Statement of Richard C. Wald
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Before the
Financial Institutions and Consumer Credit Subcommittee of the
House Financial Services Committee on
"The Impact of the Dodd-Frank Act: Understanding Heightened Regulatory Capital Requirements."
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Madame Chairman and members of the Subcommittee, thank you for this opportunity to provide testimony regarding heightened regulatory capital requirements under Dodd-Frank. Specifically, I want to focus my testimony on H.R. 3128 currently pending in this Subcommittee, and urge its speedy approval. H.R. 3128 is an administrative amendment to Dodd-Frank to avoid an unintended and untoward result from the Collins Amendment's retroactive date for measuring certain bank assets.

To introduce myself, I am here representing Emigrant Savings bank, where I have worked for over 20 years, a community bank in the truest sense of the term. Emigrant is the oldest savings bank still operating in New York City. It was chartered in 1850 as a mutual savings bank for the benefit of and principally serving Irish immigrants and has a long and distinguished history of serving the working and middle class communities in the boroughs of New York. Emigrant has approximately $10.5 billion in assets, is considered well capitalized and is in good standing with all of its regulators. I oversee many of Emigrant's home lending and small business lending programs that continue to provide vital liquidity to needy communities, especially those in New York's outer boroughs.

Among other things, the Dodd-Frank Act eliminated Tier 1 capital treatment for Trust Preferred Securities ("TRUPs") for all institutions with $15 billion or more in assets. However, TRUPs issued by institutions with less than $15 billion in assets (as of December 31, 2009) were allowed to continue counting TRUPs as Tier 1 capital. Every other cut off date in the Collins Amendment is May 19th 2010 or later and, after consulting with all involved parties, we have been unable to ascertain any substantive reason for moving the "cut-off" date back to December 31, 2009.

Congress was clearly concerned that this change, known as the Collins Amendment (Section 171), would negatively impact community lenders' abilities to serve communities in need. This concern is shown in the record by the fact that, while the initial "cut-off" for the grandfathered treatment of TRUPs was $10 billion in consolidated assets as of May 19, 2010, the threshold was ultimately increased to $15 billion. This increase was meant to mitigate an adverse impact on the lending capacity of smaller community banks whose parent companies issued TRUPs, including Emigrant, because

of the difficulty these institutions would have of replacing this capital and the subsequent effect that a tightening of local credit would have on the communities that need it.

I am here today because, despite the fact that Emigrant has been under $15 billion in assets for almost all of its existence, it is not considered “grandfathered” under this provision of the Collins Amendment. Therefore, this community bank will lose $ 300 million of capital as follows: beginning in 2013, $100 million of its Tier 1 capital will be required to be eliminated each year for three years. As I will describe more fully below, the net impact of this must be a curtailment, or potentially a roll-back, of lending activity for the Bank, penalizing the communities it serves. In fact in May of 2010 Emigrant’s assets were approximately $13 billion, well below the $15 billion threshold.

However, just before enactment of the Collins Amendment, and Dodd-Frank as a whole, this measurement date for determining grandfathered status, i.e. whether an institution had less than $15 billion in assets, was moved retroactively from May 19, 2010 to December 31, 2009. There is no legislative history that explains or justifies what amounts to a 6 month retroactive change in the “look back” date. But for institutions which otherwise would have enjoyed grandfathered status under the Collins Amendment, this change has the potential to make a challenging operating environment even more difficult.

Emigrant’s primary businesses today remain the same as they have been for decades: we are a portfolio lender, originating loans on 1-4 family properties in all five boroughs of New York, consisting of full documentation residential mortgages that we hold on our own balance sheet and agency loans, as well as mortgages on small mixed-use and multi-family apartment buildings. In addition, Emigrant has 32 branches in the New York metropolitan area. Many of its deposit relationships with its customers span decades, and in some cases, generations.

The Bank has a strong retail presence in providing deposit and lending services in many communities that have often been neglected by the other larger financial institutions in New York City, particularly in the outer boroughs where most of our branches are located. In this regard, we have consistently scored high marks on our state and federal Community Reinvestment Act examinations and the FDIC has praised us for our “innovative and flexible” lending products.

Primarily to bolster our lending capacity, beginning in 2003, Emigrant’s holding company, Emigrant Bancorp, issued a total of $300 million in TRUPs. The issuance of these TRUPs were reviewed and approved by the Bank’s regulators and the funds were permitted to be included by the Bank’s parent as Tier 1 capital. Emigrant was one of approximately 650 bank holding companies that issued TRUPs from 1996 to 2009. Many of these issuers were like Emigrant: community banks with holding companies that sought low cost capital in order to enhance their retail lending programs. Like Emigrant, many of these holding companies downstreamed the TRUPs proceeds to their depository institution subsidiaries. Once the proceeds were held at the institution level, they were used to support lending and investment activities, while providing an additional capital buffer for the benefit of the FDIC insurance fund.

Among other things, the Dodd-Frank Act, through what is known as the Collins Amendment (Section 171), eliminated Tier 1 capital treatment for TRUPs over a three year period beginning in 2013. However, TRUPs issued by certain grandfathered institutions (those with less than $15 billion in assets as of December 31, 2009) may continue to count TRUPs as Tier 1 capital. For reasons I will explain, despite the fact that Emigrant has been under $15 billion in assets for almost all of its existence, it is not considered "grandfathered" under this provision of the Collins Amendment.

Congress was clearly concerned about which institutions would be entitled to "grandfathered" status of this provision of the Collins Amendment, principally given the impact this provision would have on community lenders. The initial "cut-off" for the grandfathered treatment of TRUPs was $10 billion in consolidated assets as of May 19, 2010. This threshold was ultimately increased to $15 billion to lessen the adverse impact this would have on the lending capacity of smaller community banks whose parents issued TRUPs, including Emigrant, because of the difficulty these institutions would have of replacing this capital in the equity markets during a period of economic distress. In fact in May, 2010 Emigrant's assets were approximately $13 billion, well below the $15 billion threshold.

However, just before enactment of the Collins Amendment, and Dodd-Frank as a whole, this measurement date for determining grandfathered status, i.e. whether an institution had less than $15 billion in assets, was moved retroactively from May 19, 2010 to December 31, 2009.

Emigrant is one such institution that has been adversely affected by this 2009 "look back" date. Because of an effort to be exceedingly cautious with regard to addressing its liquidity during the peak of the financial crisis, Emigrant had more than $15 billion in assets on December 31, 2009 but significantly less than $15 billion when Dodd-Frank was enacted. Thus, it lost the grandfathered status it otherwise would have enjoyed because the "look back" date was retroactively changed to December 31, 2009, fully 6 months prior to the enactment of Dodd-Frank.

Why was Emigrant temporarily above this $15 billion threshold? As the financial crisis escalated in 2008 Emigrant performed an analysis of its uninsured customer deposits (those exceeding $100,000) and determined that amount to be $2.3 billion. To be extra cautious, Emigrant then borrowed $2.3 billion at an average rate of 2.5% from the Federal Home Loan Bank of New York for a minimum of two years. Soon after Emigrant borrowed these extra funds, the FDIC insured deposit cap was raised to $250,000. Thus, the Bank moved decisively to insure it would have adequate liquidity even in the event of a panic. While the need for these funds was largely obviated by this increase in FDIC insurance, the penalty for prepayment prior to 2010 would have been approximately $40 million.

These excess liquidity borrowings were primarily held on deposit at the Federal Reserve as liquidity insurance (the Bank bore a negative spread on these holdings during this period). These borrowings temporarily increased the Bank's asset size to slightly more

than $15 billion at the end of 2009. By March 31, 2010, after the Bank repaid its borrowings with the Federal Home Loan Bank, Emigrant's total assets were well under $15 billion.

Thus, Emigrant's prudent action to solidify its liquidity and safety and soundness during the height of the financial crisis has had the unintended, detrimental effect of causing it to forfeit its ability to use its TRUPs as capital available to support the community lending it pursues like so many other community banks under the statute's grandfathering provision. The Bank's TRUPs, because of the retroactive measurement date, would be rendered ineligible as Tier 1 capital under the Collins Amendment beginning in 2013, even though by March, 2010, and since then, its assets have been well below the $15 billion threshold for grandfathering established under the Collins Amendment. In enacting a cut-off date that was 6 months prior to Dodd-Frank's enactment, the drafters failed to anticipate that some community banks may have prudently taken out liquidity insurance, thus temporarily enlarging their asset base and causing them to forfeit grandfathered status that could have allowed them to continue to enhance their consumer lending in the communities in which they operate.

Specifically with regard to Emigrant as a community bank, the elimination of its TRUPs could have potentially serious consequences for its lending programs. The elimination of $300 million in TRUPs as Tier 1 capital would subtract $6 billion in lending capacity (new loan growth) on residential loans (those assets with a 50% risk weighting). Assuming a conservative mix of originations of residential and small balance commercial mortgages (each with a 50% risk weighting), at least $4.5 billion in lending capacity for its traditional customer base could ultimately be eliminated once the Collins Amendment is fully phased-in.

At a time in the economic cycle when more, not less, community lending is needed, a reduction in lending capacity for Emigrant – an 160 year-old community bank with an approximate size of $10.5 billion in assets – could not have been the intended result when the "look back" date for grandfathering under this provision of the Collins Amendment was pushed back 6 months prior to the statute's enactment. It is respectfully submitted that H.R. 3128 is fully consistent with the clear intent of the exception for community banks with asset levels under $15 billion, and furthers the public policy of enhancing credit availability to residential borrowers and small business owners.

Enacting an alternative "look back" date of March 31, 2010 – in addition to the existing look back of December 31, 2009 – will prevent this unfair, unintended, counterproductive and counterintuitive economic result from unfolding. This change will simply provide for greater community lending at a time in the economic cycle when it is sorely needed.

I would like to thank the Subcommittee again for providing us this opportunity to testify on this important legislation.