June 6, 2018

Testimony of

Elmer K. Whitaker

before the

Financial Services Committee

Subcommittee on Financial Institutions and Consumer Credit

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Chairman Leutkemeyer, Ranking Member Clay, and members of the subcommittee, my name is Elmer Whitaker. I am President of Whitaker Bank Corporation of Kentucky, a family-owned bank holding company located in Lexington, Kentucky. Our holding company owns and operates two banks in Kentucky – Whitaker Bank, Inc, where I serve as Chief Executive Officer and Peoples Bank and Trust of Madison County. We also own and operate Kentucky Trust Company, which provides wealth management and insurance services.

Whitaker Bank Corporation of Kentucky was founded by my Grandfather in 1978 with five locations in three counties and total assets of $59 million. Today we have 45 locations in 17 counties with combined assets of $1.75 billion. We are proud of the community banking services we have provided to homeowners, businesses and neighbors throughout our market in Kentucky. While we offer the convenience of online banking, text banking, and mobile banking, our success is rooted in the relationships based on honesty and trust between our bank and the customers we serve.

I am also pleased to be before the subcommittee today to share our views on "Improving Transparency and Accountability at the Bureau of Consumer Financial Protection." Before speaking on this subject, I would first like to commend Chairman Hensarling and members of the House of Representatives for their support of S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act. This commonsense legislation is long overdue. This new law will help community banks, like mine, better serve our customers and communities. I would also like to thank Congressman Andy Barr for his steadfast support on a number of provisions in the bill, in particular his leadership on creating a safe harbor for qualified mortgage products. It is these types of commonsense proposals that help us better serve our mortgage customers.

As a community banker, I fully support effective consumer protection. We believe that Kentuckians are best served by a financially sound banking industry that safeguards customer deposits, lends those deposits responsibly, and processes payments efficiently. To achieve those goals, effective controls are needed to ensure that measures designed to help customers do not inadvertently limit credit. This committee is charged with crafting legislative proposals that provide the proper balance of protections to help the financial industry serve our customers.

Since the creation of the Dodd-Frank Act, several proposals have been introduced that would replace the position of Director of the Consumer Financial Protection Bureau (CFPB) with a bi-partisan five-member commission, similar to other financial regulatory agencies. We support this commission concept and believe that a commission structure is appropriate to address the extremely broad authority of a single director. We believe that a commission would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and it would provide necessary and appropriate checks and balances in the exercise of the Bureau's authority. We would also like to see an appeals process that is reviewed by more than a single director; the commission concept could address this need.

Bills have also been introduced that eliminates the direct funding of the Bureau by the Federal Reserve and subjects the Bureau to the regular congressional appropriations process.

The Bureau has been given broad authority that can alter financial markets, but it lacks accountability that comes from budget oversight. Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. Oversight by Congress would allow the very consumers who the Bureau was designed to protect to hold it accountable through their elected officials.

In my opinion, there needs to be an effective check and balance on the Bureau's authority. We support the principle of accountability and balance and commend this committee for continually pushing for greater accountability at the Bureau.

Similarly, we support efforts to create transparency by creating an Inspector General. The Inspector General's function is to serve as an independent unit that conducts audits, investigations, and reviews programs and operations. The CFPB handles a large portfolio of financial industry and consumer issues. I would hope that the CFPB would welcome an independent review of its operations.

Mr. Chairman, as I noted, my bank fully supports consumer protection. We believe, however, that new regulations must be reviewed to ensure they are meeting their intended purpose. Regulation, whether by the CFPB or other regulatory agencies, shapes the way banks do business and can help or hinder the smooth functioning of the credit cycle and economic expansion. Bank regulatory changes—through each and every law and regulation, court case and legal settlement—directly affect the cost of providing banking products and services to customers. Even small changes can have a big impact on bank customers by reducing credit availability, raising costs and driving consolidation in the industry. Everyone who uses banking products or services is touched by changes in bank regulation. In many communities, appraisal costs alone for a home loan have doubled since the implementation of Dodd-Frank.

The rules in Dodd-Frank have caused some banks to stop offering certain products altogether, such as mortgage and other consumer loans. The fact is that most community banks are small businesses by any definition. ***The median sized bank in this country has only 44 employees***. There is simply not enough capacity to read and understand what rules apply; implement, train, and test for compliance with those that do; and still have the time and resources to meet with individuals and businesses about their financial needs. Faced with the thousands of new regulations, the economics have forced many strong, well-run community banks to sell or merge with another bank. As of the first quarter of 2011, there were 179 commercial banks in Kentucky; 6,402 nationwide. By the first quarter of 2018, this number had decreased to 143 in Kentucky; 4,852 nationwide (FFIEC, retrieved from FRED, Federal Reserve bank of St. Louis).

As Congress continues to review the Dodd-Frank Act and the role of the CFPB, we would encourage you to take into consideration additional changes at the Bureau, as follows:

Create CFPB Advisory Opinion Process

Innovation and consumer protection in financial products and services is currently hampered because there is no effective way to obtain an advanced ruling from the Consumer Financial Protection Bureau ("Bureau") regarding whether or not a proposed product or service would conform or would potentially violate the federal consumer laws. This lack of legal and regulatory certainty chills innovation and prevents consumers from benefitting from such products and services and harms economic growth.

Innovators and CFPB staff do not have a means to formally review a product before it reaches consumers, which unnecessarily delays important consumer protection conversations until a costly enforcement action is potentially undertaken. This reactionary posture creates an information vacuum, depriving innovators of vital compliance information and preventing CFPB staff from staying abreast of emerging consumer product trends – knowledge which is important to their effectiveness as a regulator.

Legislation is needed that directs the Bureau to establish a formal process for innovators to voluntarily ask for an opinion on whether a proposed product or service would conform or violate federal consumer law. The Bureau's opinion should be one that can be relied upon by the innovator making the inquiry as an official interpretation of the applicable underlying federal consumer law.

Review Section 1071 of the Dodd-Frank Act

Section 1071 of the Dodd-Frank Act requires the Bureau to prescribe rules for collecting and reporting data on lending to minority-owned and women-owned small businesses. Unfortunately, this HMDA-like data collection over-simplifies the nature of the small business lending environment, and will mislead community leaders, government entities and creditors from identifying the business and community development needs and opportunities for local small businesses. Moreover, there has been no analysis of whether this new data collection duplicates existing data on small business lending collected by the Small Business Administration (SBA) and the banking agencies pursuant to the Community Reinvestment Act.

Perhaps most troubling is there has been no analysis of its impact on economic growth given the potential negative effects this may have on what loans are made or not made in a local community. The considerable burdens associated with this data collection and reporting regime would add significant costs and red tape to small business lending, discouraging a primary engine for economic growth. Moreover, the majority of small business lending is originated by community and mid-size banks, which try to adapt to the needs and circumstances of individual borrowers. Compliance with this rule, however, will impede this individualized approach due to potential fair lending liability concerns. This will inevitably lead to the homogenization of small business loans, which will hurt small businesses and the banks that want to serve them. This would be counterproductive to the provision's underlying goal of facilitating increased credit access and economic growth.

To correct this, the Bureau and the Small Business Administration (SBA) should be required—before the Bureau is authorized to prescribe any rule for collecting and reporting loan data—to conduct a joint-study to determine whether the proposed collection would be duplicative of existing data collections and to determine whether the costs for such data collection exceed the potential benefits. The agencies should also be required to submit a report to Congress on their findings along with their recommendations, if any, for prescribing rules for the collection and reporting of minority-owned and women-owned small business loan data.

Conclusion

Community banks continue to be the backbone of Kentucky and hometowns throughout America. My banks presence means we have a personal stake in the economic growth, health, and vitality of the communities we serve.

By eliminating unnecessary impediments and ensuring that the agencies that oversee our products are fully transparent, Congress can help stem the tide of community bank consolidation driven by these unnecessary regulations which negatively impact every community across the United States.

Thank you again for the opportunity to testify today. I look forward to the continued commonsense legislation from this committee.