Testimony of

Robert S. Tissue

On behalf of

Summit Financial Group, Inc. and
West Virginia Bankers Association

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

United States House of Representatives

Testimony of

Robert S. Tissue

On behalf of

Summit Financial Group, Inc. and

West Virginia Bankers Association

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

United States House of Representatives

October 29, 2013

Chairman Capito, Ranking Member Meeks, and members of the Subcommittee, my name is Rob Tissue. I am the Chief Financial Officer of Summit Financial Group (Summit). Summit is a financial holding company headquartered in Moorefield, West Virginia, and provides banking and insurance services to the communities located in the eastern panhandle and south-central regions of West Virginia and in the Shenandoah Valley and northern regions of Virginia. I appreciate the opportunity to present my views on legislation that would improve the accountability of the Bureau of Consumer Financial Protection (Bureau).

Summit's bank was founded in 1883, and it has survived many economic ups and downs over the past 130 years. My bank's focus, and those of my fellow community bankers in West Virginia, Virginia and throughout the country, is on developing and maintaining long-term relationships with our customers. No bank can be successful without such a long-term philosophy and without treating customers fairly. We plan to be here for a very long time, and that requires us to provide the financial service that will keep our communities strong and growing. The success of Summit is inextricably linked to the success of the communities that we serve, and we are very proud of our relationships with them.

Our long tradition of service is not unique among banks. In fact, there are 2,742 banks—39 percent of the banking industry—that have been in business for more than a century; 4,669 banks—67 percent—have served their local communities for more than half a century. These numbers tell a dramatic story about banks' commitment to the communities they serve. It is a testament to the close attention to customer service.

Let me begin by first emphasizing that ***the banking industry fully supports effective consumer protection.*** We believe that Americans are best served by a financially sound banking industry that safeguards customer deposits, lends those deposits responsibly, and processes payments efficiently. My bank's philosophy—shared by banks everywhere—has always been to treat our customers right and do whatever we can to make sure that they understand the terms of the loans they are taking on and their obligations to us. Traditional FDIC-insured banks—more than any other financial institution class—are dedicated to delivering consumer financial services right the first time. Not only do we have the compliance programs and top-down culture to prove it, banks are required to have the financial wherewithal—in terms of capital, liquidity and asset quality—to be there when our customers need us.

Fair service to our banking customers is inseparable from sound management of our banking business. Yet despite this axiom, the Dodd-Frank Act erected a Bureau that divides consumer protection regulation from safety and soundness supervision. It is for this reason I and my fellow bankers, from banks small to large and everywhere in between, have common cause to advocate for improvements to assure this new Bureau is accountable to the fundamentals of safe and sound operation, to the gaps in regulating non-banks that motivated financial reform, and to the principles of consistent regulatory standards consistently applied.

There are several features of the Bureau that make improved accountability imperative. In addition to the weakening of any connection between the Bureau's mission and safety and soundness concerns, Dodd-Frank gave the Bureau expansive new quasi-legislative powers and discretion to re-write the rules of the consumer financial services industry based on its own initiative and conclusions about the needs of consumers. The prerogative of Congress to decide the direction and parameters of the consumer financial product market has essentially been delegated to the Bureau. The resulting practically boundless grant of agency discretion is exacerbated by giving the head of the Bureau ***sole authority*** to make decisions that could fundamentally alter the financial choices available to customers.

Not only has the Bureau been given these extraordinary powers, but it also lacks the accountability that comes with budget oversight. Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. This lack of oversight means that the Bureau is free to direct its nearly $600 million budget towards any issue it sees fit, without input from Congress.

The Dodd-Frank Act has certainly changed the landscape for banking regulation and consumer protection across all financial institution participants, including non-banks. The Bureau of Consumer Financial Protection will play a pivotal role in setting new rules that will affect access, availability, and cost of credit to individuals across the country. Therefore, measures must be taken to ensure that the Bureau is held accountable for the consequences of its actions which includes the availability or lack thereof of credit and financial services to deserving people.

There are several specific measures that members of Congress have proposed that will ensure consumers understand the financial decisions that confront them and will not limit the choices and availability of credit to them. A number of the bills introduced by Reps. Spencer Bachus (R-AL) and Sean Duffy (R-WI) begin to address the issue of the structure of the Bureau. In addition, the bills from Reps. Bill Posey (R-FL) and Duffy address what the oversight and source of funding should be. These bills are a few of many options to address concerns about the role of the Bureau and its exercise of power. An important principle that underlies these and other bills is that there needs to be an effective check and balance on the Bureau's authority. I strongly support this principle of accountability and balance, and applaud Congressional efforts to assure an effective mechanism is in place to achieve it for the Bureau.

For all these reasons and others, it is critical to improve the accountability of the Bureau and the Dodd-Frank framework around it. In the remainder of my testimony, I would like to offer several suggestions that I and the banking industry believe are needed to restore the necessary accountability of the Bureau:

- *Strengthen accountability by making meaningful structural changes;*
- *Assure the Bureau's funds are used effectively and disclosed fully; and*
- *Improve oversight of the Bureau to assure results are consistent with the Bureau's mission.*

Before I discuss each of these, I would like to say that the Bureau has been responsive to industry comments to improve the mortgage reform implementation. For example, recent rule-makings on remittances and mortgage financing and servicing will benefit consumers, providers and the market as a whole. The Bureau's willingness to respond flexibly rather than dogmatically has enabled these win-win outcomes. Responsiveness is not, of course, a substitute for accountability. In fact, formal accountability would work hand-in-glove with thoughtful consideration by the Bureau of stakeholder concerns to make improvements that serve both consumers and the financial institutions that serve them.

There is clearly more that the Bureau can do immediately. In particular, we remain deeply concerned about the consequences of implementing the Qualified Mortgage (QM) rules in January 2014. The rulemaking has left banks little time to comply with the QM regulations despite the wide-reaching market implications and tremendous amount of work banks must undertake to comply with these rules. Between now and January, banks must fully review all of the final rules; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online. We must get this right, for the sake of our customers, our banks' reputations, and to promote the nascent recovery of the housing market. For some institutions, stopping any mortgage lending is the answer to this unreasonable deadline because the consequences are too great if the implementation is not done correctly. In order to do this, we need to extend the existing deadlines as well as address outstanding issues to ensure that all creditworthy borrowers have access to credit. Congressional support for such action would be welcomed as it affects many community banks and the local communities that they serve.

I. Strengthen Accountability By Making Meaningful Structural Changes

Our industry has long advocated the use of a board or commission structure is appropriate to address the unfettered authority of the Bureau's director to impose new rules. It would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and would provide needed balance and appropriate checks in the exercise of the Bureau's authority. It will facilitate continuity of the organization and enhance predictability about rulemaking over time.

As the law is currently written, the Bureau's director has sole authority to decide the direction and parameters of the consumer financial product market. This vests too much power in one person to fundamentally alter the financial choices available to customers. A board or commission would broaden the perspective on any rulemaking and enforcement activity of the Bureau, facilitate continuity of the organization and enhance predictability about rulemaking over time, and provide the appropriate checks in the exercise of the Bureau's authority.

I believe that the board or commission should include members with consumer finance business experience and direct safety and soundness regulatory expertise. Such expertise provides an important and necessary perspective as standards are set and enforcement activities undertaken. Such an important feature will also improve accountability and help redress the separation between consumer protection and sound financial management.

I would also urge Congress to consider requiring one of the five seats in the proposed Commission be filled with the recently created, statutorily-mandated position of the Vice-Chairman for Supervision of the Federal Reserve Board. We believe that the inclusion of the Vice-Chair for Supervision provides necessary and current safety and soundness experience that directly addresses a pivotal deficiency of the existing structure. The Vice-Chair for Supervision is a unique official who has oversight responsibility both for large financial holding companies (which include the nation's biggest banks and credit card issuers) and state chartered community banks that are Federal Reserve members. This broad responsibility and expertise would be invaluable to achieving the missing accountability for safety and soundness that the current structure lacks.

Both H.R. 2402 (introduced by Rep. Duffy) and H.R. 2446 (introduced by Rep. Bachus) address the structure of the Bureau, and would replace the director with a bipartisan five-member commission. This is a step that would be critical to strengthening the Bureau's accountability. H.R. 2402 goes one step farther and ensures that one of the members of the committee is the Vice Chairman for Supervision of the Federal Reserve System.

II. Assure Bureau's Funds Are Used Effectively and Disclosed Fully

On funding, the Bureau should be accountable to Congress to show how it is using its resources and to demonstrate that it is taking a balanced approach to its rulemaking and enforcement. The Bureau has been given unprecedented powers to shape financial markets, but it lacks accountability that comes with budget oversight.

Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. This lack of oversight means that the Bureau is free to direct its nearly $600 million budget towards any issue it sees fit, without input from Congress. Oversight by Congress would allow the very consumers that the Bureau was designed to protect to hold it accountable through their elected officials.

For example, the financial crisis pointed to an enormous gap in the regulation and supervision of non-bank financial providers. The system failed to enforce laws—already on the books—against predatory practices by many of those non-banks. Therefore, the Bureau should be held accountable for directing its resources to the most glaring gap in regulatory oversight—a failure to supervise and pursue available enforcement remedies against non-bank lenders committing predatory practices or other consumer protection violations.

Traditional banks will be examined year-in and year-out for compliance with all of the pre-crisis consumer protection laws—and any new rules forthcoming from the Bureau. Non-bank lenders have no such oversight and will once again escape supervision and melt back into the forest just as they did as the financial crisis unfolded. By focusing resources disproportionally on the banking industry where strong regulations and consumer protections already exists will inevitably shift consumers to less regulated entities that were the key offenders leading up to the crisis

Unlike non-banks, the banking industry already has a compliance culture and financial wherewithal to assure compliance with consumer regulations. Thus, there needs to be great transparency regarding the Bureau's funding to assure that the focus is on closing the gaps on non-banks, including a break-out of Bureau expenditures attributable to bank versus non-bank regulation and supervision. Mandated transparency on the Bureau's non-bank expenditures will better enable Congress to fulfill its own oversight function.

III. Improve Oversight of the Bureau to Assure Results are Consistent with Its Mission

Improving accountability will allow Congress to better guide the Bureau to accomplish its mission. There are a number of areas where improved oversight would result in improved outcomes for both consumers and businesses. There are several areas where there are insufficient consumer protections that deserve enhanced oversight by Congress. Just as important as address the gaps in regulation is not over-regulating in areas where consumers are already protected. Over-regulation risks limiting credit availability, which does as much of a disservice to consumers as failing to protect them in the first place.

Ensure that non-banks receive equal regulation

Even the strongest proponents of the Bureau acknowledge the fact that traditional banks were not the cause of the financial crisis. Rather, unsupervised non-bank lenders and unregulated packagers of collateralized mortgage obligations (CMOs) were allowed to take excessive risks in spite of existing laws that could have stemmed the tide of corrosive market conduct by non-depositories. The system failed to enforce laws—already on the books—against predatory practices by many of those firms and it failed to bring market discipline to bear on underwriting standards against which bankers were hard pressed to compete.

Yet here we are, the surviving bankers, facing a new bureaucracy charged with making sense of the often conflicting, never intuitive and always burdensome compliance obligations. Traditional bankers will be examined year-in and year-out for compliance with all of the pre-crisis consumer protection laws—and any new rules forthcoming from the Bureau—while non-bank lenders may once again escape.

Therefore, the Bureau should be held accountable for directing its resources to the most glaring gap in regulatory oversight: a failure to supervise and pursue available enforcement remedies against non-bank lenders committing predatory practices or other consumer protection violations.

I would note a recent effort by the Bureau to enlist the prudential regulators to expand the statutory authority to compel reports of conditions from banks to include market research data on deposit fee and remittance fee revenues. By only collecting information from the banking sector of this service market and not from credit unions or non-bank competitors who provide these same services to consumers, the agencies are aiding and abetting the Bureau's inconsistent exercise of authority toward an end that will not comprehensively capture the market they claim to want to study. This lopsided data collection should be stopped.

Address shortcomings and challenges associated with new mortgage rules

The mortgage market comprises a substantial portion of the GDP in our economy and touches the lives of nearly every American household. The Bureau's new Ability to Repay (ATR) and Qualified Mortgage (QM) rule represent a fundamental change in the housing-finance market. It is critical that these rules make sense and do not end up hurting creditworthy Americans that want to own a home.

Unfortunately, the Ability to Repay/QM rule, however well intentioned, will end up restricting mortgage credit making it more difficult to serve a diverse and creditworthy population. There are several problems associated with the rule. The general non-QM segment is very unclear and compliance is uncertain. More pointedly, the heightened penalties and liabilities applicable in the Ability to Repay rule are tremendously burdensome. Given the legal and reputational risks imposed by this regulation, banks will be hesitant to venture outside the bounds of the QM safe harbors. The new rules create a narrowly defined box that consumers must fit in to qualify for a QM-covered loan. Since banks will make few loans that do not meet QM standards, many American families across the country that are creditworthy but do not fit inside the QM "box" will be denied access to credit. In practice, this also likely means that less affluent communities may not be given the support they need to thrive. These rules may leave many communities largely underserved in the mortgage space.

Further heightening concerns with the rule is the fact that the rulemaking process has left banks little time to comply with the QM regulations despite the wide-reaching market implications and tremendous amount of work banks must undertake to comply with these rules. While the CFPB has attempted to address industry concerns by revising and clarifying aspects of the rule since it was finalized, the planned implementation date in January 2014 leaves banks little time to bring systems on line, train staff and ensure that software vendors compliance products are fully functional. CFPB needs to extend the existing implementation deadlines to provide for a transition period before requiring compliance to ensure that all creditworthy borrowers continue to have access to credit. This must be done in a formal fashion to ensure that the prudential regulators, as well as state attorneys general and private citizens all recognize the same transition period for enforcement of the new rules.

Rethink the role of enforcement staff in the supervisory process

Supervision should be a value-added proposition and not be conducted as an enforcement exercise. The presence of enforcement staff in the supervisory process hurts the entire process. Supervisory authority represents an extra-ordinary combination of visitorial rights and broad business record access without normal investigatory due process in exchange for a strong confidentiality privilege for the purpose of constructively criticizing and improving risk management without undermining the institution’s market viability. This trade-off is at the heart of successful supervision and what distinguishes it from the enforcement paradigm. The presence of enforcement counsel converts supervision to a form of pre-complaint discovery with none of the protections every other American business enjoys in its dealing with government agencies. A firm wall should be erected between enforcement and the Bureau’s examination process.

Conclusion

The banking industry fully supports effective consumer protection. Traditional FDIC-insured banks have a long history of delivering consumer financial services right the first time and banks have the compliance and top-down culture to prove it.

It is an inescapable fact that fair service to our banking customers is inseparable from sound management of our banking business. Yet despite this axiom, the Dodd-Frank Act erected a Bureau that divides consumer protection regulation from safety and soundness supervision. It is for this reason that Congress should act to enhance the accountability of the Bureau by dealing with the problems brought about by the extensive new powers of the agency, the unfettered authority of the Director to impose new rules, the separation of consumer protection from financial institution safety and soundness, the gaps in regulating non-banks, and the expanded and unaccountable enforcement authority of prudential regulators and state attorneys general.

My bank's philosophy—shared by banks all across this country—has always been to treat our customers' right and do whatever we can to make sure that they understand the terms of the loans they are taking on and their obligations to us. We will continue to do this, but now there will be many new hurdles that we will have to jump to serve our customers' most basic needs that will inevitably add cost, time, and hassle for my customers.

Thus, it is critically important that Congress be vigilant in overseeing the regulatory actions of the Bureau to assure they do not restrict access to responsive financial products by responsible American families.