nonetheless significantly increases the difficulty of compliance for financial institutions without commensurate consumer benefits. When the rules are not clear, financial institutions will delay decisions and avoid introducing new products and services, to keep their risks to a minimum. Overly complex rules also cause confusion to customers and uncertainty to regulators and institutions. This is often to the detriment of consumers and small businesses, which do not receive the new services they need or are left with outdated technologies that do not provide them with the products and services when they need them. In some cases it even drives consumers to less regulated entities, which appear to provide for their needs without restriction, but which can carry risks to consumers.

One way this can occur is when guidance is provided by enforcement actions instead of through the regulatory process. Enforcement actions that are not grounded in clear rules may provide little clarity about what the rules are for other institutions in similar markets and circumstances. The problem is magnified as the actions may often result in consent orders when the matters are resolved, rather than going to court and being publicly aired. They also lack the input from consumers and industry, which is part of the rulemaking process and provide critical feedback leading to sound policy-making. The industry and consumers may be left in the dark about the factors that led to the enforcement action and the tools needed to ensure they are fully compliant with the law.

Exam Cost

Exams themselves can be more costly than necessary to both the consumer and the institutions being examined. The supervision process is the hallmark of the way in which consumer protection and safety and soundness are maintained at regulated financial institutions. Dodd-Frank leveled the playing field by expanding that benefit to all financial service providers in the consumer protection realm, and we would encourage the CFPB to move more expeditiously to carry out its mandate to supervise larger nonbank financial service companies. Among the larger nonbank participants, it has, to date, only begun supervising consumer reporting agencies and debt collectors, and has yet to begin supervising many other larger nonbank entities.

For regulated financial institutions, the supervision can become unnecessarily burdensome and costly if the examination process is inefficient, if rules are too complex, if examination teams are inadequately trained or inadequately experienced, if multiple regulatory agencies are covering much of the same examination territory, or if the process is unnecessarily slow. The CFPB is a new agency with some of the difficulties inherent in a start-up business, and has at one time or another been accused of most of these problems to some degree. CBA members have seen improvement in all areas, but more can still be done to enhance and streamline the process, thereby reducing costs to industry and, thereby, consumers and small businesses interacting with these institutions.

Basel III

We all anxiously await the final rules to implement Basel III Capital Standards. While the Basel III proposal impacts banks in a number of different areas, we could see significant reduction in the mortgage market and banks’ ability to offer certain home equity products. In particular, under the proposal, banks could face higher capital requirements when offering certain home equity lines and liens to some existing customers but could then have less severe capital requirements for offering the same home equity product to a new customer. Second mortgages are safe and sound products, which allow individuals and families to make home improvements or access equity in their homes to finance other important endeavors.

In addition, second mortgages often are used to help launch small businesses and, if the Basel III proposal is unchanged, it could curtail some lending to small business owners or force families to obtain unsecured lending.

The Basel III proposal is an example of an extremely complicated proposed regulation that will be very difficult and costly for banks to manage and difficult for regulators to oversee. Simpler solutions with fewer unintended consequences and greater capital protection are easily attainable. The Basel III proposal and its complexity will have a number of impacts on the banking industry and its ability to serve communities. We are hopeful that careful consideration and analysis will lead to more reasonable and workable final rules. CBA encourages Congress to continue to monitor this important issue closely.

And while we agree that stress testing serves a very sound and useful purpose, it will be very complex and will add significant costs to all banks over $10 billion in assets, regardless of their sound balance sheets, solid earnings performance and strong management.

Mortgage Rules

We have seen a tremendous amount of change in the mortgage space on everything from underwriting, to appraisals, to loan officer compensation to new mortgage disclosures. These are all important, complex rules which banks are diligently working to implement in a very short period of time. In many cases, these new rules will restrict lending to borrowers on the low end and on the high end of mortgage lending because of the perceived risks attached to those loans.

Basel III and the Qualified Residential Mortgage (QRM) rule will undoubtedly have a major impact on mortgages and their availability, but our priority right now is to comply with the myriad new mortgage rules issued by the CFPB. However, our job has been made more difficult due to the uncertainty still baked in the new rule. CBA has reached out to the CFPB to express our confusion about certain aspects of the final rules, but we are concerned that the Bureau's promised guidance on these issues may come too late.

To give an example, we have a number of issues with the Qualified Mortgage (QM) rule that was issued in January 2013 by the CFPB. These include the relatively short period of time that banks have to comply with this rule, especially since not all aspects of the rule are final and the CFPB has yet to issue all its expected guidance. In addition, the change made to loan originator registrations to include evaluating their personal financial responsibility, while well intentioned, creates a number of challenges. Its guidelines lack clarity and actionable definitions, and when coupled with the impact of the economic downturn on Americans credit profile, it can create challenges for banks to evaluate a possible employee's financial responsibility. CBA is also concerned with the three percent limit on points and fees for QM loans.

Appendix Q, which provides guidance with regard to the underwriting of QM loans, raises a number of problematic issues. In addition to the increased scrutiny with regard to self-employed loan applicants, it seems that employers are expected to virtually guarantee the applicant's future employment, which is an unrealistic expectation. Although based on current Federal Housing Administration (FHA) guidelines, FHA does allow for compensating factors that are not included in Appendix Q. Also, Appendix Q is part of the QM rule and violations of the rule subjects banks to litigation, which is not the case with the FHA guidelines.

The industry stands ready to work with the CFPB to address these still unanswered questions. However, CBA is very concerned that a long delay in getting the answers that we need may lead certain lenders to reduce, or even eliminate, their mortgage lending activities in order to mitigate their exposure to regulatory risk.

E-Sign Act

Today's new generation of customers and their wants and behaviors are evolving rapidly due to technological advancements. Banks and credit unions alike are moving to mobile banking and payments that offer a number of customer solutions online. Much has changed since Congress enacted the E-Sign Act in 2000. As the CFPB has now inherited the E-Sign Act disclosure requirements from other financial regulators, CBA believes it is time for both Congress and the CFPB to review and update the E-Sign Act requirements to reflect the significant technological changes that have occurred over the past 13 years, while ensuring they remain "technology neutral" as intended by Congress when this law was enacted.

Consumers who choose to conduct transactions electronically have a reasonable expectation that their disclosures will also be provided in electronic form. CBA believes banks should be able to provide all disclosures electronically and all inherited regulations should be consistent in this regard except where a statute clearly states otherwise. Allowing consumers the option to decide what format they wish to retain their disclosures is the best way to encourage consumers to read and understand them.

Financial institutions should be provided flexibility to develop innovative ways to accommodate evolving consumer behavior. Employing a "technology neutral approach" will also mitigate situations where regulations would need to be re-written due to new technology.

CARD Act Review Requirement

CBA believes one area to reduce regulatory compliance costs is the rate increase review requirement under the CARD Act. If there is an increase in a customer's rate, the increase must be reviewed every six months for the life of the account or until the rate increase is rescinded. CBA believes there should be some limitation with regards to this review.

For example, one approach would be to require this rate review only for rate increases occurring within the prior 12 months, in which case it would be limited to two reviews. It makes little sense to require constant, periodic reviews of rate increases for the life of an account. This represents a significant review and implementation burden for banks that will continue to increase throughout the life of an account. At the same time, the benefit for consumers declines, as it would seem the reasons for these long ago rate increases would become less relevant to them over time.

Conclusion

We expect the regulatory environment to remain in flux over the next two years as regulators continue to implement requirements of Dodd-Frank, as Basel III is finalized and as the CFPB continues to issue rules and regulations. All of these changes require banks to make adjustments to remain in compliance. This is all occurring in a time of continued economic uncertainty. CBA appreciates the opportunity to highlight these opportunities for regulatory relief and monitoring and we look forward to continuing to work with the Subcommittee on these important issues.