# THE IMPACT OF DODD-FRANK ON CONSUMER CHOICE AND ACCESS TO CREDIT

## HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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# THE IMPACT OF DODD-FRANK ON CONSUMER CHOICE AND ACCESS TO CREDIT

**Thursday, July 19, 2012**

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:02 p.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Renacci, Manzullo, McHenry, Pearce, Luetkemeyer, Huizenga, Duffy, Canseco; Maloney, Hinojosa, Miller of North Carolina, and Scott.

Also present: Representative Green.

Chairwoman CAPITO. I now call the subcommittee to order, and I would like to inform Members, and Mr. Date, that we do expect a series of votes this afternoon between 4:30 and 5:00. It will be a long series of votes, and it is my intention to complete this hearing by the time votes are called. I am sure you are okay with that.

Anyway, this afternoon's hearing is the second installment of the Financial Institutions and Consumer Credit Subcommittee's contribution to oversight hearings leading up to the second anniversary of the Dodd-Frank Act. Today, we are joined by Mr. Raj Date—this is not his first visit here, and I appreciate him coming back again—who is the Deputy Director of the Consumer Financial Protection Bureau (CFPB), and he will provide members of this subcommittee with an update on the operations of the CFPB since the designated transfer date of last July.

Many of my colleagues on the other side of the aisle like to highlight the number of times the CFPB has testified as proof positive of sufficient congressional oversight. According to the CFPB's Web site, this will be the 24th time a representative from the agency has testified before either the House or the Senate. So, just for the sake of comparison, how does that compare to the other financial regulators? The Treasury and the Federal Reserve each have appeared 45 times, the SEC has appeared 47 times, the FDIC has appeared 26 times, and the OCC has appeared 22 times. Testifying at hearings is a central function of a Federal regulatory agency, but it does not necessarily equate to Congress having sufficient oversight.

Republicans have offered common-sense proposals that provide for greater congressional oversight of an agency that will be spending hundreds of millions of dollars each year without compromising the core mission of protecting—a shared mission, I might add—consumers, and I urge the Senate and the Administration to accept our good faith offering and work with Republicans to place these vital reforms in place.

I am especially interested to hear Mr. Date's thoughts on two rules that are now before the CFPB's purview. The first is the credit card ability-to-pay rule—on which we had a hearing—that CFPB inherited from the Federal Reserve, and the second is the Qualified Mortgage rule that is pending.

Last fall, the Federal Reserve finalized rules providing guidelines for credit card issuers to determine a borrower's ability to pay. When drafting this rule, in my view, and I think it is borne out in the actions, the Federal Reserve clearly misinterpreted the statute and required all borrowers to provide proof of an individual income, even though the statute clearly intended that requirement to apply only to underage students seeking credit. The practical effects are that we are hearing more and more anecdotal stories from across the Nation about stay-at-home spouses, male and female, being denied credit because they do not have an individual income. This is a clear example, I think, of Washington regulations that have gone wrong. I have asked the CFPB to fix this inequity, and they have assured us and the committee that they are working on it, and they will have a resolution by this summer. We are working on a legislative solution to restore parity in case that doesn't come about.

Last week, we heard from many witnesses about the importance of clarity in the CFPB as the CFPB promulgates the Qualified Mortgage rule. Again, the actions of this agency could determine the availability of credit for borrowers across this Nation, and I would urge the CFPB, as I did in a letter with Mr. Sherman that I am sure you received, to have a broad definition for the Qualified Mortgage and provide a strong legal safe harbor for the loans that fit these criteria. We need to ensure this rule does not overly restrict credit for consumers and increase the cost of credit for borrowers.

Again, I would like to thank Mr. Date for appearing before the committee. Our members are very interested in the actions of the CFPB. Going forward, we must ensure that agencies strike the appropriate balance between protecting consumers and ensuring that there is sufficient access to credit.

With this, I would like to recognize the ranking member, the gentlelady from New York, Mrs. Maloney, for the purpose of making an opening statement.

Mrs. MALONEY. I thank the gentlelady for calling this hearing and I thank her for pointing out that this is the 24th time the Bureau has testified before Congress, oftentimes before this committee, but it is always with good news. It is always with good news of how we are protecting consumers and how we are moving forward.

Just yesterday—I would like unanimous consent to place in the record a report really from the American Banker that shows that the CFPB hit a financial institution with their first-ever penalty. And I was waiting to see in what area it was going to take form, and it took form in the area of credit card reforms, so I was pleased to see that the Bureau is being serious about cracking down on unfair, deceptive, and anticompetitive practices.

Just yesterday, they announced their first enforcement action, finding deceptive marketing of credit protection products to consumers with lower credit scores. These practices were uncovered during the supervision process, a critical authority we gave to the CFPB, and it will put $140 million back into the pockets of 2 million cardholders. This case in point is why the Bureau is necessary, and I applaud the work that was done in the months leading up to this announcement.

We need to put this in perspective. Not only is this the 24th hearing, but there have been 50 bills and numerous amendments that have been introduced to either gut, slow down, block or defund the financial reforms, including the repeal of this bill. There have been numerous legal challenges to dismantle the CFPB as well as other important aspects of financial reform. And the very agencies which have been tasked with implementing financial reform are facing drastic budget cuts. The SEC is looking at a 12 percent cut. The CFTC would get a 41 percent cut. And if my colleagues get their way, together that would amount to $323 million cut, but it pales in comparison to what Americans lost in the financial crisis. It is merely two-tenths of a basis point of the $19 trillion in household wealth that Americans lost. We lost 8.7 million jobs, and 6.3 million more Americans are now in poverty because of the financial crisis. If we had prevented those abuses, then we would not have had these drastic losses.

The CFPB is a pillar of the financial reforms that we enacted 2 years ago, and consumer protection in financial products is its first and only mission. That was not the case before financial reform, where consumer protection authority was housed in multiple agencies whose chief mission was safety and soundness, not consumer protection, and that is important, but too often consumer protection was a secondary thought, a third thought or not even thought about at all. Now the system has changed; it is safer, stronger, more transparent, and there are new tools to monitor and mitigate threats that consumers face and to protect them.

These reforms are helping to build a sound foundation to support economic growth, and we do see signs of that growth. We have added 3.8 million jobs, and business lending has increased 15 percent, according to the Bureau of Labor Statistics, after these reforms went into place. CFPB has leveled the playing field for consumers and financial institutions.

And I for one do not really understand why there is such great opposition to it. The "know-before-you-owe" is really very important so consumers can see and assess how much they owe. They have simplified credit card contracts, introduced new student loan assessment tools, highlighting rates and eliminating confusing rhetoric so people know what they are getting into, and I really don't understand why some of my colleagues are opposed to it for giving consumers disclosures that will clearly state their obligations under their mortgages: their interest rates; their payments; their fees; and other important information.

For all the talk of limits to consumer choice and restrictions in credit, none of that has materialized. And for all the talk about unacceptable agencies and unaccountable and not transparent, the CFPB has been unprecedented in its transparency. Just go to their Web site. They have been forthcoming with Members, with the industry, and with consumers, and I look forward to hearing their report today. I hope there have been more advancements to simplify information, to level the playing field, and to strengthen our overall economy and consumers' understanding of their exposure and enabling them to better manage their own financial life and their own risk. I thank the gentlelady for calling this hearing, and I look forward to the gentleman's testimony. Thank you.

Chairwoman CAPITO. Mr. Duffy, for 2 minutes.

Mr. DUFFY. Thank you, Chairwoman Capito, for holding this very important hearing. Here we are a year after the CFPB took over responsibility for promulgating Federal consumer protection rules, and many questions still remain on the potential future actions that the Bureau may take.

As you know, I have been following the CFPB developments ever since being elected to Congress, and my focus has been particularly targeted at how the CFPB actions impact small financial institutions, many of them in smaller, more rural parts of America. Almost daily, I continue to hear from community banks and credit unions in my district and throughout Wisconsin about the increasing regulatory regime that these institutions are now facing. Many of them tell us it is not making their lives easier. The small institutions are telling us that it is making their lives far more difficult.

We have had numerous hearings discussing this important issue. We had one recently in Wausau, Wisconsin, and we have also had many hearings in this room talking about the impact on small community institutions. This hearing will hopefully highlight some of those concerns. Today, we will be discussing the impact of Dodd-Frank on consumer choice and access to credit.

As we have this conversation on consumer choice, I want to make sure that we do not restrict financial institutions from providing consumers with the power to choose the products that they want and the products that make the most sense for them.

I would also like to ask for unanimous consent to offer a letter into the record from the National Association of Federal Credit Unions that addresses the regulatory burden and the issues that are arising with regard to consumer choice.

Chairwoman CAPITO. Without objection, it is so ordered.

Mr. DUFFY. Thank you. And I want to thank Mr. Date for coming today, and I look forward to his testimony.

Chairwoman CAPITO. Mr. Hinojosa for 2 minutes.

Mr. HINOJOSA. Thank you, Chairwoman Capito, and Ranking Member Maloney.

I also want to thank you, Mr. Date, for once again coming before this subcommittee to speak out about the progress of the Consumer Financial Protection Bureau. We are once again evaluating the CFPB and marking the 2-year anniversary of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Two years later, I still hear my friends and colleagues on the other side of the aisle complaining about the so-called strangling red tape which the law has supposedly imposed. On Monday, The National Journal published a story entitled, "Gripes and Few Laws

From GOP on Dodd-Frank." By next month, the CFPB will have testified before Congress 26 times during their 18-month existence.

I would like to point out that, according to a poll commissioned by the AARP and other organizations taken earlier this month, most Americans disagree with the negative characterization of the CFPB that my Republican colleagues have embraced. In fact, two-thirds of voters and 69 percent of independents agreed that the CFPB is a necessary institution, I repeat, that it is necessary to have it.

No wonder they feel this way. While the big banks are complaining about the red tape, we are being inundated with new scandals and evidence of malfeasance by the major financial institutions. Starting with the JPMorgan exotic derivatives loss that may reach up to $9 billion, there have been several instances which reflect poorly on the financial services industry and beg for more oversight and protection for our consumers.

Just yesterday, the CFPB announced its first enforcement action against Capital One Bank, which will have to refund $140 million to 2 million consumers and pay a $25 million penalty. It has also recently come to light that HSBC Bank has been looking the other way while terrorist organizations and drug cartels launder money with their institution. Last week, the chairman of Peregrine Financial Group admitted to 20 years of embezzlement, and of course, we are all appalled at the London Interbank Offered Rate, or LIBOR, fixing scandal which may have involved up to 16 banks in a conspiracy to report false rates. It boggles my mind that instead of seeking to regain public trust, if only for self preservation, these institutions continue to evade the law and point at the CFPB and the Dodd-Frank Act and cry foul.

In closing, I want to say that rather than continually trying to hamper the work of the CFPB, we should be encouraging the Bureau and the other regulators to hamper these Wall Street banks from evading laws and putting our economy at risk. We do need the Consumer Financial Protection Bureau, and the recent scandals only underscore this point. With that, I yield back.

Chairwoman CAPITO. The gentleman yields back.

Mr. Canseco?

Mr. CANSECO. Thank you, Madam Chairwoman.

The number I am keeping in mind today is 1,100, and that is how many pages the CFPB's recently proposed rule regarding mortgage disclosures contains, even though the disclosures themselves will be less than 10 pages in length. Many of us have expressed skepticism over the argument that the creation of another unaccountable bureaucracy would somehow reduce red tape and compliance costs and make financial decisions easier to understand for consumers.

The CFPB's biblical length rule seems to have validated our worst fears about this agency. With its proposed rule, the CFPB has shown us the path they have chosen to take, and I am afraid that for financial institutions, families, and consumers, the outlook isn't good. I yield back my time.

Chairwoman CAPITO. The gentleman yields back.

Mr. Scott for 3 minutes.

Mr. SCOTT. Thank you very much, Madam Chairwoman.

In addition to forming the CFPB, the Dodd-Frank Act also imposed a risk retention requirement for lenders that I think we really need to take a good look at as we discuss this today, a risk retention requirement for lenders who securitize mortgages that they originate.

Under Dodd-Frank, there is a requirement that lenders must retain 5 percent of the credit risk of any asset in order to encourage sound lending practices. The law currently exempts Qualified Residential Mortgages, or what are referred to as QRMs, from this risk retention. And on that note, as many of you may know, I am the cosponsor of the Consumer Mortgage Choice Act, which would simply amend the calculation within Dodd-Frank determining whether a mortgage loan is compliant with the QRM requirement. This is necessary. Our legislation would exclude so-called points and fees as long as they are reasonable.

So I am going to be interested to know what Mr. Date's view on the legislation might be and how it might affect consumers' access to credit in order to obtain mortgages, because it seems to me that any expansion of charges to be included in the finance charge could very well cause vast numbers of mortgages to fail to meet the standards required of a Qualified Mortgage, and obviously, if the CFPB counts all originations and title charges as part of the points and fees, then a huge part of the mortgage loan market in my State of Georgia and elsewhere will not meet the requirement to be a Qualified Mortgage, and lenders will not be able to make the loan, and moreover, there could be an especially negative impact on the consumer's ability to choose affiliated mortgage and title companies if affiliated fees are included.

And so, it could be that by expanding the range of charges that must be included in the finance charge, it could make it nearly impossible for the average consumer to obtain a Qualified Mortgage. I would like for us to look at this and get your opinion on that as we move forward and look forward to the hearing. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

That concludes our opening statements.

I would like to welcome, again, Mr. Raj Date to our committee. He is the Deputy Director of the CFPB. Welcome.

**STATEMENT OF RAJ DATE, DEPUTY DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Mr. DATE. Thank you, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee for inviting me back to discuss the work of the Consumer Financial Protection Bureau.

The last time I was before this subcommittee was back in November and the CFPB had been in existence for just over 100 days. Today as we look forward to the 1-year anniversary of the CFPB on July 21st, so the day after tomorrow, I am glad once again to have the opportunity to discuss the important work that we are doing.

As you know, before the Dodd-Frank Wall Street Reform and Consumer Protection Act, no agency was solely responsible for protecting consumers of financial services. Now, after the Dodd-Frank Act, one agency is solely responsible for consumer protection, and that is the CFPB. Congress equipped the CFPB with a range of tools to reform the consumer finance marketplace: tools like research and supervision and enforcement and rulemaking and consumer education. I am pleased to report that we have been using these tools to deliver tangible value to American consumers.

In addition to supervising the country's biggest banks, we have also begun our supervision of nonbank businesses in two markets, residential mortgage and payday lending. On Monday of this week, we announced the addition of credit reporting companies to our nonbank supervision program, and over time we will continue to build out our nonbank supervision activities. Many of these nonbank products and services have never before been supervised at the Federal level, so these are important changes for consumers.

And yesterday, we resolved our first enforcement action. During our supervision of a major credit card issuer, our team identified deceptive marketing practices used by the bank's third-party vendors to pressure or mislead customers into paying for add-on products when they activated their credit cards. Yesterday's consent order, which we issued in conjunction with the OCC, requires the credit card issuer to refund $140 million to 2 million consumers and to pay an additional $25 million fine.

Other work that we have been up to: Evaluating overdraft protection; helping students to better understand their financial options; and working with the prudential regulators to help struggling military homeowners who have received permanent change of station orders.

In most of what we do, we have had the benefit of an ongoing and productive dialogue with the consumer finance industry. We are, for example, working with one of the largest credit unions in the country to figure out if shorter, more transparent credit card agreements can make a meaningful difference to consumers' understanding.

The place that we are spending most of our time, as you might imagine, is the mortgage market. Given what American consumers have gone through since 2007, mortgage reform is appropriately at the top of the Bureau's policy agenda. From shopping for a mortgage to closing on a mortgage to paying for a mortgage, we are working toward restoring trust across the mortgage business system. Over the next 6 months, we will be proposing and then finalizing rules to address problems consumers often face in buying or refinancing a home.

Let me start with shopping for a mortgage. Markets don't work if both parties to the transaction don't understand what it is they are getting into. With our new loan estimate form, we are saying "no more" to costs and risks being buried in the fine print. Not only are we integrating the Federal mortgage disclosure forms, as Congress directed us to do, but we are simplifying those forms, too. The idea is for borrowers to have a better chance to actually understand the price and the risk of their obligations in a way that is better for everyone involved.

When it comes to closing on a mortgage, the Bureau is proposing rules that would require lenders to provide the most critical information 3 days before closing instead of at the closing table. This means consumers will have the time to review the loan terms and the costs and ask questions about anything that they don't understand or that just doesn't seem right.

We are also trying to put an end to mortgages that, as a practical matter, destine consumers to fail. In the years leading up to the financial crisis, lenders too often paid little attention to whether consumers actually had the ability to repay their loans. The results were disastrous, not only for consumers but for the housing market, for investors, and for the broader economy. By the end of the year, we plan to finalize a rule requiring lenders to make a good faith determination that borrowers actually have an ability to repay their loans.

And finally, when it comes to paying for a mortgage, we are considering common-sense rules of the road. So, for example, we are considering whether a servicer should be required to give borrowers better information about how much they owe every month. We are still at the early stages of these servicing rulemakings, but I am optimistic that we can find a common-sense path forward. In the end, we want to craft sensible rules that work for the market throughout the credit cycle, but we also want to be mindful of just how fragile and risk-averse the market seems to be today.

Throughout all of our efforts across consumer finance, we want to minimize compliance burden to the extent possible, and we want to encourage a competitive market where consumers and honest businesses can both thrive. Again, thank you for inviting me back, and I look forward to your questions.

[The prepared statement of Mr. Date can be found on page 30 of the appendix.]

Chairwoman CAPITO. Thank you.

I would like to say in reference to the comment that you made about whether you are going to recommend that everybody send out a statement monthly on what they owe on their mortgages, I get that. I get that from my own lender every month. I think it is probably a good business practice, and I think you will find a lot of people are already doing that, which I am sure you already know.

But anyway, I brought up two rules when I was mentioning my opening statement. Let me go to the one that Gail Hillebrand came to our committee and spoke about, and that is the stay-at-home spouse issue with the ability to repay to be able to get credit in their own name. Can you tell me what the status of that is? And I am hoping that you are moving as quickly as she said that you would be towards a resolution of this.

Mr. DATE. Yes, strangely, Chairwoman Capito, I am not sure I actually have that much to add beyond your explanation of the issues associated with the ability-to-pay rule in the CARD Act and how the Federal Reserve Board's regulation may have the unintended consequence that you discussed on nonworking spouses.

Associate Director Hillebrand had discussed our approach to it, and that remains our approach, which is to try to move from the admittedly merely anecdotal evidence today to a more systematic understanding of the magnitude of the problem, its trajectory, and to think about potential solutions that we might be able to move forward with. She had talked about the end of the summer being the point in time where we would have a good sense of what the right path is, and that remains our plan.

Chairwoman CAPITO. My understanding—

Mrs. MALONEY. May I—

Chairwoman CAPITO. Let me go ahead and finish because I only have 3 minutes. My understanding on her, on our testimony is that this is a real problem. I am a former stay-at-home spouse myself. I understand the issues and how important this issue is to folks who are staying at home with their children to raise their families, both, as I said, males and females, so my understanding is that the resolution to this issue was going to be reached by the end of the summer, not just an analysis of whether there actually is a problem. So I would encourage you to keep moving forward quickly on this. It is extremely important to these families that we have a resolution to this sooner than later, and that was the crux of what she said when she was here, the way I understood it.

Let's go to the bright line. Mr. Cordray has said that a bright line is exceedingly important in the criteria for a Qualified Mortgage. I have an article here from the Wall Street Journal yesterday which said the Fed's new mortgage disclosures are a bust. I guess they could say the CFPB new mortgage disclosures are a bust, in his opinion. I don't agree with some of what he is saying here, the nitpicking of the forms; I looked at them. It looks fine to me. I think he is complaining about having the APR on the third page. I don't think that bothers me as much as it seemingly bothers him, but he does say that the unintended consequences, and we did discuss this in our hearing last week, would be a tightening of credit and an inability—if you can't get a Qualified Mortgage, you are out of the game. Everybody on our panel said nobody is going to write a mortgage that is not a Qualified Mortgage, and so it needs to be broad and it needs to have bright lines in terms of the legal protections.

So do you agree that the safest way to ensure that standard is not overly litigated is to get the legal safe harbor on this, or what is your position on that?

Mr. DATE. As always, Chairwoman Capito, thank you for raising the set of reforms around mortgages because it is at the top of our policy agenda for a reason, it is the single most important and largest market in the country, and it is the one that we have the most impact on. The ability to repay curiously also called ability to repay provision with respect to mortgages, which most people call the Qualified Mortgage Rulemaking, is a pending rulemaking so I am a little bit constrained in how I can talk about it, but I will point out that it is difficult to find a lot of dissenting voices to the core notion that you are saying, which is that bright lines matter. To the extent that the Qualified Mortgage is meant to be at the time of origination to provide some manner of presumption, either irrebuttable or rebuttable in some way, that the ability to repay provision has been met, then, that is not especially helpful if no one knows whether or not the loan, when made, is in fact a Qualified Mortgage. So I think most of the commenters throughout the two comment periods on the QM rule have made very similar arguments.

There are related issues with respect to the degree and magnitude of litigation risk that we recently reopened the comment period to get more perspectives on. I know that your letter, and thank you for it, takes a point of view on that question. I would characterize the point of view in that letter as being quite solidly within the spectrum of the wide diversity of perspectives on litigation risk as evidenced by the comment letters that we have received, but we are trying to move forward on the timetable that we have laid out.

Chairwoman CAPITO. I would also bring up and caution you that in this article that was written in the Wall Street Journal, an opinion article that raises some questions, and we have heard this in our office of Habitat for Humanity and other nonprofits that try to get maybe nonqualified borrowers to be able to be in a home, sweat equity, those kinds of things. I would hope that would be taken into consideration and have some flexibility for these really valuable programs to move forward.

I guess my other question, my final question—I don't have time for a final question. Maybe I will come back afterwards.

Mrs. Maloney?

Mrs. MALONEY. I thank the gentlelady, and I would like to add my voice with the concern on the stay-at-home moms. It was certainly not my intention when I authored the bill to in any way roll back rights of women, and just on my own calls that I hear in my district from stay-at-home moms, this has been quite a challenge, so I look forward to your report, and I hope that you can make accommodations that are in line with the spirit of the law, and this is something we agree on. This is something that we both support wholeheartedly.

We are having a day on the Floor next week on regulatory burdens, and many people or some people on the other side of the aisle have criticized the CFPB, claiming that it has too much of a regulatory burden on smaller institutions and businesses, yet I do know that in the financial reform, we made a point of requiring that the Bureau convene panels during the rulemaking process to assess the effects of proposals on small businesses. Can you report on how this process is working? And, very importantly, in your data-driven research, has it been any type of a burden in any way? Also, some have claimed that it has ensured the end of free checking. Would you agree with that statement or could you give your analysis of that particular complaint, shall we say?

I do want to say I am very proud to have been one of the authors of Dodd-Frank. I worked on the conference committee, and I feel this is a centerpiece, an incredibly important reform, I support it completely, but it is also very important to answer any types of criticisms that come our way, so I look forward to your response. Thank you.

Mr. DATE. Thank you, Ranking Member Maloney, and I will take those questions in the order in which you posed them. First, with respect to burden on small institutions, I think sometimes lost, and perhaps it is my own fault for not being as clear about this as maybe I can be, the CFPB does not supervise or enforce the law with respect to small banks. There are 15,000 banks, thrifts, and credit unions within the country. Our supervision authority extends to call it the biggest 105 out of 15,000.

Second, are any putative sort of burdens associated with abiding by regulations that are promulgated by the CFPB? Although conceptually I understand that notion, the fact of the matter is that we have finalized two substantive rulemakings since being in business for a year, one of which by its terms kept in place the status quo, that is the Alternative Mortgage Parity Transactions Act rulemaking, and the other is not yet effective, and indeed we have publicly said we are considering means by which to provide exemptions for smaller providers. So the burden argument with respect to smaller institutions I think we have been quite attentive to and indeed the Congress has been.

Mrs. MALONEY. What was the second rule you came forward with?

Mr. DATE. The Remittance Rulemaking.

Mrs. MALONEY. The Remittance Rulemaking.

Mr. DATE. And when that was finalized, it was not yet effective, and, second, we are now considering means by which to provide exemptions or different requirements with respect to smaller remittance providers.

You had mentioned the small business review panels that we convene. I am essentially a quite conservative person. I tend to be slightly fearful and anxious about things that are new, and we are the first financial regulator to conduct small business review panels. There are only two other Federal agencies that do them, OSHA and the EPA, and so I will confess to a certain amount of anxiety a year ago about how this would work out.

I have been very pleased personally with how it is that we have been able to convene panels of small entity representatives, the diligence that the representatives have taken to the task at hand, the feedback that we have gotten, and as I think you probably have already seen in a couple of our proposals and will continue to see, for example, in our servicing proposal when it comes out, we have been able to listen to quite right-minded concerns and adapt to them where we can. It has been a real benefit to us, and I am proud of the team that is responsible for that at the Bureau.

Finally, just briefly on the notion of free checking, the Federal Reserve Board had a not insubstantial change to overdraft fee opt-in a couple of years ago. We have said that we will evaluate how it is that the marketplace has changed since then. We don't actually know how it is that the marketplace has changed until we do the work, and as a result, the notion that somehow the CFPB has either promoted or prevented free checking I think is just factually inaccurate.

Second, I would just point out, not just from this particular job I am in but from years prior, there is no free anything. Products that provide value, institutions tend to charge for one way or another.

Mrs. MALONEY. My time has expired. Thank you.

Chairwoman CAPITO. Mr. Renacci for 5 minutes.

Mr. RENACCI. Thank you, Madam Chairwoman.

Thank you, Mr. Date, for being here.

Mr. Date, on June 28th the CFPB amended its regulations to provide that submission of confidential information to the CFPB will not waive any applicable privilege and to assert that the Bureau's transfer of such information to another Federal or State agency does not waive privilege. How do you address the concerns raised by the American Bar Association that because the proposed rule is based in part on an assertion of the Bureau's authority to compel production of privileged materials, the proposed rule may not protect the privileged status of the information?

Mr. DATE. I understand that concerns have been voiced, and it is a concern that caused us to propose and then finalize exactly the rulemaking that you are referring to, Congressman.

Supervision of banks and nonbanks is core to what we do. I would argue that of the many policy tools we have, it is the single most central, it is the single most flexible, it is the one that makes everything else better. Supervision depends on confidential information being shared with regulators, full stop. You cannot create a supervisory relationship that is going to be meaningfully additive to the system unless institutions can count on that, which is why we proceeded with and finalized the rule that you discussed.

Mr. RENACCI. Again, I appreciate the intentions of the rule, but I share some of the concerns of the American Bar Association. I believe the statutory change is preferable. In fact, in recent congressional testimony, Director Cordray had also stated that legislation would be helpful in removing all doubt. It is for that reason I supported Representative Huizenga's efforts in H.R. 4014, but I also have concerns for institutions not covered under the Huizenga bill. Many nonbank financial institutions are now subject to the CFPB. Many of these nonbank institutions are also regulated by the consumer finance regulators, not State bank supervisors, as currently defined under the FDI Act.

Regardless of how an institution is regulated at the same level, I believe they should be extended the same protections when they and their regulators share information with the CFPB.

So I would ask you, can you envision a scenario where the CFPB will collect information from a nonbank financial company?

Mr. DATE. Certainly, Congressman. Given the nature of nondepositories, the number of them, and the diversity of their business models, the nondepository supervisory process may not look identical to, say, a supervisory process with respect to a $150 billion bank. It will rely on the exchange of information, absolutely.

Mr. RENACCI. Sure. Can you envision a scenario where the CFPB might share or collect information with a State consumer finance regulator as opposed to a State bank regulator?

Mr. DATE. We have promulgated our point of view on when it is and under what conditions of confidentiality we would share information of any kind, and I believe that takes account of that possibility, where there is a shared purpose and confidentiality is assured. So, again, I understand and appreciate the analogous situation that nondepositories are in versus depositories.

Mr. RENACCI. So there is a possibility that there would be—

Mr. DATE. I would say core to the question is to the extent that confidential information can be important to enabling an effective supervisory regime, we will insist the confidential information be shared, and we will obviously be quite careful with it. Again, our point of view is that does not somehow waive attorney-client privilege for the supervised institutions, but to the extent that there is doubt out there, and I am not quibbling with whether or not there is, in fact, some doubt, then statutory remedy is something, as Director Cordray has pointed out, that we would welcome.

Mr. RENACCI. So you could see why a nonbank institution would want the same protections extended to the consumer finance regulator that are extended to a State bank regulator under the FDI Act?

Mr. DATE. Yes, by and large the entire premise of the supervisory authority of the CFPB is grounded in parallel treatment of institutions. The idea is if you are going to be in the consumer finance business, it shouldn't matter if you are a bank or a thrift or a broker or an investment bank, you all should follow the same set of rules.

Mr. RENACCI. So this really comes down to those protections.

This is one of the reasons I joined my colleague from Colorado, Mr. Perlmutter, on H.R. 6125. It is legislation to ensure that all information shared between State agencies and the CFPB is afforded the same protections. This is the only way that I believe we can remove all doubt and protect the free flow of all information.

Madam Chairwoman, without objection, I would like to submit for the record a letter in support of H.R. 6125.

Chairwoman CAPITO. Without objection, it is so ordered.

Mr. RENACCI. And I yield back the remainder of my time.

Chairwoman CAPITO. The gentleman yields back.

Mr. Hinojosa for 5 minutes.

Mr. HINOJOSA. Thank you, Chairwoman Capito.

Mr. Date, the CFPB was created as the first Federal regulator wholly responsible for protecting the American consumer. This is apparent in the recent enforcement action against Capital One, the first by the CFPB. The hearing held earlier today was entitled by the Republicans, "Who is in Your Wallet? Dodd-Frank's Impact on Families, Communities, and Small Businesses." That was the title. It seems to me the hearing's title mirrored, ironically, the catch phrase of Capital One's omnipresent commercials.

I have a question or two to ask. In addition to credit card companies, credit bureaus also heavily affect the financial lives of Americans, and the Bureau just announced its intention to supervise credit bureaus through its larger participant authority. Can you elaborate on what this rule will mean for credit bureaus and also what it will mean for consumers?

Mr. DATE. Certainly. As actually we were just talking about, one of the key features of the CFPB's supervisory authority is that it has the opportunity to extend not just to big banks but to nondepositories as well, because nondepositories, after all, are quite important features of the consumer finance landscape in the United States, and I would argue certainly perhaps none more importantly than the credit Bureaus and the information flows built off of it.

The fact of the matter is that the latticework of consumer information that is captured within credit reporting companies has great benefits for the democratization of credit across the United States. It is a quite remarkable thing.

On the other hand, it is certainly possible that inaccuracies or inequities with respect to that data can have the consequences of trapping consumers into situations that end up not being especially fair to them or to the system more broadly. Those are issues, among others, that we hope to be able to put light on through our continued activity in the space, including our continued supervision of credit reporting companies.

As you point out, this week we finalized our rule with respect to the larger participants within the credit reporting agency industry. There are something like 30 firms that would be subject to that rulemaking and therefore subject to our supervisory authority. Together, those 30 firms constitute better than 90 percent of the revenues in that business, and we will proceed with alacrity as soon as that rule becomes effective.

Mr. HINOJOSA. I look forward to seeing the impact that you will have.

Can you explain the Bureau's auditing practices? Who conducts the audits, how often are they required to happen, and what has been found to date through auditing processes?

Mr. DATE. Audits or supervisory exams are the core activity within the supervisory process, and that is true for the CFPB. It is true for the prudential regulators and has been true for quite some time. The key thing to remember with respect to exams broadly is that the purpose of the CFPB's exam process is to ensure compliance with the law. It is not meant to sneak up on people. We try to be quite clear and transparent about what the expectations both of the law and of our exam teams are so that institutions are in a best position to ensure their own compliance, to ensure that they have a compliance management system that they can count on, and to ensure that our relationship can be a productive one to make sure the consumer financial laws are abided by and that consumers are protected in the way that the Congress has intended.

Mr. HINOJOSA. Another criticism that we have heard is that the Bureau is going to create additional regulatory burdens for our smaller institutions and for businesses, yet Dodd-Frank requires that the Bureau convene panels during the rulemaking process to assess the effects of proposals on small businesses, which are of great concern to me. Can you report on how the process has worked so far?

Mr. DATE. Yes. It has been a quite productive early venture into the convening of small business review panels, the synthesis of the feedback that we hear with respect to potential rulemakings, and to date folding that feedback into the proposed rules that we actually promulgate. If the purpose was to make sure that we are hearing a diversity of perspectives with respect to impact on small enterprises and make sure that we are attentive to them even before we propose a rule, I would call it an unmitigated success.

Mr. HINOJOSA. My time has run out, and I yield back.

Mr. RENACCI [presiding]. The gentleman yields back.

I recognize Mr. Duffy for 5 minutes.

Mr. DUFFY. Thank you, Mr. Chairman. Just a quick question and to clarify, you had indicated that the rules that you make in the CFPB have an impact on the 105 largest banks. And you are going to enforce those rules, but is it fair to say also that the rules that you promulgate will be enforced on smaller institutions as well? Is that correct?

Mr. DATE. Yes. Our rulemaking authority, as distinct from our supervisory authority, is meant to cover the entire landscape of firms, which is why we have been so attentive, as we were talking about a moment ago, to make sure that we are using, for example, the small business review panel process to ensure that the rules as crafted can ease compliance burden where necessary, especially with respect to smaller firms.

Smaller firms, be they depositories or nondepositories, are by their nature less able to easily shoulder significant compliance burden. Compliance costs tend to be more fixed than variable, which means that to the extent that a firm is smaller, equivalent compliance burden will be more biting, more constraining, and so we are attentive to that basic fact and trying to make sure that we are attentive to it as applied to various regulatory requirements.

Mr. DUFFY. That is one of my concerns. Being from a more rural part of the country, I keep getting that feedback from our small banks and credit unions about the compliance costs with all these new rules that are coming out. Within the CFPB, those who are dealing with disclosure issues with QM and QRM as well as other disclosure forms, are you guys all communicating so when QM and QRM and the disclosure forms all come out, we are not going to have different waves of compliance issues for small banking institutions? Are all institutions, are you guys all talking together so it is going to be very fluid and we are not going to have one rule come out with QM that will then maybe be modified when the disclosure forms come out, you guys are all talking and this is going to be a very smooth process?

Mr. DATE. Yes. Dodd-Frank contemplates a number of reforms to the mortgage market, quite appropriately in my opinion, given how many facets of the mortgage market proved to be quite not up to the task of pricing and calibrating risk.

We are proceeding in three sorts of ways to make sure that your concern is addressed. Number one is structural. In some ways, the statute itself lays out means by which to make sure that somehow definitions don't get uncoordinated. So, for example, the Qualified Residential Mortgage definition, which is an important element of the risk retention framework under Dodd-Frank, that definition cannot be broader than the Qualified Mortgage definition. So there is a structural means by which these fit together.

A second is process. So there is a great advantage—it is not easy on the team, but there is a great advantage to actually developing all of these areas simultaneously so that we are thinking about those interactions instead of in series really thinking about them as an integrated whole.

Mr. DUFFY. So with the process and the practice internally, you are all communicating, you are trying to make it as simple and easy as possible for all these small institutions?

Mr. DATE. Yes, absolutely, because the compliance burden can fundamentally be dead weight in the economy. We want to make things as easy as possible and still achieve the consumer protection aims appropriately baked in the statute.

Mr. DUFFY. Right. Switching just a little bit, you have heard the argument, we have heard it today, and we have read articles as well that the new rules may reduce the power of consumers to choose different products that may work for them. I think the Chair brought this up earlier about this example of Habitat for Humanity, an example where they may have issues with making loans to not as wealthy individuals in our community because of the risk for making that loan and the ability to repay. We saw with the CARD Act that we want to make sure people have the ability to pay, we all agree that is a sound banking principle, but the side impact of that is, if you are a spouse who stays at home, you may not be able to get a credit card. Have you guys contemplated all of these offshoot issues? I know you are trying to do the right thing, I know we are trying to make the process work better, we are trying to protect consumers, but in the end, there are some unintended consequences. I certainly don't imagine you guys intend to have Habitat for Humanity not be able to engage in a loan and build a home for a low-income family in communities across America. I don't imagine that is your intent, but that is the reality of some of these rules that are coming out. How do you guys plan on addressing that?

Mr. DATE. Our rulemaking process does not lack for deliberation and it certainly doesn't lack for transparency and getting feedback from the public, and so, for example, in the case of Habitat for Humanity or, frankly, lots of other institutions that are concerned with providing credit to especially underserved segments of the population, we absolutely have heard the feedback, and we are sufficiently early in the process to make sure that we think about how it is that these things fit together. We take the feedback for what it is intended to do, which is to help inform a better, more nuanced rule that works not just for now but for the long term and for the entire marketplace.

Mr. DUFFY. And one of the concerns—oh, I yield back, my time is up.

Chairwoman CAPITO. The gentleman yields back.

Mr. Miller for 5 minutes.

Mr. MILLER OF NORTH CAROLINA. Thank you, Madam Chairwoman.

In the last few years on this committee, since the credit crisis, there are Members who remember that they warned us repeatedly that we were on the road to ruin in subprime mortgage lending, and that is not really my recollection. I introduced with Mel Watt legislation in 2004 to provide consumer protections in subprime mortgage lending, and I recall it was a fairly lonely fight. And the argument against it was, you mean well, this is well-intended, but you are going to constrict credit, you are going to make credit unavailable to people who now for the first time can get credit, can buy homes they couldn't otherwise have bought or will not be able to refinance.

And I always acknowledged the importance of making credit available, credit being available. Ned Gramlich, a well-regarded member of the Federal Reserve Board, argued in the 1990s for subprime lending as democratization of credit, but by the last decade, he was arguing that the terms had become obviously abusive, so there is—something that may begin as a wholesome practice may cease to be. But I think, I thought that just about everybody agreed that a lot of the loans made, a lot of the mortgages in particular made in the last decade were not really such a good idea, and now we are hearing, but we are hearing the same arguments for consumer protection that it is going to constrict credit. Do you think that all the loans that were made in the last, all the mortgages made in the last decade should have been made or that—and if some consumer protections against abusive terms for those loans had prevented them from being made, it wouldn't have been such a bad thing?

Mr. DATE. Thank you, Congressman, for the question.

There is no question that the credit business is a cyclical one. It is difficult to banish, somehow, the credit cycle from the economy. That said, not just in retrospect, but at the time, there were mortgage loans being made at the height of the bubble—in 2005, 2006, and the first half of 2007—that were simply implausible from a credit perspective. Clearly, loans were being made without, for example, a lender's inquiry into a borrower's ability to repay the loan. Basic reforms, frankly common-sense provisions within Dodd-Frank would have prevented those loans from being made at the time. To my mind, there is no question about that.

Mr. MILLER OF NORTH CAROLINA. We also hear the idea that these consumer protections will prevent people from making consumer choices. Looking at the kind of consumer choices that those mortgages represented, particularly at the height of the bubble, because by that time, subprime mortgages, whatever wholesome innovation they may have been in the 1990s, the predatory mortgages had completely shoved those out of the market. It was entirely a predatory market. The terms that made those loans subprime were almost entirely predatory. Do you think we should be too worried about consumers not having a choice that no one in their right mind would make?

Mr. DATE. Let me give an example just from our supervisory and enforcement action announced yesterday. It would be my characterization that, for example, add-on credit card products may make sense for some borrowers, but it doesn't make sense to make that inquiry until you are confident that the sales practices associated with those products, in fact, abide by the law. No one can be expected to make the right choice for himself, herself or their families unless they actually are confronted with a financial services landscape that operates in a fair and nondeceptive way. I think that is the central challenge for the Bureau, and it is the central thrust of the consumer reforms as I understand them within Dodd-Frank.

Mr. MILLER OF NORTH CAROLINA. Okay. I yield back.

Chairwoman CAPITO. The gentleman yields back.

Mr. Canseco?

Mr. CANSECO. Thank you, Madam Chairwoman.

Mr. Date, the CFPB on its Web site has a consumer complaint database, and there is a disclaimer attached to it that says, "We do not verify the accuracy of these complaints, but we do take steps to confirm a commercial relationship between the consumer and the identified company."

So given that the CFPB does not verify these complaints but boasts that it collects thousands of them, am I correct in assuming that the complaint database from a legal, ethical, and rational point of view will not influence enforcement of regulatory actions by the CFPB?

Mr. DATE. I think I lost the last part of it. You are asking me whether or not consumer complaints will not influence enforcement?

Mr. CANSECO. No, no, no. You have a complete consumer complaint database, but it says that it does not verify the veracity of those complaints. Now, am I to assume that you don't use them at all for any of your enforcement actions?

Mr. DATE. Oh, I see what you mean. The consumer complaint database that is published, we certainly make sure that we, what is called de-dupe the complaints as they come in, which means you remove duplicates, you don't want to double and triple count things, and we make sure that a customer who is making a complaint is in fact a customer of the institution they are complaining about.

What that disclaimer means is that we put those counts and classifications on complaints and without publishing a point of view as to whether or not the consumer is somehow right in the complaint. However, for a subset of the complaints that we receive, both on the randomized and in a focused way both, we do conduct investigations on a subset of those, and the outcomes of those investigations may or may not influence—

Mr. CANSECO. Yet they are unverified.

Mr. DATE. The ones that would influence an enforcement agenda would be the ones that come up—

Mr. CANSECO. But your database says that they are unverified and that you will not verify the accuracy of the complaints. Very specifically, do you use unverified complaints to use, to start enforcement action or do you just have them there just as a collection?

Mr. DATE. There is an internal step that we obviously do with respect to a subset of complaints that we receive to investigate, and to the extent that those investigations result in a finding of a potential of a violation of law, then of course then we would take appropriate steps thereafter.

Mr. CANSECO. So, therefore, it is not true that they are verified? They are verified, you go and verify them; is that correct?

Mr. DATE. Internally, we will investigate a subset of the complaints.

Mr. CANSECO. So it is a misstatement for you to say that you will not verify the accuracy of these complaints, yes or no? Do you verify the accuracy of the complaints?

Mr. DATE. Of all the complaints that are catalogued on the Web site?

Mr. CANSECO. Right.

Mr. DATE. No, that is correct, we do not—

Mr. CANSECO. Okay. Thank you. So therefore what is to keep your organization from putting together a campaign against a single financial institution by having hundreds of individuals send complaints to the CFPB about an institution, and more importantly, who is going to verify the accuracy of these complaints were such an event to occur?

Mr. DATE. We are careful to make sure that—that is why we ensure that there is a commercial relationship between a complainant and an institution. You would not want to somehow open the system to someone submitting thousands of complaints with respect to a firm that he or she happens not to like. So there are antifraud mechanisms built in, and we are attentive to that.

The notion, though, that raw numbers of complaints are somehow irrelevant to a consideration of, that would be relevant for consumers, I certainly don't see things that way. The prior—

Mr. CANSECO. My time is sort of running out, but let me ask you this: Are there any penalties for individuals or groups of individuals who submit bogus complaints to the CFPB?

Mr. DATE. We have not, as far as I know, assessed any penalties with respect to so-called bogus complaints that we have discovered to exist.

Mr. CANSECO. Okay. All right.

Mr. DATE. I cannot promise—

Mr. CANSECO. Now, so moving on here, one of the things that troubles me about the CFPB is your agency's ability to ban products or at least make them so unattractive that nobody will use them. In a White Paper released in May, economists at the Chicago Fed debunked the theory that low-income or naive consumers were the primary target of lenders accused of pushing complex mortgages. The Chicago Fed study showed that those who took out interest-only or negative amortization loans by and large had much higher income and higher FICO scores than any borrowers, yet the CFPB excluded these types of mortgages from the proposed Qualified Mortgage rule.

So my question is, if a sophisticated borrower with a high income and high credit score wants to use a complex mortgage to buy a home or invest in a second property, why should the CFPB or any other Federal agency stop them?

Mr. DATE. Congressman, I think just to be clear about what it is the "ability to repay" provision does, it is possible to provide a negatively amortizing loan or an interest-only loan and be in compliance with the ability-to-repay rule, as it is—obviously, we have to finalize a rule, but as contemplated by the statute. It is certainly possible.

I think what you are referring to is that the "Qualified Mortgage" definition within the statute, I think fairly unambiguously, does not provide for deferred amortization products.

Mr. CANSECO. Okay. Has the CFPB conducted any type of empirical study to determine the typical consumer—I see my time is up.

Chairwoman CAPITO. Your time is up.

Mr. CANSECO. Thank you very much, Mr. Date.

Chairwoman CAPITO. Mr. Scott for 5 minutes.

Mr. SCOTT. Yes, thank you.

Mr. Date, in my district of Georgia, a significant percentage of homes are valued at less than $100,000, and with the Qualified Mortgages 3 percent cap on points and fees, many of my constituents, especially low-income and first-time home buyers, will not have the access to credit if title charges, escrows for taxes and insurance, and loan officer's compensation have to be included in the calculation.

As a result of this, I cosponsored H.R. 4323, the Consumer Mortgage Choice Act, to assure that these fees would be excluded, regardless of whether they are using a lender with affiliated businesses or not. So it seems to me that any expansion of charges to be included in the finance charges will cause vast numbers of mortgages to fail to meet the standards required of a Qualified Mortgage, and obviously, if the CFPB counts all originations and title charges as parts of the points and fees, a huge part of the mortgage loan market in Georgia and elsewhere will not meet the requirements to be a Qualified Mortgage, and lenders will not make the loans. Moreover, there could be an especially negative impact on consumers' ability to choose affiliated mortgage and title companies if affiliated fees are included.

So, with this information, and as I have articulated it, are you not concerned that expanding the range of charges that must be included in the finance charge will make it nearly impossible for average consumers to obtain a Qualified Mortgage?

Mr. DATE. Thank you, Congressman, for raising the question. It is one that we have been trying to be mindful of, and it is a good example of the benefit of working on a number of these reforms and at the same time, to make sure that an approach is appropriately integrated and doesn't create problems in one set of the reforms even as we are trying to solve problems in a different set.

So, with your example, we are trying to make sure that the finance, sort of an all-in finance charge if it is used that it doesn't inadvertently somehow create dramatically different sweeping in or sweeping out of loans under, for example, the HOEPA standards or under the Qualified Mortgage standard. We have a solicited comment with respect to precisely those questions, which is how is it that one should account for the conceivably unintended consequences of vastly increasing the universe of HOEPA loans even as we move forward with respect to the TILA and RESPA project.

Mr. SCOTT. Okay. So you don't see any difficulty here at all with this situation?

Mr. DATE. I think you are right to point out the issue, which is if we were somehow blind to it and just blithely proceeded with a new definition of finance charge without being attentive to potential impact on HOEPA and Qualified Mortgage, I would agree that would be a bad outcome, but due to your flagging the issue and others, the team is very much going to focus on it.

Mr. SCOTT. So you see our legislation as a useful way of making sure that the expansion, any expansion of charges to be included in the finance charge will not cause vast numbers of mortgages to fail to meet the standard required of the Qualified Mortgage?

Mr. DATE. I see, and that is one of the means that we are trying to contemplate in the rulemaking project itself.

Mr. SCOTT. Okay, thank you, sir.

I yield back, Madam Chairwoman.

Chairwoman CAPITO. The gentleman yields back. The Chair is going to recognize Mr. Huizenga for the purpose of making an introduction of a guest, and then I will go to Mr. Pearce. Go ahead.

Mr. HUIZENGA. Thank you, Madam Chairwoman. It is a real honor to have a couple of members from the European Parliament join us here today. We have with us Miss Sharon Bowles, who is the Chair of the Economic and Monetary Affairs Committee, who is sitting right over here, and Mr. Peter Skinner. Both are from the U.K. He also serves on the Economic and Monetary Affairs Committee. I had a chance to meet Sharon for the first time a short while ago, but she is the first Briton to chair that committee, and the first female, I believe, to do that as well and has been Chair since 2009. And then Mr. Skinner actually has been in Parliament since 1994 and has been on this committee for 16 years. So the committee has the responsibility of economic and monetary policies for the EU, taxation and competition policies, free movement of capital and regulation of financial services such as banks, insurance, pension funds, asset fund management accounting, international monetary and financial systems, so they are here meeting with a number of our regulators and also continuing to build those relationships.

Peter and I had a chance to meet in Copenhagen a few weeks ago as part of the transatlantic legislative dialogue, and we are looking forward to continuing to build those relationships as we know we are in a one world market space for financial services. I am very pleased that you are able to join us here today. So thank you, Madam Chairwoman.

[applause]

Chairwoman CAPITO. Thank you for that, and welcome to our guests. We could have orchestrated a little more fireworks for you, but we are doing business as usual here.

Mr. Pearce for 5 minutes.

Mr. PEARCE. Thank you, Madam Chairwoman.

And thanks to Mr. Date for being here and for your service. I guess as I am looking at your account, and you are reporting that the CFPB is solely accountable for protecting consumers of financial products and services, I wonder—and you go into some of the failures of homeowners who couldn't understand or couldn't afford homes, lost those, and then the ability to repay is a repeating theme. So I wonder if the CFPB has taken a close look at what led to those homeowners not being able to repay, what caused that process that began to push loans out at people? Have you all done that?

Mr. DATE. Sure. We obviously also work with the backdrop of a great deal of work that has come before at other agencies and public and private researchers. Thank you for raising this because I do think it is important, Congressman, to look back to how is it that we got here in the first place. We are—

Mr. PEARCE. I am just asking, not for you to recount it. Have you studied it?

Mr. DATE. Oh, certainly, and indeed it is relevant.

Mr. PEARCE. So do you all have any authority over Fannie Mae?

Mr. DATE. Our—

Mr. PEARCE. Just yes or no.

Mr. DATE. Our authority extends to consumer financial.

Mr. PEARCE. So no?

Mr. DATE. So the GSEs don't have consumer relationships in general, but if they did—

Mr. PEARCE. But the GSEs actually, according to—I don't know if you have read the book by Gretchen Morgenson and Joshua

Rosner, "Reckless Endangerment," but on page 5 of that they explain that Fannie Mae led the way in relaxing loan underwriting standards, a shift that was quickly followed by private lenders, and then later in the paragraph, it became the playbook for financial executives, and in that whole process under James Johnson, he began to—he spent about $100 million in 10 years lobbying Congress to make certain small changes in the rules that would allow him to push those.

So you had members of this committee back in 2005 were asked, are you afraid that the easy lending programs, for example, that James Johnson was pushing through Fannie and that this institution was encouraging, are you concerned that these easy lending programs are going to wind up luring people into homes they could not ultimately afford?

And so it is not kind of like this came on us in the middle of the night. It was well-orchestrated by a guy who began to change the financial compensation standards in Fannie Mae and Freddie Mac to one of loan values, and he pushed $100 million towards himself in his 9 years as head of Fannie and Freddie, and so I wonder as you are concerned about the health of our consumer, if you have worried about who is protecting us from policy and who is protecting us from these people who will buy influence here to redirect?

If you don't do that and if you all haven't asked those hard questions behind the scenes, then I fear that there is no one actually out here who is really concerned about the consumer because this thing didn't begin with the banks. It began with one guy that began to buy influence here on Capitol Hill and with the Administration. It began in 1994 with President Clinton buying into the idea that somehow—I think it was 1994—that he says more Americans should own their own home. That is a theme that continued through both of his terms and through President Bush's term, but it was during those periods that they began to restructure the policies in order to push loans at people who couldn't afford them, and when I hear that you are just sort of blandly going along and not kicking back at the system that encouraged it, it gives me great pause, it gives me a sadness that this is all just a little bit of a game, that we used the crisis to come down, and we are going to lean on banks all the way up and down Main Street without ever really getting at the problem.

The problem originated in these halls, and I think you all know that, but I don't think you have the courage to get out and push and say loudly, but we are only looking at a piece of the problem, you are not letting us get where the real problem is. The real problem was there; it was there in the halls of Congress. It was there on the Financial Services Committee. And it was there with James Johnson and when he was buying influence here, and you are not saying that. I haven't heard it once. And it just makes me sad because you are the guys, you are the sheriff in town, and you are looking the other way.

I yield back.

Chairwoman CAPITO. The gentleman yields back.

Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. I thank the witness for appearing, and I thank you for allowing me to be a part of this subcommittee.

I am very much concerned about our military families. As you know, members of the military are sometimes required to relocate, and upon relocating, they have mortgages that have to be dealt with. Sometimes, they have to have short sales. They have to have refis, and these things are sometimes difficult to negotiate with servicers because of what servicers perceive as a limited amount of authority.

These persons who serve us in our military, they do so without question. They go where they are told to go. Families go with them. I would like to compliment the President and the First Lady for the Joint Forces Initiative that helps them with education, jobs, and job training. Can you explain what the CFPB is doing in concert with the FDIC and some other agencies to make sure that they can get the assistance they need when they have to transfer or they have to relocate to some other area because they are forced to do so as a result of serving our country?

Mr. DATE. Thank you, Congressman, and thank you for your concern with respect to issues surrounding servicemembers and their interaction with the finance system in the United States. This is a specific instance of a broader theme with the Bureau and its work to date where we have tried to shine a light on issues that are especially important to our servicemembers.

As you point out, servicemembers not infrequently are asked to change stations with Permanent Change of Station Orders. When military homeowners receive those orders, they don't have the flexibility to say, no thank you, I would rather stay right here. And that becomes a real problem to the extent the homeowner, like so many homeowners across the country, is in fact underwater. So there is not very much flexibility to be able to refi away or sell the house. We worked with the prudential regulators to make sure servicers were put on notice that in fact there are legal obligations with respect to the treatment of our military borrowers under a number of different statutes and that we are quite attentive to it over time. It is an area where Congress has already done a lot, and combined with shining a bright light on the issues, my hope is that we can effect real change.

Mrs. Holly Petraeus, who runs our Office of Servicemember Affairs, has been doing exactly that, not just on mortgages, but across a number of important markets where frankly the men and women who put on a uniform to serve the country, we at some level should be attentive to the fact that they have financial circumstances that are different than most of the civilian population, and we should ensure that our regulated institutions follow the law with respect to them.

Mr. GREEN. Thank you. I trust we will promulgate rules that will help them to make this transition and maintain their creditworthiness and in general not get caught with a home that they can't do anything with because of the current market conditions. I hope that you will do your best.

Now, I have a minute and 16 or 17 seconds left. Have you been asked any question that you would like to respond to and you need perhaps a moment to answer or some statements that may have been made that you didn't get a chance to respond to? If so, you now have a minute to do so.

Mr. DATE. Thank you, Congressman.

Hopefully, I have been responsive to questions as they have been raised. Given the frequency, though, with which concerns, I think some quite legitimate concerns, about the impact of financial reform on small community banks has been raised, I think it is useful to just point out the fact that over the last decades, community banks have been pushed further and further toward the periphery of consumer finance in the United States. There is some reason for that, at least in part because we had a regulatory system that did not create an even playing field. If, in general, you have a regulatory system that makes it as a practical matter easier to be a nondepository or easier to be very big compared to very small, then you shouldn't be surprised when community banks end up with the short end of the stick. If we did our jobs right, we should be able to help them, not make it worse.

Mr. GREEN. Thank you, I yield back.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Mr. Luetkemeyer for 5 minutes, please.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Mr. Date, it is always interesting to have you before the committee. It is an interesting discussion this afternoon.

Can you tell me what spurs the rulemaking of CFPB, the different areas that they get into?

Mr. DATE. Thank you, Congressman.

Let me answer that in terms of the long-term policy agenda, and then the near-term, not quite in that order. The near-term policy agenda as it applies to rulemaking really is set out by the statute. We have a not inconsiderable rulemaking agenda within the mortgage business that is mandatory and carries with it a timetable that is—

Mr. LUETKEMEYER. Let me call timeout right there. What is the reason, or do you know or have any idea, what the reason is for the rulemaking request that has been made of you?

Mr. DATE. Yes, when the statute is relatively clear in most cases, the—

Mr. LUETKEMEYER. Why is the statute the way it is? Why would the statute want you to make a rule in certain instances?

Mr. DATE. I know that the deliberations and debate with respect to the statute were lengthy and spirited, and of course Congress in its discretion has chosen rulemaking mandates, and we have embraced them, and we are moving forward with speed.

Mr. LUETKEMEYER. Okay. In the course of your rulemaking, do you do a cost-benefit analysis of each rule?

Mr. DATE. We do. It comes in a couple of different flavors. One is an analysis of the cost and the benefits and the burdens associated with the rule. There is also an element that relates with particularity to the impact on relatively small institutions within the financial services landscape.

Mr. LUETKEMEYER. With regard to your RESPA and TILA rules, have you done a cost-benefit analysis on those yet?

Mr. DATE. Yes. And as part of the proposal, part of the reason why the document is 1,100 pages long is that the new rules associated with TILA and RESPA integration are like 60 pages of the 1,100 pages. The other, whatever that is, 1,040 pages relate to lots of other required elements of our rulemaking, including the cost-benefit analysis, so that is laid out in that which we publish.

Mr. LUETKEMEYER. Okay. Part of the initiative of going to RESPA, though, was to create a simpler disclosure form and something more consumer-friendly. And yet, we wound up with a 3-page-long estimate at the beginning and a 5-page-long estimate at the end. Do you think that is really an improvement?

Mr. DATE. I do. Both to my mind are improvements. We have been careful to reach out to a number of different—

Mr. LUETKEMEYER. Have you ever done a survey to see how many consumers actually read those documents?

Mr. DATE. We conducted what is called "qualitative usability testing" before the proposal was even issued.

Mr. LUETKEMEYER. Qualitative using?

Mr. DATE. Usability testing. It goes by a few different terms. It is something that is used at other agencies as well as not infrequently in the private sector to develop the broad contours of a piece of collateral or disclosure form so that—

Mr. LUETKEMEYER. I get it. Did you ever do it?

Mr. DATE. Yes, absolutely.

Mr. LUETKEMEYER. What was your finding on the RESPA forms? Have you done it on RESPA yet?

Mr. DATE. You are referring to the general kind of difficulties that consumers have with the current form—

Mr. LUETKEMEYER. No, I am asking, did you do the survey on the RESPA form to see if anybody reads them?

Mr. DATE. We did conduct—

Mr. LUETKEMEYER. What was the result?

Mr. DATE. In general, that which we have proposed is something that is easier, it would appear, based on the testing to date.

Mr. LUETKEMEYER. More pages, and it is going to be easier to read; is that right?

Mr. DATE. It is—so the mandate by the Congress was to combine the TILA and RESPA closings documents, or the final truth in lending disclosure.

Mr. LUETKEMEYER. Do you know offhand what the percentage is of the people who actually read the RESPA documents?

Mr. DATE. You would be hard-pressed, I think, Congressman, to find borrowers who sit at a closing table and thumb through—

Mr. LUETKEMEYER. Do you have a figure please?

Mr. DATE. I don't know the—

Mr. LUETKEMEYER. Two percent?

Mr. DATE. I wouldn't hazard a guess, but we will be doing quantitative testing after the proposal comment period ends.

Mr. LUETKEMEYER. But we don't know how many—we do propose a rule, and we don't know what percentage of people actually read this stuff. So, therefore, is there a use for it?

Mr. DATE. Oh, sure, this is for most people the single largest financial transaction that they will enter.

Mr. LUETKEMEYER. If they don't read it, Mr. Date, what good is it?

Mr. DATE. Congressman, at some level, I suppose it would be useful to know how the dollars in the transaction actually flow.

Mr. LUETKEMEYER. I have one more quick question for you. In following Mr. Canseco's discussion here about verifying complaints, it was very concerning to me that you indicated that you did not verify all the complaints, did not go through and try and figure out if they were a legitimate complaint and didn't follow up, if there was something needed to be followed up on, why?

Mr. DATE. Oh, no. This was, I feel like I was not adequately clear. To the extent that there are complaints that the consumer disputes the resolution of, then we have an investigations team within our consumer response unit that will follow up with those complaints—

Mr. LUETKEMEYER. But you indicated to him you just verified whether it was a legitimate complaint that they actually did business with them; you didn't tell them that you actually followed up on each individual complaint to see if there was something there.

Mr. DATE. What I just referred to is our approach with respect to complaints that we receive. With respect to that which we publish on the Web site, we—and we are quite transparent about it—that which we publish on the Web site is the nonpersonally identifiable information associated with complaints that we receive with the various data fields as we receive them. It is something that will continue to populate over time. That is—for example, we have—

Mr. LUETKEMEYER. My basic question was, you get the complaints, you verify that it is a legitimate complaint the person does business, do you follow up with an individual complaint? If one individual—you talk about—you keep telling me about this subset, about a whole group of people who are being abused or there is a problem, but if there is one individual case, you are not following up on it from the discussion and answers you are giving me; is that correct?

Mr. DATE. With a random sample of complaints that are resolved—

Mr. LUETKEMEYER. If you are giving a random sample, Mr. Date, you are not taking care of every single one of them.

Mr. DATE. Complaints that are resolved to the satisfaction of a consumer, we will not follow up with an investigation of every single one of those complaints, no.

Mr. LUETKEMEYER. My time is up.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Mr. Manzullo?

Mr. MANZULLO. Thank you.

According to FICO and other sources, small amounts of medical debt that had been reported to credit bureaus can dramatically lower a consumer's credit score and keep a creditworthy customer from assessing credit and bolstering our economy. Is the review of medical debt that it is reporting by credit bureaus on your radar screen?

Mr. DATE. It is, and more broadly, trying to understand the interplay between data, data accuracy, its resilience as it feeds into scores and the usability of scores thereafter is within sort of both the medium-term research agenda and the near-term supervisory agenda.

Mr. MANZULLO. We know it impacts the credit score. The reason I ask that question is that I practiced law for several years, and I was probably involved in 300, 400, 500 bankruptcies, and one of the things that we saw toward the end of my law career and what we see today are people filing bankruptcy because of high medical bills.

Obviously, these are not large screen TVs. These are bills that were incurred because a person had no insurance or otherwise. And that being the case, it really has no impact—not the word impact—it really has nothing to do with a person's ability to pay the bills that would come day to day.

And we are seeing even small amounts of money, even if they are money for bills, even if the bills are paid off, that already impacted a person's credit score. That is where I want to go on. Do you think that you would be open to look into the fact, so that perhaps there may be a regulation that says if a medical debt is under such and such an amount and it has been resolved, that it no longer should be part of a person's permanent credit record?

Mr. DATE. I understand the issue you are raising, and I do think that we should take steps to inquire into it. It is something that has been raised also in other contexts, field hearings that we have conducted. It is also analogous to other issues. For example, delinquency rates for homeowners—otherwise identical homeowners, one of whom happens to be underwater because he lives in a part of the country where there is a lot of depreciation, delinquencies are higher where people are more underwater. Does that necessarily mean that you are more or less likely to pay your auto—an analogous kind of—

Mr. MANZULLO. If I could send you a letter on that, laying out that issue—

Mr. DATE. We would welcome your thoughts.

Mr. MANZULLO. The second thought I had is on RESPA. When I practiced law, I closed probably 2,000 real estate closings, everything from small shopping centers and farms and residences, industrial properties, etc. And most of those were homes, and I am showing my age, but it was before RESPA took effect—I think it was in 1973 or 1975. What we are seeing now is going from a relatively small folder of documents to documents that can reach 6, 7, 8, 10 inches high. In my experience, in fact in closing one of my own loans, is the fact that it is impossible for a person to read through all that information. And in the effort and good faith attempts by regulators to disclose to the public, I think there has been so much work at that end, that we really have to ask ourselves the question, exactly what does the consumer need to know?

Alex Pollock, who was the head of the Federal Home Loan Bank of Chicago—I think you know Alex—came up with, I believe, a 1½-page closing statement. Are you familiar with that?

Mr. DATE. I am.

Mr. MANZULLO. Tell me your thoughts on this. The closing statement plus the amount of paper that appear at a closing.

Mr. DATE. Many of the documents at a closing are State law-driven and not Federal.

But I absolutely agree that there has been, over a period of decades, I assume right-minded in the moment, but also reflexive reaction, there is a problem, add another disclosure, add another disclosure. And at some point, and I think that point is relatively early on, there are diminishing returns to another sheet of paper.

I mentioned to one of your colleagues in a different subcommittee here a couple weeks ago, my wife, who happens to be here today, we bought a house a year ago. She does financial fraud at the Department of Justice, and consider what I do for a living. We didn't read the documents at the closing table. At some level, to the extent that things are predicated on an unrealistic assumption of human behavior, that is bad. That is why we are trying to get the most critical information in people's hands 3 days beforehand, so that they actually have a chance to look at the most critical things ahead of time. I certainly don't think that just sort of throwing up our hands is the right answer, but we want to makes things better and not worse.

Mr. MANZULLO. Thank you.

Mr. DATE. Thank you.

Chairwoman CAPITO. Thank you.

I believe that concludes our questioning. I would like to ask for unanimous consent to insert into the record a statement from the Financial Services Roundtable.

Hearing no objections, it is so ordered.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to this witnesses and to place his responses in the record.

Hearing no further discussion, this hearing stands adjourned.

[Whereupon, at 3:35 p.m., the hearing was adjourned.]

# A P P E N D I X

July 19, 2012

Testimony of Raj Date

Deputy Director, Consumer Financial Protection Bureau

Before the

House Financial Services Subcommittee on Financial Institutions and Consumer Credit

July 19, 2012

Chairman Capito, Ranking Member Maloney, and Members of the Subcommittee, thank you for the opportunity to appear before you again to discuss the work of the Consumer Financial Protection Bureau. I'd like to talk to you today about how the CFPB is fulfilling its mission to help consumer finance markets actually work – for American families, for financial services firms, and for the economy as a whole.

As you know, the Bureau was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act in response to the worst financial crisis since the Great Depression. Before Dodd-Frank, responsibility for administering and enforcing the various federal consumer financial laws was scattered across seven different federal agencies. For each of those seven agencies, consumer protection was only one of its responsibilities. As a result, no agency was solely accountable for protecting consumers of financial products and services.

The Dodd-Frank Act created the CFPB as a single point of accountability for consumer financial protection. Fortunately, Congress had the foresight to supply us with a range of tools – including research, supervision, rulemaking, enforcement, and consumer education. I am pleased to report that in the year since our launch, we have been using the tools you gave us to address challenges in a number of different markets and deliver tangible value to American consumers.

We've launched an evaluation of overdraft protection and payday lending. We've worked to help students better understand their financial options. And we've started figuring out whether shorter, more transparent credit card agreements can make a meaningful difference to consumers' understanding. Of course, as you might imagine, the place we're spending most of our time is in the mortgage market.

The American mortgage business was supposed to be the broadest, deepest, most liquid, most sophisticated consumer finance market in the world. But it failed us -- because it failed to calibrate price, and it failed to calibrate risk. As a result, millions of homeowners ended up in loans that they either couldn't understand or couldn't afford -- or both. The mortgage crisis and resulting financial upheaval have impacted virtually every person in this country. Americans are still recovering from the profound failures of the residential mortgage market.

Congress recognized this in passing the Dodd-Frank Act, and enacted a number of new statutory provisions to reform the mortgage market. Congress also directed the Bureau to issue implementing regulations under these new provisions. Mortgage reform, therefore, is appropriately front and center on the CFPB's agenda.

The failures of the mortgage market help to underscore -- by contrast -- what functioning, efficient markets are supposed to look like. They're supposed to be transparent; they're supposed to be fair; they're supposed to create financial incentives for hard work and smart decisions. The Dodd-Frank Act addresses each of those areas, and the Bureau is helping to rebuild those elements of a well-functioning mortgage market.

Let me start with transparency. Markets don't work well if both parties to a transaction don't understand what they're getting into. So not only are we integrating federal disclosure forms as Congress directed us to do, but we're simplifying those forms as well. The idea is for borrowers to have a better chance to actually understand the price and risk of their obligations. The integrated and simplified forms should also reduce burden on the lenders, brokers, and settlement agents -- many of them small businesses -- who are responsible for providing the disclosures to consumers.

We're working to bring greater transparency to mortgage servicing, by proposing common-sense rules of the road, and asking the public to weigh in. For example: we're considering requiring servicers to give borrowers better information about how much they owe every month; an earlier heads-up that an adjustable rate payment is about to change; and a warning if borrowers are going to be force-placed into a potentially expensive insurance policy. We're still at the early stages of these rulemakings. But I'm optimistic that we can find a common-sense path forward.

Another priority for the Bureau is basic fairness. Federal consumer financial protection is about fairness with respect to consumers. But fairness among financial services firms – irrespective of their charters – matters, too.

We saw, in the lead-up to the crisis, how an inconsistent or incomplete oversight scheme was doomed to fail. Commercial banks, for example, were subject to explicit federal supervision, while many other critical mortgage market participants were not. It shouldn't matter if you're a broker, a thrift, a bank, a finance company, an industrial loan company, or an investment bank. If you want to be in the business of consumer finance, you should play by the rules like everybody else.

The mortgage market should be driven by financial incentives that make sense – those that reward hard work and smart risk-taking. Let me be clear: There is nothing inherently wrong with risk. Indeed, financial markets are supposed to absorb and price certain kinds of risk. But people shouldn't get paid for taking risk that they can't understand, they can't rank, they can't quantify, or they can't price. Especially when the downside of those risks is primarily borne by consumers or taxpayers, or when the downside of those risks can create dangerous ripple effects throughout the broader economy. For too long, we lived in a mortgage marketplace where people were able to take bad risks – that ultimately had devastating consequences – and get paid anyway.

I've spent the vast majority of my career in financial services. I've been in and around finance companies, commercial banks, and investment banks. And one thing I have learned is that people generally do what they are paid to do. So if we want businesses to do the right thing, they shouldn't be paid to do the wrong thing. Bankers shouldn't win when customers lose. Ideally, lenders' and borrowers' financial incentives should be aligned. After all, both of them win when borrowers can afford their loans.

That leads me to another effort underway at the Bureau: Dodd-Frank's ability-to-repay requirement in mortgages. Again, going back to my days as a banker: People who are going to lend money should care about getting paid back. And if you care about getting paid back, you should inquire about, and evaluate, a borrower's ability to pay you back. This should not be controversial. And it isn't, to the vast majority of financial institutions that actually held on to some of the risk of the mortgages they were originating during the bubble. Nor should it be surprising to any banker trying to build or sustain a customer franchise – after all, a customer franchise endures and thrives only if its customers win.

In its simplest form, the ability-to-repay provision of the Dodd-Frank Act requires that lenders reach a good-faith determination that a mortgage borrower has a reasonable ability to repay the loan. If lenders don't do that, the law lays out consequences. As part of the broader ability-to-repay mandate, Congress also designated so-called "qualified mortgages," which are structurally safer and pose lower risk for borrowers, and which are underwritten according to standards that make it reasonable to expect that borrowers have an ability to repay. The Federal Reserve Board proposed a regulation last year to give definition and effect to the ability-to-repay provisions, and the Bureau inherited that proposal when we opened for business last July. We have had the benefit of extensive public comment on the proposal, and have undertaken significant analysis, with a cross-functional Bureau team of economists, lawyers, and market experts.

We are considering a wide range of issues. First and foremost, we want to ensure that consumers are not sold mortgages they can't afford. We want to minimize compliance burden to the extent possible, in part through the careful definition of those lower-risk "qualified mortgages." We want to encourage a competitive market that does what markets are supposed to do – calibrate risk and price. We want to craft a sensible rule that works for the market throughout the credit cycle, but we also want to be mindful of just how fragile and risk-averse the market seems to be today.

Restoring confidence in this market is critical to industry, to consumers, and to our broader economy. We're going to take the time to get it right. We recently issued a notice reopening the record on qualified mortgages for a short period of time. We plan to finalize the ability-to-repay rule before our January deadline.

The mortgage market will recover when we have restored transparency, when we have restored fairness, and when we have restored financial incentives that reward people for making smart decisions. As we approach the Bureau's one-year anniversary, that is what we are working toward – not just in the mortgage market, but across other financial services markets as well: transparency, fairness, and incentives for responsible behavior. Thank you.

STATEMENT

OF THE FINANCIAL SERVICES ROUNDTABLE

ON THE IMPACT OF DODD-FRANK

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FOR SUBMISSION TO THE

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

JULY 19, 2012

The Financial Services Roundtable ("the Roundtable") appreciates the opportunity to submit a statement to the House Financial Services Committee on the two-year anniversary of the Dodd-Frank Act ("the Act") and the impact of the Act on the industry and consumers. We thank you for holding these hearings, which could not come at a more critical time in our economic recovery.

The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. The mission of the Roundtable is to protect and promote the economic vitality and integrity of its members and the United States financial system. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

Our economic success as an industry is directly tied to our ability to effectively serve consumers; and the Act must be evaluated based on the degree that it helps or hinders our ability to provide this service. The Roundtable believes we must preserve those parts of the Dodd-Frank Act that make our system safer and stronger, while re-examining the provisions that restrict economic growth, limit credit, reduce consumer choice, and make U.S. companies less competitive.

Attached you will find a report on the state of the financial services industry, and a white paper summarizing the projected impact of financial regulatory reform on the economy, credit, international competiveness, and the cost of basic financial services.

The two-year anniversary of Dodd-Frank finds an industry that is safer and stronger, but a regulatory environment that is far from certain. With over 70% of the rules resulting from the Act yet to be finalized, we remain concerned about provisions that carry significant economic consequences for the industry and consumers.

The Roundtable very much appreciates the opportunity to submit this statement and supporting materials for the record, and we look forward to working with you as the committee continues to conduct its oversight of regulatory changes.

Best regards,

Steve

Steve Bartlett
President and CEO
The Financial Services Roundtable

THE FINANCIAL SERVICES ROUNDTABLE
*Financing America's Economy*

DODD-FRANK 2-YEAR ANNIVERSARY REPORT

# State of the Financial Services Industry

July 21, 2012

Focus on fortress balance sheets; too big to fail;
the cumulative weight of new rules; and economic benefits of big banks

# State of the Financial Services Industry

The two-year anniversary of the Dodd-Frank Act is marked by a safer and stronger financial services industry. Capital is at a record high, lending is at pre-crisis levels, and the number of "problem banks" is rapidly decreasing. The risk profiles of individual firms have been reduced and systemic risk oversight is in place for the first time in history.

These dramatic improvements are the result of industry initiative and financial regulatory reform. However, 70% of the rules resulting from the Dodd-Frank Act have yet to be finalized. Many of the expected provisions carry significant economic consequences for the industry, consumers, and the economy.

At this critical time in our nation's economic recovery, we must preserve those parts of the Dodd-Frank Act that make our system safer and stronger, while re-examining the provisions and combination of provisions that needlessly restrict economic growth, limit credit, result in higher costs and reduced access to services for consumers, and make U.S. companies less competitive.

## Fortress Balance Sheets

Banks are much stronger today than they were *even before the 2008 crisis.* According to the Hamilton Financial Index released on July 16, 2012, bank safety and soundness is 22% above pre-crisis levels.

Bank capital is the highest in history. FDIC-insured banks hold $1.6 trillion in capital and set a record Tier 1 capital ratio (13.28%) in the first quarter of 2012. Insurance firms' capital and surplus have also grown to all-time highs, despite an increase in natural disasters in 2011.

Lending has risen to pre-crisis levels. Large banks with over $10 billion in assets increased their loans by $40 billion during the first quarter of 2012, and loan quality has improved across all loan categories and all bank sizes.

Net income has returned to pre-crisis levels. FDIC-insured commercial banks and savings institutions reported $35.3 billion in net income for first quarter 2012. This represents a $6.6 billion (22.9%) improvement over first quarter 2011 results.

Bank failures are at their lowest level in three years, and the number of "problem" institutions is now at its lowest level since 2008.

The improved health of the financial services industry is widely recognized. According to Federal Reserve Chairman Ben Bernanke, "Risk indicators present a picture of the banking system that has become healthier and more resilient." Presidential candidate

Mitt Romney echoed this sentiment, recently saying, "Our banks are on a much stronger basis than they were at the time of the last economic crisis, and they have built their capital base and their equity base and worked through a lot of their toxic assets."

## Systemic Risk & Too Big to Fail

The risk and impact of a financial services institution failing has been significantly reduced through industry improvements and financial regulatory reform.

Supervision of large financial services companies has increased dramatically. For example, large banks must submit detailed plans and stress tests to the Federal Reserve on an annual basis before they can pay out dividends to shareholders or make any other capital distributions. Additionally, the Dodd-Frank Act mandates that large banks conduct three stress tests each year and publicly disclose information about the results.

Systemic oversight is in place for the first time in history. The Financial Stability Oversight Council was created to monitor risk across the entire system, and identify and head-off emerging trends that could be a threat to financial stability.

In the unlikely event that a large financial company actually fails, the FDIC now has liquidation authority to swiftly isolate and resolve the firm. Large financial services companies must plan for their own failure and submit extensive resolution plans to the FDIC and Federal Reserve each year with an overview of how their institution would be resolved.

While there is no single definition of "too big to fail," it is commonly used to describe a financial institution whose failure would destabilize the economy and thus require government intervention using taxpayer funds to keep it afloat. The improved health of financial institutions, increase in systemic risk oversight, and statutory protection of taxpayer dollars means that too big to fail is no longer a problem.

## Cumulative Weight of Reform

According to Davis Polk's Dodd-Frank progress report, 279 of 398 rules (70%) required by the Dodd-Frank Act have yet to be finalized as of July 2, 2012.

Many of these rules will dramatically alter the ways financial services firms do business, and the cumulative weight of hundreds of new rules promises to be significant for the U.S. economy. Consider these findings from recent studies:

- As the result of regulatory reform, U.S GDP is projected to be 2.7% lower than it would otherwise be by 2015, lending rates are projected to be 4.7% higher, and the U.S. is projected to lose 2.9 million jobs. **Institute for International Finance Report, September 2011.**

- The Volcker Rule is estimated to cost American businesses up to $315 billion, increase borrowing costs by up to $43 billion per year, and dramatically reduce liquidity. **Oliver Wyman Study, January 2012.**

- It is the risk that the Dodd-Frank apparatus will smother financial institutions in so much red tape that innovation is stifled and America's economy suffers. **The Economist, February 2012.**

- Free checking in the U.S. has declined by 40% <in large part due> to the Durbin amendment and overdraft rules. **Bankrate Survey, 2011.**

- Since passage, the Dodd-Frank Act has produced more than 52.7 million paperwork burden hours and imposed $7 billion in direct compliance costs. Based on calculations from The Financial Services Roundtable, Dodd-Frank regulations will require 26,352 employees to file federal paperwork. **American Action Forum, July 2012.**

The Financial Services Roundtable has cataloged over 125 independent studies and public statements about the economic impact of the Dodd-Frank Act, available at http://bit.ly/S5zbFF. These reports conclude that the cumulative weight of Dodd-Frank rules will restrict economic growth, restrict the availability of credit, increase the cost of financial services for consumers, and place U.S. financial institutions at a competitive disadvantage.

The costs of the Dodd-Frank Act are often weighed against the benefits of preventing the next crisis. But it is crucial to note that many of the most expensive provisions, such as the Durbin Amendment and Volcker Rule, had nothing to do with the crisis and will create a huge drag on the economy.

Going forward, it is crucial to minimize the negative economic consequences of the new rules and support the vital role that large financial services companies play in the U.S. economy.

## Economic Benefits of Big Banks

Healthy, diversified, and large financial institutions are essential to the U.S. economy. Their provision for consumers, businesses, and global competitiveness cannot be understated and must be protected.

Large banks provide the vast majority of credit in the U.S. economy – schools, hospitals, small businesses, and personal expenditures. According to FDIC data, banks with more than $10 billion in assets finance 40% of small business loans, extend 85% of consumer credit, and manage 70% of home loans.

Large financial institutions are uniquely positioned to support global companies, such as Apple (valued at $324 billion) and Exxon Mobil (valued at $415 billion), by providing them with access to capital markets, cash management, credit, foreign exchange, risk management products, trade payments, investment products, and other critical financial services.

Large financial institutions drive much of the innovation in the industry such as online banking and mobile banking, have advanced payments and clearing technologies, and are recognized leaders across all industries in cybersecurity.

Banks have grown proportionately to support the needs of the U.S. economy. Over the past 20 years, U.S. bank assets have grown 237%, mirroring the percentage increases in U.S. exports (243%) and the S&P (292%), according to data from Bloomberg, the Federal Reserve, and U.S. Census.

A study undertaken by The Clearing House concludes that the unique benefits large U.S. banks provide to companies, consumers, and governments total $50 billion to $100 billion annually.

## Conclusion

The financial services industry has come a long way since 2008. Sweeping legislative, regulatory, and industry changes, have made the industry safer and stronger. The industry remains committed to customers and communities and is helping to fuel the economy through lending.

In the next 12 months, hundreds of additional Dodd-Frank rules are scheduled to be finalized. These new rules will be issued in a hyper-charged political environment, with the Presidential and Congressional elections taking place in November, the fiscal cliff approaching at the end of 2012, and what is shaping up to be relatively tepid economic growth for the rest of the year.

It is essential to set aside political rhetoric and issue new rules prudently, supporting the parts of the Dodd-Frank Act that make financial services industry safer and stronger, while re-examining the provisions and combination of provisions that are needlessly detrimental to consumers, economy, and America's financial services industry.

## About the Roundtable

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. The mission of The Financial Services Roundtable is to protect and promote the economic vitality and integrity of its members and the United States financial system. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

For more information about the Roundtable's Dodd-Frank research, visit http://www.fsround.org/fsr/publications_and_research/cumulative-weight.asp

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# Economic Impact of the Dodd-Frank Act

**June 2012**

Reports and public statements about the impact of financial regulatory reform on the economy, credit, consumers, and the industry, assorted by

**The Financial Services Roundtable**

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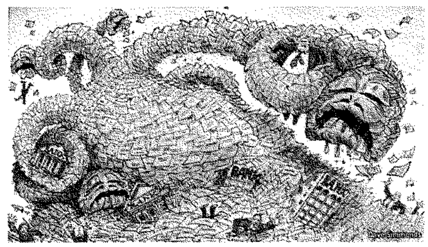

*Economist, "The Dodd-Frank Act: Too Big to Fail," February 18, 2012*

## Economic Impact of the Dodd-Frank Act

The health of the financial services industry has improved dramatically in recent months. Capital is at a record high, lending is at pre-crisis levels, and large financial companies are solvent and strong.

These changes have occurred despite only 30% of Dodd-Frank rules being finalized.

However, if requirements are carried too far, adverse economic consequences will far outweigh the benefits. Current cost estimates include:

- **By 2015, U.S GDP is projected to be 2.7% lower than it would otherwise be** <as a result of regulatory reform>, or 5.2% lower if reform is implemented rapidly. *Institute for International Finance Report*, September 6, 2011.

- **The Volcker Rule will cost American businesses up to $315 billion,** increase borrowing costs by up to $43 billion per year, and dramatically reduce liquidity. *Oliver Wyman Study*, January 2012.

- **Free checking has declined by 40%** as a result of the Durbin amendment and overdraft rules. *Roundtable Fast Facts: Decline of Free Checking*, June 1, 2012.

- **Dodd-Frank compliance costs for the industry are projected to be $7,092,471,000 each year according to Federal Register cost estimates.**

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The Financial Services Roundtable has developed a public database of *over 125 independent studies and reports showing how the cumulative weight of new rules will negatively impact the economic recovery and industry.* The database can be accessed on the Roundtable,'s website, www.fsround.org.[1]

Last August, the Roundtable published a white paper based on these studies, entitled, "Cumulative Weight." The paper examined the projected impact of financial regulatory reform on the economy, credit, international competiveness, and cost of basic financial services. The paper, which included an overview of the Dodd-Frank Act, is also hosted on the Roundtable's website.[2]

Since that time, dozens of new reports have been released on the economic impact of Dodd-Frank. What follows is a collection of updated studies and reports, from September 2011 through June 2012.

## Impact on the Economy

*U.S. GDP is projected to be 2.7% lower than it would otherwise be as a result of regulatory reform, according to the Institute for International Finance*

- The Volcker Rule will raise energy prices and reduce energy investment, resulting in 200,000 lost jobs. If the Volcker Rule is implemented, electricity costs will increase by $5.3 billion per year; gasoline prices will increase by $2 billion per year; natural gas investment will be reduced by $7.5 billion and ; two East Coast refineries will close. ***I.H.S. Study,*** March 2012.

- It is the risk that the Dodd-Frank apparatus will smother financial institutions in so much red tape that innovation is stifled and America's economy suffers. ***The Economist,*** February 18, 2012.

- Dodd-Frank is the thing that is most harming the economy right now. Big business can deal with regulatory uncertainty, but it makes small businesses reluctant to take on risk and expand their operations. ***Todd Zywicki, Mercatus Center at George Mason University,*** September 21, 2011.

- By 2015, U.S GDP is projected to be 2.7% lower than it would otherwise be <as a result of regulatory reform>, or 5.2% lower if reform is implemented rapidly. ***Institute for International Finance Report,*** September 6, 2011.

[1] http://www.fsround.org/fsr/publications_and_research/cumulative-weight.asp
[2] http://www.fsround.org/fsr/publications_and_research/files/CUMULATIVEWEIGHTWHITEPAPER.pdf

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- By 2015, 2.9 million jobs are projected to be lost in the U.S. <as a result of regulatory reform>, or 5.8 million jobs if reform is implemented rapidly. ***Institute for International Finance Report,*** September 6, 2011.

- Complexity risk - the burden on financial institutions and regulators of complex, cross-cutting and incomprehensible rules may now be the most significant impediment to financial-market recovery and robust economic growth. ***Karen Petrou, Federal Financial Analytics, Inc.*** November 2011.

## Impact on Credit

*The Volcker Rule will increase borrowing costs by up to $43 billion per year, according to an Oliver Wyman Study.*

- Based on responses from 75 financial institutions in 38 countries, 40% of banks expect to raise the price they charge companies for loans by between half and a full percentage point, while a further 26% expect to raise the price of loans by more than that <as a direct result of Basel III>. ***Institute for International Finance.*** June 21, 2012

- The Dodd-Frank Act "was a major overreach that has created uncertainty throughout the economy and threatens to make credit for consumers and businesses more expensive and less available" said ***Senator Bob Corker of Tennessee***, May 7, 2012.

- The [Volcker Rule of the Dodd-Frank Act] would result in a decrease in liquidity and increase in price instability in many markets in the U.S., but will also have negative effects on markets globally, as banks will be forced to reduce the quality of their market-making services to comply. ***Institute of International Finance Report***, February 2012.

- The Volcker Rule will cost American businesses up to $315 billion, increase borrowing costs by up to $43 billion per year, and dramatically reduce liquidity. ***Oliver Wyman Study***, January 2012.

- In our view, <the Volcker Rule> would result in a dramatic increase in volatility and reduction in market liquidity that would ultimately cause borrowing costs for all municipal issuers to rise. ***City Group Global Market Study***, January 2012.

- Relative to pre-crisis levels, banks would have to raise an additional 100% more capital ($525 billion) to meet Basel III's capital requirements. To meet these capital requirements, U.S. banks would have to either increase the borrowing costs to their customers by 60 basis points or reduce non-interest expenses by 19%. ***The Clearing House Report.*** September 26, 2011.

- <The Dodd-Frank Act> could have a negative effect on the ability of banks to extend credit and have a critical impact on our economy. ***Reginald Imamura, PNC Bank,*** September 22, 2011.

- Real lending rates in the U.S. are projected to increase by 468 basis points, (or 701 basis points if reform is implemented rapidly), <exponentially increasing the cost of education loans, home loans, commercial loans, etc.> ***Institute for International Finance Report,*** September 6, 2011.

*Free checking has declined by over 40% in the last three years in large part due to the Durbin Amendment and overdraft rules, according to a Bankrate survey.*

## Impact on Consumers

- Free checking is on the decline, in large part due to overdraft changes and the Durbin Amendment . In 2011, less than half of checking accounts (45%) were free of maintenance charges and balance requirements. In 2009, 76% of accounts were free. ***Roundtable Fast Facts: Decline of Free Checking,*** June 1, 2012.

- Instead of investing in new products to meet the demands of customers, banks are paying for changes to software to ensure compliance with all the new rules. Even a small reduction in the cost of compliance would free up billions of dollars that could facilitate loans and other banking services. ***William B. Grant, CEO of First United Bank of Trust,*** May 9, 2012.

- If regulators tighten restrictions on bank overdraft policies, it could threaten a major source of bank revenue and speed up the end of free checking accounts. ***Fitch Ratings Report.*** April 24, 2012.

- Consumers and small businesses are impacted in negative ways through the Dodd-Frank Act, such as: higher costs for financial products or limited products or limited credit availability at a higher cost. At some banks, certain types of credit will be completely eliminated and access to credit will be denied. ***Ignacio Urrabazo,***

***Testimony before the House Subcommittee on Financial Institutions and Consumer Credit***, March 14, 2012.

- Inflexible loan to value ratios and repayment ability criteria are likely to have the effect of putting home ownership out of reach for many Americans. ***Cliff McCauley, Testimony before the House Subcommittee on Financial Institutions and Consumer Credit***, March 14, 2012.

- The Durbin Amendment will cause smaller institutions to cease offering <debit cards> to their consumers. ***Cliff McCauley, Testimony before the House Subcommittee on Financial Institutions and Consumer Credit***, March 14, 2012.

- Elimination of fee incomes through Durbin and limitations of overdraft fees are hurting community banks. These fees are critical to the survival of community banking: it is key that noninterest income helps provide many of our banking products and services for consumers. ***Ignacio Urrabazo, Testimony before the House Subcommittee on Financial Institutions and Consumer Credit***, March 14, 2012.

- Overdraft and interchange rules have cost the industry about $12.2 billion annually, translating into 20% higher fees for consumers. ***Javelin Study.*** February 2012.

- Retail prices have actually increased 1.7% since the Durbin Amendment became effective. ***Electronic Payment Coalition Report***, December, 2011.

- It has become more expensive for consumers to use banks <as a result of regulatory reform>. ***Elizabeth Robertson, Javelin Strategy & Research***, September 22, 2011.

- 41% of merchants reported they do not intend to pass on lower debit card costs to consumers, when asked about the Durbin Amendment. ***DFR Survey***, September, 2011.

- 54% of institutions report looking to re-structure or terminate rewards programs due to Durbin. ***Pulse Network's 2011 Debit Issuance Study***, June 2011.

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## Impact on the Industry

*Compliance costs have increased over 240% in the last five years, one banker's Congressional testimony.*

- Dodd-Frank compliance costs for the industry are projected to be $7,092,471,000 each year and 52,696,738 paperwork burden hours, according to Federal Register cost estimates. ***American Action Forum,*** June 2012.

- <Basel III rules> are leading many banks to fundamentally rethink their business models, with 65% reporting that they are evaluating their portfolios, 45% reporting that they are moving out of complex or less liquid instruments, while 30% said they were planning to drop lines of business and 13% said they are preparing to leave particular countries. ***Institute for International Finance,*** June 21, 2012.

- Dodd-Frank will cost JP Morgan Chase roughly $1 billion a year, across technology, risk, credit, compliance, and all other lines. ***Jamie Dimon, CEO of JP Morgan Chase, Senate Banking Committee Testimony,*** June 13, 2012.

- Smaller banks could face "operational burdens" in implementing the <new capital> rules. ***Fed governor Elizabeth Duke,*** June 7, 2012.

- The new regulations are so complex that few people understand them, and it will cost them to figure it out. Companies will have to spend a lot to make sure they're aware of the details, since most don't have teams of attorneys to interpret them. ***Mitch Stebal of Busey Bank for the Washington Post,*** May 23, 2012.

- Any one particular regulation may not be that onerous or expensive, but when you add them up, it raises the cost of doing business for banks, and ultimately the consumer ends up paying for it. ***Doug Cruickshanks, CEO of FirstBank,*** May 7, 2012.

- Investment bankers and financial industry consultants estimated that Dodd-Frank would lower the return on equity of community banks with less than $500 in assets to between 6-8%. Bank investors usually look for returns near 11-14%. ***Reynolds, Bone, & Griesbeck,*** May 6, 2012.

- Direct compliance costs have increased over 240% in that last five years – far exceeding the growth of the bank, its loans, investments and deposits. ***Les Parker, Testimony before the House***

***Subcommittee on Financial Institutions and Consumer Credit,*** March 14, 2012.

> *Increasing regulation is the single largest factor of post-crisis bank profitability (or lack thereof) in the U.S. and Europe, according to a report by McKinsey.*

- Annual compliance costs of Dodd-Frank are already over $7 billion for banks—even though only 27% of Dodd-Frank regulatory rules have been completed. The projected number of new personnel required to comply with Dodd-Frank is 26,447. ***American Action Forum data,*** March, 2012.

- Elimination of fee incomes through Durbin and limitations of overdraft fees are hurting community banks. These fees are critical to the survival of community banking: it is key that noninterest income helps provide many of our banking products and services for consumers. ***Ignacio Urrabazo, Testimony before the House Subcommittee on Financial Institutions and Consumer Credit,*** March 14, 2012.

- It took 20 million man hours to build the Panama Canal...we are with 22 million man hours only 1/3 of the way through major legislation. ***Congressman Randy Neugebauer,*** February 2012.

- Regulators' estimate that banks will have to spend 6.6 million hours to implement the Volcker rule. Over 1.8 million hours would be required every year in perpetuity. That translates into 3,292 years, or 3,000 bank employees to comply this rule. ***Frank Keating, President and CEO, American Bankers Association,*** October 2011.

- There is a widening gap between growing and non-growing markets. For example, Asian banks are likely to achieve annual revenue growth of around 10% over the next decade – double the rate of developed markets. ***McKinsey & Company Report,*** September 2011.

- Increasing regulation is the single largest factor of post-crisis bank profitability (or lack thereof) in the U.S. and Europe. U.S. banks will need to triple their net profits by 2015 to cover the cost of raising the capital required under Basel III and the Dodd-Frank Act. This is double the profit level that McKinsey forecasts U.S. banks are likely to achieve during this period. ***McKinsey & Company Report***. September 2011.

- Dodd-Frank has raised the cost of financial transactions in America and that encourages consolidation because it's the only way you can spread the costs over larger assets. ***Tom Hoenig, President of the Federal Reserve Bank of Kansas City,*** September 2011.

- Modifying systems for compliance with Dodd-Frank will drain resources and divert attention from projects that may help business growth. Firms do not plan to increase staff to handle requirements for Dodd-Frank, and are trying to meet demands with the same amount of people. ***Greg MacSweeny for Wall Street & Technology***, February 2011.

**About the Roundtable**

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More information about the Roundtable and its research can be accessed at www.fsround.org. If you have questions, please contact Abby McCloskey, Director of Research at the Financial Services Roundtable, at abby@fsround.org.

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**Fred R. Becker, Jr.**
*President and CEO*

June 27, 2012

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: FSOC's Role to Reduce Regulatory Compliance Burden on Credit Unions

Dear Secretary ~~Geithner:~~ Secretary Geithner

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's Federal credit unions (FCUs), I am writing to you in your capacity as Chairman of the Financial Stability Oversight Council (FSOC).

As you know, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), the FSOC has a duty to facilitate regulatory coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure, promoting a safer and a more stable system.

In regards to this goal, NAFCU would like to emphasize how important it is to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden. As highlighted in the testimony of NAFCU Board Member Ed Templeton before the House Financial Services Committee on May 9, 2012, it is not any single regulation, but the panoply of the regulatory regime of numerous regulators, each operating "within their own lanes" and with minimal, if any, interagency coordination, that not only helps create, but significantly magnifies, today's undue regulatory burden on credit unions and other small financial institutions.

In his testimony, Mr. Templeton, CEO of a small credit union that serves a large number of underserved Americans, emphasized the difficulties facing credit unions to

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plan ahead and keep pace with the rapid rate of regulatory changes under the Act. As Mr. Templeton testified, 96.4% of credit unions in a NAFCU survey last spring reported that they were devoting more staff time to regulatory compliance than they did in 2008. Consequently, credit unions have not been able to use their resources efficiently as they are devoting far too much time and money on regulatory compliance and related functions; they should be empowered, instead, to expend such time and resources to serving their members.

The array of regulations that are making operating a credit union more and more difficult are being fired simultaneously from multiple directions and by a host of agencies. For example, the Consumer Financial Protection Bureau (CFPB) has issued several rules and is soon expected to propose numerous major rules that would greatly impact credit unions' products and services, including savings, mortgage lending, and credit and debit card services. Concomitantly, the credit union's principle regulator, the National Credit Union Administration (NCUA), is issuing regulations on issues such as concentration and interest rate risk, loan participations, credit union service organizations and appraisal management. At the same time, the Department of Justice is issuing regulations on physical assess to ATMs, while the Department of Labor is issuing regulations on employee rights and the Financial Crimes Enforcement Network (FinCEN) is issuing regulations on currency transaction reports and suspicious activity reports.

As we have approached each agency regarding the ever-increasing regulatory burden, they quickly respond that the rules being issued by other agencies are outside of their purview. NAFCU believes the FSOC is well-positioned to rectify this lack of coordination. In that regard, we ask that you establish within the FSOC robust inter-agency coordination on the issuance of rules impacting financial institutions.

NAFCU also urges the FSOC to establish policy requiring member agencies to conduct and publish a thorough cost-benefit analysis prior to issuing regulations as well as a separate cost-benefit analysis a year after each regulation the agency prescribes and every other year thereafter. Also, a cost-benefit analysis should be conducted every two years on each regulation that an agency has on its books, with the agency required to justify the regulations' continued existence. These cost analyses should be reviewed by the FSOC to assess the total impact on the financial services industry. We strongly believe that conducting such exercises would better instruct regulators of the high cost of compliance, and equip them with the information necessary to assess whether a particular regulation is effective and justifiable.

America's credit unions have long been reliable sources of financial advancement for millions of people. We believe that the FSOC, with your leadership, is in a position to help credit unions and other small financial institutions continue to achieve their mission of serving their members.

NAFCU appreciates your attention to our concerns. Should you have any questions or concerns, please feel free to contact me or Carrie Hunt, NAFCU's General Counsel and Vice President of Regulatory Affairs, at 703-842-2234.

Sincerely,

Fred R. Becker, Jr.
President/CEO

cc: Members of the Senate Banking Committee
Members of the House Financial Services Committee
The Honorable Ben Bernanke, chairman of the Federal Reserve Board
Martin J. Gruenberg, acting chairman of the Federal Deposit Insurance Corporation
The Honorable Richard Cordray, director of the Consumer Financial Protection Bureau
Edward DeMarco, acting director of the Federal Housing Finance Agency
The Honorable Debbie Matz, chairman of the National Credit Union Administration
The Honorable Karen Mills, administrator of the Small Business Administration
The Honorable Hilda Solis, secretary of the Department of Labor
The Honorable Shaun Donovan, secretary the Department of Housing and Urban Development
James H. Freis, Jr., director, Financial Crimes Enforcement Network
The Honorable Julius Genachowski, chairman of the Federal Communications Commission
The Honorable Jon Leibowitz, chairman of the Federal Trade Commission

Questions for the Record from
Rep. Blaine Luetkemeyer (MO-9)
Subcommittee on Financial Institutions
Committee on Financial Services, U.S. House of Representatives

Hearing held on July 19, 2012, entitled
"The Impact of Dodd-Frank on Consumer Choice and Access to Credit"

Witness: Mr. Raj Date, Deputy Director, Consumer Financial Protection Bureau

1. **In your appearance before the Subcommittee, you touched on the methods and process, or lack thereof, utilized by the Consumer Financial Protection Bureau (CFPB) to verify that complaints filed against financial institutions are valid and unique. Please explain in greater detail how the CFPB goes about verifying the legitimacy of complaints. What steps does the agency take in separating legitimate complaints from illegitimate complaints?**

   The Bureau maintains significant controls to authenticate complaints. Each complaint is checked to ensure that it is submitted by the identified consumer or from his or her specifically authorized representative. Each submission is also reviewed to determine if it is a complaint, an inquiry, or feedback. (Submissions in the latter two categories are not forwarded to companies for handling as complaints.) Further, each complaint is checked to identify duplicate submissions by a consumer who has already filed with the Bureau a complaint on the same issue. Finally, complaints are only forwarded to companies when they contain all the required fields, including the complaint narrative, the consumer's narrative statement of his or her fair resolution, and the consumer's contact information.

2. **What course of action does CFPB take to ensure that complaints are not part of a large-scale campaign?**

   The CFPB has a number of protections to ensure complaints are not part of a large-scale campaign. For one, the burden of submitting a complaint is not negligible. Consumers must affirm that the information is true to the best of their knowledge and belief. The consumer is also asked for a verifiable account number. If none is provided and the consumer is unable to produce verifiable documentation of the account (such as a statement), the complaint is not pursued further. A company can also challenge its identification by the consumer, prompting review by the CFPB to seek additional information from the consumer to correctly identify the company that is the subject of the complaint. Duplicate complaints from the same consumer are consolidated into a single complaint. The Bureau also maintains additional controls after complaints are submitted.

Further, although companies are able to alert the Bureau to any suspected manipulation, the Bureau has not seen or been alerted by companies to any potential large-scale campaigns since beginning operations in July, 2011. If, in the future, companies find this combined package of controls insufficient in practice, the Bureau remains committed to addressing any issues that may arise, including enabling companies to flag any complaint that the company reasonably believes is not submitted in good faith by or on behalf of an individual consumer.

3. **During the examination process, does CFPB review all complaints and utilize them as an examination tool? Does the Bureau take these complaints into consideration at all during the rulemaking process?**

Summary information regarding complaints about an identified company can be provided to examination teams. Individual complaints typically are reviewed as part of the examination process, but which ones and how many depend on the type of examination, the issues identified in the complaints, and their overall volume. The Bureau may take complaints into consideration during its rulemaking process, along with other relevant information.