

**EXAMINING LEGISLATIVE PROPOSALS
TO PROVIDE TARGETED
REGULATORY RELIEF TO
COMMUNITY FINANCIAL INSTITUTIONS**

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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**EXAMINING LEGISLATIVE PROPOSALS
TO PROVIDE TARGETED
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Wednesday, July 12, 2017

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 p.m., in room 2128, Rayburn House Office Building, Hon. Blaine Luetkemeyer [chairman of the subcommittee] presiding.

Members present: Representatives Luetkemeyer, Rothfus, Posey, Ross, Pittenger, Tipton, Love, Trott, Loudermilk, Kustoff, Tenney; Clay, Maloney, Meeks, Scott, Velazquez, Green, Heck, Moore, and Crist.

Ex officio present: Representative Hensarling.

Also present: Representatives Emmer and Hollingsworth.

Chairman LUETKEMEYER. The Subcommittee on Financial Institutions and Consumer Credit will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

Today's hearing is entitled, "Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions."

Before I begin today, I would like to thank the witnesses for appearing. I appreciate your participation and I look forward to a productive discussion. Also, I want to note that one of the reasons we have such a light crowd today is we are expecting votes any minute. So I apologize for that, but we are going to try to get as far as we can with your testimony, and when the votes occur, we will take a recess for probably 30 minutes to an hour. I appreciate your indulgence, and we will be back to continue the discussions.

With that, I now recognize myself for 4 minutes for an opening statement. This subcommittee has spent a great deal of time exploring the many burdens facing financial institutions. I have heard from my friends on the other side of the aisle that there is a willingness to work across party lines to offer regulatory relief, particularly to community banks and credit unions. Today, we will have an opportunity to do just that.

The work our subcommittee has done this year has led to the creation of many of the bills we will consider today. Our first hear-

ing served to examine the lack of de novo bank and credit union charters. As a result, the gentlelady from New York, Ms. Tenney, has drafted legislation to streamline the de novo process.

We have also held hearings regarding the appropriate role of Federal financial regulators. Vice Chairman Rothfus has legislation to fundamentally change the appeals process, allowing financial institutions to have a fighting chance in what seems to be a process with predetermined outcomes that benefit financial regulators.

Other Members have spent considerable time and energy developing legislation to balance the demand for access to credit with a more responsible regulatory regime. Of particular importance to me is one of my bills, H.R. 2133, the CLEAR Act. This legislation is a compilation of provisions to offer targeted regulatory relief for community banks and credit unions. The aim of my legislation is to make mortgages more affordable, demand more accountability from Washington regulators, and ease requirements on the Nation's smallest institutions and businesses.

Many of the members of this subcommittee have offered their assistance with provisions included in the CLEAR Act, and I am pleased they will have an opportunity to discuss them today. And while we will spend the bulk of the afternoon talking about specific measures to offer relief from regulation, what must not be missed is the impact this relief will have on our local economies and consumers.

The greatest impact of the Dodd-Frank Act and other Obama-era rules has been on the consumers, the customers of our financial institutions. An example is Michelle from Fulton, Missouri. She told me that her daughter, despite having a full-time job, could not get a loan to buy her first car. Then there is Matt, a banker in southeast Missouri, who said the regulatory climate makes it harder to write a loan with terms that may be in a customer's best interest.

Despite what the Federal financial regulators would lead you to believe, Washington does not know best. The supervisory and regulatory structure experienced today leaves little to no room for flexibility or innovation, despite the fact that American consumers and small businesses continue to struggle to get the financial services they need to pursue growth and economic freedom. It is past time to demand a reasonable regulatory structure that fosters economic opportunity while allowing for robust consumer protection.

The nine bills that we will discuss today seek to make modest changes in an effort to return to a more reasonable regulatory structure. We have a distinguished panel with us today, and we look forward to your testimony.

The Chair now recognizes another gentleman from Missouri, Mr. Clay, the ranking member of the subcommittee, for 5 minutes for an opening statement.

Mr. CLAY. Thank you.

And let me first thank you, Mr. Chairman, for holding this hearing to review proposals to provide regulatory relief for smaller institutions. And thank you to the witnesses for your input on these important issues. I am certainly willing to consider and support tailored regulatory relief for smaller institutions, but before adopting legislative changes, we should be 100 percent confident that the proposal is actually designed to provide tailored regulatory relief to

community financial institutions and not the large banks, and that any special consideration for community banks and credit units will not expose consumers to abusive and predatory practices.

As the subcommittee reviews these proposals, I hope my colleagues will not forget the lessons learned from the financial crisis. We must understand the true state of the financial services industry in this country today and reject the false claims that the Dodd-Frank Act has harmed banks and consumers.

I believe that regulatory relief should always be done with careful consideration in order to protect the safety and soundness of our financial system, ensure the independence of our financial regulators, and combat shoddy practices by bad actors that harm consumers.

Last, I want to call upon my colleagues to actually show their support for community financial institutions by working with me to ensure that Congress does not follow the Trump Administration's proposal to slash funding for the CDFI fund in Fiscal Year 2018, which provides valuable funding to our community financial institutions and the communities they serve.

I thank you again, each of today's witnesses, and I yield back the balance of my time.

Chairman LUETKEMEYER. The gentleman yields back.

With that, we will begin the testimony.

We want to welcome each of you: Mr. Robert Fisher, president and CEO of Tioga State Bank, on behalf of the Independent Community Bankers of America; Mr. Rick Nichols, president and CEO of River Region Credit Union, on behalf of the Credit Union National Association; Mr. J.W. Verret, associate professor, Antonin Scalia Law School, and senior scholar at the Mercatus Center, George Mason University, as well as an alumnus of this Financial Services Committee—welcome back; and Mr. Scott Astrada, director of Federal advocacy, Center for Responsible Lending.

Also, I would like to take a moment of personal privilege to extend a special welcome to Rick Nichols, whose credit union serves members across my district, and every day Rick and his staff work to ensure that Missourians have the ability to pursue economic freedom and create better lives.

Rick, thank you for making the trip from Jefferson City. We certainly appreciate your participation today. I know the ranking member would agree, as well, that it is nice to have another Missourian on the panel.

Mr. CLAY. It certainly is.

Chairman LUETKEMEYER. And Rick comes from a little town just like I do. So, welcome to the big city.

With this, we will begin the testimony, and we will explain the light system quickly here. Green means go. With 1 minute left, you will see a yellow light come on, and that means you have 1 minute to wrap it up. And when the red light comes on, I have the gavel, which means I get the last word, and it may be "stop." But we will work with everybody as best we can here to make sure you get your points made.

With that, Mr. Fisher, you are recognized for 5 minutes.

STATEMENT OF ROBERT M. FISHER, PRESIDENT & CEO, TIOGA STATE BANK, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA (ICBA)

Mr. FISHER. Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, I am Robert Fisher, president and CEO of Tioga State Bank, a \$475 million community bank in Spencer, New York.

I am pleased to be here on behalf of the nearly 5,000 community banks represented by the Independent Community Bankers of America. We hope today's hearing sets the stage for legislation needed to strengthen local economic growth and job creation.

Tioga State Bank was founded by my great-great-grandfather in 1884 to provide needed banking services to local businesses and individuals. I am a fifth-generation community banker who is proud to carry out our commitment to the local prosperity.

Today, we specialize in consumer mortgage and small business lending. Many of the rural communities we serve in upstate New York depend on us as the only financial institution with a local presence. These smaller communities are simply not on the radar of larger banks.

I will focus my testimony on four bills before this subcommittee, all of which include provisions recommended in ICBA's Plan for Prosperity. First, H.R. 2133, the CLEARRR Act, is a package of provisions chosen to provide relief from some of the most egregious aspects of regulatory burden, government overreach, and legal risk facing community bankers today. ICBA is grateful to Chairman Luetkemeyer for introducing this important bill, so thank you.

Approximately half of the bill's provisions address different aspects of mortgage lending. No area of community banking has been heaped with more new regulations in recent years, to the detriment of borrowers everywhere.

As a portfolio lender, I appreciate the needed flexibility provided by the CLEARRR Act. Loans held in portfolio would automatically have qualified mortgage status. This is a simple, clean solution that would avoid the inflexible requirements and tortuous analysis mandated by the CFPB's ability-to-repay rule.

Loans held in portfolio by a bank with assets of less than \$10 billion would also be exempt from costly escrow requirements for tax and insurance payments. And loans of less than \$250,000 would be exempt from appraisal requirements. In our market, an appraiser shortage is escalating prices and lengthening turnaround times.

ICBA thanks Representative Kustoff for introducing this provision of the CLEARRR Act in a separate bill, the Access to Affordable Mortgages Act. Such flexibility is safe and reasonable because portfolio lenders bear the full risk of default and have every incentive to ensure the loans they hold are affordable for the borrower and are appropriately collateralized.

Another provision of the CLEARRR Act would be to raise the HMDA exemption thresholds so that community banks like mine would not be forced to complete 48 data fields for every mortgage application we receive. In rural communities that I serve where people are well known to each other, published HMDA data is a threat to consumer privacy. The current exemption thresholds are

much too low. Raising these loan thresholds will protect consumer privacy and provide regulatory relief for many more small lenders without a significant impact on the mortgage data available to the CFPB.

In addition to the mortgage lending reforms, the CLEAR Act would fully repeal Dodd-Frank Section 1071, a small business loan data collection requirement, which has not yet been fully implemented. In my opinion as a commercial lender, this is one of the most important provisions of the CLEAR Act.

Commercial lending is a complex business with customized terms, covenants, and rates based on numerous factors unique to each borrower. This type of lending cannot be commoditized in the way that consumer lending can, nor can it be subject to simplified, rigid analysis, which may generate baseless fair lending complaints. I believe that Section 1071 will have a chilling effect on lenders' ability to price for risk. This, in addition to the expensive data collection and reporting, may drive community banks from the commercial lending market and curb access to small business credit. Other provisions of the CLEAR Act are discussed in my written statement.

ICBA also supports H.R. 924, the Financial Institutions Due Process Act, introduced by Representative Rothfus, which would reform the appeals process for exam findings and bring a higher level of accountability to the regulators and their field examiners.

And, finally, H.R. 2148, the Clarifying Commercial Real Estate Loans Act, introduced by Representatives Pittenger and Scott, would provide relief from punitive new Basel III capital charges for commercial projects that promote local economic development and job creation.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Fisher can be found on page 75 of the appendix.]

Chairman LUETKEMEYER. The gentleman's time has expired.

Mr. Nichols, you are recognized for 5 minutes.

STATEMENT OF RICK NICHOLS, PRESIDENT & CEO, RIVER REGION CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION (CUNA)

Mr. NICHOLS. Thank you.

Good afternoon, Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee. And a special thank you for the gentleman from Missouri. It's good to see you.

Thank you for the opportunity to appear before you today. As you noted in my introduction, I am the president and CEO of River Region Credit Union in Jefferson City, Missouri. By any stretch of the imagination, my credit union is a small institution. We are about \$200 million in assets, and we serve about 22,000 members.

As a result of the tidal wave of new regulations coming out of the financial crisis, credit unions like mine, as well as many small banks, are forced to operate in a regulatory environment that is rigged in favor of large institutions.

When Washington produces one-size-fits-all regulations designed to rein in Wall Street banks, or abusers of consumers, my credit union feels the impact more than Bank of America and Wells

Fargo. They have an army of compliance attorneys and all the resources in the world. I don't. The system is creating too-big-to-fail banks that put all American consumers at risk.

I appreciate that the subcommittee is looking at legislative proposals to provide targeted relief to community financial institutions. We are being painted with the same brush as those who commit abuses. Overregulation is leading to a decreased number of smaller institutions that know their communities and work with the people they serve every day. Relief cannot come quickly enough.

America's credit unions and the 110 million members we serve, including 1.5 million members in the State of Missouri, support many of the bills that are under consideration. We support Chairman Luetkemeyer's H.R. 2133, the CLEAR Act. This legislation includes several common-sense solutions that will help my credit union. Specifically, we support provisions that would adjust thresholds for mortgage servicing and escrow account administration, exempt certain higher-risk mortgages from appraisal requirements, repeal NCUA's 2015 risk-based capital rule, modify the CFPB's UDAAP authority, improve the CFPB's final HMDA rules, repeal the CFPB's authority to collect small business loan data, end Operation Choke Point, give consumers the right to waive waiting periods on mortgage closures, increase CFPB supervisory authority threshold to \$50 billion in assets, treat mortgages held in portfolio as qualified mortgages, and transfer authority to define ability to repay to the FHFA.

We also support H.R. 924, the Financial Institutions Due Process Act. This bill brings fairness to an examination process that is not always transparent and an appeals process that has never been balanced. It is important for Federal regulatory agencies to be able to cite the authority under which they are making material findings during the examination process.

Further, it is critical that if there is a dispute between the financial institution and the examiner, that such dispute be heard in a venue independent of the examiner's chain of command. H.R. 924 achieves both of those objectives.

We support H.R. 1457, the MOBILE Act. This legislation is an important step toward helping credit unions and other financial institutions remain competitive in a market increasingly disrupted by financial technology companies, who are often subject to fewer regulatory requirements. To the extent that this legislation makes it easier for consumers to join credit unions, we view this as a positive step.

We also support H.R. 2396, which makes changes to the privacy notification requirements that will make compliance much easier.

America's credit unions greatly appreciate the subcommittee's work on these targeted regulatory relief proposals. The complexity of the crisis facing community-based financial institutions means that one piece of financial legislation is unlikely to remove all of the obstacles facing these institutions in serving consumers. There is much, much more work to be done.

In conclusion, we encourage the subcommittee to continue to pursue additional measures to provide meaningful relief to community

financial institutions like River Region Credit Union. It is important to keep in mind the people that these regulations affect.

For example, this folder—I won't make you read it—contains a 30-year mortgage loan. This is all the documents that our members receive in a 30-year mortgage. Every time we pass something, it is just another piece of paper for them to see and less information that they actually understand.

Thank you for the opportunity to testify today. I look forward to answering your questions.

[The prepared statement of Mr. Nichols can be found on page 87 of the appendix.]

Chairman LUETKEMEYER. I thank the gentleman, and just a quick question, how many pieces of paper are in that folder, do you know offhand?

Mr. NICHOLS. As I told them, we quit measuring by pages. We now measure by pounds.

Chairman LUETKEMEYER. Okay. How many pounds do you have there?

Mr. NICHOLS. I am guessing that one to be about 7 pounds.

Chairman LUETKEMEYER. Seven pounds of paper. Okay. Great visual aid. Thank you very much.

Mr. Astrada, you are recognized for 5 minutes. Thank you for being here.

**STATEMENT OF SCOTT B. ASTRADA, DIRECTOR OF FEDERAL
ADVOCACY, CENTER FOR RESPONSIBLE LENDING**

Mr. ASTRADA. Thank you. Good afternoon, Chairman Luetkemeyer, Ranking Member Clay, and members of the Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit.

As noted, I am the director of Federal advocacy at the Center for Responsible Lending (CRL), a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate predatory financial practices.

On behalf of CRL, I would like to thank you for allowing me to testify today to discuss proposals regarding regulatory relief for community financial institutions.

This important hearing addresses the health of our small banks and community lenders in the context of the regulatory structure created in the wake of the Great Recession, a regulatory framework that corrected systemic gaps and sought to prevent future market failures while providing essential protections to consumers in the overall economy.

In setting and implementing these safeguards, regulators have utilized a two-tier approach with numerous measures intended to decrease compliance costs for smaller lenders and institutions. This approach should be continued and expanded. However, dismantling central reforms such as the mortgage ability-to-repay standard, or expanded QM exemptions, or reducing the effectiveness of the Consumer Financial Protection Bureau, would severely harm consumers, banks, and the overall economy.

The 2008 Great Recession has showed us the consequences of a financial marketplace where there are no basic protections, ac-

countabilities, or transparency. The result was 7.8 million Americans losing their homes to foreclosure, taxpayers on the hook for \$7 trillion to bail out financial institutions, and an additional \$22 trillion through the Federal Government's purchase of assets.

According to the FDIC, more than 500 banks closed their doors, with most of these institutions being small community banks. These consequences remind us why the safeguards of the Dodd-Frank Wall Street Reform and Consumer Protection Act are needed to protect consumers in our Nation's economy. All financial institutions, including community banks and credit unions, benefit from the underlying purpose of financial regulation: protecting consumers; ensuring the safety and soundness of institutions; and defending the Nation's financial market from systemic risk.

Today, financial institutions, including small banks, are recovering steadily. Contrary to theories that Dodd-Frank has stifled growth, the financial sector has seen record profits, community bank profitability has rebounded strongly, credit union membership is growing, and mortgage lending has also steadily recovered.

Community banks and small lenders play an important and growing role in the mortgage market, and loans originated by smaller lenders with assets under \$1 billion saw the biggest increase between 2012 and 2015, and credit unions alone originated \$41.7 billion in first lien mortgage loans in the third quarter of 2016, an increase of 22 percent over the same period of the previous year.

CRL supports reasonable regulatory flexibility for small depositories. However, we strongly oppose any effort to use regulatory relief for small lenders as a free pass for nonbanks and larger financial institutions to avoid reasonable regulatory scrutiny.

Just as important, Federal financial regulators like the CFPB must be allowed to both protect the American people and ensure a fair and sustainable marketplace. The CFPB independent structure and funding should remain as Congress intended so the Bureau may continue its work without gridlock or political interference. Rather than pushing proposals that drastically roll back important safeguards for consumers and community banks, we should be working on pragmatic, broadly supported proposals that provide regulatory relief. For example, further clarification of the False Claims Act liability for FHA loans is needed to reduce uncertainty and protect responsible lenders. Another reform is to raise the QM safe harbor from 150 basis points over APOR to 200 basis points. This would substantially reduce the number of mortgages that are classified as higher cost and excluded from safe harbor status.

Finally, a major area of relief could be provided around the Bank Secrecy Act and Anti-Money Laundering rules compliance. BSA/AML compliance is a huge regulatory burden and, according to the American Bankers Association, is especially burdensome for community banks and credit unions. These laws carry out the essential and critical need to prevent our financial institutions from being used by criminal enterprises to facilitate illegal activities.

Currently, the onerous task of determining the true identity of owners of accounts falls on the financial institution itself. The ICBA and others have asked that Federal and State agencies verify

account ownership information at the time the entity is formed, and bipartisan bills that have supported this solution have been endorsed by the Clearing House Association.

CRL is ready to work with the committee, community banks, credit unions and their associations, and regulators to ensure that all of these objectives are satisfied through laws and reasonable regulations.

Thank you again for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Mr. Astrada can be found on page 44 of the appendix.]

Chairman LUETKEMEYER. Thank you, Mr. Astrada.

Professor Verret, we welcome you, and before you get started here, we have had votes called, and so what we will do, members of the panel, is we will have the testimony of the professor, and when he is finished, we will call a recess. We will go vote, and then we will come back.

But I think we have about 12 minutes left before we have to vote. So, Professor, you are recognized for 5 minutes.

STATEMENT OF J.W. VERRET, SENIOR SCHOLAR, MERCATUS CENTER, GEORGE MASON UNIVERSITY

Mr. VERRET. Chairman Luetkemeyer, Ranking Member Clay, and Vice Chairman Rothfus, I appreciate the opportunity to testify today. My name is J.W. Verret. I am a professor of banking and securities law at Scalia Law School, and I work with the Mercatus Center.

I want to begin by noting that the legislation under consideration today includes vital reforms to the bank exam process and to the CFPB and its rules. These changes will begin to alleviate barriers to entry, which have made it all but impossible to open new banking institutions in recent years.

As the dual-banking system evolved over the 150-year period since the Bank Act of 1863 was first adopted, a number of States set up intentional barriers to entry to prevent out-of-State institutions from competing with home State banks, but Congress and Federal regulators eventually stepped in to promote interstate branching, first through holding companies and then through efficient preemption of anticompetitive State rules.

We stand at another such juncture where bank regulatory reform is vital to the national interest, and so I commend this committee's attention to that. The exam process for banks is unique in the American regulatory structure. In no other field of regulation is the relationship between regulator and regulated so close-knit: Examiners take up residence in institutions; communications to them get limited legal privilege, similar to one's spouse or attorney. The exam process can work well. It can help remedy financial problems particular to an institution without harming the bank's reputational capital, but it can turn ugly when it goes bad.

Banks report examiners have sometimes issued retributive threats for opposing rules in a public notice and comment or have issued inappropriate demands that amount to shadow regulation. The legislation featured today will begin to ameliorate some of these problems.

Turning to the CFPB, which is one of the most powerful regulators in the financial services space, yet it is also the youngest. The Federal Reserve is 100 years old. The OCC dates back to the Civil War. These agencies benefit from regulatory culture and a wealth of legal precedent defining their operative statutes that have evolved collectively over hundreds of years. The CFPB, on the other hand, is 6 years old, and I don't need to remind this committee of the growing pains it has already experienced. That is why the proposed change, the broad authority of the CFPB under UDAAP, is so essential.

Words have power in the law because they can be defined over hundreds of fact patterns in which impartial judges give words meaning. The words "deceptive" and "unfair" have such a clear meaning developed over decades of implementation by the Federal Trade Commission. The word "abusive" does not.

Now, I know it is easy to accuse someone making a legitimate argument about statutory meaning of being, "in favor of abusive products," and it is an old Washington trick. I challenge any who oppose this change, however, to describe a set of facts that would be considered abusive but not count as deceptive or unfair under the statute.

Another bill proposed today would establish an intent requirement for violations of ECOA. The CFPB describes itself as a law enforcement agency, and indeed, the penalties it collects are often large enough to blur the line between civil and criminal sanctions. Our criminal laws overwhelmingly recognize an intent or scienter requirement in offenses, recognizing that unintentional actions taken by people doing their best to follow the law are not morally blameworthy.

Courts interpreting ECOA have also recognized this need for an intent requirement in order to award punitive damages under the ECOA statute. I would further argue that a clear reading of the ECOA statute in light of the holding inclusive communities indicates it does not permit actions based on a theory of disparate impact.

I also commend the committee's attention to the use of reputation risk in bank regulation and supervision. Citing to amorphous reputation risk has become a new fad among bank regulators in recent years, both in justifying rules and in a CAMELS rating process, and it is highly problematic.

First, regulators have yet to demonstrate that reputation risk is a necessary component of the CAMELS rating and of examination since existing financial and management measures would capture the effect of any reputational problems among bank customers. Second, regulators refuse to use the empirical tools available to them to measure reputation risk, such as stock price, event studies, or hedonic consumer price studies. And the close association, frankly, between this regulatory tool and the Operation Choke Point scandal suggests that careful scrutiny is warranted.

There are a lot of bills on the agenda today. I know I have only touched on a few issues in some of them, but I thank you for the opportunity to testify, and I look forward to answering your questions. And may I say, it is good to be back; it feels like home.

[The prepared statement of Mr. Verret can be found on page 104 of the appendix.]

Chairman LUETKEMEYER. Thank you, Professor.

And I thank each of you for your testimony. We do apologize for this interruption, but we do have some things we need to be doing here. So we need to take care of some votes. I think we have three votes. So we should probably be back around the top of the hour, a little bit after.

With that, I will call for a recess.

[recess]

Chairman LUETKEMEYER. Okay. The subcommittee will come to order.

We have a couple of housekeeping things to take care of first. Again, thank you, witnesses, for your indulgence.

Without objection, each of your written statements will be made a part of the record.

And, without objection, the gentleman from Minnesota, Mr. Emmer, and the gentleman from Indiana, Mr. Hollingsworth, are permitted to participate in today's subcommittee hearing. While not members of the subcommittee, Mr. Emmer and Mr. Hollingsworth are members of the full Financial Services Committee, and we appreciate their interest in participating today. So they will be able to ask questions and participate here shortly, as well.

So, with that, I recognize myself for 5 minutes for questions.

Again, thanks to each of you for being here.

Mr. Nichols, you represent the credit unions, and a lot of the discussions you had earlier with regards to the CLEAR Act and some other bills—what would it mean from the standpoint of cost to your organization to have the bills passed that we are talking about today? What kind of costs? How would it affect your customers?

Mr. NICHOLS. The cost is almost immeasurable. We were just talking about that, the amount of people that I have involved in compliance. Again, we are a very small institution, \$200 million. I have two dedicated people in compliance, plus I have another six to eight people who spend a significant portion of their time in compliance. As we look, I will pat this mortgage packet once again. That is a post-TRID mortgage packet. TRID by most accounts doubled the amount of time that it took to complete a mortgage loan. So, if you really look at that, all my cost—obviously there would be a savings. The cost to the consumer, my owners, my members, every dollar that I save I pass on to my members. So it is immeasurable.

Chairman LUETKEMEYER. Mr. Fisher, you made quite a bit of a discussion with regards to the portfolio, being able to hold some of the loans in portfolio. Would you explain that and explain how important it is to an institution of your size to be able to do something like that?

Mr. FISHER. As a portfolio lender, we do sell some loans off to the Federal Home Loan Bank, but the majority, probably 65 to 70 percent of every mortgage we write, we hold on our books. So we bear the full risk. If a loan goes bad, we take the loss, nobody else takes the loss. It is our bank that takes the loss. So to have QM

status on anything we hold in portfolio would be very valuable to us. And it is just—

Chairman LUETKEMEYER. Does it deter you from making loans, to have this QM status—or not being able to hold all of them in portfolio?

Mr. FISHER. We have always been kind of a nontraditional lender. We have always done a lot of nonconforming mortgage lending. So, when they came out with a qualified mortgage status, we made a decision that we were not going to stop doing non-QM loans. So we continue to make non-QM loans today, and we have decided to take that risk on, but I do know a lot of bankers who have exited the mortgage business or do not do any non-QM lending.

Chairman LUETKEMEYER. It is interesting, Mr. Nichols, with your pile of papers next to you there, I was talking to a banker the other day, and he said, I can do a \$50,000 brand new truck loan in about 60 to 90 minutes, and it takes me 60 to 90 days to do a \$50,000 home loan. And then you have to spend \$2,500 probably to put that packet of papers together for the individual, plus you look at the assets that you have as collateral: one is depreciable, and it is going to be movable, it can leave the country; and the other one is stationary and will probably appreciate. We have a huge disconnect here in my mind with regards to how we look at housing finance. I know, in the CLEARR Act, what it will do is take some of those HMDA things back down to the 2008 levels, so people can actually knock off some of the cost and some of the nonsense you are having to put up with here.

And I am sure every single person who comes in your institution reads every one of those pieces of paper, too, right?

Mr. NICHOLS. That is part of the issue, is the more paper we give them, the less they end up reading, by nature.

Chairman LUETKEMEYER. It is interesting because my father passed away a few years ago and my mother passed a few years before that, and my brother and I sold their home. And it took me nine signatures and an initial to sell the property. That is not to go buy it. The buyers had to do that. I still had a packet of papers this thick. That is how out of whack this whole system is. Thank you very much.

Professor Verret, you talked a little bit about the abusive practices and reputational risk. This is something that really irritates me with regards to regulators. They can't define either one of these things, yet they throw them at bankers and the credit union folks as a way to intimidate them into doing things. Would you like to talk a little bit about how over the top this is and how irrational some of these discussions are?

Mr. VERRET. Yes. I think a prime example has been the use of reputational risk in the physical commodities rulemaking that the Fed was considering for a time that I think they probably dropped with the change in Administration. I have sat down and asked these guys: How are you measuring reputational risk?

And they will try to tell me: Well, you can't measure it.

Or they would say: Well, it seems like some banks have gotten out of this, and so it must have been risky.

And I ask them: Maybe they got out of it just because of the attention from HSGAC and because of your complaints. Maybe you are the reputational risk to the banking system.

And then they would talk to me about the size of potential liability, and I would say: They pay billions of dollars a year in securities class actions. Are securities class actions—is being publicly traded a reputational risk to the banking system?

And they would say: That does not compute; I don't know how to answer that question.

It is a nonsensical approach, I would say.

Chairman LUETKEMEYER. Okay. Thank you very much, Professor, and I appreciate everybody's comments.

I am out of time.

With that, we go to Mr. Scott from Georgia. He is recognized for 5 minutes.

Mr. SCOTT. All right. Thank you, Mr. Chairman.

First of all, I want to thank Mr. Pittenger—I believe he is here—for working with me and my staff to put forward H.R. 2148. And because of this bipartisan work, we are able to introduce bipartisan legislation that will clarify pesky commercial real estate rules.

Now, let me explain why we need this bill. First of all, the commercial real estate loan industry works in a somewhat complicated way, but starting in 2015, real estate loans that are classified as an HVCRE, which is high validity commercial real estate loan activity, and for those watching on C-SPAN, you see what I mean when oftentimes we make things a little more complicated. But because of that rule, overnight it became much more expensive because of the rules from the FDIC to the industry.

Now, let me be clear that the financial crisis saw a lot of banks go under because of their heavy exposure and risky commercial real estate. I might add that my dear State of Georgia led the Nation in bank closures repeatedly during this period for a number of years. So, moving to add more capital cushion to the riskiest of loans does make a lot of sense. However, the FDIC wrote an overly broad and very vague rule that failed to grasp the real-world problems in this area. So all our legislation does is provide the clarity of which types of loans should and should not be classified as these HVCRE loans, high validity commercial real estate loans.

Now, Mr. Pittenger's and my legislation does not eliminate the FDIC's ability to require banks to hold higher capital for these loans. Our language does nothing to the higher standard that was set in 2013. So that is our bill, but we have two distinguished CEOs of banks on the panel, Mr. Fisher and Mr. Nichols. I would like know what they have seen firsthand.

You guys are out there in the field getting the crops in on all of this. We are just in here trying to give you a level playing field to be able to conduct your business. Tell us what is happening in the construction and financing side, the real estate side of your business since 2015 when these high validity commercial real estate (HVCRE) loans came out.

Mr. FISHER. Well, Congressman, I appreciate the question and the bill. ICVA obviously is supportive of this bill. Where I am at in upstate New York we have not had a great deal of commercial activity as far as a lot of commercial real estate expansion. We do

a lot of commercial real estate financing, but we don't have a whole lot of HVCRE in our market. So I don't know if Mr. Nichols has experienced anything different, but we would support a simplification and clarification of the current rule that is out there, so we appreciate that.

Mr. SCOTT. Yes.

Mr. Nichols?

Mr. NICHOLS. Congressman, as I understand it, that bill is FDIC specifically, and the credit unions don't have a position on that.

Mr. SCOTT. Okay. Very good. Let me go to another bill that we have sort of working with Mr. Tipton, and ask you again, Mr. Fisher, or anybody, about House Resolution 1457. And there is no doubt that customers are relying less and less on walking into a branch for their banking needs instead of turning to their phones. But another trend is happening simultaneously, which is an uptick in bank mergers. This is particularly impactful for rural communities in my district who usually only have one bank within miles from where families live, and this means that Americans' taste for walking into branches is declining.

So Mr. Tipton's bill, which I am also sponsoring, the MOBILE Act, caught my attention because it addresses these headwinds facing community banks by creating a uniform nationwide standard where banks can easily scan a driver's license, or a State ID using a mobile device. My time is up. Maybe I will have a chance to come back and ask you more about that. Thank you Mr. Chairman.

Chairman LUETKEMEYER. The gentleman's time has expired.

The gentleman from Pennsylvania, the vice chairman of the subcommittee, Mr. Rothfus, is recognized for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Mr. Fisher, I often hear from small business owners who complain they have difficulty getting bank loans after an off year despite having ample collateral or a strong track record. When I discuss this issue with community bankers, they usually tell me that they are wary of making loans to customers with suspect cashflow because they are concerned about receiving criticism from regulators. In other words, bankers who know that a potential borrower has sufficient collateral and a strong track record are being discouraged by regulators from exercising their discretion and providing capital to small businesses. Is this a problem that community banks like yours often face?

Mr. FISHER. We often are criticized on certain loans that we make even to longer-term customers. We have had loans on the books where maybe a customer, as you mentioned, has one bad year out of three, and the loan gets classified or written up as being a substandard loan. One bad year does not necessarily mean it is a bad loan. The loan is still paying as agreed, so I would—it obviously has a negative impact on us making future loans.

Mr. ROTHFUS. Do you believe that the regulators are arbitrarily discouraging banks from providing loans to small businesses that banks have confidence in?

Mr. FISHER. I am not sure if it is arbitrary. I believe that sometimes it is a focused effort to discourage us from making certain types of loans at times.

Mr. ROTHFUS. Do you view the current examination process as a hindrance to small business access to capital?

Mr. FISHER. I can tell you that the current examination process is a hindrance to making loans and doing business. From the time I get my first day letter to the time I close out an exam period with an onsite examination, our focus is not on serving our customers. Our focus is on serving our regulators or examiners who are onsite, and if I look back at probably a 10-year earning history, quarterly earning history, I think I could pinpoint exactly each quarter that I have had an examination by looking at our earnings for that quarter.

Mr. ROTHFUS. Can you suggest some ways Congress can address this?

Mr. FISHER. I think by just having a more focused examination approach and maybe even reducing the number of examiners who come onsite, not having—I am a \$475 million bank. For a safety and soundness exam, I think we had 10 or 12 examiners onsite for a safety and soundness examination, which seems like a little bit of overkill.

Mr. ROTHFUS. Mr. Nichols, I want to ask you a question. I had a conversation with a small business banker. It could have been in any other circumstance, a credit union, who recently told me a troubling story about a disagreement he had with his onsite examiners. When the examiners told the regional office of the disagreement and conveyed the banker's desire to appeal the examination conclusion, the regional officer for the regulator arranged a call with the bank and its legal counsel.

The regional officer for the regulator conceded during this call that the bank had the right to appeal the matter, but strongly advised against doing so. He then informed the bank that he had already spoken to the so-called independent regulatory reviewers and that the bank would lose its appeal. Based on my experience, these stories are not uncommon. They serve to underscore the importance of the Financial Institutions Due Process Act, which creates a fair or more independent and more transparent process.

Do you see the need for an impartial system of checks and balances to ensure that disagreements with regulators are handled fairly and on a timely basis?

Mr. NICHOLS. Absolutely. From a clarity standpoint, I can't agree more with what Mr. Fisher said. From a clarity standpoint, if the laws are written in black and white, and we can see what the law is, and there aren't ambiguous rules that we are supposed to be paying attention to, it makes it a lot more clearer to us. If we disagree with those examination findings, there should be an independent process that we can follow outside of that chain of command.

Mr. ROTHFUS. I was struck looking at and listening to some of Mr. Astrada's testimony and his written testimony, that financial regulations are not slowing economic growth or preventing lending. I read a piece recently by an economist, Steve Strongin, who talked about the two-speed economy. The big firms are doing fine. They are lending. It is rosy, almost as rosy as the picture painted in Mr. Astrada's testimony. But then there is the slow lane, and there are a lot of folks struggling out there. And Mr. Strong estimates that

as a result, directly because of the financial regulation that we have seen over the last 8 years, there are 650,000 fewer small businesses and 6.5 million fewer jobs. I wonder if you had any reaction when you were listening to Mr. Astrada's testimony?

Mr. Fisher?

Mr. FISHER. Obviously, I didn't agree with most of his testimony that he gave. I do feel that a lot of the regulation, especially if you look at my market in upstate New York, we are really struggling. We have never really fully recovered from the economic crisis. So, while I do believe that there has been some positive impact in other areas of the country where the recovery is stronger, it is still a struggle in my market. And regulatory efforts make that difficult.

Mr. ROTHFUS. I yield back.

Chairman LUETKEMEYER. The gentleman's time has expired.

Mr. Meeks of New York is recognized for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman, and thank you to our witnesses at this important hearing. And although there are some proposals on the table that raise some serious concerns for me, there are others that I believe have the potential for strong bipartisan support, and in my view, if we work together, we can improve some.

I, for one, have always been a supporter of encouraging banks and credit unions, which are highly regulated institutions, to re-enter and/or enter the small dollar lending space. I think Mr. Hollingsworth has made a sincere attempt to tackle this issue, but I believe the bill can be substantially improved by: one, increasing access to capital; and two, maintaining reasonably strong consumer protections. I think we still have to do those two things, but I look forward to working with Mr. Hollingsworth and his staff to address some of my concerns with this bill and to potentially reach bipartisan agreement on how we can encourage banks to re-enter the small dollar lending space as an alternative to less safe and costly alternatives out there because I know, from my life experience, that folks are going to try to find a way where they need a small dollar loan, they need to get one, and I want to make sure they have the protection, et cetera.

So let me start with Mr. Nichols. In your testimony, you mentioned that nearly 93 percent of credit unions offer or are considering offering small dollar loan products to their members. Now, many disagree on what the appropriate underwriting status should be for small dollar loans given their size. Some argue that there should be no underwriting requirements at all. Others argue a different way. So my question to you is, from your experience dealing with the risks associated with these products, what is the most appropriate level of underwriting that should be required of a loan of less than \$1,000?

Mr. Nichols?

Mr. NICHOLS. Let me start by saying I am a member-owned organization. Every person who comes in to do business is an owner of mine. So when we talk about what dollar amount I should consider, it is what dollar amount makes sense for that member. So if a person comes in and they have a small dollar need, whether it be for a new appliance, or whether it be for something to get them through to the next payday, we hear those stories, we deal with

those people every day of the week. Every circumstance is different. Every time is something unique. We use that for financial counseling. We work with them and say, let's develop a plan for you in the future. I don't know that all credit unions nationwide are designed that way. Again, we are owned and operated by the people we serve. So that is what we are about.

Mr. MEEKS. That is extremely important, but let me go then to Mr. Astrada because my concern is that there are individuals who are not members of credit unions who need these small loans, and they have no place else to go. And I know from my old neighborhood, if they had to and there is no one else that was going to give them a loan, they would go to a loan shark. But since the OCC and the FDIC has issued depository advance product guidance, nearly all banks that offered these products have discontinued their programs. There are no banks in this small—most of them are all done. And although the OCC's and the FDIC's guidance includes principles that I am supportive of, I am still concerned that there are virtually no more banks that offer this product today.

So, Mr. Astrada, do you have any alternative proposals policy-makers can consider to incentivize banks and credit unions—we hear what the credit unions have to say—to re-enter the small dollar lending space, yet maintain reasonably strong consumer protections?

Mr. ASTRADA. Thank you for that question, and thank you for your work on this. I would just preface that with the importance of that guidance and how the banks have withdrawn from that space as indication of how damaging that can be on communities. Once those bank loans look like payday loans, they have the same effects of payday loans. And CRL actually just issued a brief today on the negative impacts of what we are calling bank payday loans, and we feel that before any innovation or before any proposal can have legs, we need to ensure that that guidance and those regulations and those protections for consumers who are seeking small dollar loans are not repealed or rolled back by current proposals.

So I do look forward to working with your staff and continuing to find actual suggestions, but until we ensure that the regulatory environment now doesn't repeal that guidance and keeps the bad actors from being predatory lenders, in essence, I think that should be the first step toward this discussion.

Mr. MEEKS. I am out of time. I yield back.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman. I appreciate you calling this hearing, and I thank each of you for coming, for taking your valuable time to be with us on such critical issues. I would like to talk about H.R. 2148, Mr. Fisher, that you brought up today, the HVCRE legislation. I would like just to get some personal thoughts on how this rule affected your commercial real estate lending activity?

Mr. FISHER. I think commercial real estate or commercial real estate lending in upstate New York is—it is the majority of the commercial lending that I do. We do a lot of C&I and commercial real estate, but we don't have a huge amount of commercial real estate

lending growth in rural upstate New York where I am located, so it is—

Mr. PITTENGER. What is your understanding relative to the financial institutions, the banks, and the impediments this rule has had for them in making commercial real estate loans?

Mr. FISHER. I believe that we are in agreement with the legislation that you proposed, and we would definitely support this bill going forward, and I think it would be a positive impact on community banks' ability and clarify some of the guidance as far as their lending so—

Mr. PITTENGER. Do you have some thoughts in terms of the economic consequences of not clarifying the HVCRE bill?

Mr. FISHER. I think not clarifying it will continue to restrict commercial lending as far as definitely commercial real estate, HVCRE lending.

Mr. PITTENGER. From your experience, do you believe that the regulatory agencies will resolve this issue, or do you believe that this legislation is warranted and necessary?

Mr. FISHER. I think this legislation is definitely warranted and necessary because, if left up to the agencies, I am not sure we will get the clarification that you are providing.

Mr. PITTENGER. If any of you want to pitch in on these issues, you are welcome to. I don't know particularly your backgrounds in it, but I would like to know your concerns about the economic consequences of what we refer to as the wall of maturities, which is approximately a billion dollars a day of commercial real estate loan maturities.

Mr. FISHER. I'm sorry. I didn't understand the question.

Mr. PITTENGER. It is called the wall of maturities. What is your understanding of that and the billion dollars a day of loan maturities that we have, the economic consequences of those.

Mr. FISHER. I am not sure I—

Mr. PITTENGER. Are you familiar with that? Okay. Well, are you concerned about the cumulative impact of various Dodd-Frank and Basel III measures, then, on commercial real estate credit capacity and liquidity?

Mr. FISHER. Some of the Basel III will definitely restrict commercial lending as we go forward.

Mr. PITTENGER. Yes, sir. Any comments down the line?

Okay. Are you starting to see a slowdown in the bank lending for commercial real estate as a result of—is this your experience, your background, your awareness from your other—

Mr. FISHER. We have seen a slowdown since 2008, 2009, sir, and it has just kind of really been fairly stagnant in rural upstate New York.

Mr. PITTENGER. What do you believe are the other factors that would contribute toward reestablishing the positive real estate environment? What would the overall market conditions relative to tax reform, regulatory reform on banks, what are your major impediments that you see that are keeping back your economy in northern State New York?

Mr. FISHER. I think there is a vast array of issues that are causing some of the issues in New York. We are seeing a migration of people out of our area. We are not retaining some of our youth. I

think it is taxes. It is energy prices. There is a multitude of issues that is causing some of the issues, but obviously we try to be the economic engine in our communities, and anything that can clarify and help us make more loans into our community would be beneficial.

Mr. PITTENGER. So you say that, if we would be able to bring some clarity to this HVCRE rule and other impediments in terms of the regulatory environment, that that would be an enhancement to our broader economy, and you feel the burden could be lifted on the financial institutions?

Mr. FISHER. Most definitely, sir.

Mr. PITTENGER. Okay. Any other comments from any of the rest of you?

Thank you, and I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

With that, we go to the gentlelady from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. Thank you very much, Mr. Chairman.

And while I have some strong concerns with a few of these bills, other bills strike me as a good bipartisan effort to address very serious issues such as Mrs. Love's and Mr. Ellison's H.R. 864, Mr. Trott's bill with Ranking Member Clay on privacy notices, and Mr. Tipton's bill on mobile banking.

I would like to ask you, Mr. Astrada: I am intrigued by Congressman Tipton's MOBILE Act, which is trying to address a legitimate problem, how to make it easier for people who live in rural areas without physical bank branches to open bank accounts. What are your thoughts on this bill? Are there any potential unintended consequences from allowing financial institutions to use an image of a State-issued ID for purposes of verifying a customer's identity?

Mr. ASTRADA. Thank you for that question, and as is our practice, CRL is always open and encouraging access to financial products and wealth building. I think, for this particular bill, just the concerns that we would raise is that the potential of State preemption issues of the States that don't allow such practices and the consumer protections that don't kind of go along with—

Mrs. MALONEY. But this would be a Federal bill.

Mr. ASTRADA. Right. So the States that don't allow the electronic storage or transmission would not have maybe the accompanying consumer protection laws for customer privacy or data loss. So that would be our concern, not so much in terms of expanding the access, especially to rural areas. It would be more the concern of, once State laws are preempted that don't permit such electronic storage, what are the consumer protections that are present, especially when every month or every couple of weeks, we are getting news of an information hack or breach from some of the richest and most well-designed infrastructures in the country, never mind regional banks. So from CRL's perspective, that would be the area where we would have some concern.

Mrs. MALONEY. Would anybody else like to comment on the bill?

Mr. NICHOLS. If you don't mind, from a different, very human perspective, I have three daughters, and if I sit down and watch my daughters, they live on their cell phones. That is their oper-

ational life. I am sure each one of you can sit around your family or in a restaurant and do the same thing.

We have to adjust, in our environment, to be able to serve people the way they want to be served, through the channels they want to be served. It is very important that we keep all that data safe, that data along with other data. But I really appreciate the effort of moving forward with something like this that helps us adapt and try to do it in a very safe manner.

Mrs. MALONEY. Okay.

Would anybody else care to comment?

I think it is a real concern in these rural areas. Upstate New York has huge swaths of land that don't really have banks there.

Mr. NICHOLS. If you don't mind, I come from a town of about 300 people. So—along with Congressman Luetkemeyer—and there are—there are 20 miles between the towns in many cases. So I really do appreciate your response there.

Mr. VERRET. I would also support this idea as essential to bringing a new generation of millennials into banking products, and I think it is also going to be essential in the fintech space. We are going to have to think in a big way about preemption in the fintech space for it to work, not just with respect to licenses but with respect to a wide variety of issues.

Mrs. MALONEY. Thank you. I am rather intrigued by it.

And I would also like to ask you, Mr. Astrada, about the CFPB's authority to penalize abusive conduct. One of the bills, H.R. 2133, would repeal the CFPB's authority to penalize abusive practices and conduct—the UDAAPs. And even though the CFPB has used this authority many, many times, most recently when Wells Fargo had the fake account scandals, the CHOICE Act contained a similar provision. I offered an amendment to reinstate this authority over abusive practices.

And one of the arguments that we heard from the other side of the aisle was that the CFPB did not need separate authority over abusive practices because any practice that would be considered abusive would also be illegal under other laws.

Can you address this argument? Why is it important for the CFPB to have the authority to penalize abusive acts and practices separately?

Mr. ASTRADA. I will answer that quickly, because I know we are running out of time. I would just express a strong concern about melding those two terms together, and that both of those terms, especially "abusive," has specific definitions in Dodd-Frank and has specific definitions that apply to different practices. So to say that one would be the other is a fallacy.

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

Chairman LUETKEMEYER. The gentlelady's time has expired.

The gentleman from Tennessee, Mr. Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman.

And I do want to thank the witnesses for appearing here today and indulging us when we had to take our recess earlier.

Mr. Fisher, I do appreciate your comments that you made about the bill that I will be introducing, the Securing Access to the Affordable Mortgage Act. And I would like to ask you and Mr. Nich-

ols both, as it relates to that, I think we can all agree that the American Dream includes being able to purchase a home. Now, for many first-time home buyers, that ability has become just that, a dream, and it has become one that is increasingly becoming out of reach for a number of them.

Part of the problem is, in my opinion, in rural communities—and I represent west Tennessee, which is the Memphis area, but I also have a lot of the rural part of west Tennessee—we lack an adequate number of qualified appraisers. And under the current standards, as I think you all know and you have talked about, the costs associated with an appraisal on a real estate loan are high compared with the property's purchase price.

If I could, Mr. Fisher, from your standpoint, from a real-world perspective, can you explain to us how the current home appraisal process has impacted mortgage loans on community banks like yours?

Mr. FISHER. Sure. We are in a very small town, part of rural upstate New York. Spencer is a village of about 860 people. It was that in the year 2000, and it was also that in the year 1900, so it has been pretty—I think there are different people. But the appraisal process becomes difficult.

We have definitely seen a reduction in the number of appraisers, certified appraisers, who are available to do appraisals for us in some of our rural markets, which has increased the price and also delayed the turnaround time in getting an appraisal done. So it has lengthened the process. It has increased the cost to the borrower. And I would say it has had a very negative impact on borrowers.

Mr. KUSTOFF. Thank you.

And, Mr. Nichols, can you talk about that from a credit union perspective?

Mr. NICHOLS. I can. So my question would be, have you ever heard of St. Elizabeth, Missouri? Jamestown, Missouri? Centertown, Missouri? Appraisers haven't either. You cannot get comps. That is a severe issue. So, when you go to those more rural areas, to meet the secondary market guidelines that were established post-crisis, you cannot get reasonable comps. So it is a tremendous, tremendous issue.

We both share the same issues trying to get a reasonable appraisal. A lot of the rules that came into the appraisal process were needed, and I think we have much better appraisal rules. However, the recognition that the cost of appraisals has gone up and the ability to get appraisers is really tough.

Mr. KUSTOFF. Thank you.

And, Mr. Fisher, going back to you for a moment. If you could wave a magic wand and create a standard for appraisals for properties, how would you craft it? What dollar limit would you look at? What would be the criteria that you would look at to make it fair?

Mr. FISHER. I think your proposal to have a \$250,000 limit on the loan is very reasonable to be able to do an in-house evaluation or some type of independent review of that property value. I think that would definitely make the process less expensive, quicker, and still most of those loans were portfolioing anyway, so the risk falls on us to do a proper evaluation, so—

Mr. KUSTOFF. You may have said, but what is the population of your community?

Mr. FISHER. The county that I live in, Tioga County, has about 50,000 people. The population of the town of Owega is probably about 10,000, so—

Mr. KUSTOFF. Thank you.

Mr. Nichols, I will ask you the same question. If you could craft a law, create a standard, what would it look like?

Mr. NICHOLS. Again, I do agree with \$250,000 for in-house loans. And again, that local expertise that we can rely on is very valid, and we understand the risks involved there and understand the properties.

Mr. KUSTOFF. Thank you very much.

I yield back the balance of my time.

Mr. NICHOLS. Thank you.

Chairman LUTKEMEYER. The gentleman yields back.

And, with that, we go to the gentleman from Washington, Mr. Heck, for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman.

I think it was just last week we had a pretty interesting hearing, and part of the conversation got toward the regulatory burdens associated with compliance with the Bank Secrecy Act. I looked at the notice for this week, and I kind of got excited. I am one who believes there should be some regulatory modernization.

But I said last week, and I will say again, I went on an extensive tour literally over a year's period of time in my district visiting with small and large and medium-sized banks and credit unions, and I had a sole objective: Show me your compliance burden. Walk me through your compliance burden. And the number one grievance I received was the Bank Secrecy Act.

There are some good ideas in some of these bills today. Some of these bills are good. Some I think go, frankly, way too far, but I don't see any discussion of the Bank Secrecy Act. We could go small CTRs, set in 1972 at \$10,000. If I did my back-of-the-envelope calculation accurately and we held it harmless for inflation, we would be talking \$60,000 today. And I heard that everywhere I went. When they would stack the papers in front of me saying, "This is what we have to do," an awful lot of it dealt with the Bank Secrecy Act.

Look, we all want effective counterterrorism and anti-money-laundering and anti-organized-crime safeguards in place, but the grievance I got was that the benefit is way out of proportion to the effort required. And, frankly, the benefit was not transparent in many instances.

So I know you are here today to talk about these other bills, but I guess I am curious as to whether every financial institution in my Congressional district is abnormal in this regard, or if you could say a sentence or two, Mr. Fisher and Mr. Nichols, about Bank Secrecy Act compliance effects on your institution.

Mr. Fisher?

Mr. FISHER. I appreciate the ability to make some comments. The Bank Secrecy Act is by far—it is a huge burden on community banks, and we would greatly appreciate the \$60,000 CTR limit would be huge.

Mr. HECK. Let the record show I didn't actually specifically propose \$60,000, just an appropriate adjustment as collaboratively arrived at.

Mr. FISHER. We are a bank. We have 97 full-time-equivalent employees. I have one employee who is completely dedicated 100 percent to BSA. Plus, as a banker, we have to—we purchase software that we pay annual maintenance on because no physical person can do all the BSA monitoring that is required by us to do.

One of the things I do think would be great is if we got a tax credit for the money that we do spend on BSA, since it is really a government—it is helping the government out, not really helping my bank out so—

Mr. HECK. Mr. Nichols?

Mr. NICHOLS. BSA, obviously, is an incredible burden. You can leverage the cost-benefits. It is such an expansive piece of legislation, it would really be hard to cover that.

Mr. HECK. Do you agree that it is not apparent to those of you upon whom the compliance burden falls what the benefit is in proportion to the effort required? Or are you fully embracing the Bank Secrecy Act as written with every crossed "T" and dotted "I" existent in the statute? If so, Mr. Fisher would like to talk with you after the hearing.

Mr. NICHOLS. No, I think that is a loaded question.

Mr. HECK. Oh, really? How perceptive of you.

Mr. NICHOLS. No, the BSA, obviously, is quite burdensome, as is anything CFPB-related.

Mr. HECK. It predated CFPB. Let's be clear about that.

Mr. Astrada, I have one last question for you. I note with interest in your conclusion that CLR understands and supports the need for appropriate regulatory flexibility for small depositories.

Okay. Name two.

Mr. ASTRADA. Name two?

Mr. HECK. Increased regulatory flexibilities that you think would be appropriate. Because I think regulatory modernization is an idea whose time has come. My big issue on this committee is that we overreach and then get nothing. You have said, having put together some really well-written objections to what we would agree is regulatory overreach, that you think appropriate regulatory flexibility is—there is a need for it. So be specific. Help us out here, Mr. Astrada. We are trying to make some progress.

Mr. ASTRADA. And I did make a fine point in some of my oral testimony, especially considering BSA reform. We think there is a lot of promise and the ICBA supported having the identity—the account owner information verified at the time the entity is formed by Federal or State agencies, to take the onus away from the Federal institution.

If you want to go into a mortgage, we said that we think that is a fair and effective increase of the QM standard of 200 basis points over APOR, as opposed to 150, which would greatly extend the amount of mortgages that are currently excluded from safe harbor.

So there are a few, and I would be more than happy to send to your staff—

Mr. HECK. We would appreciate—I am way over my time here. And you are incredibly indulgent.

Thank you, Mr. Chairman.

And thank you, Mr. Astrada. Please do send them.

Mr. ASTRADA. Thank you.

Chairman LUETKEMEYER. I thank the gentleman from Washington. His time has expired.

Just a heads-up in response to your questions, gentlemen. That is the reason that we had an entire hearing 2 weeks ago on BSA. It is an important issue, extremely important, and it is something that the financial institutions have brought to our attention, and that is why we dedicated one entire hearing to that.

But I appreciate you bringing it up again because it is very important that we continue to hear from the folks who are in the field, who have to deal with this issue, because it is very, very important.

The gentleman from Georgia, Mr. Loudermilk, is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

As has been mentioned many times in these hearings, Georgia was specifically hit hard during the financial crisis, and lost more banks than any other State. And as Professor Verret, I think, adequately stated, it was regulatory barriers, I think, is what is suppressing the creation of new banks, which has left a void. In Georgia, we have 52 counties that have no community bank in them. We have three counties that have no bank whatsoever, no bank branch at all. And so I am really pleased about the hearing and the bills we have here. But one of the bills that I am cosponsor of, the MOBILE Act, will actually bring I think some commonsense reforms to remove some barriers that would allow a lot of our underbanked or unbanked communities, such as these rural areas that have no bank branch whatsoever, to use technology.

The irony is, Georgia is also leading in the fintech market in certain areas. So, Mr. Nichols, I was wondering, could you just mention how some of these common-sense reforms would actually help in removing some of these barriers to implement technology?

Mr. NICHOLS. Well, talk about the MOBILE Act in particular. I think, again, as we recognize the different channels that are becoming available, service channels that I won't even say younger people; it is all age groups who can use those channels to the rural areas. I think we forget about those sometimes as being underserved. And it is geographically underserved. They don't have the ability to get to our offices or the time zones don't match or whatever the case may be. So I think moving those channels—again, in my position of being a member of a credit union, it is me listening to my members and saying: We are trying to provide things that can help you be a better owner and better participant of credit unions. So I do applaud that effort.

Mr. LOUDERMILK. And I know it doesn't only affect Georgia. It is in maybe some other States, but I think Georgia is a good illustration. If you are in one of those counties that is unbanked, you may have to go two or three counties over to get to a bank branch to make a deposit or what we take advantage of being able to do day to day financial operations. So I appreciate your support for that.

Another bill that I cosponsored here is the CLEARRR Act. And, again, when you look at the regulatory barriers that are really suppressing the creation of new banks that would fill some of these voids, especially with the small banks—I had a president of a small bank in my office the other day and he was talking about the regulatory burden that was placed on his bank where he could not make a simple \$3,500 loan to a gentleman that he knows, and he knows would be good for it. He has a family. He wanted to buy a car, and his numbers just weren't there. And it was the consumer who was hurt by that.

And I know that the CLEARRR Act actually works on removing some of these regulatory barriers affecting small banks.

Mr. FISHER, could you maybe address a couple of these of why it would be so important for a bill like the CLEARRR Act?

Mr. FISHER. The CLEARRR Act just, a lot of the mortgage relief, half of it is geared toward mortgage relief. It would definitely improve clarification. It would reduce some of the regulatory burden. When I came into the bank 25 years ago, we had—compliance was a part-time position for somebody in the bank. Today, I have basically 2½ FTEs completely dedicated to compliance functions.

Mr. LOUDERMILK. And yours is a small bank.

Mr. FISHER. We only have 97 employees total. And the only person who doesn't have any compliance responsibilities in my bank is my courier who takes work between the offices. Everybody else in the bank has compliance functions that they are responsible for.

So just a clear relief act or the CLEARRR Act would definitely help reduce that burden and help just narrow the focus down so we are more clear.

Mr. LOUDERMILK. Do you think that the CLEARRR Act and maybe a combination of the bills would clear the way for the creation of new financial institutions that may be suppressed because of heavy burden?

Mr. FISHER. I would greatly hope so, since there have only been three new banking charters since the financial crisis. On average, prior to the crisis, we had about 100 new charters per year. So it would be nice to see some new charters coming back on line for community banks.

Mr. LOUDERMILK. Mr. Chairman, the way I see this, it is the consumer who is ultimately hurt by this. It is not the banker. It is not the institution. It is the consumer.

And, Mr. Chairman, I also have some legislation, the Fair Credit Reporting Act Liability Harmonization Act, which I know you are supportive of, that I think would bring some common-sense reforms, and I look forward to working with you on that.

Chairman LUETKEMEYER. I thank the gentleman. I look forward to working with you on that. And we are probably going to schedule another hearing in September or October, for another group of bills like this. So we want to include yours in that and have a full discussion at that time. So thank you for that hard work.

The gentlelady from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Astrada, one of the bills that we are reviewing today would allow the OCC to approve the granting of deposit insurance for a

new operating national bank or Federal savings association. It is important to note that the OCC used to have this authority, but because of clear abuses, Congress abolished that authority in 1991.

Do you think returning to this discredited policy puts the Deposit Insurance Fund at risk and threatens the safety and soundness of the banking industry or the banking system?

Mr. ASTRADA. Thank you for that question. And in touching base with our research team in researching this bill, it is lost upon us how this provision has targeted regulatory relief for small institutions. We think the FDIC is well-positioned with a great history of managing financial downturns, the shuttering of banks, and to shift that responsibility or to expand that responsibility to the OCC, it raises more questions than answers, especially given the history of the program that you have outlined.

Ms. VELAZQUEZ. Thank you.

Mr. Astrada, more and more Americans are moving to fintech business to meet their financial needs. Are you concerned that if this bill were passed and the OCC had sole authority to both grant charters and deposit insurance, they would largely be able to dictate the terms of the fintech charters without the input of other regulators?

Mr. ASTRADA. Again, thank you for that question. And I think it is along the similar lines of my first answer, that we recognize innovation; we recognize technological changes. CRL is a policy affiliate of a CDFI based in North Carolina and is very much informed by the industry. Of great example of the concern we have is OCC charter preempting State consumer law protections on payday loans where we have very old school predatory lenders calling themselves innovative technology companies to be able to avoid State rate caps based on a potential Federal charter. So I think the OCC, while it is leading the pack on this—I think there is a lot of discussion to be had in terms of what national charters will have on State consumer protection issues, especially when it comes to preemption and, like I said, old school predatory lenders calling themselves innovative fintech lenders.

Ms. VELAZQUEZ. Thank you.

Mr. Chairman, I have a letter from the Conference of State Bank Supervisors that I would like to enter into the record.

Chairman LUTKEMEYER. Without objection, it is so ordered.

Ms. VELAZQUEZ. And I also have a letter from over 40 civil rights and community groups, including the NAACP and the American Civil Liberties Union, that I would like to enter into the record, and these are letters that are raising a number of concerns about the proposals that we are discussing today.

Chairman LUTKEMEYER. Without objection, it is so ordered.

Ms. VELAZQUEZ. Mr. Astrada, as you may know, I am the ranking member of the Small Business Committee. In that role, I have continually pushed for the expansion of credit opportunities for women- and minority-owned small businesses. Unfortunately, there remains an information gap regarding the demographics of small business borrowers. Section 1071 of Dodd-Frank was designed to fill this gap and identify potential shortcomings in lending markets.

Now, the CLEAR Act is seeking to repeal Section 1071. Can you explain the importance of collecting this data?

Mr. ASTRADA. Thank you for that question. And, yes, we are very much aligned with that in terms of the only way to combat structural and historic discrimination and exclusion is through robust datasets. And any effort to roll back the collection of data, especially among discriminatory behavior, whether it is disparate impact or intentional is something that we are very concerned about.

And, again, I would just stress that it is not so much we are ignoring the cost implications of collecting this data; it is just that what is in the bill and simply blowing up thresholds and expanding exemptions beyond what seems to be reasonable is very concerning for us, especially as it applies also to the HMDA and the 1071 data. We share your concern.

Ms. VELAZQUEZ. Thank you.

I yield back, Mr. Chairman.

Chairman LUETKEMEYER. The gentlelady yields back.

With that, we go to the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman.

I would like to ask unanimous consent to enter into the record letters of support for H.R. 1457, the MOBILE Act, from the American Bankers Association, the Consumer Bankers Association, the Center for Financial Services Innovation, the Financial Services Roundtable, and the Innovative Lending Platform Association.

Chairman LUETKEMEYER. Without objection, it is so ordered.

Mr. TIPTON. Thank you, Mr. Chairman.

And I thank the panel for taking the time to be here.

Mr. Nichols, I would like to start with you. According to a 2015 FDIC survey of the unbanked and underbanked, there are approximately 50.6 million adults considered entirely unbanked and another 51.1 million adults who are considered underbanked. Is it concerning to you as someone who is president and CEO of a credit union that there are at least 67 million people who do not have adequate access to the financial system, cannot conveniently withdraw their money, control their finances, and may lack protections to be able to prevent theft of their funds?

Mr. NICHOLS. Yes. Actually, I thank you for the question. I think it is a tremendous opportunity for us in industry and, frankly, as citizens of the country to bring those people into the regulated and very growing service industry. It is much better for them to come out of "the darkness" and operating behind the scenes and be able to offer services, such as mobile and technological services, that could provide much better service for them.

Mr. TIPTON. Thank you, Mr. Nichols.

And, Professor Verret, I am very pleased to have the broad bipartisan support for this legislation as you can see on this committee.

Without access to the traditional financial system and regulated financial institutions, what will happen to the unbanked and the underbanked without access?

Mr. VERRET. Yes, I think this bill is a terrific approach to promoting access for particularly low- and middle-income people who are having trouble accessing traditional services. I think it would

be helpful to the traditional banking industry, as well as to the new fintech space and alternative financial services industry.

Mr. TIPTON. And I appreciate that answer. Do you feel when we are talking about the underbanked that unregulated lenders actually pose more of a threat rather than having something like the MOBILE Act that is going to be going through traditional instruments, like our credit unions, our banks, to be able to provide those services, making those in different circumstances maybe a little more vulnerable?

Mr. VERRET. Well, it depends what you mean by unregulated lenders. If you mean nontraditional lenders regulated at the State level, I wouldn't say that is necessarily more risky than the traditional banking system. But if you mean sort of loan sharks and folks making illicit loans, I would certainly want to discourage that and provide people other opportunities.

Mr. TIPTON. The FDIC also found that the unbanked and underbanked rates were higher among the following groups: lower-income households; less educated households; younger households; Black and Hispanic households; and working-age disabled households.

As we discuss these legislative policies and encourage financial inclusion, do the FDIC survey results corroborate with what you see currently, Professor?

Mr. VERRET. There was some good news in 2015 but not nearly in terms of the FDIC survey of the unbanked and underbanked. We could do a lot better. And so I certainly salute this committee's effort to do so, particularly with this legislation.

Mr. TIPTON. Thank you. And just one more question for you, Professor. According to the same survey, roughly 4 in 10 unbanked households and 3 in 4 underbanked households have access to a smartphone.

The FDIC concluded that the use of smartphones to engage in banking presents promising opportunities to use that mobile platform to increase economic inclusion. Would you agree with that statement?

Mr. VERRET. I do. And, unfortunately, I think the FDIC hasn't stayed true to that observation. We have already seen some hostility to fintech among, at least the existing FDIC management, certainly with respect to how they regulate bank services providers. I think they are fairly hostile to the future of fintech. And so I would prefer they stay more true to that observation. I think they are right about that.

Mr. TIPTON. Thank you, sir.

Mr. Nichols, my legislation, the MOBILE Act, would create regulatory certainty by explicitly allowing financial institutions to be able to verify customer identity by copying a State-issued driver's license or personal identification card through the mobile app. As CEO of a financial institution, do you see the merit of engaging future consumers through a mobile banking platform?

Mr. NICHOLS. Absolutely. So let me back up and describe just a little bit about my credit union. So we are located in Jefferson City. We serve healthcare people. We serve Missouri National Guard people. We serve people who work for the Missouri Farmers Association. All of those people are spread throughout the State of Mis-

souri and, in many cases, in other countries. So the ability for us to actually grab that data without physically being in touch with them is a tremendous benefit for them and for my credit union.

Mr. TIPTON. Thanks so much, Mr. Chairman.

I yield back the balance of my time.

Chairman LUETKEMEYER. The gentleman's time has expired.

We now go to another gentleman from Missouri, Mr. Clay. The ranking member is recognized for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

And this is a question for Mr. Astrada, Mr. Fisher, and Mr. Nichols.

Mr. Fisher, the organization you represent, ICBA, along with other bank associations, wrote to Congress saying: "We are greatly concerned that the Administration's forthcoming Fiscal Year 2018 budget may propose cuts to the CDFI fund. We strongly urge you to maintain strong funding levels."

The letter goes on to say: "During the 2016 Presidential campaign, the need to create jobs and revitalize the economies of disenfranchised rural communities and neglected inner cities was a key theme. CDFI banks work in the exact communities that were the focus of this conversation. Community-based financial institutions are uniquely positioned to understand local credit needs, which is why there is historic bipartisan support for the CDFI fund."

And, yet, the President's budget as well as the appropriations bill the House Republicans are advancing would severely cut the program by nearly \$60 million or 23 percent.

Mr. Fisher, should Congress follow President Trump's lead and impose severe cuts on the CDFI fund? And if so, if they do that, who will lose?

Mr. FISHER. I am not educated enough to tell you who is going to lose, but I do know that ICBA does support funding the CDFIs, so I would say that we would back the idea of continuing to fund the CDFIs where they have been funded.

Mr. CLAY. All right.

Mr. Nichols, what are your views on the CDFIs? Should Congress maintain strong funding for this program?

Mr. NICHOLS. I will back up and say we are a CDFI. We are CDFI-certified, so I absolutely. Those dollars that go to the institutions help in programs and reinvest in those communities and my members, in this particular case. So, absolutely, we would really appreciate the funding in that program.

Mr. CLAY. Thank you for that response.

And, Mr. Astrada, I understand Self-Help, a credit union that CRL is associated with, is a CDFI. How problematic are these steep proposed cuts to that fund?

Mr. ASTRADA. Thank you for that question. Yes, and that is correct. We are the policy affiliate of Self-Help, and we have firsthand knowledge of the importance of CDFIs throughout the country for very much the same reasons that you pointed out: accessibility, serving communities that would certainly be disenfranchised from mainstream banks, whether they are underbanked. We strongly support robust funding for CDFI and would be at the forefront of

those fighting against any cuts and the effects that that would have.

Mr. CLAY. Thank you for that.

And, Mr. Astrada, we received a letter signed by over 40 civil rights and consumer groups opposing H.R. 2133, or the CLEAR Act. These groups said that H.R. 2133 includes a number of provisions that would, under the innocent-sounding guise of regulatory relief, drastically undermine our Nation's most important civil rights and consumer protection laws. They also highlighted how the bill changes fair lending laws, changes data collection standards for mortgages and small businesses, and weakens the CFPB. Do you share these concerns, or could you discuss who would be harmed by these changes?

Mr. ASTRADA. Thank you. Yes. And we are very much in support of that letter and realize that, as I said to a previous question, a lot of the discriminatory lending, a lot of the adverse effects of implicit bias require robust data collection to really track and find—find where this behavior is going. And rolling back the collection of data under a guise of cost is not lost upon us, but there is a tradeoff. And a lot of, I think, what we are disagreeing on is really methodology as opposed to result. I don't think anybody is for discrimination, just how we are going to root out the problem.

And CRL, from a lot of civil rights advocates that signed on to that letter said that this data is not only crucial but necessary to get the market analysis of where discrimination is happening, both historic and, like I said, on the individual level.

Mr. CLAY. And I appreciate your response to that.

Mr. Chairman, I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

The gentleman from Michigan, Mr. Trott, is recognized for 5 minutes.

Mr. TROTT. Thank you, Mr. Chairman.

I want to also thank the panel for their time this afternoon.

Professor, I want to start with you. Do you think the UDAAP authority that is given to the CFPB is necessary to keep these rogue financial institutions accountable, or do you think, on balance, it, in general, compromises financial institutions because it creates confusion and uncertainty regarding their business plans?

Mr. VERRET. I believe that the authority that pre-dated Dodd-Frank under UDAAP, the unfair and deceptive practices prohibition, provides more than enough leverage for CFPB to go after bad actors. I think it most certainly would have covered—without the abusive sort of unclear section, it would have most certainly covered all the activity of Wells Fargo. That clearly falls squarely within deceptive practices. Anybody who knows that story knows that.

And the abusive definition, just going through how the CFPB has utilized its sole abusive authority, when it has brought solely abusive actions, it is often—you see some settlements there that stretch the rule of law, to me at least, including one in which they went after abusive practices saying: "Well, this provision was just too far down in the contract, too deep in the contract for anyone to read, so it must have been abusive because it was on page 100

rather than on page.” That strikes me as highly problematic in the rule of law culture.

Mr. TROTT. Do you think some of the changes in the chairman’s bill we are considering with respect to the CFPB will, on balance, help consumers more than hurt them?

Mr. VERRET. I do, absolutely. Yes. And with respect to data collection, I think we have to do a balancing test, a cost-benefit analysis on data collection. Look, the IRS would love to get unfettered access to all of our bank accounts. I have no doubt it would help the IRS catch tax cheats. But I don’t want the IRS digging through my data. It is too cumbersome, and I have financial privacy. I think we can think about that in the context of HDMA and other collection, especially when the SBA is already collecting a lot of this data anyway.

Mr. TROTT. I want to switch topics. Thank you, Professor.

Mr. FISHER, so, last Congress, we worked to streamline some of the privacy notification requirements relating to community banks. Has that affected your operations at all?

Mr. FISHER. The privacy notices, not having to send out a privacy notice annually if you haven’t changed it has been a very positive impact for my bank.

Mr. TROTT. Has it had a good impact on your customer service?

Mr. FISHER. Privacy hasn’t really affected—

Mr. TROTT. People probably aren’t calling saying, what is this?

Mr. FISHER. No, people are definitely not calling asking, why am I getting this notice again?

Mr. TROTT. Although they probably miss that stack of paper next to Mr. Nichols. I know it is for mortgage origination, but it is good coloring paper for their kids, I would suspect.

Have you saved some money because of it?

Mr. FISHER. We definitely saved some money. I am not sure I can quantify, but I know it is obviously less postage, less paper.

Mr. TROTT. What did you do with the money?

Mr. FISHER. What did I do—

Mr. TROTT. Maybe lend it to some businesses or—

Mr. FISHER. Definitely, it has been put back into use in the community as far as more loans and trying to—

Mr. TROTT. Sure. If a customer calls asking for the notification, do you send it to them?

Mr. FISHER. Sure. Of course.

Mr. TROTT. Do you charge them for it?

Mr. FISHER. No.

Mr. TROTT. Okay. So Mr. Clay and I cosponsored a bill, the Privacy Notification Technical Correction Act, one of our tougher acronyms here in town, and it largely expands the scope of these disclosures, and I think it will be beneficial.

Mr. Nichols, I want to talk but your credit union for a minute. How many years have you been in business?

Mr. NICHOLS. How many years have we been in business?

Mr. TROTT. Yes.

Mr. NICHOLS. We opened in 1954, September to be exact.

Mr. TROTT. And you said earlier you have about \$200 million in assets.

Mr. NICHOLS. Yes.

Mr. TROTT. How many employees, again, are dedicated to compliance.

Mr. NICHOLS. To compliance, we have about two full-time employees.

Mr. TROTT. So do you get sued very often by your members?

Mr. NICHOLS. No. Our members own us, so it seems it would be like suing yourself for the most part.

Mr. TROTT. So do you think Dodd-Frank had anything to do with it, or you always ran a good operation and you really didn't need the benefit of all the regulations.

Mr. NICHOLS. I will go back and say the definition of credit unions—

Mr. TROTT. Okay. We will switch that. Assuming your members don't want to sue themselves.

Mr. FISHER, how about community banks?

Mr. FISHER. We have not been sued by our customers. To my knowledge, in our 150-year-plus history, we have never been sued.

Mr. TROTT. Right.

I thank you.

I yield back, Mr. Chairman.

Chairman LUETKEMEYER. The gentleman yields back.

And the gentleman from Texas, Mr. Green, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

And I thank the ranking member as well.

I am a son of the South. What the Constitution accorded me, my friends and neighbors took away from me. I lived through invidious discrimination. I know what it looks like. The KKK burned a cross in my yard. I know what it smells like. I had to go through filthy waiting rooms and colored restrooms. I know what it sounds like. I have had ugly things said to me. So I know what invidious discrimination is like. I know the harm that discrimination can cause. And I am very much concerned about Section 7, which reads—it amends the Equal Credit Opportunity Act and the Fair Housing Act to require intent to discriminate.

I am very much concerned about this, because whether by accident or design, discrimination still hurts. The pain is not eased simply because it was done without intentionality. And I am talking about H.R. 2133, Section 7.

So I would like to visit with Mr. Astrada for just a moment.

Mr. Astrada, does making the requirement one of intentionality to have a cause of action, does that in some way decrease the harm that is caused when one is discriminated against?

Mr. ASTRADA. That particular question, absolutely not. It doesn't decrease the harm it causes because it was intentional or in effect rather than intent.

Mr. GREEN. And does it benefit the people who are discriminated against to require intentionality?

Mr. ASTRADA. No. In fact, I would say it puts a barrier toward equity.

Mr. GREEN. Do you find that discrimination exists in banking?

Mr. ASTRADA. Yes. There is a long history of not only discrimination in the marketplace but through Federal Government programs, with FHFA and redlining, and so I think there is more than

enough evidence on both the industry and government side to show that.

Mr. GREEN. When you balance the benefits with the liabilities associated with this, do the liabilities of doing this outweigh the benefits such that it is just not a good thing to do for people who are being harmed?

Mr. ASTRADA. I would agree with that, but I would reframe that. I think that it is a privilege to look at racism in a cost-benefit analysis. I think if you are the victim of racism and discrimination, you don't have the privilege of saying, what are my feelings compared to your data collection efforts? So I would think that, especially around the issue of disparate impact, which has been upheld in the housing discrimination cases with the Supreme Court, employment cases all the way back to 1970, that racism is not a cost-benefit question. So, while we want to be supportive of industry and be mindful of the costs that it would take to collect data to root out systemic discrimination, I think that having the privilege to say, "What is the cost-benefit of racism versus how much do I have to pay to collect that data," is a very dangerous way to approach the problem.

Mr. GREEN. Thank you for your very thoughtful response.

I would just end with this: If you haven't known the pain of discrimination, it can be difficult for you to appreciate my commentary. But when your neighbors deny you what the Constitution accords you, it can be very painful. And there are a good many people in this society who will never suffer any pain if we make this change, but there are a good many other people who will be subject to harm if we do so. And we ought to want all people to have the same opportunities in this society. This is a bad piece of legislation. I absolutely oppose it, and I want the record to reflect that I would never support something that is going to harm people in this fashion.

I yield back the balance of my time.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentlelady from New York, Ms. Tenney. She is recognized for 5 minutes.

Ms. TENNEY. Thank you, Mr. Chairman.

And thank you, panel. You are finally at the end, I think.

I just want to, first, before I get started, say thank you. And it is an honor to have Mr. Fisher here, someone who hails from my region, and we talked a little bit about it earlier with Chair Yellen how rural our area is and how difficult it is for our community banks to survive.

And I appreciate your testimony dealing with a number of issues. As a former bank attorney, I represented a number of community banks. You discussed really great issues, and now we think we have some solutions on the mortgage end. And I just wanted to just welcome you and say thank you for being here and helping advocate for our region and for what the real problems are in communities like ours that are struggling with, as you say, high regulatory burdens, taxes, out-migration of people, and all those things.

And I just want to say thank you. I don't have any questions. I think you have been asked an awful lot of questions today because

you really define what is going on in our region, which I call the Rust Belt of New York.

I wanted to focus, just switching gears a little bit, to Professor Verret about just some of the issues surrounding the concern about the lack of de novo charters being started in the Nation and credit unions, for that matter, since the passage of Dodd-Frank in 2010.

It is my opinion that the lack of new banks has been an issue. We talked earlier with—speaking with Janet Yellen about the number of community banks that are just buildings on corners or overgrown with grass, and we have lost many of them, or they have been merged into larger entities, and it has hurt our small business community and our ability to lend to smaller institutions.

Thankfully, we have banks like Tioga Bank still forging ahead in a small community and providing those vital services to our rural residents. But between 2000 and 2008, we had almost 1,400 new institutions. Since 2010 and the passage of Dodd-Frank, we have had 5 new bank charters, and 16 new credit unions chartered in the United States. And so I guess I would like to ask you what your opinion would be on how we can increase the number of de novo charters, streamline the process, and make it easier to bring them onboard? If you could comment on that, please.

Mr. VERRET. Sure. Thank you for that question. An analysis by the Federal Reserve Bank of Richmond points to the problem. It diagnoses the problem of the lack of de novo charters squarely in the regulatory field. Overregulation is the problem, particularly with the chartering process.

The intent was never for—I think the intent behind the design of Federal banking law, which has primary Federal regulators and secondary regulators, was to make sure that regulatory turf wars, bureaucratic turf wars, didn't prevent new chartering and didn't prevent lending and growth.

Ms. TENNEY. Are you referring to the—excuse me, the dual approval process? Is that what you are referencing?

Mr. VERRET. Sure. That is part of it. That is the important part of it. And I think this is a great idea, and I would look to a number of other ideas that have been raised, like providing more corporate governance flexibility for new banking institutions as well. But that is absolutely the key to the problem, so I commend that.

Ms. TENNEY. So, streamlining it. Would you go to a—obviously, it would require insurance. We wouldn't want to have any of this leak into areas outside of the chartered banks, banks and union—or banks issue.

Can you just make—tell me what you feel about the—how we would manage that, say, if we were to draft legislation on dealing with the dual aspect of the appropriate—or the process with FDIC versus OCC. How would you reconcile that?

Mr. VERRET. I think, both with respect to chartering and also with respect to the exam process, an institution's primary Federal regulator ought to be given some deference. This is a problem in examination as well, where we have examiners examining the same thing within a few weeks of each other and not even connecting in any way on specialized exams. So I think the OCC's determinations of chartering and its own reputational risk as an agency are going to keep it from doing anything inappropriate. And

I also think, with respect to the fintech space, though, most fintech firms are not going to need deposit insurance or take deposits, some of them might, and so I think this would be important in that arena as well.

Ms. TENNEY. Thank you very much.

I thank the panel and, again, Mr. Fisher from my region. I really appreciate it.

And I yield my time back, Mr. Chairman. Thank you.

Chairman LUETKEMEYER. The gentlelady yields back.

Mr. Emmer from Minnesota is recognized for 5 minutes. Welcome.

Mr. EMMER. Thank you. Thanks to the Chair for holding this hearing and for allowing me to participate.

And thank you to the panel. I appreciate you being here today and taking all this time. In particular, I just wanted to recognize Mr. Fisher and Mr. Nichols. Community banks and credit unions are incredibly important to my State, as I expect they are all across this country.

In 2008, at the time of the financial crisis, we had about 8,000 of each across the country. A year later, a year after the crash, we still had about 8,000 community banks and 8,000 credit unions across this country. Now, it has been almost 7 years since Dodd-Frank was passed, and we are left with somewhere around 6,000 of each.

I believe we need everyone in the financial services food chain. We need the biggest banks. We need the regional banks, community banks, credit unions—everyone. It just so happens, though, that community banks and credit unions support all of our small communities, because I can guarantee you, if you live in Moore, Minnesota, you are not going to Goldman Sachs for a loan. If you live in Hallock, Minnesota, you are not going to go to a Citibank. And if you live in Tower, Minnesota, which some of you might have heard of—sometimes it is called one of the coldest spots in the country; you might remember those battery commercials they used to do in Tower, Minnesota—you are not going to go to JPMorgan Chase. You are going to go to your local, probably family-owned community bank or credit union.

It is imperative that we enact policy that would allow these financial institutions to survive and thrive again, which is why today's hearing is so important and timely. And there are several excellent proposals from this committee, and in Chair Luetkemeyer's Community Lending Enhancement Relief and Regulatory Relief Act, there are two, though, that interest me today.

One of the Chair's proposals would amend the FDIC's definition of a deposit broker that will allow for reciprocal deposits so community banks can keep money in the local community that usually is used by community banks, minority-owned banks, community development banks, that sort of thing.

And the other one would amend the Home Mortgage Disclosure Act of 1975 to exempt small banks and credit unions from Regulation C if they have originated 1,000 or fewer closed-end mortgages in each of the preceding 2 years or if they have originated 2,000 or fewer open end lines of credit in each of the preceding 2 years.

I guess I will start with Mr. Fisher. Can you tell the committee why the reciprocal deposits are so important, especially right now?

Mr. FISHER. Well, reciprocal deposits are—it is a great source of funds. If I look at my bank, personally, about 30 percent of our total deposits are municipal deposits. And municipal deposits, anything that exceeds FDIC insurance, we have to have a bond pledged against that deposit. So, whether it is reciprocal deposits, we can get full FDIC coverage using reciprocal deposits. However, there is still kind of a negative perception about reciprocal deposits because they are considered brokered funds.

So we would greatly appreciate this amendment so that they would not be considered brokered funds.

Mr. EMMER. What is the alternative if you don't fix this? What is the alternative? The money leaves your community, doesn't it?

Mr. FISHER. Correct. The money—obviously, as rates are increasing, lending is increasing, deposits are our raw material. That is what we lend out.

Mr. EMMER. And we want to put it to work in our communities, our small communities?

Mr. FISHER. We really don't want to see municipal deposits go out of our local communities, because that is helping to fund growth in our communities.

Mr. EMMER. Right.

Why don't I expand it to Mr. Nichols, there has been some talk here, and in the little time left, there has been some talk about the 48 points, all this information. I think the Chair started the second part of the hearing talking about a closing where he was trying to sell property, and there is this big packet.

Why do we need all of this information that the CFPB has put in this rule? Why?

Mr. NICHOLS. We don't, and the consumers don't want it as well. Again, I will go like this, but there is—the more paper that we give to the consumer, the less they read, the less informed they are. It is a more expensive process, which, ultimately, guess who pays for that process.

Mr. EMMER. Well, and very quickly, community banks, credit unions, people on the lower end of the financial system, they are getting out of the business.

Mr. NICHOLS. Right.

Mr. EMMER. So it is not even that we don't read it; it is that we may not get the choice.

Mr. NICHOLS. That is actually a great point. It is good to have multiple options. I will go back to another Congressman's point in that the more options you have, the less systemic risk you have by having the too-big-to-fails out there and the more choice you give to the consumer.

Mr. EMMER. Right.

Thank you, again, Mr. Chairman. Thanks for your patience.

Chairman LUETKEMEYER. The gentleman's time has expired.

The gentlelady from Utah, Mrs. Love, is recognized for 5 minutes.

Mrs. LOVE. Thank you. Thank you all for being here today.

I would like to broaden our focus now to a consumer issue, that of debt collection, which is the topic of H.R. 864, the Stop Debt Collection Abuse Act of 2017.

Every year, millions of Americans are touched by debt collection, many of them low- to middle-income families. In fact, the CFPB's most recent monthly consumer complaint report in June 2017 showed that the most complaints about financial product or services were debt collection, including in my home State of Utah.

Within the broader topic of debt collection, I would like to focus on the Federal Government's use of private debt collection agencies to assist in its debt collecting uses and efforts.

Under the Debt Collection Improvement Act of 1996, many Federal agencies can, after a prescribed amount of time, refer delinquent Federal nontax debt to the Department of Treasury for collection activity by an approved private debt collection agency.

In addition, some Federal agencies, such as the Department of Education, managed their own use of private debt collectors. Most notably, the IRS was recently mandated under the Fixing America's Surface Transportation Act (FAST Act) to revise its use of private debt collectors to collect delinquent individual income taxes and started doing so in April of this year. Yet questions have been raised about the Federal Government's use of debt collectors or private debt collectors.

In recent years, the Department of Education announced that it was ending contracts with five private debt collectors that have been providing inaccurate information to borrowers about loan rehabilitation programs. In addition, there are significant concerns about the IRS' renewal of private debt collectors, particularly with regard to private and consumer protection, including fears that scammers would pose as IRS debt collectors to commit fraud against vulnerable individuals. So, in a nutshell, this is about making sure that the Federal Government complies with the same activities as the private sector when it comes to collecting debt.

So I would like to start by asking whether anyone on this panel has been tracking the most recent round of debt collectors being hired on behalf of the IRS? I know it is very recent, but do we have any feedback on that program yet?

Mr. Astrada, do you know anything about that?

Mr. ASTRADA. Well, at CRL, we do support the provisions of debt collected by third-party collectors for the Federal Government. In terms of the Hanson case, we are still assessing the impact of the decision and how it relates to that. So I would love to stay in touch with your staff as we work through it ourselves and keep you updated on what we plan on putting out.

Mrs. LOVE. Okay. So, just to give everyone an idea, H.R. 864, the Stop Debt Collection Abuse Act, is a bipartisan effort on behalf of myself, Representative Ellison, Representative Cleaver, and Representative Hill, to make sure that the Federal Government uses the same practices that the private sector uses.

Also, just as a follow-up, have you tracked any other issues with private debt collectors hired by the Federal Government? Has anyone tracked any of those activities or have any thoughts that maybe they can share?

Mr. VERRET. I haven't tracked that, Congresswoman Love, but it strikes me that the proposal that you are talking about, that particular section of the bill, is consistent with the taxpayer bill of rights that I think would be relevant, and so it sounds like a pretty good approach to me.

Mrs. LOVE. Okay. Anyone else have anything to offer? No? No? Nothing? Okay.

I would also like to talk more generally about the role of debt collection in consumer credit lifecycles. So the Federal Reserve Bank of New York recently published a report confirming the important role of debt collecting in the credit-based economy. The analysis found that restricting collection activity leads to a decrease in access to credit across the full spectrum of borrowers and to the deterioration of indicators of financial health. So it is very important, as always, that we find the right balance between protecting consumers and making sure we don't inadvertently restrict credit availability.

So, just really quickly, Mr. Fisher, as one of the two bankers on the panel, can you tell us about the significance of debt collecting and the availability of consumer credit?

Mr. FISHER. We handle our own debt collection. We don't outsource it at all. So if a loan goes bad, we handle it ourselves. Obviously, if a bank takes a loss and they are not able to collect on their debts, it is going to make them less likely to lend money out again.

Mrs. LOVE. Okay. Thank you.

Chairman LUTKEMEYER. The gentlelady's time has expired.

With that, we go to the gentleman from Indiana, Mr. Hollingsworth. Welcome. And you are recognized for 5 minutes.

Mr. HOLLINGSWORTH. Mr. Chairman, thank you so much for the time. And knowing that I am not on the subcommittee, thank you for allowing me to crash the party here.

One thing that I am absolutely passionate about is making sure that consumers have more and more choices in the products that they want to use, because, ultimately, as I think Sam Walton said, consumers tend to choose with their feet, with their wallet, the products that win and lose. I know what I hear every single day in my district is that they are tired of bureaucrats in Washington telling them what products they should be able to choose, what products they shouldn't be able to choose, what those products should look like. They want to get a multitude, a cornucopia of offerings and then be able to decide for themselves what they want. And I know what I hear from not just banks, not just credit unions, not just lenders, but from every company as well that I have run into, is that they are tired of servicing a bureaucracy in Washington, a regulatory state in Washington, instead of servicing their customers, instead of working for their shareholders, instead of working for their mutual owners. They are tired of servicing this bureaucracy that puts more and more demands on their business, on their time and not allowing them to—standing between them and their customers.

And where this really comes to the forefront for me is with deposit advance product. Now, this is a product pre-2013, short-term, small dollar, line of credit product that people loved, that they were

utilizing day in and day out to be able to help their families make ends meet with cashflow needs, that over and over again, at each of the institutions that were offering this product, it got rave reviews and was used very, very frequently to help families prepare for their future, prepare for a short-term problem, and ultimately be able to help rebuild their credit, because they were reporting to credit agencies. But then 2013 happened. The OCC and the FDIC issued guidance and said to all of these lenders that, even though this is a short-term, small dollar product that was really a line of credit, it should be treated like a loan, and they had to underwrite each one of these like a loan. Whether they were loaning \$100,000, it had to be treated just like that if they were loaning \$100 through this product. And it is a real travesty because, all of a sudden, those lenders stopped being able to do this because the cost was too high. The regulatory burden in making, in presenting these products to the market was too high. And so, instead of consumers getting the opportunity to choose, the bureaucrats got to choose. And the bureaucrats got to say they didn't want this product even though consumers said over and over again that this was a product that fit their families' needs.

So I am proud, with my colleague across the aisle, because this is a bipartisan issue, to sponsor and have written the Ensuring Quality Unbiased Access to Loans Act, or the EQUAL Act, where we go back and rescind that guidance and enable consumers to choose exactly the type of products that they want and allow these lenders to be able to make those type of decisions themselves, rather than the FDIC and the OCC making these decisions for them.

And I really wanted to, first, talk about that and thank Mr. Meeks across the aisle for working with me on that.

And then, Mr. Chairman, I wanted to ask unanimous consent that I am able to enter this letter of support into the record.

Chairman LUETKEMEYER. Without objection, it is so ordered.

Mr. HOLLINGSWORTH. Thank you.

And then I wanted to direct my first question to Professor Verret and really talk a little bit about your view on the product, and on the opportunity that we have to roll back a regulatory intervention to prevent consumers from being able to make decisions that are best for their families, best for their futures, and best for their financial needs.

Mr. VERRET. Sure. Well, the Federal Reserve indicates that over half of all families couldn't cover an emergency expense of \$400 without selling something or taking out a loan. So this literally keeps their lights on for some people. Deposit—I think small dollar lending in general is helpful to the economy in a variety of different forms. One form is deposit advance products, which use a history of direct deposits to make some gauge of the riskiness of a borrower, which is one of those technological innovations that we didn't have in the 1990s.

Mr. HOLLINGSWORTH. Right.

Mr. VERRET. So I think it is helpful.

I think that—Mr. Meeks requested suggestions for, I guess, compromise approaches. One of the approaches, I think, is most egregious is the—at least in the CFPB's piece of small dollar—is the portfolio default-based regulations, which I think set an institution

up for huge reimbursements for the macroeconomic things way outside of their control.

And the final point I would say that makes your legislation very reasonable is that it just asks for notice and comment, which, let's not forget that the Administrative Procedures Act was led by a very liberal, progressive Senator some 60 years ago. So I think it is a very reasonable suggestion.

Mr. HOLLINGSWORTH. Well, I appreciate that so much. And just as a closing remark, I wanted to talk about the wide spectrum of individuals this has the opportunity to touch. It has been estimated that over 50 percent of the customers who use this have incomes of greater than \$50,000; 25 percent of customers have incomes of greater than \$75,000. This isn't just to help low-income and moderate-income families, but to help everybody get through a tough period.

And I think one of the great misfortunes or malintentions from overregulation is that it is helping that marginal customer. And what we under—getting back to smarter regulation enables us to bring them back into the banking system, bring them back to participating in our financial system to help their future.

So I thank the panelists for their time, and I appreciate the chairman letting me have some time here today.

Chairman LUTKEMEYER. The gentleman's time has expired.

And, with that, the questioning is at an end. You guys have survived. Congratulations.

Thank you very much for your patience to wait out our votes and for your willingness to be here today and for your expertise.

I know we talked about a lot of bills today, and some of the bills have a number of parts and some of the things we probably didn't get to, but your comments are very important. It will give us some insights, both pro and con, on some good things and some of the not-so-good things, so we know where to go and what pieces we need to work on and move and make better.

But I think it is our sincere effort to try and give some relief to some small and financial institutions, to be able to help them, not just to survive, because the pressure of the continued increase in cost of doing business, but to also better serve their communities and to be able to help those communities grow and prosper, because at the end of the day, that is what this is all about. These businesses that you guys represent today do not survive unless you have communities that are growing and thriving. You live off the customers that you have that you can help to make their lives better. It is a symbiotic relationship that you have to have with your customers, with your community. If you grow, they grow. If you don't, they don't. And coming from a small town, I can tell you that is the way it works.

So it is very important that you are here. We sincerely thank you for your time and for your efforts.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without ob-

jection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And, with that, this hearing is adjourned.

[Whereupon, at 4:47 p.m., the hearing was adjourned.]

A P P E N D I X

July 12, 2017

Testimony of Mr. Scott B. Astrada

Director of Federal Advocacy,

Center for Responsible Lending

Before the U.S. House Committee on Financial Services'
Subcommittee on Financial Institutions and Consumer Credit

**Examining Legislative Proposals to Provide Targeted
Regulatory Relief to Community Financial Institutions.**

July 12th, 2017

Good afternoon Chairman Luetkemeyer, Ranking Member Clay, and Members of the House Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit. Thank you for allowing me to testify today about legislative proposals regarding regulatory relief for community financial institutions, and the need to ensure that all financial institutions are subjected to responsible, reasonable regulatory oversight that maintains sensible consumer protections.

I am the Director of Federal Advocacy at the Center for Responsible Lending (CRL), a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution. For thirty years, Self-Help has focused on creating asset building opportunities for low-income, rural, women-headed, and minority families. In total, Self-Help has provided over \$6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits and currently serves more than 80,000 mostly low and moderate income families through 30 retail credit union branches in North Carolina, California, and Illinois.

This important hearing addresses the health of our banks in the context of the regulatory structure created in the wake of the Great Recession. A regulatory framework that corrected systemic gaps and sought to prevent future market failures, while providing essential protections to consumers and the overall economy. Fortunately, today consumer lending is strong, and bank profitability is at record levels. We are still emerging from the catastrophic effects of the Great Recession of 2008, and have implemented essential protections that ensure such a financial crisis does not happen again, and that consumer financial markets are strong, stable and competitive. In setting and implementing these protections, regulators have utilized a two-tier approach, with

numerous measures intended to decrease compliance costs for smaller financial institutions. This approach should be continued and expanded. In addition, there are reforms that have broad support and that would benefit all banks, without harming consumers. However, dismantling essential reforms, such as the mortgage ability to repay standard, or reducing the effectiveness of the Consumer Financial Protection Bureau (CFPB) would harm consumers, banks and the overall economy.

Unfortunately, many of the legislative proposals before the committee today do not build on the success of recent reforms and would, in the name of helping small banks, harm consumers while helping very large financial institutions. In particular, the CLEARR Act is far too extreme and is not the way to provide the kind of targeted regulatory relief that community banks are asking for. The CLEARR Act:

- Weakens regulators' ability to prevent discriminatory lending;
- Hamstrings regulators' ability to protect consumers;
- Does not help small banks, as most exemptions would apply to very large banks, including bad actors; and
- Makes the mortgage market more susceptible to abuses.

I. History shows that responsible regulations are necessary for a healthy national market and economy.

The Great Recession of 2008 has already shown us the consequences of the absence of basic protections and oversight in the financial market. In the years leading up to the financial crisis, mortgage lenders were driven by profits and collecting fees to offer mortgages with the lowest monthly payment and the least amount of underwriting. Lenders first started offering mortgages that had lower payments that never reduced the principal balance of the loan. These loans were followed by loans that had "teaser rates" where the monthly payments were even

lower for the first several years, but then increased dramatically. Finally, lenders pushed loans that had startling low payments, a few thousand dollars a month for a half million-dollar loan, but the loan balance actually *increased* by more than five percent every year. In addition to these mortgage practices, lenders competed with each other by reducing underwriting requirements, streamlining the underwriting, and pushing no documentation or “no-doc” loans without any verification of income in order to collect exorbitant profits. It was very difficult for responsible lenders to compete in this environment, and in order to maintain their businesses and some market share, they were forced to join this race to the bottom.

The result is all too well known. In the wake of the financial crisis, 7.8 million American consumers lost their homes through foreclosure.¹ The failure to have a responsible and effective regulatory environment also resulted in taxpayers paying \$7 trillion to bail out financial institutions through loans and according to some reports, an additional \$22 trillion through the federal government’s purchase of assets.² According to the Federal Deposit Insurance Corporation (FDIC), more than 500 banks shuttered their doors and most of those institutions were community banks.³ In addition, the national economy was undermined and plunged into a severe recession. People lost their jobs, small businesses went under, and many Americans—from small entrepreneurs to families—struggled to make ends meet while being unable to obtain the credit and capital they needed from financial institutions to sustain their position or expand their asset base.

¹ CORELOGIC, CORELOGIC REPORTS, UNITED STATES RESIDENTIAL FORECLOSURE CRISIS, TEN YEARS LATER 3, available at <http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-10-year.pdf>.

² John Carney, The Size of the Bank Bailout: \$29 Trillion, *CNBC*, (December 14, 2011), available at <http://www.cnbc.com/id/45674390#>.

³ FEDERAL DEPOSIT INSURANCE CORPORATION, FAILED BANK LIST, available at <https://www.fdic.gov/bank/individual/failed/banklist.html>.

These dynamics and consequences are why the protections of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)⁴ are needed to protect consumers, small businesses, taxpayers, and the nation's economy. All financial institutions, including community banks and credit unions, benefit from the underlying purposes of financial regulation: protecting consumers, ensuring the safety and soundness of institutions, protecting community financial institutions from unfair competition, and defending the nation's financial market from systemic risk.

II. Financial regulations are not slowing economic growth or preventing lending.

Financial institutions, including small banks, are continuing to recover from the worst financial downturn since the Great Depression. Mortgage lending in particular continues to steadily improve. Small banks are playing an important and growing role in the recovery. Contrary to theories that the Dodd-Frank Act has stifled growth, the financial sector has had record profits. In 2016 U.S. financial institutions had total annual profits of \$171.3 billion, the highest level since 2013.⁵ While this profit level is slightly lower than the profit level in the peak of the false housing boom in the years immediately prior to the financial crisis (2004-2006), it remains higher than inflation-adjusted financial sector profits for any other time period since World War II.

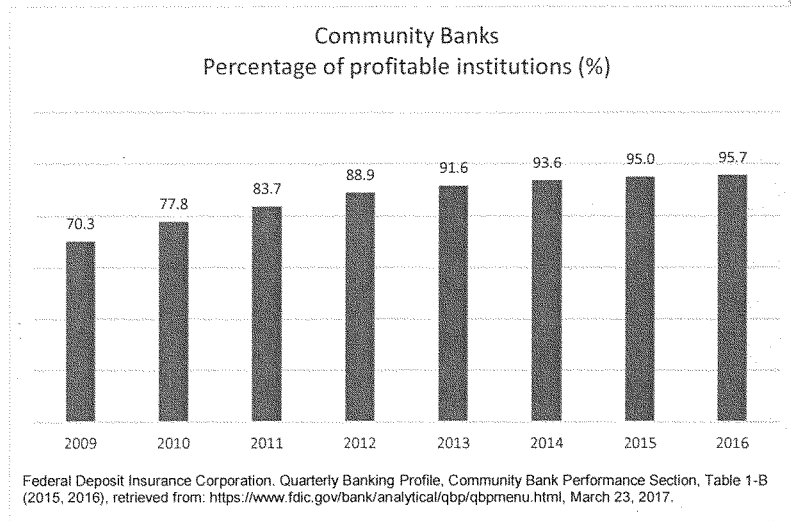
Community bank profitability has also rebounded strongly and meets pre-recession levels. In 2010, less than 78 percent of community banks were profitable. By the end of 2015, over 95 percent of community banks were profitable.⁶ A FDIC report from the 2016 third

⁴ Public Law 111-203 (2010).

⁵ Wall Street Journal, U.S. Banking Industry Annual Profit Hit Record in 2016 (Feb 28, 2017), *available at* <https://www.wsj.com/articles/u-s-banking-industry-annual-profit-hit-record-in-2016-1488295836>.

⁶ FEDERAL DEPOSIT INSURANCE CORPORATION, CORE PROFITABILITY OF COMMUNITY BANKS 1985-2015 1 (2016), *available at* https://www.fdic.gov/bank/analytical/quarterly/2016_vol10_4/article1.pdf.

quarter notes that the percentage of unprofitable community banks sunk to 4.6 percent, which is the “lowest percentage since the third quarter of 1997.”⁷ Full year earnings were up 9.7 percent in 2015, which is a higher figure than the overall increase of 7.5 percent for all banks.⁸



Credit unions have also continued to grow while recovering from the financial crisis.

Credit union membership has been steadily growing in recent years. In 2016, credit unions added 4.7 million new members, which amounted to “the biggest annual increase in credit union history and four times the pace set a decade earlier.”⁹ Operating costs for credit unions have also fallen

⁷ FEDERAL DEPOSIT INSURANCE CORPORATION, QUARTERLY BANKING PROFILE: THIRD QUARTER 2016 1, *available at* https://www.fdic.gov/bank/analytical/quarterly/2016_vol10_4/fdic_v10n4_3q16_quarterly.pdf.

⁸ *Id.*

⁹ CUNA MUTUAL GROUP, CREDIT UNION TRENDS REPORT (2017), *available at* <https://www.cunamutual.com/resource-library/publications/credit-union-trends-report>.

in the period since Dodd-Frank was passed and were down to 3.1 percent in 2016 from a high of 3.59 percent in 2008.¹⁰

While the number of small lenders, including community banks and credit unions has decreased over the years, this cannot be reasonably attributed to Dodd-Frank or CFPB regulations. The number of community banks has declined every single year since 1984.¹¹ FDIC research concludes that community bank profitability since 2008 has overwhelmingly been driven by macroeconomic conditions, not regulations.¹² The FDIC study first takes a wide look at regulations that include Dodd-Frank, but also Basel III capital standards. The study states that “regulation is just one among many noneconomic factors that may contribute to structural change in community bank profitability,” but conclude that 80 percent of variation in profitability is due to macroeconomic factors, and the other 20 percent includes not just changing regulations, but also “the rise of nonbank lending, competition from larger banks, and changes in loan portfolios and other business practices.”¹³

Smaller lenders play an important role in extending access to credit, and it is noteworthy that lending has also rebounded from the depths of the crisis. After falling from June 2008 to November 2010, outstanding consumer loans have steadily increased at \$3.7 trillion in December 2016, which well exceeds pre-crisis levels.¹⁴ Small banks have posted increases in commercial lending in all but one quarter compared to levels at the time of passage of Dodd-Frank in 2010.¹⁵

¹⁰ NATIONAL CREDIT UNION ADMINISTRATION, NCUA CHART PACK (2016), *available at* <https://www.ncua.gov/analysis/Pages/industry/fact-sheets.aspx>.

¹¹ FEDERAL DEPOSIT INSURANCE CORPORATION, COMMUNITY BANKING STUDY 1 (2012), *available at* <https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf>.

¹² FDIC, Core Profitability of Community Banks *supra* note 6.

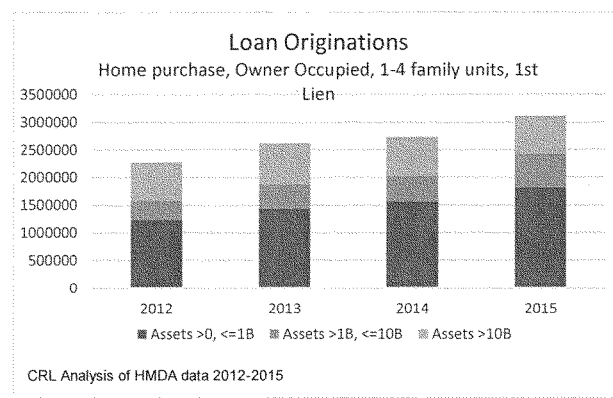
¹³ *Id.* at 42.

¹⁴ FEDERAL RESERVE, TOTAL CONSUMER CREDIT OWNED AND SECURITIZED, OUTSTANDING *available at* <https://fred.stlouisfed.org/series/TOTALSL>.

¹⁵ FEDERAL RESERVE, TOTAL VALUE OF LOANS FOR ALL COMMERCIAL AND INDUSTRY LOANS, SMALL DOMESTIC BANKS *available at* <https://fred.stlouisfed.org>.

Furthermore, the FDIC's quarterly community bank performance data for the fourth quarter of 2016 shows that community banks hold 43 percent of all small loans to businesses and that they increased lending by \$6.4 Billion (2.2 percent) compared to 2015, twice the rate of other banks.¹⁶

Finally, mortgage lending has also steadily recovered since the crisis. Community banks and small lenders play an important and growing role in the mortgage market in particular. In 2015, mortgage lenders originated 850,085 more loans¹⁷ than they did in 2012, a 37 percent increase. Loans originated by smaller lenders with assets under \$1 billion saw the biggest increase during this period (48 percent) while the largest institutions with assets over \$10 billion saw a 1 percent decline. Credit unions alone originated \$41.7 billion in first-lien mortgage loans in the third quarter of 2016, an increase of 22 percent over the same period in the previous year.¹⁸

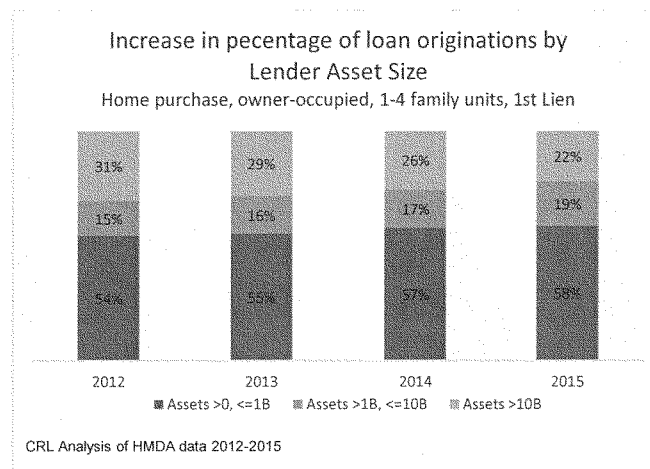


¹⁶ FEDERAL DEPOSIT INSURANCE CORPORATION, QUARTERLY BANKING PROFILE, COMMUNITY BANK PERFORMANCE, FOURTH QUARTER (2016), available at <https://www.fdic.gov/bank/analytical/qbp/2016dec/qbpccb.html>.

¹⁷ Sarah Wolff, CRL Analysis of HMDA Data 2012-2015. Loan analysis limited to: home purchase, owner-occupied, 1-4 family units, 1st lien loans, available at <http://www.responsiblelending.org/media/new-hmda-data-shows-mortgage-market-continues-exclude-consumers-color-and-low-wealth-families>.

¹⁸ CUNA MUTUAL GROUP, CREDIT UNION TRENDS REPORT (2016), available at <https://www.cunamutual.com/resource-library/publications/credit-union-trends-report>.

Small lenders also saw their market share in mortgage lending increase over this time period. The market share of the smallest lenders with assets under \$1 billion increased from 54 percent in 2012 to 58 percent in 2015. In contrast, the market share of the largest lenders with assets over \$10 billion, decreased from 31 percent in 2012 to 22 percent in 2015.¹⁹



III. The CLEARR Act is far too expansive in weakening consumer protections and helping large banks.

In this context of recovering and growing profitability and strength of smaller lenders, we must ensure that legislative reform seeking regulatory relief is targeted to smaller lenders, and is based on a sound and accurate assessment of the impact of regulations on economic growth. CRL is opposed to any legislative reform that exposes consumers and the economy to the increased risk of pre-recession behaviors, or disproportionately benefits the largest financial institutions at the expense of other lenders. Responsible and sensible lending has promoted growth, ensured

¹⁹ CRL Analysis *supra* note 17.

stability, and protected consumers and the market from the reckless behavior of pre-recession practices.

H.R. 2133, the “Community Lending Enhancement and Regulatory Relief Act of 2017” (CLEARRR Act) introduced by Representative Luetkemeyer does not provide targeted regulatory relief for consumers and small banks and simultaneously puts consumers at risk. The CLEARRR Act is far too expansive in weakening consumer protections in the name of helping community banks and would ultimately benefit large banks while weakening important protections for consumers and the economy. The provisions of the CLEARRR Act would grant exemptions and free passes for almost all financial institutions, including large banks. The bill exempts large lenders from escrow requirements mandated by the Truth in Lending Act (TILA), amplifying the risk of these loans. The CLEARRR Act also expands the Qualified Mortgage safe harbor for loans held in portfolio by any institutions including some of the biggest banks in the world. The bill also targets the CFPB, and attempts to weaken its power and authority to fight for the American consumer. By raising the threshold for the agency’s supervisory authority over depository institutions from \$10 billion to \$50 billion, the CFPB ability to police the financial marketplace is scaled back. Additionally, the bill strips the CFPB of its UDAP authority to pursue institutions that engage in “abusive” practices, the very same authority the CFPB used to take action against Wells Fargo in its recent account scandal. The bill would also roll back significant data reporting requirements that provide a key tool to fight discrimination in the financial marketplace, by repealing section 1071 of the Dodd-Frank Act, which mandates collection of small business and minority-owned business loan data under the Equal Credit Opportunity Act.

1. The CLEARRR Act weakens regulators ability to prevent discriminatory lending

Some of the most concerning provisions in the CLEAR Act are those which would weaken the ability of regulators to address lending discrimination. Provisions 7, 8 and 9 all specifically limit the effectiveness of financial regulators to understand and address troubling ongoing discrimination.

Section 7: Amend the Equal Credit Opportunity Act and the Fair Housing Act to require federal agencies to determine whether a financial institution intentionally discriminated as grounds for fair lending enforcement.

This section amends ECOA and the Fair Housing Act by prohibiting creditors from *intentionally* discriminating against any applicant for credit based on certain characteristics as defined by statute. This would abolish *disparate impact* discrimination claims based on violations of ECOA and the Fair Housing Act, and would instead limit claims to the different standard of *disparate treatment*. In order to be liable under the disparate treatment standard intent needs to be proven, while under disparate impact claims of discrimination the harm can be unintentional, but liability can be established by showing an ostensibly neutral policy disproportionately affects members of the protected class. Disparate impact has been a central part of combating racial discrimination for decades, and to summarily disregard disparate impact is indicative of the extreme nature of this bill.

Section 8: Amend the Home Mortgage Disclosure Act of 1975 to from maintenance of mortgage loan records and disclosure requirements depository institutions that have originated—in each of the two preceding calendar years—fewer than 1,000 closed end mortgage loans and fewer than 2,000 open-end mortgage loans.

This section of the CLEAR Act proposes to vastly increase the number of banks and nonbanks that would be exempted from having to report new data on their mortgage lending under the Home Mortgage Disclosure Act (HMDA). Current CFPB rules require banks and nonbanks that originate at least 25 closed-end loans or 100 open-end lines of credit in each of the two preceding calendar years to provide data. These thresholds were carefully put in place by the

CFPB to balance the value of reporting and of having uniform standards against the burden reporting places on reporting institutions. This section proposed to raise that threshold significantly: to 1,000 closed-end mortgage loans or 2,000 open-end lines of credit. Such an increase is both harmful and unnecessary.

HMDA data have been used for years to understand the mortgage market and to hold lenders accountable for fair lending. The expanded HMDA data fields help shed important light on aspects of the underwriting process that the public previously has not been able to measure, such as how loan denials vary by race and credit characteristics. These new data could help explain persistent differences in measures like denial rates by race and ethnicity. This provision undermines this important public resource by exempting all but the largest lenders from reporting. The CFPB has estimated that nearly all depository (85%) and nearly half of all nondepository (48%) mortgage lenders would be exempt under a loan threshold half the size proposed by this provision.²⁰ If this provision were made law, regulators and the public would have far less information about the mortgage market.

This provision, however, also fails to materially reduce the burden on HMDA reports. Lenders already collect most of the data they would need to report under the expanded HMDA rule.²¹ Lenders collect data for underwriting, as required on closing documents, the Uniform Residential Loan application, and as required by the GSEs or FHA. Providing this information through HMDA reporting does not require lenders to collect vast amounts of new information, it

²⁰ Based on 2013 data, the CFPB estimates that updated reporting would be lost for 10 percent of loan records under a 500 closed-end loan volume threshold, and over 5,300 census tracts would lose 20 percent of the updated data about mortgage lending in their communities.

²¹ See Adam Levitin, Credit Slips Blog, “New HMDA Regs Require Banks to Collect Lots of Data....That They Already Have”.

simply requires them to report important information that they already collect. The bulk of reporting burden is in collecting, maintaining and managing data systems, not in reporting.²²

Section 9: Amend the Equal Credit Opportunity Act to repeal requirements that financial institutions collect information from small businesses regarding their ownership.

Small business lending provides critical capital to new and growing businesses that create jobs and help people build wealth. Smaller banks play a critical role in expanding access to credit for small businesses and we support efforts to encourage small business lending. However, eliminating new small business data collection efforts will hamper small business lending and we oppose the elimination of the data collection required by Section 1071 of the Dodd-Frank Act. Data collection has not even begun so eliminating the disclosure of small business lending activity, like the long-standing practice of mortgage lending data collection, is premature.

Section 704B of the Equal Credit Opportunity Act amended by Section 1071 of the Dodd-Frank Act requires creditors to disclose business loan applications, type and purpose of financing, loan amount, approval status, location and size of the business and other information necessary to lending products and practices. These data will help prevent discriminatory lending practices and encourage financial institutions of all sizes to serve the small business needs of underserved communities, emerging entrepreneurs and growing businesses that create much needed employment opportunities.²³

As discussed above, data collected through HMDA has made home mortgage lending data widely available for decades and has improved how lenders and policymakers understand

²² CFPB, HMDA Final Rule, Federal Register, Vol. 80, No. 208, p. 66282.

²³ 15 U.S. Code § 1691c-2

the mortgage market—bringing much needed transparency to the market and taking an important step toward understanding lending trends and identifying discriminatory lending practices.²⁴ The requirements of HMDA apply market-wide, to depositories and non-depositories and large and smaller lenders alike and result in an unprecedented view of how and where lenders make mortgage credit available.

Currently, there is only limited information available about small business lending activity and only from a subset of lenders.²⁵ However, these data suggest that low-wealth communities and communities of color lack the access to credit necessary to create and sustain new small businesses.

A report by Woodstock Institute found that, nationally, businesses in low-income census tracts comprised an average of 9.3 percent of all businesses for the period 2012-2014, but they received only 4.7 percent of reported bank loans under \$100,000 and only 4.9 percent of the total dollar amount of those loans. If those businesses had received loans in proportion to their share of businesses overall, they would have received over 687,600 more loans totaling over \$8.8 billion more than they actually received between 2012 and 2014.²⁶ A recent report by the Kauffman Foundation found that African American business owners were nearly twice as likely as white business owners to rely on their credit card to build their business and 59% of African American entrepreneurs did not seek financing because they thought they would be turned down

²⁴ See “The Nation’s Housing Finance System Remains Closed to African-American, Hispanic, And Low-Income Consumers Despite Stronger National Economic Recovery In 2015.” Durham, NC: Center for Responsible Lending, September 2016. http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2015_hmda_policy_brief_2.pdf.

²⁵ Under the Community Reinvestment Act, some financial institutions disclose small business loans made to businesses with annual revenue of \$1 million or less.

²⁶ “Patterns of Disparity: Small Business Lending in the Buffalo and New Brunswick Regions.” Chicago, IL: Woodstock Institute, April 2017. http://www.woodstockinst.org/sites/default/files/attachments/Bufalo%20and%20New%20Brunswick%20Report%20RevisedApr%2019%20Final_DR.pdf.

by a lender.²⁷ That same report found that minority entrepreneurs were far more likely to report that their profits were negatively impacted by a lack of access to and cost of capital than white entrepreneurs.

Section 9 of HR 2304 would preserve the status quo and roll back years of work to improve access to small business lending. Rather than providing relief for small banks, this proposal takes an extreme approach and eliminates the small business data collection requirement for all lenders, including large banks and non-depository lenders. Data collection is yet to begin, and the CFPB has just started collecting information from all stakeholders involved in the process. In May 2017, the CFPB released a white paper on small business credit and requested comments on what defines a small business, what institutions lend to small businesses and what products are offered. The request also sought information on existing credit options available to small businesses and the privacy implications of the collection and release of small business data.

We believe that these are right questions to ask. We urge the consideration of targeted efforts to expand small business lending that support the significant role of small banks in this market rather than eliminating efforts to prevent discriminatory lending practices and exempting all lenders, including large banks and non-depositories from this critical disclosure requirement.

2. The CLEARR Act hamstrings regulators ability to protect consumers

In addition to weakening the ability of regulators to address lending discrimination, provisions of the CLEARR Act weaken protections for all consumers. Section 6 removes the

²⁷ “Zero Barriers: Three Mega Trends Shaping the Future of Entrepreneurship.” Kauffman Foundation, 2017. http://www.kauffman.org/~media/kauffman_org/resources/2017/state_of_entrepreneurship_address_report_2017.pdf.

CFPB's UDAAP authority, and sections 10 and 11 limit the power of financial regulators to protect consumers.

Section 6: Amend the Consumer Financial Protection Act of 2010 to repeal the authority of the Consumer Financial Protection Bureau (CFPB) to take action to prevent a covered person or service provider from committing or engaging in an abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of one. The bill also prohibits the CFPB from taking any action against a covered person or service provider without first consulting with such person's primary financial regulatory agency. The CFPB must comply with the same rules as govern the Federal Trade Commission (FTC) regarding unfair or deceptive acts or practices in or affecting commerce;

This section strips the CFPB of its enforcement and rulemaking UDAAP authority. This section also prohibits the CFPB from pursuing any enforcement action without first conferring with the "covered person or service provider's primary financial regulatory agency." The section mandates that the CFPB is subject to the same requirements that the Federal Trade Commission ("FTC") is subject to when the CFPB conducts any rulemaking. This would ultimately hamstring the CFPB's ability to promulgate broad and effective rules.

Section 10: prohibit a federal banking agency from formally or informally suggesting, requesting, or ordering a depository institution to terminate either a specific customer account, or group of customer accounts, or otherwise restrict or discourage it from entering into or maintaining a banking relationship with a specific customer or group of customers, unless: (1) the agency has a material reason to do so, and (2) the reason is not based solely on reputation risk;

and

Section 11: Amendments to Civil Penalties under FIRREA: Section 11 would substantially narrow the scope of activity that Department of Justice (DOJ) can issue administrative subpoenas and initiate civil actions against financial institutions under FIRREA. It would also undermine the DOJ's ability to conduct investigations by requiring that administrative subpoenas either be issued pursuant to a court order or personally through the Attorney General or Deputy Attorney General.

Sections 10 and 11 of the CLEARR Act would hamper the government's ability to ensure that some banks are not willfully enabling scammers to defraud the customers. Financial fraud is

a large-scale problem that affects millions of Americans. The FBI estimates that mass marketing fraud schemes strip tens of billions of dollars each year from millions of individuals and businesses around the world. MetLife estimates annual losses by elder Americans alone at nearly \$3 billion. Banks are well positioned to assist in identifying scammers because they serve as a gateway to payment networks, including ACH and debit card networks. Monitoring the rates of returned transactions through these networks is an effective risk control that banks are well-suited to do. A high rate of returned transactions for a given bank customer, which may be a payment processor with many clients, is a common warning signal of fraudulent activity.

The CLEARR Act takes aim at the DOJ's Operation Chokepoint initiative, the goal of which has been to stop fraudulent schemes perpetrated through the banking system, particularly where they involve third party payment processors. The three cases the DOJ has brought under Operation Chokepoint were not close calls. Four Oaks Bank, CommerceWest Bank, and Plaza Bank all ignored glaring indications that their payment processor customers were scammers, enabling them to illegally remove funds from the accounts of customers at other banks. While average return rates for unauthorized ACH payments are about 0.03%, these banks ignored return rates as high as 50%, 60%, 70%. They willingly enabled fraudulent activity that caused real people real financial harm. Section 10 of the CLEARR Act would make it more burdensome for financial regulators to discourage banks from doing business with customers where there is indication the customers are engaging in fraud. But supervision of a bank's due diligence in detecting fraud is an important role of the banking regulator. Hampering the regulator's ability to perform that role will help scammers and their enabling banks, while harming responsible banks.

Further, Section 11 would significantly narrow the scope of the DOJ's investigative authority to illegal conduct "against" a financial institution or "by" the institution, rather than activity that "affecting" the institution. This would likely eliminate the DOJ's authority to conduct the sort of investigations it has brought under Operation Chokepoint because the bank enabling the scam was not, itself, the scammer or the one scammed. The bill would also impose additional hurdles for the DOJ to be able to issue subpoenas in connection with its investigations of financial fraud. A subpoena is an important fact-finding tool, critical to the DOJ's ability to obtain the information it needs to stop banks from willfully enabling scammers. Again, making it more difficult to obtain information will help scammers and their enabling banks at the expenses of responsible banks and their customers.

3. *The CLEARR Act doesn't help small banks, it mostly exempts large banks some of which are bad actors*

Section 2: Amend the Truth in Lending Act (TILA) to direct the Board of Governors of the Federal Reserve to exempt from certain escrow or impound requirements a loan secured by a first lien on a consumer's principal dwelling if the loan is held by a creditor with assets of \$50 billion or less. The Consumer Financial Protection Bureau must also provide either exemptions to or adjustments from the mortgage loan servicing and escrow account administration requirements of the Real Estate Settlement Procedures Act of 1974 for servicers of 30,000 or fewer mortgage loans.

This section increases thresholds of two exemptions provided by the CFPB for small banks concerning escrow accounts for higher-priced mortgage loans and servicing requirements for small mortgage servicers. Under this section, for institutions with less than \$50 billion in assets, escrow accounts would no longer mandated for riskier, high-priced loans. Additionally, the exemption from increased notification requirements to borrowers would be increased from 5,000 loans to 50,000 loans. This expansion is a prime example of how the increase of thresholds would significantly benefit larger institutions, and significantly misses the mark in targeting

relief for smaller institutions. By removing the escrow requirement for larger financial institutions, the provision increases riskiness in of the loans and the balance sheets that hold them.

Section 3: Amend TILA to exempt from property appraisal requirements a higher-risk mortgage loan of \$250,000 or less if it appears on the loan creditor's balance sheet for at least three years.

This section exempts mortgages in the amount of \$250,000 or less from the definition of “higher-risk mortgage,” and therefore from the appraisal requirements required for such mortgages under TILA, so long as the creditor holds the loan on its balance sheet for at least 3 years. The lack of adequate regulation in the appraisal market was a significant factor causing the housing market crash.²⁸ In fact, between 2000-2007 a coalition of appraisal organizations produced a petition, signed by 11,000 appraisers that stated lenders were pressuring them to artificially inflate home prices, and would only give business to appraisers that complied.²⁹ This section also removes penalties under TILA regarding professional misconduct, unethical behavior, or violation of law in mortgage dealings. This roll back of penalties and the increase of thresholds again raises questions as to how this provision would provide relief for smaller lending institutions.

Section 13: Amend the Consumer Financial Protection Act of 2010 to raise the examination threshold that brings an insured depository institution or insured credit union within its supervisory purview from assets of \$10 billion or more to assets of \$50 billion or more. The bill also increases from assets of \$10 billion or less to assets of \$50 billion or less the size of an insured depository institution or insured credit union that is subject to the Act's reporting requirements.

²⁸ Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States. Submitted by The Financial Crisis Inquiry Commission Pursuant to Public Law 111-21, January 2011, 17-19 (“Financial Crisis Report”)

²⁹ Id. at 18

Provisions that weaken or scale back the authority and power of the CFPB must ultimately answer the question: who benefits from a weakened CFPB? The CFPB, the only agency whose mission is to protect the American consumer, has been effective in policing the financial market place and fighting to protect and expand consumer rights. The data is unambiguous, the CFPB is works.

The CFPB has recovered nearly \$12 billion for 29 million consumers who have been harmed by illegal practices of credit card companies, banks, debt collectors, mortgage companies, and others. This relief includes monetary compensation to harmed consumers, principal reductions, canceled debts, and other remedies to address these practices. The CFPB has worked hard to end predatory practices by institutions like ITT Tech (a for-profit college that misled borrowers into high-cost private student loans), Wells Fargo, and car-title and payday lenders.

Under the leadership of Director Cordray, the CFPB has issued and proposed rules that make the market safer for consumers and the general economy. In addition to the mortgage rule and standards addressed above, the CFPB has issued a rule to make prepaid cards safer and fairer for consumers who rely on them. The CFPB has also undertaken enforcement actions that benefit consumers by either shielding them from harm or compensating them for wrong done by illegal financial practices. The CFPB has simplified bank disclosures borrowers receive when taking out a loan, protected military families against illegal foreclosures and abusive student and payday loans, and has guarded seniors from predatory scams. Further, the CFPB has obtained more than a billion dollars in compensation to consumers harmed by misleading credit card add-on products from big banks, and to consumers harmed by the recently uncovered egregious fraudulent acts of Wells Fargo in opening checking accounts without customers' approval. The

CFPB has also provided \$160 million in settlements to consumers harmed by discriminatory auto interest rate mark ups where borrowers ended up with higher-cost auto loans when they qualified for more affordable loans. The Consumer Bureau hears directly from Americans harmed by illegal financial practices through its searchable public complaints database, which has helped people resolve disputes and allowed the Bureau to identify patterns in predatory industry practices. The system has recorded more than one million consumer complaints.³⁰

Even though the economy is on a stable path to recovery and much has been done with the robust work of the Consumer Bureau, there remain areas of critical concern that must be addressed. The CFPB must be allowed to continue to do its work on behalf of consumers and by substantially exempting virtually all financial institutions, it will not be able to.

4. The CLEARR Act makes the mortgage market more susceptible to abuses

Section 15: Amend TILA to create a safe harbor from lawsuit for a depository institution that fails to comply with ability-to-repay requirements with respect to a residential mortgage loan made and held on its balance sheet; and

Section 16: Amend TILA to direct the Federal Housing Finance Agency (FHFA) to promulgate regulations defining qualified mortgage and the types of loans that are qualified mortgages. The FHFA is required to conduct a yearly review of its promulgated standards, and must publish and proposed changes in the Federal Register

The consequences have shown the results of lax regulation of the mortgage market-- fraud and abuse that deplete the savings of American consumers and destabilize the economy. According to the Financial Crisis Inquiry Commission Report, “collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis.”³¹ Mortgage regulations were put in place to prevent these practices and abuses. The

³⁰ Consumer Financial Protection Bureau, CFPB Complaint Snapshot Spotlights Money Transfer Complaints: Bureau Marks Over One Million Consumer Complaints Handled (2016), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-complaint-snapshot-spotlights-money-transfer-complaints/>.

³¹ Financial Crisis Report, *supra* n. 25, at xxiii

expansion of exemptions to larger financial institutions casts doubt upon the notion that these provisions are targeted for smaller financial institutions.

The CFPB's Qualified Mortgage (QM) rule and the Ability-to-Repay standard set out common sense standards to protect the market and consumers from high-risk, unsustainable loans by ensuring borrowers have an ability to repay the loans they receive. Irresponsible mortgage lending that ignored borrowers' ability to repay their loans resulted in a foreclosure tsunami that disproportionately impacted communities of color—eviscerating a generation of wealth building. Further, Wall Street's appetite for risky mortgages encouraged this lax underwriting, and regulatory inaction failed to address the problem. As a result, unaffordable loans toppled the entire market and nearly destroyed the economy.³²

The reforms of Dodd-Frank, including QM and Ability-to-Repay, have not hurt mortgage lending or access to credit. Instead, these reforms support sustainable homeownership and wealth building opportunities for lower-wealth households. Large lender portfolio exemptions to the QM rule are unnecessary, do not help small lenders, and are dangerous for the economy. Some have suggested that expanding QM to include all loans held in portfolio by lenders of any size, would increase lending. However, this would be dangerous for consumers and the market, and unlikely to meaningfully expand lending. As demonstrated in the housing crisis, holding loans in portfolio alone will not protect borrowers, taxpayers, and the market from the mistakes of the past. In the lead up to the financial crisis, many of the toxic loans, such as negative amortization loans, and "ARMs" underwritten to initial "teaser" rates were held in bank portfolios. Lenders underwrote these loans based upon only this initial, artificially low payment, even though

³² Testimony of Eric Stein, Center for Responsible Lending, before the US Senate Committee on Banking, Housing, and Urban Affairs, "Turmoil in the US Credit Markets: The Genesis of the Current Economic Crisis," (October 16, 2008) available at http://www.banking.senate.gov/public/_cache/files/03d72248-b676-4983-bd3e-0ffec936b509/33A699FF535D59925B69836A6E068FD0.steintestimony101608final.pdf.

dramatically higher payments commenced after a few years. Many lenders did not document the income of the borrowers, instead making “no-doc” loans. Hundreds of billions of dollars of these loans were made, and many were kept on bank portfolios. These portfolio loans soon crashed, helping to trigger the financial crisis, and devastating banks such as Washington Mutual and Wachovia.³³

Portfolio loans can still be risky for consumers and taxpayers, and automatic QM status for loans held in portfolio should not be extended to larger institutions. Many homeowners have very substantial equity in their homes and a significant number of those have no current home debt. Current information shows that the average loan-to-value for GSE loans is roughly 74 percent with many loans having much lower levels.³⁴ With these loans, the borrower’s equity absorbs the risk of loss rather than the lender. Therefore, the lender is protected even from very risky loan terms. Furthermore, lenders are also already making and holding loans in portfolio. Portfolio loans accounted for 30.9 percent of all originations in 2016, approximating the pre-crisis share of originations for portfolio loans.³⁵ Expanding QM to all portfolio loans is unlikely to lead to an increase in volume.

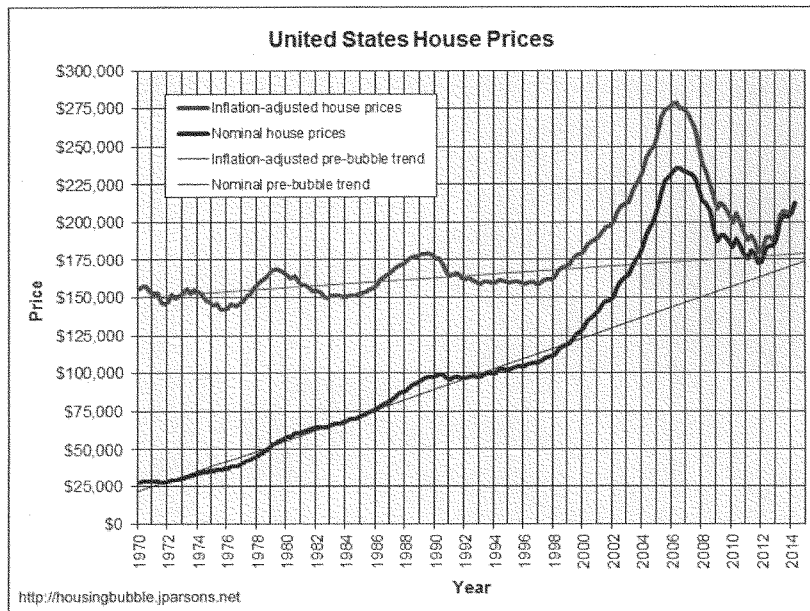
This would be a particularly dangerous time to reduce the Ability-to-Repay/QM mortgage protections. As the economy moves through the business cycle and the recovery improves, the important protections recently put in place will provide new value. Real and nominal house prices now exceed pre-crisis trends and at the same time interest rates are expected to rise. As shown in the chart below, the home market is cyclical with home values

³³ Ben White and Eric Dash, Wachovia, Looking for Help, Turns to Citigroup, New York Times (September 26, 2008), available at http://www.nytimes.com/2008/09/27/business/27bank.html?_r=0.

³⁴ FANNIE MAE 2016 CREDIT SUPPLEMENT 6 (2017), available at http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2016/q42016_credit_summary.pdf.

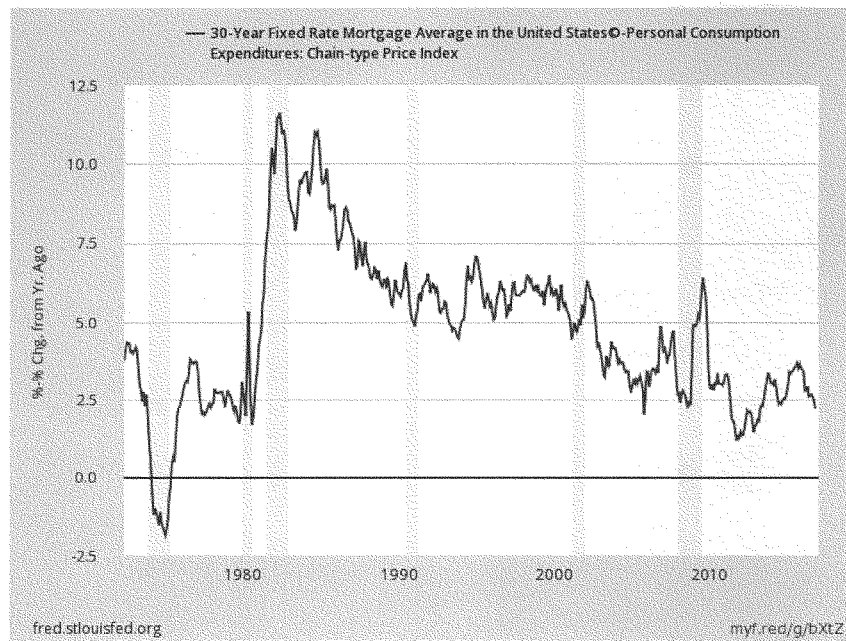
³⁵ LAURIE GOODMAN ET AL. HOUSING FINANCE AT A GLANCE: A MONTHLY CHARTBOOK, MARCH 2017 (2017), available at http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017/view/full_report.

rising and falling when measured in real inflation adjusted dollars. There were in fact several substantial price run ups in home values and declines prior to the Great Recession. The difference was that in these prior run ups, the bubble was limited because mortgage payments were not artificially reduced by poor mortgage products without borrower ability to repay. This enabled the market to rebalance without a crash. In contrast in the early 2000's housing prices rose rather than being rebalanced. These unsustainable mortgages further artificially inflated home prices and created a housing bubble of unprecedented height and fall.



In the coming years, the market will create pressures for the reintroduction of these unaffordable mortgages. As the following chart shows, we are coming to the end of a decades-long period of declining interest rates, culminating in the current market where there is a

negative real interest rate and historically low mortgage rates. A consensus of experts agree that mortgage, and other interest rates will increase in coming years. This will create pressure for lenders to bring back the exotic unaffordable mortgages of the recent past to again artificially reduce monthly mortgage payments. Undercutting regulation that sets the basic expectation that borrowers should have the ability to repay loans, especially loans made by federally insured institutions, would invite a repeat of the recent financial crisis at the cost to the American taxpayer.

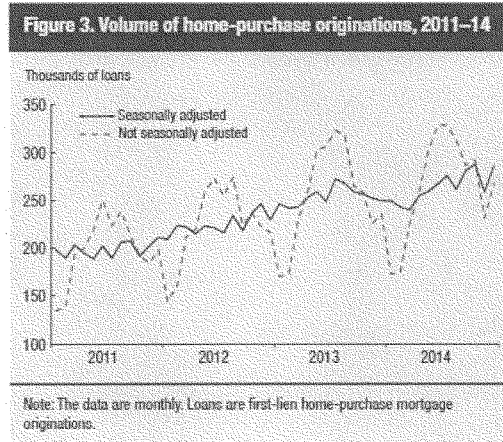


Provisions that grant out right legal immunity are extreme and put consumers at great risk. Granting QM status to portfolio loans held by larger financial actors will allow some to use relaxed standards to harm consumers and strip consumer equity, all while being insulated by QM's legal protections.

The QM rule is designed to facilitate the flow of mortgage credit, as lenders will have the confidence in knowing the suitability of loans for borrowers at the time of origination. The same standards in turn reduce the overall likelihood of borrower default. This certainty has benefitted consumers, lenders, and investors alike, leading to a more sustained housing recovery.

Three years have passed since the QM rule was implemented. Reports, including the Home Mortgage Disclosure Act (HMDA) report, show that QM has not negatively impacted mortgage lending or access to credit. In fact, (post QM) HMDA data is very much consistent with market trends immediately preceding the implementation of the QM rule and Ability-to-Repay standard. The Federal Reserve's seasonally adjusted origination numbers, in the chart below, show a slow overall increase in monthly originations from 2011 through 2015 with no discernable decrease when the rules were fully implemented in January 2014.³⁶

³⁶ FEDERAL RESERVE BULLETIN, THE 2014 HOME MORTGAGE DISCLOSURE ACT DATA (2015), *available at* https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.



In addition, HMDA data from 2014-15 shows a modest but steady increase in mortgage lending to low and moderate-income borrowers and African-American and Latino borrowers.³⁷

Researchers have looked carefully at mortgage lending after the implementation of QM and found no link to a reduction in credit. For example, researchers at the Urban Institute looked at loans that might reasonably have been affected by the QM standards (interest only or prepayment penalty loans, loans with debt-to-income “DTI” over 43 percent, or adjustable rate mortgages or “ARM” loans) and found no decline in these categories associated with QM.³⁸ Researchers at the Federal Reserve similarly concluded “The HMDA data provide little indication that the new ATR and QM rules significantly curtailed mortgage credit availability.”³⁹ Researchers at the Federal Reserve also looked at both the origination and securitization of

³⁷ FEDERAL RESERVE BULLETIN, THE 2015 HOME MORTGAGE DISCLOSURE ACT DATA (2016), *available at* https://www.federalreserve.gov/pubs/bulletin/2016/pdf/2015_HMDA.pdf, see also note 21.

³⁸ Bing Bai, Laurie Goodman, and Ellen Seidman, *Has the QM Rule Made It Harder to Get a Mortgage?* (2016), *available at* <http://www.urban.org/research/publication/has-qm-rule-made-it-harder-get-mortgage>.

³⁹ FEDERAL RESERVE BULLETIN, THE 2014 HOME MORTGAGE DISCLOSURE ACT DATA, *available at* https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.

mortgages post-crisis and find that lender asset size has become a less important factor in explaining this lending activity and conclude “smaller banks have not been, on net, deterred from engaging in the sales and securitizations of mortgages, have become a more important part of the market and have profited from their activities.”⁴⁰

The Urban Institute likewise found that QM rules had not adversely affected access to credit. While mortgage originations can and should expand, the Urban Institute attributes continued access problems to overcorrections in the post-crises market that has resulted in constrained lending. This environment is most harmful to lower-wealth households with lower FICO scores and fewer resources for a down payment⁴¹

Also Provision 8, discussed above, which exempts all but the largest mortgage lenders from expanded HMDA reporting threatens to undermine an important dataset that regulators and the public can use to understand the mortgage market. The expanded data would provide information that would have been helpful in the run up to the crisis, such as the debt-to-income ratio on newly originated mortgages. Such information is helpful to understanding and managing the market.

IV. Other Legislative Proposals

Many of the bills before the committee today take extreme positions and propose legislation that either is tangential to small banking regulatory relief, or benefits larger banks and non-depository institutions. In particular , H.R. ____, (Rep. Hollingsworth), the “Ensuring Quality Unbiased Access to Loans Act of 2017” To be introduced by Representative

⁴⁰ William F. Basset and John C. Driscoll, Post Crisis Residential Mortgage Lending by Community Banks (2015), available at https://www.communitybanking.org/documents/Session3_Paper4_Bassett.pdf.

⁴¹ Jim Parrot and Mark Zandi, Opening up the Credit Box 5 (2013), available at <http://www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf>, see also LAURIE GOODMAN ET AL., TIGHT CREDIT STANDARDS PREVENTED 5.2 MILLION MORTGAGES BETWEEN 2009 AND 2014, available at <http://www.urban.org/urban-wire/tight-credit-standards-prevented-52-million-mortgages-between-2009-and-2014>.

Hollingsworth. This bill would repeal the Office of the Comptroller of the Currency (OCC) “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” (78 Fed. Reg. 70624; November 26, 2013), and the Federal Deposit Insurance Corporation (FDIC) “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products” (78 Fed. Reg. 70552; November 26, 2013). This guidance addressed egregious high-cost payday loans made by banks and put in place important protections; repealing it would reintroduce abuses into the marketplace and cost account holders billions. The damage by the debt traps of payday loans has been well documented. Recognizing the harm to consumers, regulators took action protecting bank customers. In 2013, the Office of the Comptroller of the Currency (OCC), the prudential regulator for several of the banks making payday loans, and the Federal Deposit Insurance Corporation (FDIC) issued guidance advising that, before making one of these loans, banks should determine a customer’s ability to repay it based on the customer’s income and expenses over a six-month period. By repealing these actions, the provision opens the door for high-cost bank installment loans to once again trap customers in unending debt traps.

Many of the other proposal under discussion suffer from similar problems of lacking a real focus on regulatory relief for small financial institutions. Regulations should take into account the different business models of community banks and credit unions and their cost structure. Much has already been done in this regard and further steps can be taken. In addition, there are other broader reforms that can reduce obstacles and uncertainty without jeopardizing consumers or overall markets.

There are several substantial regulatory provisions that acknowledge and accommodate the special role and circumstances of community banks and credit unions. These include:

- Banks under \$10 billion in assets that are exempted from the examination authority of the Consumer Financial Protection Bureau;

- Banks under \$10 billion in assets that are exempted from the interchange provisions of the Durbin amendment;
- Banks under \$10 billion in assets that are exempted from all of the enhanced bank prudential standards in Title I of Dodd-Frank;
- Regulators that have reduced liquidity and capital requirements based on bank size, with community banks exempted from new liquidity requirements and subject to more flexible capital requirements; and
- The CFPB's more flexible standards for small creditors and small rural lenders for numerous mortgage requirements including: QM status for small rural lender portfolio loans; higher interest rate thresholds for small lender QM safe harbor loans; exemptions from escrow and other servicing requirements; and generous standards for small rural bank balloon loans. This approach works and should be continued.

Other broader proposals that likewise enjoy broad support would provide further relief to all lenders. Further clarification of False Claims Act liability for Federal Housing Administration (FHA) loans is needed to reduce unnecessary uncertainty and protect responsible lenders. Another reform is that the interest rate level for QM safe harbor loans could be increased from 150 basis points over average prime offer rate (APOR) to 200 basis points. This would substantially reduce the number of mortgages that are classified as higher cost mortgages and that are excluded from safe harbor status. Finally, a major area of relief could be provided around the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) rules compliance. BSA/AML compliance is a huge regulatory burden, especially for community banks and credit unions. These laws carry out the critical need to prevent our financial institutions from being used by terrorists, drug dealers, and other criminals to facilitate illegal activities. Today, the onerous task of determining the true identity of owners of accounts falls on the financial institution. The American Bankers Association found that this compliance is "the most costly regulatory burden."⁴² It further found that this burden was especially costly for smaller banks. The Independent Community Bankers of America (ICBA) and others have asked that

⁴² American Banker, BankThink, (2015) *available at* <https://www.americanbanker.com/opinion/how-to-lighten-community-banks-aml-compliance-load>.

“ownership information should be collected and verified at the time a legal entity is formed by either the Internal Revenue Service or other appropriate federal or state agency, rather than by financial institutions. This would provide uniformity and consistency across the United States.”⁴³

Bipartisan bills have supported this solution, and have been endorsed by the Clearing House Association. This important reform should be enacted.

V. Conclusion.

Financial institutions, especially community banks and credit unions, play an important and essential role in this nation’s financial market. CRL understands and supports the need for appropriate regulatory flexibility for small depositories. We oppose, however, any effort to use regulatory relief for community banks and credit unions as a vehicle for non-deposit-taking lenders and larger financial institutions to avoid having the regulatory scrutiny and oversight that proved lacking in the build up to the financial crisis. The need for regulatory flexibility must be balanced against the importance of consumer safeguards, the safety and soundness of financial institutions, and the security of America’s financial system as a whole. Federal financial regulators like the CFPB must be allowed to both protect the American people and ensure access to a broad, sustainable financial market.

We simply cannot afford another financial crisis. Congress should not roll back the CFPB and consumer protections under Dodd-Frank that have and continue to help millions of people across the country. I look forward to continuing to work with this Committee, community banks and credit unions, their associations, and regulators to ensure that all of these objectives are satisfied through laws and responsible regulations. Thank you for the opportunity to testify today, and I look forward to answering your questions.

⁴³ Independent Community Bankers Association, “2017 Plan for Prosperity,” *ICBA* (2017), available at <http://www.icba.org/docs/default-source/icba/advocacy-documents/priorities/icbaplanforprosperity>.



Testimony of
Robert M. Fisher
President and CEO
of
Tioga State Bank
Spencer, NY

On behalf of the
Independent Community Bankers of America

Before the
United States House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

Hearing on
**“Examining Legislative Proposals to Provide Targeted
Regulatory Relief to Community Financial Institutions”**

July 12, 2017
Washington, D.C.

Opening

Chairman Luetkemeyer, Ranking Member Clay, and members of the Subcommittee, I am Robert Fisher, President and Chief Executive Officer of Tioga State Bank, a \$475 million community bank in Spencer, New York. I am pleased to be here today on behalf of the Independent Community Bankers of America and the nearly 5,000 community banks we represent. Thank you for convening this hearing titled: "Examining Legislative Proposals to Provide Targeted Regulatory Relief for Community Financial Institutions." We hope that this hearing sets the stage for legislation needed to strengthen local economic growth and job creation.

Tioga State Bank has deep roots in the communities of Tioga County and surrounding counties in upstate New York. Founded by my great-great grandfather in 1884 to provide badly-needed banking services to local businesses and individuals, Tioga State Bank has weathered the Great Depression and numerous recessions since that time. I am a fifth-generation community banker, proud to carry on our commitment to local prosperity. Today we have 11 offices and approximately \$475million in assets. We specialize in consumer mortgage and small business lending. Our footprint is largely rural, but we also have offices in the urban and suburban communities of Binghamton. Many of the communities we serve depend on us as the only financial institution with a local presence. These smaller communities are simply not on the radar of the megabanks.

Like thousands of other community banks across the country, Tioga State Bank provides services that cannot be duplicated by banks that operate from outside the community. The credit and other financial services community banks provide help advance and sustain the economic recovery, which has been painfully slow and uneven, failing to reach many individuals and communities. Community banks are responsible for more than 50 percent of all small business loans nationwide under \$1 million. In New York state, community banks hold just 22 percent of total banking assets but make 55 percent of small business loans and 90 percent of small farm loans. Community banks "punch above their weight," well above, in these critical forms of lending. As the economic recovery strengthens, small businesses will lead the way in job creation with the help of community bank credit.

The role of community banks in advancing and sustaining the recovery is jeopardized by the increasing expense and distraction of regulation drastically out of proportion to any risk we pose. Community banks didn't cause the financial crisis, and we should not bear the weight of overreaching regulation intended to address it. I would like to thank this committee for passing a number of important regulatory relief bills this Congress, notably the Financial CHOICE Act (H.R. 10), which contains numerous community bank regulatory relief provisions, many of which reflect ICBA's Plan for Prosperity. We strongly encourage this committee to build on your strong record of regulatory relief by advancing legislation I will discuss today.

Proposed Legislation

I will focus my testimony on four bills before this committee that are of particular interest to community bankers: the “CLEARR Act” (H.R. 2133); the “Financial Institutions Due Process Act” (H.R. 924); the Clarifying Commercial Real Estate Loans Act” (H.R. 2148); and the Access to Affordable Mortgages Act.”

The common theme of these bills is government overreach whether it’s in the form of prescriptive regulation that unnecessarily escalates the cost of credit, arbitrary capital requirements, or examination practices designed to deter or discourage banking services to legal and legitimate customers. ICBA supports each of these bills for reasons I will discuss below.

The Community Lending Enhancement and Regulatory Relief Act of 2017 (CLEARR Act, H.R. 2133)

The CLEARR Act, introduced by Chairman Luetkemeyer, is a package of 15 provisions designed to provide relief from some of the most egregious aspects of regulatory burden, intrusive government overreach, and legal risk facing community bankers today. Passage of the CLEARR Act, many provisions of which were recommended in ICBA’s Plan for Prosperity, will increase community lending and job creation.

Strengthening Community Bank Mortgage Lending

Eight of the CLEARR Act’s 15 provisions address different aspects of mortgage lending. No area of community banking has been heaped with more new regulation in recent years than mortgage lending -- to the detriment of borrowers everywhere.

Mortgage lending by community banks represents approximately 20 percent of the national mortgage market.¹ However, in many small towns and rural communities the local community bank is the main source of mortgage credit. These markets are often neglected by larger national mortgage lenders that are driven by volume and margins because the markets may not generate enough real estate lending activity. Mortgage lending has always been an important part of Tioga State Bank’s businesses model, which as recently as 20 years ago represented some 90 percent of our lending. Today, mortgage lending represents about 45 percent of our lending and commercial lending the other 55 percent.

¹ The Federal Reserve’s analysis of Home Mortgage Disclosure Act (HMDA) data indicates that banks with assets under \$10 billion account for 18 percent of home loan originations. See “Community Banks and Mortgage Lending,” Remarks by Federal Reserve Governor Elizabeth Duke, November 9, 2012. However, HMDA data does not capture institutions that operate exclusively outside of metropolitan areas. Therefore, we estimate that the community bank mortgage market share is slightly larger than 18 percent.

Flexibility for Portfolio Lenders

Provisions of the CLEARR Act create new flexibility for banks that hold mortgage loans in portfolio. Many residential properties in the small and rural communities served by community banks don't qualify for sale in the secondary market. They may sit on a large plot of land, be mixed-use in nature, or irregular in other ways. They frequently lie outside of city limits. These are not suburban properties and for this reason they often lack adequate comparable sales and don't fit the inflexible requirements of the secondary market. In addition, the borrowers may be farmers or small business owners whose debt-to-income ratios fall outside of secondary market parameters, despite their personal net worth and means to repay the loan. Community banks specialize in serving such borrowers, often with non-conforming loans held in portfolio. At Tioga State Bank, we hold 60 to 65 percent of the mortgages we originate in portfolio. Most of these loans would not qualify for sale into the secondary market.

Portfolio lenders need a more flexible approach to regulatory compliance because they hold 100 percent of the risk of default and have every incentive to ensure they understand the borrower's financial condition and to work with the borrower to structure the loan properly and make sure it is affordable. The same incentives lead portfolio lenders to ensure that collateral properties are accurately appraised and that taxes and insurance premiums are paid on a timely basis.

Automatic QM for Mortgages Held in Portfolio

The "qualified mortgage" (QM)/ability-to-repay rule is overly complex and prescriptive and excludes otherwise creditworthy mortgages. As many community banks are unwilling to assume the legal risk of underwriting non-QM mortgages, the QM rule has the effect of reducing credit availability and even pushing some banks to exit the mortgage market. QM reform is needed to keep community banks in the mortgage market and expand mortgage credit.

CLEARR Act Solution

The CLEARR Act would provide that mortgages held in portfolio by have automatic "qualified mortgage" (QM) status under the CFPB's ability-to-repay rule. This is a simple, clean solution that would avoid the tortuous analysis required under the CFPB's ability-to-repay rule.

Ease Escrow and Appraisal Requirements for Community Bank Portfolio Lenders

Mandatory escrow requirements raise the cost of credit for those borrowers who can least afford it and impose additional, unnecessary compliance costs for community bank lenders. Appraisal requirements have become more costly in recent years, and rural American is experiencing a shortage of licensed appraisers. This is certainly true in our market, where an appraiser shortage is escalating prices and increasing appraisal turnaround times. Escrow and appraisal requirements deter community bank mortgage

lending and reduce borrower choice. Portfolio lenders have every incentive to ensure that collateralized properties are accurately appraised and that taxes and insurance are paid on a timely basis. Community bank employees often understand local real property values better than licensed appraisers who operate from outside of the county or state where the property is located.

CLEAR Act Solution

Under the CLEAR Act, a mortgage held in portfolio by a bank with assets of \$50 billion or less would be exempt from escrow requirements. Further, mortgage loans of less than \$250,000 held in portfolio would be exempt from appraisal requirements that otherwise apply to “higher-risk” mortgages, as defined by regulation. Community banks are better able to appraise local property values in-house.

I would like to thank Rep. Kustoff for introducing the CLEAR Act appraisal provision described above in a free-standing bill, the **Access to Affordable Mortgages Act of 2017**.

Home Mortgage Disclosure Act Reporting and Recordkeeping

Community bank mortgage lenders are subject to burdensome reporting and recordkeeping requirements under the Home Mortgage Disclosure Act (HMDA). The HMDA burden was sharply increased by a recent CFPB rule that more than doubled the number of data fields – from 23 to 48 – lenders must report for every loan application, forcing community banks to overhaul their systems and retrain staff at significant cost. At Tioga State Bank, we have had an internal task force working on the new data fields for the last six months. Our core processor is still working on the issue as well.

Collection of the new data points begins on January 1, 2018, and reporting of that data begins in 2019. Yet this new data, collected at significant expense, will likely provide little incremental benefit or insight over what is currently reported.

While HMDA does exempt certain lenders, the current exemption thresholds are far too low. Institutions with assets of less than \$44 million (adjusted annually) and institutions with no offices in metropolitan statistical areas are exempt from reporting under HMDA. The new rule creates an additional exemption for small volume mortgage lenders that originate fewer than 25 closed-end mortgages and fewer than 100 open-end lines of credit in each of the two preceding years.

This threshold exempts a maximum of 34,000 loans nationwide, according to a CFPB estimate, a miniscule fraction of the nearly 10 million annual mortgage applications reported through HMDA last year.

CLEAR Act Solution

The CLEAR Act would repeal the Dodd-Frank authority for expanded HMDA reporting which provides little additional information of use at significant expense to community bank mortgage lenders.

In addition, the CLEAR Act would increase the loan-volume threshold for HMDA reporting to 1,000 closed-end mortgages and 2,000 open-end lines of credit. These higher thresholds would provide relief for many more small lenders without significantly impacting the mortgage data available to the CFPB or impairing the purpose of the HMDA statute.

As a community bank mortgage lender, I can affirm that HMDA reform is a high priority and would free up significant staff time and resources to better focus on serving customers.

Preserve Community Bank Servicing

ICBA believes it is critical to retain and promote the role of community banks in mortgage servicing and adopt policies that will deter further consolidation of the mortgage servicing industry. At Tioga State Bank, servicing is a critical component of our mortgage lending model. We service the loans held in our portfolio and retain servicing on the loans we sell into the secondary market as well. We believe local servicing is one of the major reasons customers come to us for mortgage credit. Servicing helps us to cement long-term customer relationships.

Community banks, which thrive on their reputation for customer focus and local commitment, promote a competitive mortgage servicing industry that is less susceptible to abuses and avoidable foreclosures such as those that have impeded the housing recovery and led to the national mortgage settlement.

Community bank servicers know their communities and intervene early to keep mortgages out of default. Smaller portfolios and better control of mortgage documents also provide an advantage over the large servicers. For these reasons, community banks have generally been able to identify repayment problems at the first signs of distress and work with borrowers one-on-one to keep them in their homes.

Requiring community banks to comply with the same resource-intensive mortgage servicing requirements as the largest national servicers is driving community banks out of the marketplace. New servicing standards are overly prescriptive regarding the method and frequency of delinquent borrower contacts. They have reduced community bank flexibility to use methods that have proved successful in holding down delinquency rates. What's more, new regulation has approximately doubled the cost of servicing with a direct impact on the consumer cost of mortgage credit.

Compounding the impact of these costly and prescriptive new standards, Basel III punishes community bank mortgage servicers by severely lowering the threshold deduction for holding mortgage servicing assets (MSAs) as well as almost tripling the risk weight assigned to MSAs when they are not deducted.

CLEARR Act Solution

The CLEAR Act would increase the small servicer exemption limit from 5,000 loans to 30,000 loans serviced. Community banks above the 5,000-loan limit have a proven record of strong, personalized servicing and no record of abusive practices. This exemption limit would separate community bank servicers from regional and megabank servicers as well as non-bank servicers with large portfolios. To put the 30,000-loan limit in perspective, consider that the five largest servicers service an average portfolio of 6.8 million loans each and employ as many as 10,000 people each in their servicing departments. The top 5 mortgage servicers each have more than \$300 billion in unpaid principal balance on mortgages serviced.

The full benefit of increasing the small servicer exemption limit cannot be realized without corresponding relief from the punitive capital treatment of MSAs under Basel III. The CLEAR Act would require the federal banking agencies to repeal all regulations that implement Basel III with respect to MSAs and propose a new rule that takes into account (i) the history of the market for MSA, particularly during the financial crisis; (ii) the impact on consumer access to mortgage lending and mortgage servicing; and (iii) competition in the mortgage servicing market, including the role of community and mid-sized financial institutions.

Inflexible TRID Waiting Period a Nuisance to Borrowers

The TILA RESPA Integrated Disclosure (TRID) rule, which governs the mortgage application and closing process, is unique in scope and complexity. Unfortunately, the new rule has unclear liabilities and significant new compliance expenditures which have caused some community banks to exit the mortgage market.

The rule's inflexibility is a burden to both lenders and borrowers. For example, the rule requires a waiting period of three business days after the consumer receives the final disclosure documents and before closing on the loan. Loan closures can be difficult to coordinate between the seller, the buyer, and the lender. No borrower should be rushed into a loan. At the same time, ICBA believes that the borrower should have the flexibility to waive the mandatory waiting period, which in certain cases is not only a nuisance but a hardship.

For example, when a homeowner needs to refinance in order to avoid foreclosure, the waiting period may cause the homeowner to miss a foreclosure deadline. We recently had such a case at Tioga State Bank. In another case, after receiving the pre-closing disclosures, a customer changed his mind about allowing us to create an escrow account. This late decision affected the loan's APR and triggered a restart of the three-business-

day waiting period. Lastly, we get complaints from refinance borrowers because the waiting period is added to the three-day rescission period, which means that it takes at least six business days to close a refinance. More flexibility with regard to the waiting period would facilitate transactions and be greatly appreciated by borrowers.

CLEARR Act Solution

The CLEAR Act requires the CFPB to issue regulations establishing a process to waive the TRID waiting period. Consumers can best determine the appropriate timing a potentially-delicate loan closure and should have the option of waiving the three-business day waiting period.

Non-Mortgage Regulatory Relief

Small Business Loan Data Collection

Dodd-Frank Section 1071 requires the CFPB to implement rules for the collection and reporting of data on financial institutions' small business lending under the Equal Credit Opportunity Act. When written, the rules will require the collection and reporting of data in connection with credit applications made by women- or minority-owned businesses of any size as well as all small businesses regardless of ownership. Twelve pieces of data will be required, including the race, sex, and ethnicity of the principal owners of the business. Section 1071 also gives the CFPB discretion to require the reporting of any additional information that would assist the Bureau in fulfilling the purposes of the statute. The Bureau's HMDA rule (see above), which included numerous data fields not required by statute, suggests that it would take a similarly expansive view of its authority under Section 1071.

Small business data collection and reporting will impose significant new burdens on community banks at a time when they are absorbing numerous other regulatory requirements. In the small communities served by community banks, this data collection and publication raises serious privacy concerns. Moreover, commercial lending is complex business that cannot be "commoditized" in the way that consumer lending can. Each individual commercial loan has customized terms based on an analysis of numerous factors.

Complex lending should not be subject to simplified, rigid analysis, which might give rise to unfounded fair lending complaints. For this reason, the rules under Section 1071 will have a chilling effect on lenders' ability to price for risk. This, in addition to the expense of data collection and reporting, may drive community banks from the commercial lending market and curb access to small business credit.

CLEARR Act Solution

The CLEAR Act would fully repeal of Dodd-Frank Section 1071.

Federal Reserve Small Bank Holding Company Policy Statement

The Federal Reserve's Small Banking Holding Company Policy Statement (Policy Statement) is a set of capital guidelines that allows bank and thrift holding companies with assets of less than \$1 billion to raise and carry more debt than larger holding companies. Debt carried at the holding company level may be "down streamed," or invested, in subsidiary banks where it counts as equity.

The Policy Statement plays an important role in capital formation for smaller bank and thrift holding companies that have limited access to equity markets. A higher threshold would help more community banks meet their higher capital requirements under Basel III.

The Policy Statement contains safeguards to ensure that it will not unduly increase institutional risk. These include limits on outstanding debt and on off-balance sheet activities (including securitization), a ban on nonbanking activities that involve significant leverage, limitations on dividends, and a requirement that each depository institution subsidiary of a small bank holding company remain well capitalized.

CLEARR Act Solution

The CLEARR Act would raise the Policy Statement qualifying asset limit from \$1 billion to \$5 billion.

No Fair Lending Violation Without Discriminatory Intent

In June 2015, the United States Supreme Court upheld the application of "disparate impact" under the Fair Housing Act. Disparate impact describes the differential results that arise from "practices that are facially neutral *in their treatment of different groups*" but that may "*fall more harshly on one group than another.*" In other words, disparate-impact may arise when the end results of a lender's operations have different demographic results despite the uniform application of sound, neutral financial standards. Lenders must consider factors such as race and national origin in individual credit decisions to protect themselves from fair lending regulatory enforcement actions and lawsuits.

Community banks have seen an alarming trend of increased scrutiny in fair lending exams. De minimis pricing disparities that impact few borrowers are being cited as substantial "pattern and practice" fair lending violations. Allegations of disparate treatment require community banks to spend large amounts of time and resources in disproving false fair lending allegations.

Community banks are particularly vulnerable to such allegations. While large, conventional lenders typically take a "check list" approach to granting credit, community banks, by contrast, are committed to working with their customers to provide customized

loans under exceptional circumstances. Unfortunately, this form of “exception lending” raises red flags and too often draws fair lending allegations.

CLEAR Act Solution

H.R. 2133 would amend the Equal Credit Opportunity Act and the Fair Housing Act to specify that any discrimination must be “intentional” in order to find a violation of these laws. This would ensure lenders that uniformly apply neutral lending standards are not subject to unnecessary regulatory enforcement actions or frivolous and abusive lawsuits under the Equal Credit Opportunity Act or the Fair Housing Act.

Support Use of Reciprocal Deposits as a Stable Source of Funding for Community Lending

Reciprocal deposits allow a community bank to accept a deposit that exceeds the \$250,000 insurance limit by distributing it through a network of banks and receiving reciprocal deposits from other banks in the network. This solution allows a large local depositor – such as a local government or foundation – to obtain insurance coverage and allows banks to accept an equivalent amount of deposits to support local lending.

Unfortunately, reciprocal deposits have become caught up in the definition of “brokered deposit” in the Federal Deposit Insurance Act. Brokered deposits are disfavored and discouraged by the FDIC because they are not considered to be a stable source of funding. Brokered deposits could result in higher FDIC insurance premiums and a lower CAMELS rating.

Reciprocal deposits did not exist when the Federal Deposit Insurance Act was enacted and do not act like the type of deposits the law was meant to cover. Studies have shown that reciprocal deposits act similarly to other core deposits: they are from local customers, earn the local interest rate, and are a stable source of funding. Because reciprocal deposits are wrongly governed by the law on brokered deposits, it is difficult for community banks to utilize their full potential.

At Tioga State Bank, municipal deposits represent about one third of our deposits and are a critical source of funding. However, when we keep these deposits on our balance sheet, we are required to pledge bonds for the amount of these deposits above the FDIC insurance limit, which reduces our liquidity. In recent years, we have been using reciprocal deposits to help restore liquidity. In our experience, these reciprocal deposits are stable source of core funding. The negative perception of “brokered deposits” has made us reluctant to use reciprocal deposits to their full potential.

CLEAR Act Solution

The CLEAR Act would create a statutory exception for reciprocal deposits from the definition of a brokered deposit. Such an exception would not compromise safety and soundness protections.

Making Better Use of Limited CFPB Examination Resources

The CFPB does not optimize the use of its limited examination resources by focusing on the largest banks and non-banks that are the greatest source of consumer risk.

CLEAR Act Solution

The CLEAR Act would raise the threshold for banks exempt from direct examination and reporting requirements by the Consumer Financial Protection Bureau (CFPB) from \$10 billion to \$50 billion in assets. Banks of less than \$50 billion in assets would continue to be examined for compliance with CFPB rules by their prudential regulators. Bank supervision is more balanced and effective when a single regulator examines for both safety and soundness and consumer protection.

Prohibit Coercive and Discriminatory Regulator Scrutiny

All legal forms of business should be allowed to operate freely with access to essential banking services, subject to the discretion of banks, and without excessive pressure or intimidation from law enforcement. Law enforcement should focus on law breakers directly, without forcing banks to act as police, and their efforts should be narrowly targeted.

In recent years, bank regulators have applied unwarranted scrutiny to bank relationships with categories of businesses deemed “high risk” or that supposedly create “reputational risk.” These businesses include internet-based businesses, short term lenders, telemarketers, debt collectors, and other lawful businesses. Regulators have questioned long-standing relationships with businesses that have been properly screened by the bank’s own risk controls. It is beyond the scope of the supervisory process to assess a bank’s reputational risk or to prohibit or discourage community banks from providing these services. Community banks are the best judge of their own reputation risk and have every incentive to safeguard their own reputations through proper screening of customers. We conduct due diligence to assess the level of risk of each customer relationship and ensure that controls are in place to identify and monitor these relationships on an ongoing basis.

CLEAR Act Solution

Under the CLEAR Act, the three federal banking regulators, the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency, would be prohibited from suggesting, requesting, or ordering a bank to terminate a customer relationship unless the regulator put the order in writing and specified a material reason for the action. This requirement would limit the opportunity for regulators to abuse their discretion and terminate long-standing banking relationships based on biased, unsubstantiated, or subjective notions of “reputational risk.”

The CLEAR Act would preserve the ability of banks to serve legal and legitimate business customers without undue pressure from law enforcement or examiners.

The Financial Institutions Due Process Act (H.R. 924)

H.R. 924, introduced by Rep. Rothfus, would go a long way toward improving the examination environment by creating a workable appeals process. Bank examination reform is a key component of ICBA's Plan for Prosperity.

H.R. 924 would create an Independent Examination Review Panel and give financial institutions a right to an expedited, independent review of an adverse examination determination. Taking the appeals process out of the examining agencies would bring a higher level of accountability to the regulators and their field examiners. The current system, which grants examiners almost unfettered and unassailable authority, begs for checks and balances.

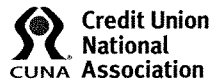
The Clarifying Commercial Real Estate Loans Act (H.R. 2148)

H.R. 2148, introduced by Reps. Robert Pittenger and David Scott, is designed to provide relief from punitive new capital charges for loans for acquisition, development, and construction of commercial projects classified as high-volatility commercial real estate (HVCRE) loans. Under Basel III, these loans are risk weighted at 150 percent for the determination of regulatory capital, compared to 100 percent before Basel III – unless the borrower can contribute at origination 15 percent of the projected appraised value of the project upon its completion in cash or readily marketable assets. This is an unreasonably high bar for a borrower to meet. The borrower must also commit to tying up that capital for the life of the project.

H.R. 2148 would amend the borrower-contribution standard by allowing a lender to consider the appreciated value of land, as opposed to its historic value, in determining whether a developer has contributed enough capital to avoid the 150 percent risk weight requirement. By easing application of the new rule, H.R. 2148 would facilitate community bank lending to credit worthy projects that would promote local economic development and job creation.

Closing

Thank you again for the opportunity to testify today. We appreciate the role of this subcommittee in putting a check on regulatory overreach and rolling back unwarranted regulation that is reducing credit and promoting industry consolidation. This committee has already passed critical regulatory relief legislation. The bills I've discussed today would build on your previous efforts by addressing critical threats to community banking. We look forward to working with this committee to advance them into law.



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TESTIMONY OF
RICK NICHOLS
PRESIDENT & CEO
RIVER REGION CREDIT UNION

BEFORE THE
FINANCIAL SERVICES SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
UNITED STATES HOUSE OF REPRESENTATIVES

AT A HEARING ENTITLED,
“EXAMINING LEGISLATIVE PROPOSALS TO PROVIDE TARGETED REGULATORY RELIEF TO
COMMUNITY FINANCIAL INSTITUTIONS”

JULY 12, 2017

Testimony of
Rick Nichols
President & CEO
River Region Credit Union
Before the
Financial Services Subcommittee on
Financial Institutions and Consumer Credit
United States House of Representatives
At a hearing entitled,
“Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions”
July 12, 2017

Chairman Luetkemeyer, Ranking Member Clay, and Members of the Subcommittee:

Thank you for the opportunity to testify on this important topic. My name is Rick Nichols, and I am President and CEO of River Region Credit Union, headquartered in Jefferson City, Missouri. I am also a member of the Board of Directors of the Heartland Credit Union Association, and my credit union is a member of the Credit Union National Association.

River Region Credit Union proudly serves more than 22,000 members and offers regular savings at competitive rates and quality loans at reasonable rates, and provides other financial services to meet its members’ needs and the credit union’s long term financial stability. Since 1954, our credit union has provided financial services to our community, including many organizations and businesses such as the Missouri National Guard, Missouri Highway Patrol, the health care industry, the transportation industry, and the Missouri Farmers Association (MFA).

By asset size (\$198 million), loans outstanding (\$161 million), and member deposits (\$176 million), we are a small financial institution, especially when compared to regional and national banks. Unlike other financial service providers who are not as connected to the consumers they serve, we are an integral component of our community as a not-for profit institution owned by our members. River Region Credit Union was established to “encourage growth and better service through education and membership participation.” Providing financial education and engaging directly with our members to equip them with the resources to face financial challenges, as well as the costs of everyday life, is a key component of our community’s economic well-being.

As you know, the recent economic crisis impacted communities throughout the United States. As such, we supported efforts to reexamine and revise the policies that led to the existence of “too-big-to-fail” institutions and their irresponsible actions that economically harmed many Americans. Unfortunately, the government’s response was not tailored to the institutions ultimately responsible for the economic crisis.

In the wake of the tidal wave of new regulations following the financial crisis, the largest banks and nonbank financial service providers continue to grow larger, while smaller financial institutions suffer under an anti-competitive regulatory scheme rigged to favor those that can better afford to comply with the regulations coming out of Washington. Unfortunately, the compliance burdens stemming from this new environment take away from our ability to serve our members. For instance, new mortgage disclosure and underwriting requirements imposed by the Consumer Financial Protection Bureau (CFPB) have had the unintended effect of preventing credit unions, such as River Region Credit Union, from lending at pre-crisis levels. Increasing the cost of making a loan does not spur economic growth in communities like Jefferson City; rather, it leads to fewer consumers having access to the products and services they need. Although our credit union continues to provide mortgage loans, many others have either exited the market or reduced their offerings.

My testimony outlines common-sense proposals that would help responsible community financial institutions, like credit unions, continue to serve their members and communities so they can grow and thrive. Some of the legislation being discussed today would make significant strides in furthering the goal of removing regulatory barriers to allow credit unions to more fully serve their members. We strongly support such targeted regulatory relief that will reduce unnecessary compliance burdens for community financial institutions.

The Current Regulatory Landscape

Since the outset of the crisis, credit unions have been subject to well over 200 regulatory changes from over a dozen federal agencies, which have totaled more than 8,000 Federal Register pages. This never-ending stream of new regulations, especially from the CFPB, has caused credit unions to divert resources from serving members and has led to tough choices regarding limiting and eliminating certain products and services.

Additionally, disparity in the cost impact of regulatory burden has accelerated the consolidation of the credit union system, as well as smaller participants in the banking sector, reducing consumers’ financial institution choices. Although the number of credit unions has continually declined since 1970, the attrition rate has increased since 2010 following the recession and the creation of the CFPB. In fact, 2014 and 2015 were among

the top five years in terms of attrition rates since 1970, at 4.2% and 4.1%, respectively. Notably, attrition rates at smaller credit unions have been especially high: in both 2014 and 2015, the attrition rate at credit unions with less than \$25 million in assets—half of all credit unions are of this size—has exceeded 6%. These higher attrition rates are a direct result of both the dramatically higher regulatory costs incurred by small credit unions and the increases in those costs since 2010.

Earlier this year, CUNA surveyed credit union executives to measure the impact of these rules on credit union members.¹ The findings indicate:

- More than four in 10 credit unions that offered mortgages sometime during the past five years (44%) have either eliminated certain mortgage products or services (33%) or stopped offering them (11%), primarily due to burden from CFPB regulations. Credit unions with assets of less than \$100 million are the asset group most apt to have dropped their mortgage program altogether.
- At 80%, the Truth in Lending Act and Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure rules are far and away the rules most negatively impacting credit unions offering mortgages. This is followed by the Qualified Mortgage rule (43%), Mortgage Servicing rule (30%), and new Home Mortgage Disclosure Act (HMDA) rules (19%). TILA-RESPA serves as the most troublesome rule for all asset groups. (Notably, many credit unions have not yet even turned their full attention to the requirements in the new HMDA rules so this impact is likely understated.)
- One in four credit unions (23%) that currently offer Home Equity Lines of Credit (HELOCs) indicate they plan to either curtail their HELOC offerings or stop offering them in response to the new HMDA rules.
- The clear majority of credit unions (93%) that either currently offer payday/small-dollar loans or are considering offering them indicate they will likely no longer consider providing these loans if there are increased regulations (33%), will review the impact and then decide whether to continue the currently-existing offering (43%), or will likely discontinue the currently existing loan product (without an impact review) if there are increased regulations (17%).

¹ Haller, Jon; Ledin, Paul; and Malla, Bandana, Credit Union National Association Impact of CFPB Rules Survey, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/FINAL%20Report%20Summary%20Only%20Impact%20of%20CFPB%20Survey%20Analysis.pdf (Feb. 2017).

As credit unions continue to suffer under the current regulatory scheme, even their prudential regulator, the National Credit Union Administration (NCUA), recognizes the clear need for regulatory relief for them. As you know, the NCUA has responsibility for maintaining the safety and soundness of the National Credit Union Share Insurance Fund (NCUSIF) and examines and supervises credit unions. Through this role, the NCUA has recognized the need for relief for credit unions from regulatory burdens. NCUA Chairman Mark McWatters recently sent a letter to CFPB Director Richard Cordray outlining some specific areas where relief is needed. Notably, the NCUA recognized that the different structure and size of credit unions warrants tailored regulations and in certain instances, exemption from rules since credit unions are already highly regulated and have a long history as consumer protectors. In NCUA's letter, it highlighted that the median size for credit unions is less than \$30 million in assets and the median staff size of a credit union is eight employees. Accordingly, it noted credit unions "can struggle to stay abreast of complex and evolving compliance requirements without the retention of often cost prohibitive counsel, accountants, financial advisors, and other professionals."²

Findings from a study of credit unions' regulatory burden completed in 2016, are consistent with these NCUA concerns. The study found that the impact of regulatory burden on credit unions and their members was \$7.2 billion in 2014 alone.³ This represented a 40% increase in compliance costs from 2010. Significant new rulemakings have taken effect since 2014, which have undoubtedly increased the cost credit unions and their members are paying to comply with rules designed for abusers even more. At the time of the study, credit union-wide, the equivalent of about one staff member's time for every four employees was spent on regulatory compliance.

Unfortunately, when credit unions spend their resources on complying with rules aimed at predatory lenders, they spend fewer resources on innovating and providing products and services that spur economic growth. As the NCUA noted in its letter, when credit unions provide affordable financial services, this benefits credit union members and their communities.

² National Credit Union Administration Letter to CFPB Concerning Compliance with CFPB Rules, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/Cordray%20CU%20Compliance%20with%20CFPB%20Rules%20Letter.pdf (May 24, 2017).

³ Hui, V., Myers, R., Seymour, K., "Regulatory Financial Impact Study." Cornerstone Advisors, Inc., *available at* <http://www.cuna.org/regburden/> (Feb. 2016).

America's Credit Unions Support H.R. 2133, the Community Lending Enhancement and Regulatory Relief Act (CLEARRR Act)

The Community Lending Enhancement and Regulatory Relief Act of 2017 (the CLEARRR Act of 2017) includes several provisions that would allow credit unions to more fully serve their members. Specifically, credit unions support the following proposals in the CLEARRR Act:

- Section 2, which directs the CFPB to provide an exemption or adjustment from the mortgage loan servicing and escrow account administration requirements in TILA/RESPA for creditors with less than \$50 billion in assets holding the loans in portfolio or servicers of fewer than 30,000 loans;
- Section 3, which would amend TILA to exempt higher-risk mortgages from property appraisal requirements;
- Section 5, which would repeal the risk-based capital regulation finalized by NCUA in 2015;
- Section 6, which would modify the CFPB's Unfair, Deceptive and Abusive Actions or Practices Authority (UDAAP);
- Section 7, which would amend the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) to require intent to discriminate;
- Section 8, which would make improvements to the CFPB's final HMDA Rules;
- Section 9, which would repeal the CFPB's ability to collect small business loan data;
- Section 10, which would establish requirements under which a federal banking agency could request or order the termination of a credit union member's account;
- Section 12, which would require the CFPB to issue a rule allowing consumers to waive requirements related to the timing of providing closing disclosures for mortgage loans;
- Section 13, which would increase the CFPB supervisory threshold from \$10 Billion to \$50 Billion;
- Section 15, which would create a safe harbor for mortgages held in portfolio at credit unions and by other mortgage lenders, deeming them qualified mortgages for purposes of the CFPB's mortgage lending rules; and
- Section 16, which would transfer to the FHFA the authority to define the ability to pay standard for purpose of a qualified mortgage.

Section 2 – Mortgage Servicing and Escrow Thresholds

Section 2 would direct the CFPB to provide an exemption or adjustment from the mortgage loan servicing and escrow account administration requirements of RESPA for creditors with less than \$50 billion in assets or servicers of fewer than 30,000 loans annually.

Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), credit unions were required to open escrow accounts for one year on higher-priced, first-lien mortgages secured by borrower's principal dwelling. However, new rules promulgated by the CFPB require credit unions to hold an escrow account open for five years. As a result, some credit unions have shied away from higher-priced mortgages because of the expertise that is required to establish and maintain escrow accounts.

It is unfortunate that legislation is necessary on this issue. We believe the CFPB has the authority to make these exemptions under the existing authority which Congress conveyed to it to keep the regulatory burden on community financial institutions measured while addressing rulemakings on large banks and abusers of consumers. However, the CFPB has not exercised this authority fully, making this legislation necessary in order to ensure these rules are appropriately focused. The two changes made by this legislation will provide important regulatory relief to credit unions and help them efficiently serve their members. We strongly support Section 2.

Section 3 – Appraisal Requirements for Higher-Risk Mortgages

Section 3 amends TILA to exempt higher-risk mortgages from property appraisal requirements. It also amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to exempt this same category of higher-risk mortgages from the standards prescribed by the federal interagency appraisal requirements, if such mortgage loans are held on a lender's portfolio for at least three years.

By providing an exemption from the TILA appraisal requirement for properties with transaction values of \$250,000 or less for loans held in portfolio for a least three years, the bill would provide both regulatory relief to mortgage lenders and increase access to mortgage credit for borrowers purchasing lower-cost dwellings. Simply put, this provision will allow credit unions that offer mortgage loans secured by covered properties to better serve middle to lower income consumers.

Section 5 – Repealing NCUA's 2015 Risk-Based Capital Rule

Section 5 would repeal NCUA's 2015 risk-based capital rule and set criteria for the agency to propose a similar rule. While the Federal Credit Union Act requires NCUA to issue a risk-based capital rule, the 2015 regulatory

changes went too far and represented a solution in search of a problem. Despite the improvements that the agency made through the rulemaking process, implementation of this misguided regulation will still cost credit unions significant resources that would be better used to the benefit of their members.

Section 6 – Reforming CFPB’s UDAAP Authority

Basic tenets of the rule of law suggest regulations should be clear, publicized, stable, and just. Through its application of its UDAAP authority, the CFPB has failed consumers by ignoring these principles. Thus, Congress should take steps, as proposed in Section 6, to curtail the Bureau’s authority.

The CFPB has used its UDAAP authority as a broad tool to sweep credit unions into proposed regulations consistent with its ideological goals, despite no evidence of harm to consumers. For example, using its UDAAP authority, the CFPB has proposed to include consumer-friendly, credit union small dollar loan programs in its new Payday and Small Dollar Loan Rule (small dollar rule).⁴ Though little to no data suggest these products have any pattern of harm to consumers, the proposed rule imposes new and complex requirements on credit unions. In fact, in the three years prior to the Bureau proposing a new small dollar rule, there were precisely four complaints regarding credit union small dollar loans, representing 0.088 percent of complaints regarding this type of loan product.⁵ To the contrary, consumers have stated that credit union small dollar loans are often their safest and best option for credit.⁶ Instead of using its broad UDAAP authority to restrict consumer access to short term credit from credit unions, the CFPB should be doing more to encourage credit unions to engage in this market which is a critical source of credit for low and moderate income consumers.

The CFPB has also used this authority to send credit unions mixed messages regarding prudential regulator guidance and to create new law. For example, in a recent enforcement action against a credit union, the CFPB labeled it an unfair practice when it froze members’ account access and disabled certain electronic services after consumers became delinquent.⁷ Several NCUA legal opinion letters conflict with this CFPB finding and specifically do not preclude a federal credit union from restricting the availability of certain services (e.g., ATM

⁴ Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47900 (July 22, 2016).

⁵ CFPB’s Consumer Complaint Database, *available at* <http://www.consumerfinance.gov/data-research/consumercomplaints/#download-the-data> (based on data downloaded on Sept. 29, 2016).

⁶ Peace, Elizabeth. “Consumers Prefer Credit Unions to Payday Lenders,” Credit Union Times, *available at* <http://www.cutimes.com/2015/07/28/consumers-prefer-credit-unions-to-payday-lenders> (July 28, 2015).

⁷ In the Matter of Navy Federal Credit Unions, *available at* http://files.consumerfinance.gov/f/documents/102016_cfpb_NavyFederalConsentOrder.pdf (Oct. 11, 2016).

services, credit cards, loans, share draft privileges, preauthorized transfers, etc.) to members provided there is a rational basis for doing so, and as long as the members are aware of the policy.⁸

Creating new requirements through enforcement actions, particularly when they conflict with longstanding statutory precedent, is extremely concerning to credit unions. Credit unions obviously support efforts to ensure that credit union members are treated fairly and the concept that all collection efforts should be conducted in a respectable and not overly aggressive way. However, we are concerned with any circumstances in which the CFPB faults credit unions using its UDAAP authority when we are complying with current law, regulation and supervisory guidance.

Arbitrary policies made outside the well-established procedures of administrative law create uncertainty and deter credit unions from offering products and services, and extending credit to borrowers, because the risk and exposure of non-compliance is stifling. In fact, in a recent member survey by CUNA, credit unions stated that they strongly believe that future CFPB policies making it more difficult for a credit union to collect on debts would cause their credit union to cut back on current practices regarding providing credit to “riskier” borrowers.⁹ Both consumers and financial institutions benefit when clear rules are created and enforced free of political divisiveness, with numerous voices at the table with various areas of expertise, and a solid understanding of current laws and policies.

My concern regarding the CFPB’s use of its UDAAP authority to regulate and supervise credit unions are shared by the NCUA, credit unions’ prudential regulator. As previously discussed, NCUA recently memorialized several suggestions for alleviating unnecessary burdens and improving the ability of credit unions to serve consumers in a letter to the CFPB, and mentioned the CFPB’s UDAAP authority as an area that needs reforms.¹⁰

Moreover, the NCUA sent a comment letter to the CFPB urging it to exempt aspects of credit union lending from the small dollar rule.¹¹ The NCUA later reiterated these concerns in a subsequent letter to the CFPB that

⁸ NCUA Opinion Letter Concerning Denial of Services to Joint Share Account Owners, *available at* <https://www.ncua.gov/Legal/OpinionLetters/OL2005-0723.pdf#search=member%20causes%20a%20loss> (Sept. 20 2005).

⁹ Impact of CFPB Rules Survey *supra* note 1.

¹⁰ National Credit Union Administration Comment Letter to CFPB in response to the CFPB’s proposed rule for Payday, Small Dollar, and High Cost Loans, *available at* <https://www.ncua.gov/newsroom/Documents/comment-letter-2016-oct-metsger-payday-rule.pdf> (Oct. 3, 2016).

¹¹ *Id.*

states it should provide clarity to credit unions with respect to UDAAP.¹² The NCUA expressed that “uncertainty regarding supervisory expectations can limit the ability of credit unions to provide the services sought by their members.”¹³ In addition, the NCUA noted there is no precedent for understanding the abusive prong of UDAAP, which can be broad.

When credit unions operate without due process and a clear picture of the rules they are expected to follow, they stop innovating and limit their products and services, which is detrimental to their members and communities. As such, more clarity regarding the CFPB's use of UDAAP authority would benefit credit unions and their members; and removing the abusive prong of UDAAP seems an appropriate step for Congress to take. For these reasons and others, we strongly support Section 6.

Section 7 – Amending the Equal Credit Opportunity Act and Fair Housing Act

America's credit unions support nondiscrimination and equal access to credit. Our mission is to promote thrift and provide access to credit for provident purposes to our members. We understand the importance of and support the goals of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). Nevertheless, these laws presently place lenders in jeopardy of frivolous litigation because of creative legal arguments created by plaintiffs' firms. Section 7 brings in line legal standards more closely aligned with the original intent of the statutes and recent court rulings to clarify that violation of these laws require proof of intent before imposing liability on a lender. Such a change would allow courts to focus on truly bad actors who were the intended targets of the original legislation.

Section 8 – Raising Home Mortgage Disclosure Act Reporting Thresholds

The CFPB has acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, the HMDA rule penalizes credit unions where there has been no evidence of wrongful conduct. We support the CLEAR Act's provisions to exempt depository institutions from reporting closed-end mortgage loans if the depository institution originated less than 1,000 closed-end mortgage loans in each of the 2 preceding calendar years, and

¹² Letter from National Credit Union Administration Chairman Mark McWatters to Consumer Financial Protection Bureau Director Richard Cordray regarding credit union compliance with CFPB rules, *available at* https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/Cordray%20CU%20Compliance%20with%20CFPB%20Rules%20Letter.pdf (May 24, 2017).

¹³ *Id.*

open-end lines of credit if the depository institution originated less than 2,000 open-end lines of credit in each of the two preceding calendar years.

For HMDA, the NCUA in its May 24, 2017, letter also highlighted several specific changes that should be made to the CFPB's final rule. It states that consideration should be given by the CFPB to raising the various thresholds to a more substantive asset and transaction volume level to further reduce the reporting burden on smaller credit unions. The letter further highlights concern with requiring the reporting of 25 new data points. Chairman McWatters writes that credit unions should be exempt from reporting the additional 14 data points and that, "such an exemption would provide much-needed regulatory relief to the credit union community and assist these institutions in their mission to serve middle class Americans, those striving to join the middle class, and small business owners, employees, customers, and vendors." Specifically, the NCUA asks the CFPB to consider the economic burden its rule would place on credit unions.¹⁴

The CFPB went too far in its final HMDA rule and the impact on credit unions and credit union members is already taking affect as credit unions prepare to comply with the new regulation. While we hope the Bureau would correct its overreach on its own volition through the rulemaking process, the likelihood of that is remote; therefore, Congress should act swiftly to correct the overreach by the Bureau by enacting Section 8.

Section 9 – Repealing Small Business Data Collection Requirements

Section 1071 of the Dodd-Frank Act amends the ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on credit applications by women-owned, minority-owned, and small businesses. Section 9 would repeal this provision.

Credit unions' unique and distinct memberships, as well as the statutory restrictions on credit union business lending and their existing regulatory framework, do not coincide with the CFPB's plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. As such, we have argued that Congress or the CFPB should exempt credit unions from the Section 1071 requirements because the regulatory harms caused by such a rule would far outweigh any benefit of having imperfect data. Taking into consideration the burden this type of requirement would impose on small entities – including credit

¹⁴ *Id.*

unions – we observe that it could harm the ability of small business owners to obtain credit from community-based financial institutions. Therefore, credit unions support repealing the provision.

Section 10 – Restrictions on Operation Choke Point

Section 10 seeks to address the problems associated with the Department of Justice’s Operation Chokepoint program by establishing requirements under which a federal banking agency could request or order the termination of a credit union member or bank customer account.

While we strongly support the government’s role in ensuring the integrity of financial markets and eliminating fraud, the program’s arbitrary enforcement tactics could create unnecessary risks to consumers and to the economy. Section 10 would limit federal banking regulators’ ability to discourage or restrict depository institutions from entering into or maintaining a financial services relationship with specific customers unless certain criteria are met. The provisions would also limit regulators’ ability to pressure financial institutions to terminate customer accounts, requiring regulators to have a material reason for termination that is not based solely on the reputation risk posed by the customer before pressuring the financial institution to close the account. Credit unions are committed to maintaining the ability to serve their members while strictly following all laws and governing regulations. Section 10 is a reasonable approach to preventing fraud and maintaining financial integrity without overreaching.

Section 12 – Empowering Consumers to Waive Unnecessary Waiting Periods for Mortgages

Section 12 would require the CFPB to issue a rule allowing consumers to waive requirements related to the timing of providing closing disclosures for mortgage loans. We support borrowers having the information they need and sufficient time to review documents necessary to close a loan agreement. The mortgage lending process is complicated for lenders and borrowers alike. Occasionally, clerical errors are made or events occur that delay closings. Under the current regulatory scheme when a lender needs to update closing documents, the clock on the period a borrower has to review the documents restarts. Borrowers should have the flexibility to waive the waiting period in order to proceed with closing, particularly when there is no harm to any party or where all parties are in agreement. This is a common-sense solution to facilitate the mortgage process while at the same time recognizing that humans make errors. We support Section 12.

Section 13 – Increasing the CFPB Supervisory Threshold to Force the CFPB to Focus Its Supervisory and Enforcement Resources on the Wall Street Banks and Other Abusers of Consumers

Section 13 would increase the threshold for supervision of credit unions and banks by the CFPB from \$10 billion to \$50 billion.

Credit unions are experiencing growing consolidation, with smaller credit unions opting to merge due in large part to the strain of growing regulatory burden. The number of community-based financial institutions approaching \$10 billion in total assets is increasing. As these institutions cross the threshold, the CFPB will be required to spend more of its resources examining these newly covered institutions at the expense of other important consumer protection activities. Adjusting the supervisory threshold would not significantly change the number of institutions or percentage of assets subject to examination by the CFPB, but it would allow it to more efficiently use its examination resources in the coming years to focus its attention on Wall Street banks and other abusers of consumers.

Furthermore, while there are only a small number of credit unions subject to the cap today, we believe raising the cap would be important recognition that credit unions were not the cause or perpetrators of the financial crisis and that credit unions, regardless of size, have a different incentive structure than for-profit financial institutions because they are owned by those they serve.

NCUA examines credit unions with less than \$10 billion in assets for compliance with consumer protection law. We are confident that NCUA can supervise the five credit unions that presently hold between \$10 billion and \$50 billion in assets, and NCUA appears to agree. Last week, NCUA Chairman Mark McWatters wrote CFPB Director Richard Cordray to request he use the Bureau's exemption authority to transfer supervisory authority over all credit unions to NCUA.¹⁵

Inasmuch as there is only one credit union with more than \$50 billion in assets, we would encourage the Subcommittee to consider exempting all credit unions from CFPB supervision. Further, we ask that the Subcommittee include language in this provision to adjust any asset threshold periodically for inflation.

¹⁵ Letter from NCUA Chairman Mark McWatters to CFPB Director Richard Cordray regarding credit union examination and enforcement, available at <https://www.ncua.gov/newsroom/Documents/mcwatters-letter-to-CFPB-credit-union-examination-enforcement.pdf> (July 6, 2017)

Section 15 – Encourage Community Financial Institutions to Lend by Deeming Mortgages Held in Portfolio as Qualified Mortgages

Section 15 would treat mortgages held in portfolio at credit unions and other mortgages as qualified mortgages for purposes of the CFPB's mortgage lending rules. The loans that financial institutions hold on their balance sheets should be treated in this manner as the lender retains all the risk involved with these mortgages and is subject to significant safety and soundness supervision from its prudential regulator. This will help credit unions, many of which are primarily portfolio lenders, continue to provide mortgage credit to their members.

Section 16 – Transferring Rulemaking for Ability to Repay Standards to FHFA

Section 16 would transfer rulemaking authority for determining a borrower's ability to repay a mortgage loan for purposes of the qualified mortgage rule from the CFPB to the Federal Housing Finance Agency (FHFA). Inasmuch as a loan meeting the qualified mortgage standards is eligible to be sold on the secondary market through a government sponsored agency regulated by FHFA, it is appropriate that the FHFA is the entity setting this standard.

America's Credit Unions Support H.R. 924, the Financial Institutions Due Process Act of 2017

H.R. 924, the Financial Institutions Due Process Act, would make several improvements to the examination process and the examination review process for credit unions. First, it would require NCUA to furnish examination reports within 60 days of the exit interview for the examination or the provision of additional information by the institution relating to the examination. Second, it would establish a three-judge independent examination review panel at the Federal Financial Institution Examination Council to hear appeals of final material supervisory determinations of the NCUA and other financial institution regulatory agencies. Third, the legislation would allow credit unions and other supervised financial institutions to request the regulatory agency provide written documentation of the agency's permission to take action, interpretation of law or regulation, and interpretation of generally accepted accounting principles, standards or requirements.

This legislation takes steps to bring fairness to an examination process that is not always transparent and an appeals process that, for credit unions, has never been balanced. CUNA, which maintains a perpetual member survey on examination process, practices and experiences, routinely hears of credit unions who have been

subject to questionable and inconsistent requests from examiners who are unable or unwilling to substantiate their authority to make such requests.

America's Credit Unions Support H.R. 1457, the Making On-Line Banking Initiation Legal and Easy Act (MOBILE Act)

Credit unions support H.R. 1457, the Making On-Line Banking Initiation Legal and Easy (MOBILE) Act. This legislation would allow financial institutions, with an individual's consent, to record personal information from a swipe, copy, or image of such individual's driver's license or personal identification card and store the information electronically for the purpose of verifying the identity of a customer and preventing fraud or criminal activity. It would prohibit financial institutions from selling, renting, transferring, or making such information available to another person.

This legislation is an important step toward helping credit unions and other financial institutions remain competitive in a market increasingly disrupted by financial-technology companies, who are often subject to fewer regulatory requirements. To the extent that this legislation makes it easier for consumers to join credit unions, we view this as a positive step.

America's Credit Unions Support H.R. 2396, the Privacy Notification Technical Correction Act

Credit unions support H.R. 2396, the Privacy Notification Technical Correction Act. We appreciate that Congress recently enacted amendments to privacy notification requirements that no longer require credit unions to mail disclosures to members annually. We understand that a technical correction is necessary because some credit unions and other financial institutions may provide different notifications to members or customers who do not receive electronic statements and different notifications to members or customers depending on their account status with the institution. The legislation under consideration today would provide credit unions sufficient flexibility to ensure that members have access to the privacy policy pertinent to their relationship with the credit union.

Other Bills Subject of Today's Hearing

America's credit unions take no position on H.R. 2148 or Representative Hollingsworth's discussion draft of the EQUAL Act. We continue to review H.R. 864.

Congress Should Continue to Tackle Regulatory Relief Priorities

America's credit unions greatly appreciate the Subcommittee's work on these targeted regulatory relief proposals. The complexity of the crisis facing community-based financial institutions means that one piece of legislation is unlikely to solve all the public policy obstacles these important institutions face in serving consumers and small businesses. We encourage the Subcommittee to continue to pursue additional measures to provide meaningful relief to community financial institutions, including the following.

Strengthening the CFPB's Exemption Authority

The CFPB regularly cites modest thresholds and accommodations it has provided in some mortgage rules and the remittances rule as evidence it is considering the impact its rules have on credit unions and their members. Regrettably, the CFPB's efforts have not been sufficient and have not fully taken into consideration the size, complexity, structure, or mission of all credit unions.

Section 1022 of the Dodd-Frank Act provides the CFPB with authority to exempt 'any class of covered entity' from its rulemaking. Last year, 399 Members of Congress—bipartisan majorities in both chambers—called on the CFPB to exercise this authority to shield credit unions and small banks from rules designed to reign in large banks and other abusers of consumers. If the CFPB remains unwilling to use this authority fully, Congress should enact legislation to clarify that credit unions are exempt from CFPB rules unless the Bureau demonstrates credit unions are causing consumers harm.

Installing a Five Member Commission at the CFPB

As presently structured, the CFPB is an anomaly in the federal government. The CFPB's extraordinary authority is vested in a single person, absent appropriate levels of Congressional oversight. We strongly believe that modernizing it to include a multi-member Commission would enhance rulemaking by ensuring diverse

perspectives are included in final rules and prevent disruptions caused by personnel changes. Credit union members will benefit from policymaking that includes more voices and different expertise.

Consumer protection should not be about politics; it should be about creating the best environment to enable financial health and safety—a mission that the credit union movement has adhered to for many decades with bipartisan support. The best way to remove politics from this equation is through a multi-member commission. We encourage Congress to continue to consider the virtues of a multi-member Commission to bring fairness and certainty to the rulemaking process for America's credit unions and small banks.

Conclusion

On behalf of America's credit unions and their 110 million members, thank you for the opportunity to testify today. I am happy to answer any questions the Subcommittee may have.



TESTIMONY

REFORMING BANK EXAMINATION PROCEDURES AND CFPB AUTHORITY

J.W. VERRET, JD

Senior Scholar, Mercatus Center at George Mason University

Hearing before the House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit

July 12, 2017

Chairman Luetkemeyer, Ranking Member Clay, and members of the committee:

I appreciate the opportunity to testify today. My name is J.W. Verret; I am a professor of banking and securities law at the Antonin Scalia Law School and a senior scholar with the Mercatus Center at George Mason University.

The legislation under consideration today includes vital reforms to the bank examination process by banking regulators, to the Consumer Financial Protection Bureau's (CFPB) jurisdiction and enforcement powers, and to the statutes enforced by the CFPB. These changes will help to provide more certainty and predictability to banks, and they will begin to alleviate barriers to entry which have made it all but impossible to open new banking institutions in recent years.¹ These new provisions will help to ensure economic growth and access to financial services for all Americans.

It is critical that regulatory barriers to bank competition and to customer access to financial services be removed. The committee's attention to these important issues is commendable, and it is consistent with other moments in banking history in which Congress was compelled to address inefficient barriers to competition in the banking system.

As the dual banking system evolved over the 150-year period since the Bank Act of 1863 was first adopted, a number of states set up intentional barriers to entry to prevent out-of-state institutions from competing with home-state banks, and consumers suffered.

Congress and federal regulators eventually stepped in to promote interstate branching, first through holding companies and eventually through efficient preemption of anticompetitive state rules. We stand at another such juncture, where congressional action will be vital to renew our banking system.

¹ Roisin McCord, Edward Simpson Prescott, and Tim Sablik, "Explaining the Decline in the Number of Banks since the Great Recession" (Economic Brief, Federal Reserve Bank of Richmond, March 2015), https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2015/pdf/eb_15-03.pdf.

For more information or to meet with the scholar, contact
Chad Reese, 703-993-8921, creese@mercatus.gmu.edu
Mercatus Center at George Mason University, 3434 Washington Blvd., 4th Floor, Arlington, Virginia 22201

The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.

At times, preemption of state regulatory barriers will be necessary, particularly with respect to the nascent financial technology industry.

In more recent history, a failure of multiple federal banking regulators to coordinate their de novo bank processes, rules, examinations, and enforcement proceedings has similarly led to unnecessary barriers to entry, excessive compliance costs, and harm to consumers. As in the past, Congress can play a vital role in renewing our banking system.

The examination process for banks is unique in the American regulatory structure. In no other field of regulation is the relationship between regulator and regulated so tightly knit. Examiners take up residence within institutions. Communications to a bank examiner are provided limited legal privilege from discovery, a privilege otherwise reserved for one's lawyer, spouse, or physician.

The exam process can work well and help remedy financial problems specific to a particular banking institution without harming the bank's reputational capital. The unique nature of examination can, however, turn quite ugly. Banking institutions report that examiners have sometimes issued retributive threats for opposing rules in a public notice-and-comment process or have issued inappropriate demands that amount to shadow regulation.

Furthermore, bank regulators have shown an unwillingness to coordinate bank examinations. Banks are in a constant state of examination and sometimes have to balance conflicting demands from different examination teams. The ideas reflected in the legislation we will discuss today can begin to ameliorate some of those problems, and I commend this committee's attention to these solutions.

The CFPB is one of the most powerful regulators in the financial services space, yet it is also the youngest. The Federal Reserve is more than a hundred years old and, the Office of the Comptroller of the Currency dates back to the Civil War. These agencies benefit from regulatory culture and a wealth of legal precedent defining their operative statutes, which have evolved collectively over hundreds of years. The CFPB, on the other hand, is five years old, and I don't need to remind this committee of the growing pains it has experienced.

It is therefore entirely appropriate that the CFPB's operative statute, and the statutes it enforces, be continually refined. I would argue that one of the most important changes being considered today is the proposed change to the broad authority of the CFPB to prevent unfair, deceptive, or abusive acts or practices.

Words have power in the law, and word choice in statutes is particularly important. They have power because they can be defined over hundreds of fact patterns in which impartial judges give words meaning. The words "deceptive" and "unfair" have such a clear meaning, developed over decades of implementation by the Federal Trade Commission, but the word "abusive" does not.

In the realm of political soundbites, it is easy to accuse someone making a legitimate argument about statutory meaning of being "in favor of abusive products." It's an old Washington trick. I would, however, challenge any who oppose this statutory change to describe a set of facts that would be considered abusive but not unfair or deceptive.

Another piece of legislation under consideration today would establish an intent requirement for violations of the Equal Credit Opportunity Act (ECOA). The CFPB describes itself as a law enforcement agency, and indeed the penalties it collects are often large enough to blur the line between civil and criminal actions. Our criminal laws overwhelmingly require an intent or "scienter" element to offenses,

recognizing that unintentional actions taken by people doing their best to follow the law are not morally blameworthy.

Courts interpreting ECOA have recognized this need for an intent requirement, and they have required either intentional or reckless behavior in order to award punitive damages under the statute.² Recent settlements under ECOA have reached levels that would have previously been reserved for punitive damages awards under the statute, and so I would argue the statutory fix contemplated today is consistent with the original intent of ECOA and with legal precedent interpreting the statute. I would further argue that a clear reading of the ECOA statute indicates it does not permit actions based on a theory of “disparate impact,” further bolstering the argument that the change contemplated today merely recognizes an existing feature of the statute.

I also commend the committee’s attention to the use of reputation risk in bank regulation and supervision. Citing to amorphous reputation risk has become a new fad among bank regulators in recent years, both in justifying rulemaking and in the CAMELS rating process, and it is highly problematic.

First, regulators have yet to demonstrate that reputation risk is a necessary component of the CAMELS rating and examination, since existing financial and management measures would capture the effect of any reputational problems among bank customers.

Second, regulators refuse to use the empirical tools available to measure reputation risk, such as stock price event studies or hedonic consumer price studies. Instead, they use reputation risk as a vague way to justify their personal preferences. The close association between this regulatory tool and the recent Operation Chokepoint scandal suggests careful scrutiny is warranted.

Reform of the examination process, of the CFPB’s powers and statutory authority, and of the use and abuse of reputation risk in bank examination and regulation will go a long way toward pruning the regulatory thicket that has stifled new bank formation in recent years. The various bills today present a wealth of ideas, only a handful of which I have touched upon. I look forward to discussing them with you.

I thank you for the opportunity to testify, and I look forward to answering your questions.

² See, for example, *Fischl v. General Motors Acceptance Corp.*, 708 F.2d 143 (5th Cir. 1983).



Statement for the Record

On behalf of the

Financial Services Roundtable

For the hearing entitled

**“Examining Legislative Proposals to Provide Targeted
Regulatory Relief to Community Financial Institutions”**

Before the

**Subcommittee on Financial Institutions and Consumer
Credit**

U.S. House Committee on Financial Services

July 12, 2017

Chairman Luetkemeyer, Ranking Member Clay and members of the Subcommittee, the Financial Services Roundtable¹ appreciates the opportunity to submit this statement for the record in support of two important pieces of legislation being discussed at this hearing.

H.R. 1457, the Making Online Banking Initiation Legal and Easy Act of 2017

The availability of financial services and products on-demand and with the convenience of a few finger swipes reflects how consumer expectations are evolving in an increasingly digital, friction-free world. To meet these expectations and remain competitive, financial firms are moving to adopt new techniques and technologies to serve their customers.

The potential benefits of this convergence between financial services, enabling technologies and the firms that produce them are immense. Aside from providing enhanced access, increased efficiencies and enhanced experiences, "FinTech" has the potential to address the challenge of making available more economically accessible and risk-tailored products and services, while maintaining and genuinely improving robust consumer protections, risk controls and data security.

This is the goal at the heart of H.R. 1457, the Making Online Banking Initiation Legal and Easy Act of 2017, which was introduced by Representative Scott Tipton and a bipartisan group of Members of this Committee.

New technologies are enabling depository institutions to reach consumers outside their geographic footprint, and to offer products and services in an entirely online or mobile environment – including account origination. However, a number of state laws governing the use of driver's licenses inhibit the ability of financial institutions to allow consumers in those states to open new accounts through a mobile application – a process in which federal law requires financial institutions to verify the applicant's identification, often with a driver's license as proof of identity. These state laws were not intended to restrict consumer access to financial services: This is purely the result of advances in financial technology that the laws never contemplated.

H.R. 1457 would ensure financial institutions can reach all consumers, and in particular unbanked or underbanked populations, with innovative and affordable financial products by clarifying that the use by a financial institution of a consumer's driver's license or personal identification card for the purpose of obtaining a financial product or service is a permissible activity. This is a common-sense measure that, by addressing an unintended

¹ FSR represents the largest integrated financial services companies providing banking, insurance, payment, investment and finance products and services to the American consumer. FSR member companies provide fuel for America's economic engine, accounting for \$54 trillion in managed assets, \$1.1 trillion in revenue and 2.1 million jobs.

consequence, will encourage innovation and expand financial access to many American consumers.

Discussion Draft entitled “Ensuring Quality Unbiased Access to Loans Act of 2017”

A hallmark of a thriving financial services system is the availability of products and services that meet the diverse needs of American consumers. Small-dollar loans and lines of credit are a financial necessity for many, and have historically been offered by both regulated financial institutions and less-regulated non-depository firms, including payday lenders, pawn brokers and title loan companies.

With limited justification, guidance put forth by the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) in 2013 had the effect of nearly drying up the availability of Deposit Advance Products (DAP) – a type of short-term credit product only available to established checking account customers of a financial institution that are repaid by the proceeds of the next direct deposit. Left with minimal choices, consumers must search outside the regulated banking sector for alternative sources of short-term financing.

The discussion draft put forth by Representative Hollingsworth would repeal the overly restrictive guidance and require any future regulatory efforts targeted at DAP to be conducted with a thorough review of the costs and benefits such an offering would have on consumers, with a focus on low- and moderate-income Americans.

Promoting greater competition and choice for consumers in the short-term lending and credit market should be achieved through practical, common-sense regulatory approaches to products like DAP. Regulated financial institutions want to be able to offer safe, well-designed short-term financing products to meet their customers’ needs. This measure would put the industry on a path toward achieving that goal.

Thank you for your leadership in developing these policies and holding this hearing. We appreciate the opportunity to comment and look forward to working together on these and other issues.



July 10, 2017

The Honorable Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions and
Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Lacy Clay
Ranking Member
Subcommittee on Financial Institutions and
Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

On behalf of the American Financial Services Association (AFSA),¹ I wish to express our appreciation to the Subcommittee on Financial Institutions and Consumer Credit for holding a hearing "Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions." We are pleased to offer our support for three measures scheduled to be considered by the Subcommittee during this hearing.

AFSA would like to thank you for co-sponsoring H.R. 2396, the "Privacy Notification Technical Clarification Act," which amends the Gramm-Leach-Bliley Act (GLBA) to update the exception for certain annual notices provided by financial institutions. We urge Subcommittee members to support this important bipartisan legislation.

The GLBA requires financial institutions (FIs) to issue privacy notices to consumers if the FIs share consumers' non-public personal information with affiliates or third parties. Such disclosures are required to occur when a relationship is first established between the FI and the consumer, as well as annually in written form as long as the relationship continues, even if no changes to the disclosure policies have occurred.

Annual privacy notices without policy changes are redundant, unnecessary, and confusing. They contain several pages of small-print legalese, which have little value for consumers. In fact, they are largely discarded – unread – immediately upon receipt. However, producing and mailing these notices costs millions of dollars.

In fall 2014, the Consumer Financial Protection Bureau (CFPB) finalized a rule allowing FIs to post their annual privacy notices online instead of delivering them individually if they meet a series of conditions, including not sharing the consumers' nonpublic personal information with unaffiliated third parties. In December 2015, Congress went further by enacting an outright exemption from the mailing requirement for FIs that: (1) do not share non-public personal information about consumers to unaffiliated third parties, and (2) have not changed its disclosure policies and practices since the most recent disclosure was sent to consumers. Unfortunately, certain FIs cannot take advantage of the exemption.

We ask Congress to pass H.R. 2396 to level the playing field for all FIs. If a financial institution's privacy policy has not materially changed, the institution should be permitted to satisfy the intent of GLBA by delivering its privacy notice through an electronic medium, or by mail upon request.

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

AFSA supports H.R. 2133, the "Community Lending Enhancement and Regulatory Relief Act of 2017." Particularly, we are in favor of Section 6, which limits the CFPB's authority to regulating and enforcing unfair or deceptive acts or practices, not the Bureau's interpretation of abusive acts or practices. The Bureau's use of this authority has stifled innovation in the marketplace through its ambiguity and has also created a catch-all authority that the CFPB and attorneys general may cite in prosecuting any business practice they find disagreeable. In fact, "abusive" is not a standard at all; it is an ill-defined tool that singularly expands the scope of regulators' power to determine which financial products and services pass muster.

Our members are committed to fair lending and expend substantial resources to ensure that credit decisions are based on a consumer's qualifications for credit and without regard to factors such as race or national origin. We therefore support the provision in H.R. 2133 clarifying that *intentional* discrimination is prohibited. AFSA also supports the elevated data thresholds for the Home Mortgage Disclosure Act in Section 8, as well as the repeal of the small business loan collection data in Section 9. The data collection requirements in this section are not a consumer issue and so should be removed from the CFPB's jurisdiction.

AFSA also favors H.R. 924, the "Financial Institutions Due Process Act of 2017," which would bring consistency and transparency to the examination process for financial institutions by requiring regulatory agencies to issue examination determinations promptly and ensure financial institutions receive full documentation of the information used to make the examination determinations. This legislation would also give financial institutions the right to have those determinations independently reviewed. A balanced and effective examination process is beneficial for both financial institutions and the consumers they serve. AFSA urges members to support this legislation and bring more balance and transparency to the examination process.

In addition, we would like to register our support for H.R. 864, the "Stop Debt Collection Abuse Act of 2017." This bipartisan legislation would extend the Fair Debt Collection Practices Act (FDCPA) to private debt collectors who work on behalf of federal government agencies. The FDCPA imposes a variety of limitations on the ability of financial institutions and debt collectors to recover money owed from consumers. Some of these requirements include restrictions on where and when a consumer may be contacted and when debt collection practices must stop if requested by a consumer. They also detail numerous disclosures that must be made to consumers, including monetary amounts, deadlines, and conditions by which the consumer may dispute the matter. The federal government should be held to the same high standards when collecting debt from consumers.

Thank you in advance for your consideration. Please do not hesitate to contact me at (202) 466-8616 with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association





July 13, 2017

The Honorable Blaine Luetkemeyer
Chairman
Committee on Financial Services
Subcommittee on Financial Institutions and
Consumer Credit
U.S. House of Representatives
2230 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Lacy Clay
Ranking Member
Committee on Financial Services
Subcommittee on Financial Institutions and
Consumer Credit
U.S. House of Representatives
2428 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

The Consumer Bankers Association (CBA) appreciates the Financial Institutions and Consumer Credit Subcommittee's interest in tailoring the regulatory framework for financial institutions serving consumers and small businesses. From underwriting loans to main street businesses to providing banking services to previously unbanked or underbanked consumers, CBA's members are integral to fueling the economic engine that drives prosperity in communities around the country. As such, we would like to take this opportunity to submit the following comments on the hearing entitled, "Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions." CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

Financial institutions of all sizes need relief from the overwhelming regulatory burden that requires valuable resources to be redirected away from the customer and focused on satisfying the demands from multiple regulatory agencies that operate independently and with little to no coordination. The legislation considered today would provide targeted relief and improve consumer access to well regulated banking products.

Ensuring Quality Unbiased Access to Loans Act of 2017

CBA strongly supports the Ensuring Quality Unbiased Access to Loans Act of 2017. This legislation would promote access to small-dollar bank loans, often known as deposit advance products (DAP), which were available prior to guidance issued in 2013 by the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC).

DAP served the critical need of providing emergency credit to pre-existing banking customers. Unfortunately, the FDIC and OCC guidance effectively eliminated the ability of the financial institutions they regulate to offer a viable alternative to compete with payday lending. The FDIC and OCC guidance recommended the use of underwriting that is more appropriately applied to a much larger credit product, such as a mortgage loan, and placed other restrictions on the

products. This, combined with a low interest rate environment, has made small-dollar credit unviable and has forced banks to exit the market.

We are encouraged that Congress is taking action to allow highly regulated banks to reenter this market and ensure consumers have access to small dollar credit liquidity. CBA strongly supports the repeal of the current DAP guidance and the requirement that any future guidance be subject to a cost-benefit analysis and public notice and comment period.

Making Online Banking Initiation Legal and Easy Act of 2017

We also strongly support H.R. 1457, the Making Online Banking Initiation Legal and Easy Act of 2017 (MOBILE Act), which would simplify consumers' ability to open bank accounts online or on a mobile device from anywhere in the United States. This common-sense, bipartisan legislation would provide consumers with improved access to safe and regulated financial services products and promote financial inclusiveness for unbanked and underbanked consumers.

Some CBA members have developed applications that allow consumers to verify their identity and open a bank account online or on a mobile device without the inconvenience of visiting a branch. One method allows consumers to "swipe" their driver's license or other state-issued identification card to record their information. Another method requires consumers to take a photo of their identification card and face. Both methods simplify the account opening process and increase the number of financial institutions that consumers can access at their fingertips.

The MOBILE Act brings consistency to the various state laws that address a bank's ability to implement the needed verification processes that would allow a consumer to swipe or copy a state-issued identification card for the purposes of opening an account.

Community Lending Enhancement and Regulatory Relief Act of 2017

CBA supports several provisions included in H.R. 2133, the Community Lending Enhancement and Regulatory Relief Act of 2017.

Abusive Standard

The CFPB was granted a significant new authority, when compared to other banking regulators, to issue enforcement actions based on unfair, deceptive, or abusive acts or practices (UDAAP). The inclusion of "abusive" within the power and scope of the CFPB's authority has proven to be a powerful tool that the Bureau can use to bring enforcement actions and levy penalties over the institutions they supervise. As the CFPB wields this new and undefined authority, the prudential regulatory agencies have authority to enforce traditional unfair or deceptive acts or practices (UDAP) powers under the Federal Trade Commission Act, even against large banks subject to CFPB supervision. The prudential agencies and the CFPB pursue actions without consultation, which not only creates duplication and overlap but could result in divergent interpretation and application of the legal standards.

CBA supports this legislation that would provide uniformity between the financial regulators by removing the “abusive” standard and require the Bureau to consult with the appropriate prudential regulator before taking action in an effort to eliminate duplication and ensure that there is a uniform standard for UDAP.

Section 1071

CBA members anticipate compliance and litigation complications that could lead to a chilling of small business lending and due to the complex new data collection requirements under Section 1071 of the Dodd-Frank Act.

Section 1071 amends the Equal Credit Opportunity Act to create a Home Mortgage Disclosure Act (HMDA)-like set of requirements for business credit applications. In brief, every financial institution must inquire of any business applying for credit whether the business is a small business, women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application (location of business, action taken, amount of credit provided, etc.). The information must be made public on request in a manner to be established by regulation, and will be made public annually by the Bureau.

The potential for overly burdensome data collection requirements could stifle small business lending, greatly increase compliance costs for small business lenders, open the door to costly litigation, and duplicate existing law. Lenders will need to revamp lending systems and processes in order to collect the required data, adding cost to compliance. The net result will limit the resources banks have to make loans and add greatly to compliance burdens and risks, a negative for small business lending. In order to prevent a reduction in small business lending and an increase in costly litigation that could occur from the misuse of the information collected, CBA supports the repeal of Section 1071.

Operation Choke Point

CBA supports the inclusion of legislation to place restrictions on Operation Choke Point. The Department of Justice (DOJ) instituted Operation Choke Point with the goal of “choking off” banking services to businesses the government deemed fraudulent or high risk regardless of the legality of their operations. CBA and our members oppose any effort by DOJ or the bank regulatory agencies to force financial institutions to terminate business relationships without proof of illegal behavior.

Financial Institutions Due Process Act of 2017

Additionally, CBA supports H.R. 924, the Financial Institutions Due Process Act of 2017. This legislation would ensure financial regulatory agencies provide timely examination reports to allow banks to take corrective action swiftly. It would also create an independent examination review panel of three judges to hear appeals of supervisory determinations. Furthermore, H.R. 924 would set up an advisory opinion process through which financial institutions could request

a written determination from regulators for permission to take action or an interpretation of law, regulations, or accounting standards.

Privacy Notification Technical Correction Act

CBA supports H.R. 2396, the Privacy Notification Technical Correction Act, to reduce unnecessary paperwork by streamlining the reporting of bank privacy policies. Specifically, H.R. 2396 would relieve a bank of its annual privacy policy notice requirement if it has not changed its policies and practices, makes its current policy publically available, notifies customers of the availability of the notice on periodic billing statements or electronically, and posts all notices if it maintains more than one policy.

Conclusion

CBA stands ready to work with Congress to ensure a sound regulatory framework that safeguards the American consumer, ensures access to credit for consumers and small businesses, and promotes competition in the financial marketplace. On behalf of the members of CBA, we appreciate the opportunity to submit this letter for the record.

Sincerely,



Richard Hunt
President and CEO
Consumer Bankers Association



July 13, 2017

The Honorable Trey Hollingsworth
U.S. House of Representatives
1641 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Hollingsworth:

The Consumer Bankers Association (CBA) commends you for introducing the Ensuring Quality Unbiased Access to Loans Act of 2017. This legislation will provide consumers access to small-dollar bank loans, often known as deposit advance products (DAP), by repealing the overly restrictive guidance issued in 2013 by the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) that significantly limited a bank's ability to offer a safe and affordable small dollar alternative product. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

We are encouraged that Congress is taking action to allow highly regulated banks to reenter this market and ensure consumers have access to small dollar credit liquidity. DAP served the critical need of providing emergency credit to pre-existing banking customers. Unfortunately, the FDIC and OCC guidance (2013-10101; 2013-0005) effectively eliminated the ability of the financial institutions they regulate to offer a viable alternative to compete with payday lending. The FDIC and OCC guidance recommended the use of underwriting that is more appropriately applied to a much larger credit product, such as a mortgage loan, and placed other restrictions on the products. This, combined with a low interest rate environment, has made small-dollar credit unviable and forced banks to leave the market.

CBA strongly supports the repeal of the current DAP guidance and the requirement that any future guidance be subject to a cost-benefit analysis and public notice and comment period. We stand ready to work with Congress to ensure availability of properly regulated small-dollar loan products that will continue to meet the credit needs of consumers and promote competition in the financial marketplace. On behalf of CBA's members, we thank you for introducing legislation on this important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Hunt".

Richard Hunt
President and CEO
Consumer Bankers Association

QUESTIONS FOR THE RECORD – REP. ED ROYCE (CA-39)

Financial Institutions Subcommittee Hearing entitled: “Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions.”

Wednesday, July 12, 2017 2:00 PM in 2128 Rayburn HOB

Questions for Mr. Rick Nichols, President and Chief Executive Officer, River Region Credit Union, on behalf of the Heartland Credit Union Association (TTF)

Mr. Nichols, one of the bills we are reviewing today focuses on commercial real estate loans made by banks, but I'd like to ask you a question about residential loans made by credit unions. Currently, when a federally insured credit union makes a loan for a non-owner occupied 1- to 4-unit family dwelling that loan counts against the member business lending cap established in the Federal Credit Union Act. If a bank were to make the same loan, it would not count as a commercial loan. I've introduced H.R. 389 to provide parity for credit unions in the treatment of these loans. What are your thoughts on this issue?

Credit union members should have the same access to these types of loans as bank customers. Credit unions that make such home loans have an established track record of safe and sound underwriting, and there is no policy reason why credit unions and their members should be placed at a disadvantage in the regulatory treatment of these loans.

Credit unions have been lending to small businesses for more than 100 years and continued to do so during the financial crisis when large and small banks withdrew access to credit. NCUA has recently taken steps, which the courts have affirmed, to make it easier for credit unions to lend to their members. That said, the Federal Credit Union Act continues to restrict credit unions' full potential.

Credit union members support H.R.389, the Credit Union Residential Loan Parity Act, as there is neither an economic nor a safety and soundness reason for these loans to be considered business loans – especially when these same loans are classified as residential loans when made by banks. Providing parity would grant credit unions flexibility to provide more access to credit for their small business members. Credit unions urge the Committee to hold a hearing on H.R. 389 with the intention of reporting it to the House as a stand-alone measure.

Mr. Nichols, although we have passed some targeted amendments to the Federal Credit Union Act in recent years, it's been nearly two decades since Congress substantially amended the Federal Credit Union Act. Because your credit union is on the frontlines of providing needed credit and banking services to nearly 22,000 members, I'm interested in learning your thoughts about any areas like capital, business lending, and CUSOs, where Congress could make changes to federal law to help you better serve your members.

Just like the overall financial marketplace updates and evolves to address the changing needs of consumers, the legal regime governing credit unions is in need of updating on a constant basis to address the needs of its members. A change to the Federal Credit Union Act to permit supplemental capital would be beneficial from a safety and soundness standpoint, as well as a member service focus. The arbitrary cap on member business lending makes no sense, and should be removed as a way to provide much-needed capital to entrepreneurs. It would also serve as a tangible form of private-sector economic stimulus.

Although this is not a change to the Federal Credit Union Act, Congress should consider reforming the Consumer Financial Protection Bureau to exempt credit unions under \$50 billion in assets from CFPB rules UNLESS those institutions demonstrate abusive or anti-consumer practices. Any well-intentioned aspects initially inherent in CFPB have been obscured by overly complex and burdensome regulations that actually serve to harm legitimate service offerings to consumers. The result has been more cost and fewer choices for consumers.

Section 1071 of the Dodd-Frank Act amends the Equal Credit Opportunity Act to require financial institutions to compile, maintain, and submit to the CFPB certain data on credit applications by women-owned, minority-owned, and small businesses. This is one of the few outstanding required rulemakings promulgated in the Dodd-Frank Act. This requirement does not take into account credit unions' unique and distinct memberships. As credit union field-of-membership varies broadly across the country, it would not coincide with the CFPB's plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. Therefore, it would be credit unions' recommendation that the CFPB exclude credit unions from this rule and its requirements using the Section 1071 and/or Section 1022 exemption authority. Regulatory burden likely to be associated with this rule, particularly for smaller credit unions, would harm the ability of small business owners to obtain credit from their credit union.

I would also like to highlight the Military Lending Act (MLA) and its impact. Credit unions continue to strongly support Military Lending Act (MLA) protections for service members, but have concerns regarding a final rule from the U.S. Department of Defense (DoD) that expands the credit products covered by a 36% rate cap and amends "consumer credit" to extend the definition to a much broader range of closed-end and open-end credit products. Specifically, we are disappointed there was not a blanket exemption for credit unions that provide alternatives to predatory loans, and that seek to provide their members with products and services at a fair and reasonable interest rate.

While many of the new MLA requirements have gone into effect, requirements relating to the calculation of the "military annual percentage rate" (MAPR) for a credit card account go into effect on October 3, 2017, with an extension of up to one additional year possible. In addition to a one-year extension, DoD should provide guidance on compliance with the credit card provisions.

Mr. Nichols, I see that your credit union makes some member business loans, about 27 loans valued at around \$2.2 million according to your latest Call Report. What are some of the barriers you encounter when making business loans? How could Congress make it easier for federally insured credit unions like yours to support their member businesses and advance economic growth in America's communities?

Credit unions' restrictive business lending authority creates the largest barrier to making business loans. The 12.25% arbitrary cap on business lending has no rational basis. It limits access and choice for credit union members who prefer to use a financial institution they know and trust for their business loan needs, but may not be able to use a credit union due to these limitations.

There is a distinct need for regulatory relief for business lending. Right now, everything is a one-size-fits-all model, with small businesses – including microbusinesses – facing the same requirements and paperwork as larger businesses. It is a huge deterrent and limits access to credit for microbusinesses in particular.

Mr. Nichols, the Federal Credit Union Act presently specifies the amount of capital a credit union must hold in order to protect both its safety and soundness and the solvency of the Share Insurance Fund. For purposes of prompt corrective action, a federally insured credit union must maintain a leverage ratio of 7 percent to be considered well-capitalized, a level that is about 2 percentage points higher than the equivalent bank requirements. Many experts have noted that this capital allocation system is inefficient and does not appropriately account for risk. What are your thoughts on revising capital standards in the Federal Credit Union Act? If Congress adopted legislation to provide greater parity between banks and credit unions in the area of leverage ratios, would your credit union be able to make more loans and offer more services?

If Congress adopted legislation to provide greater parity between banks and credit unions in the area of leverage ratios, the answer is unquestionably yes that we would be able to make more loans and offer more services. Our credit union manages our balance sheet in a way that maximizes both member service and safety and soundness. Additional flexibility in the area of capital would enable the credit union to put more money in the pockets of our members.

Mr. Nichols, in 1998 Congress put in place limitations on member business lending by federally insured credit unions. These provisions, however, exempted member business loans of less than \$50,000 from the cap's calculation. Adjusted for inflation, that value would be nearly \$75,000 today. Do you see the need for Congress to adjust this threshold? If so, what are your thoughts about the threshold? Should it be \$100,000 or higher? Should it be indexed for inflation? Should Congress delegate to the NCUA Board the ability to set the cap, up to some level?

There is a definite need to increase the exemption limit. An adjustment for inflation is long-overdue, and would provide a more realistic and useful depiction of what is, and isn't, a

member business loan. For the purposes of safety and soundness, credit unions support the idea of having Congress delegate to the NCUA Board the ability to set the cap, up to some level.

Putting a dollar amount cap is problematic because the limitations of the cap artificially forces loans to be categorized as business loans when they are not. The complexity of underwriting and ongoing documentation should be flexible to allow for proper risk assessment.

For example, right now, if a farmer wants to purchase a \$60,000 work truck for the farm and comes to my credit union, that loan would have to be categorized as a business loan. That means the farmer will be required to provide cash flow statements, balance sheets and tax information annually while the loan is outstanding. No other lenders require that, and it puts an unnecessary burden on that farmer for simply using a credit union to purchase a work truck.

Mr. Nichols, several years ago, Congress enacted my bill to provide pass-through share insurance coverage for lawyers' trust accounts and other similar escrows held at federally insured credit unions. Although this statutory change provided parity with the insurance coverage provided by FDIC, we still have more issues to address. For example, pass-through share insurance coverage is not provided for prepaid, payroll, and other stored value cards, unless the holder of these products is also the credit union's member. Does your credit union offer any of these products currently? If so, has the lack of share insurance coverage hampered your efforts to offer the product? If you don't currently offer these products, would your credit union offer them if Congress enacted statutory changes to allow for share insurance coverage?

Our credit union does not currently offer these products. At this time, we aren't in a position to assess future offerings in regards to this issue.



July 11, 2017

The Honorable Scott Tipton
U.S. House of Representatives
218 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Tipton,

On behalf of the Innovative Lending Platform Association (www.innovativelending.org), thank you for introducing H.R. 1547, the Making Online Banking Initiation Legal and Easy Act of 2017 (MOBILE Act).

The Innovative Lending Platform Association (ILPA) is the leading trade organization for online lending platforms and service companies serving small businesses. The members of the ILPA are united by a shared commitment to the health and success of small businesses in America. We believe that promoting sensible policies to advance the financial technology – “FinTech” – industry will improve access to capital for small businesses and foster economic growth.

Small business is critical to the U.S. economy and the American workforce, and in order to grow their businesses and create jobs, entrepreneurs need access to timely and affordable credit. FinTech companies are an important and growing source of capital largely because the technological innovations introduced by FinTech companies have increased efficiencies in the application, underwriting, funding, and payments disbursement processes to provide financial services and products to customers underserved by the mainstream credit market. However, many of the innovations introduced by FinTech companies are constrained by existing policy and regulatory frameworks that never contemplated a mobile-based economy and are failing to keep pace with such innovation.

Legislation such as the MOBILE Act equip FinTech lending platforms with the tools they need to verify data to make the credit decisioning process more efficient and reliable. By permitting financial institutions to photocopy or swipe a driver’s license to verify the identity of a person opening an account, the MOBILE Act promotes financial inclusion and customer access to safe and well-regulated financial services and products.

Specifically, the MOBILE Act would protect customer privacy and ensure compliance with federal bank secrecy laws by allowing financial institutions to use personal information only for identity verification and by prohibiting them from selling, renting, transferring or making the information available to another person (other than an affiliate). The Act also limits retention of the information to only that information needed to open the account or obtain a financial product or service. Additionally, the MOBILE Act ensures transparency by requiring financial institutions to give customers notice about the type of information collected.

www.innovativelending.org

Customers are increasingly demanding access to financial products and services through digital channels. The MOBILE Act meets that need by making it simpler to sign up for an account online or through a mobile device from anywhere in the United States, while also improving fraud prevention methods available to financial providers.

Thank you again for introducing H.R. 1457, and we support passage of the MOBILE Act by the U.S. House of Representatives Financial Services Committee. We look forward to working with you to advance policies that support innovation in financial services and products for the benefit of the small business sector.

Sincerely,



Chris Walters
Executive Director
Innovative Lending Platform Association





James Ballentine
Executive Vice President
Congressional Relations
And Political Affairs
202-663-5359
jballent@aba.com

April 7, 2017

The Honorable Scott Tipton
U.S. House of Representatives
218 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Tipton:

The American Bankers Association (ABA) writes to express our strong support for H.R. 1457, the Making Online Banking Initiation Legal and Easy Act or MOBILE Act. This bipartisan legislation would allow financial institutions – with the consent of an individual – to record personal information from the swipe of a driver's license or personal identification card and retain it for the purposes of opening an account with a financial institution or obtaining a related banking product or service.

The ABA believes that this legislation is mutually beneficial to both, our members and their customers, as it will help expand access to crucial banking services for underbanked populations by offering similar retail services through mobile technology. At the same time, the MOBILE Act safeguards consumer privacy through the storage of personal identification information in an electronic format, which can be an important and accessible barrier to prevent fraud or other criminal activity.

ABA supports this legislation and other legislative efforts by congressional leaders to help consumer's access financial services products in a safe and efficient manner.

Thank you for your leadership.

Sincerely,

James C. Ballentine



March 10, 2017

The Honorable Scott Tipton
U.S. House of Representatives
218 Cannon House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
U.S. House of Representatives
2334 Rayburn House Office Building
Washington, DC 20515

The Honorable Terri Sewell
U.S. House of Representatives
2201 Longworth House Office Building
Washington, DC 20515

The Honorable Randy Hultgren
U.S. House of Representatives
2455 Rayburn House Office Building
Washington, DC 20515

The Honorable David Scott
U.S. House of Representatives
225 Cannon House Office Building
Washington, DC 20515

The Honorable Kyrsten Sinema
U.S. House of Representatives
1725 Longworth House Office Building
Washington, DC 20515

Dear Representatives Tipton, Hultgren, McHenry, Scott, Sewell and Sinema:

On behalf of the Consumer Bankers Association (CBA), I would like to express our support of H.R. 1457, the Making Online Banking Initiation Legal and Easy Act of 2017 (MOBILE Act), which would simplify consumers' ability to open bank accounts online or on a mobile device from anywhere in the United States. CBA is the voice of the retail banking industry whose products and services provide access to credit for consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

The Federal Deposit Insurance Corporation (FDIC) recently reported that 7 percent of the U.S. population is unbanked and 19.9 percent is underbanked.¹ The FDIC concluded previously that mobile banking is best positioned to "meet the day-to-day financial services needs of underbanked consumers as well as consumers at risk of account closure," and that mobile banking "has the potential to help the underserved gain access to the banking system and grow their financial capability."² CBA supports these conclusions and believes this common-sense, bipartisan legislation would provide consumers with improved access to safe and regulated financial services products and promote financial inclusiveness for unbanked and underbanked consumers.

Some CBA members have developed applications that allow consumers the ability to verify their identity and open a bank account online or on a mobile device without the inconvenience of visiting a branch. One method allows consumers to "swipe" their driver's license or other state-issued identification card to record their information. Another method requires consumers to take

¹ Federal Deposit Insurance Corporation (FDIC), 2015 FDIC National Survey of Unbanked and Underbanked Households, at 1 (Oct. 2016), available at <https://www.fdic.gov/householdsurvey/2015/2015report.pdf>.

² FDIC, Assessing the Economic Inclusion Potential of Mobile Financial Services (June 30, 2014), available at <https://www.fdic.gov/consumers/community/mobile/Mobile-Financial-Services.pdf>.

a photo of their identification card and face. Both methods simplify the account opening process and increase the number of financial institutions that consumers can access at their fingertips.

The MOBILE Act brings consistency to the various state laws that address a bank's ability to implement the needed verification processes that would allow a consumer to swipe or copy a state-issued identification card for the purposes of opening an account. This bill will not reduce any financial institutions commitment to comply with federal laws aimed at preventing identity theft, financial fraud, money laundering, and terrorist financing, including the Bank Secrecy Act, its anti-money laundering rules, and Know Your Customer and Customer Identification Programs.

The MOBILE Act provides consumers easier access to the highly regulated banking industry by simplifying their ability to open an account through the process of swiping, scanning or copying their state issued identification card. Thank you for introducing legislation on this important issue.

Sincerely,



Richard Hunt
President and CEO
Consumer Bankers Association



July 7, 2017

Christian Jorgenson
Legislative Counsel to Rep. Scott Tipton
218 Cannon House Office Building
Washington DC

Dear Mr. Jorgenson,

The Center for Financial Services Innovation (CFSI) supports the legislative efforts in the House of Representatives to enable consumers to open bank accounts and sign up for other financial services using their mobile devices and PCs in conjunction with a driver's licenses and other appropriate forms of identification. We believe that financial inclusion and access to transaction and savings accounts are necessary for consumers to achieve financial health. We recognize that currently there are several states where it is illegal to take a photograph or other reproduction of a driver's license, and this presents an obstacle to the mobile or remote account-opening process. We support H.R. 1457, the MOBILE Act of 2017, and would be supportive of similar legislation in the Senate.

There are several arguments for allowing mobile or PC-enabled account opening: 1) access to mobile devices is nearly ubiquitous, which means more consumers will be able to access and use financial services; 2) prices are more affordable because the cost of opening accounts is lower; 3) consumers can open accounts when and where it is convenient for them, not when the bank or credit union is open (and this is especially important in more rural areas of the country, such as western Colorado); 4) security improvements in the financial services industry allow for more "real time" verification via digital channels, which in turn means that banks and credit unions can comply with customer identification protocols and Know Your Customer requirements.

We believe that finance can be a force for good in people's lives and that meeting consumer needs responsibly is ultimately good for both the consumer and the provider. CFSI is a national authority on consumer financial health and we lead a Network of financial services innovators committed to building higher quality products and services. CFSI informs, advises, and connects its Network to seed innovation that will transform the financial services landscape. Our vision is to see a strong, robust, and competitive financial services marketplace, where the diversity of consumer transaction, savings, and credit needs are met by a range of providers offering clear, transparent, and high-quality products and services at reasonable prices. This vision is guided by our Compass Principles – Embrace inclusion, Build trust, Promote success, and Create opportunity. These principles are built on a solid foundation that recognizes the core market values of profitability and scalability, deep customer knowledge, safety, variation and choice, consumer-provider relationships, and cross-sector participation.

cfsiinnovation.com	Chicago 135 S. LaSalle, Suite 2125 Chicago, IL 60603 Tel: 312.881.5856	New York 50 Broad St., Suite 703 New York, NY 10004 Tel: 212.228.7196	San Francisco 1161 Mission St., Suite 557 San Francisco, California 94103	Washington, DC 1701 K St., NW, Suite 1000 Washington, DC 20006 Tel: 202.888.7886
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One of our signature programs is our Financial Solutions Lab, managed by CFSI with founding partner JP Morgan Chase & Co. The Lab seeks to identify, test and bring to scale promising innovations that help Americans increase savings, improve credit, and build assets. Both in the Lab and through our Network of financial service providers, we have seen examples of how mobile account opening can improve inclusion and promote success and financial health for American consumers. We believe all Americans should be able access and use these products and support legislative efforts to this end.

We would be happy to meet with you further to discuss our experience and answer any questions you might have.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne M Hogarth".

Jeanne M Hogarth
Vice President
Center for Financial Services Innovation
202.888.7586
jhogarth@cfsinnovation.org



June 5, 2017

Congressman Scott Tipton
218 Cannon House Office Building
Washington, DC 20015

Re: H.R. 1457, the Making Online Banking Initiation Legal and Easy (MOBILE) Act of 2017

Dear Congressman Tipton:

On behalf of the members of the Financial Services Roundtable, I write to express our support for H.R. 1457, the Making Online Banking Initiation Legal and Easy Act of 2017. New technologies are enabling depository institutions to reach consumers outside their geographic footprint, and to offer products and services in an entirely online or mobile environment – including account origination. However, a number of state laws governing the use of driver's licenses inhibit the ability of financial institutions to allow consumers in those states to open new accounts through a mobile application – a process in which federal law requires financial institutions to verify the applicant's identification, often with a driver's license as proof of identity. These state laws were not intended to restrict consumer access to financial services: This is purely the result of advances in financial technology that the laws never contemplated.

H.R. 1457 would ensure financial institutions can reach all consumers, and in particular unbanked or underbanked populations, with innovative and inexpensive financial products by clarifying that the use by a financial institution of a consumer's driver's license or personal identification card for the purpose of obtaining a financial product or service is a permissible activity.

Your bill is a common-sense measure that, by addressing an unintended consequence, will encourage innovation and expand financial access to many American consumers. Thank you for your efforts to introduce this legislation and we look forward to working with you to advance it through Congress.

Sincerely,

Anthony Cimino
Senior Vice President
Head of Government Affairs

FINANCIAL SERVICES ROUNDTABLE

600 13th Street, NW, Suite 400, Washington, D.C. 20005 | 202-289-4322 | info@FSRoundtable.org | www.FSRoundtable.org



United States House of Representatives
Committee on Financial Services
Financial Institutions and Consumer Credit Subcommittee

“Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions”

July 12, 2017

Americans for Financial Reform (AFR)¹ appreciates the opportunity to provide this statement for the record of this Financial Institutions and Consumer Credit Subcommittee hearing, which considers several bills that would significantly undermine consumer financial protection and the safety and soundness of the financial system. Although the hearing is entitled “Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions,” the bills under consideration are not focused principally on community financial institutions. The most sweeping provisions of these bills apply to all institutions, many of which would radically decrease oversight of the nation’s largest banks and increase the risk of harm to the public.

A non-exhaustive list of examples follows:

- H.R. 924 would create a cumbersome new de novo appeals and review process that would create numerous opportunities for banks to delay and derail changes that examiners require to protect consumers and the public. These changes would apply to both consumer protections and the enforcement of safety and soundness rules designed to prevent another financial crisis. This radical reduction in the authority of bank regulatory agencies would negatively impact regulatory oversight across the entire financial system, including the largest banks.
- Section 6 of H.R. 2133 would repeal the CFPB’s authority to stop abusive acts and practices in consumer finance by literally striking the prohibition on abusive acts and practices from the U.S. Code. The CFPB has exercised its authority over abusive conduct to take action against companies that have inflicted significant harm on consumers, including: Wells Fargo, which fraudulently opened accounts without its customers’ permission; a credit card company that took advantage of its customers’ misunderstanding of limited-time no-interest promotional offers; and a student loan debt

¹ AFR is a coalition of more than 200 national, state, and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups. A list of AFR member groups is available at <http://ourfinancialsecurity.org/about/our-coalition/>.

relief company that charged fees for worthless advice on applying to programs that borrowers did not qualify for.²

- Section 6(a)(3)(B) of H.R. 2133 would make it effectively impossible for the CFPB to issue rules defining unfair and deceptive acts and practices. The provision would impose unworkable “Magnuson-Moss” requirements for such rulemakings. These requirements now apply only to the Federal Trade Commission (FTC) and have never applied to any bank regulator.³ These procedural requirements lengthened FTC rulemakings under these procedures to an average of more than five-and-a-half years, leading the FTC to abandon such rulemakings altogether.⁴
- Section 7 of H.R. 2133 would repeal the Fair Housing Act of 1968 and the Equal Credit Opportunity Act’s prohibitions on disparate impact discrimination, overriding the Supreme Court’s decision only two years ago in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* Section 8 of that bill further undermines fair housing enforcement by reducing the number of institutions reporting full mortgage lending data.
- The “Ensuring Quality Unbiased Access to Loans Act of 2017” would allow banks to again make abusive deposit advances – in essence payday loans. Before federal regulators stepped in, these loans typically carried an annual percentage rate (APR) of 225%-300% and borrowers took out 13.5 loans per year, trapping customers in a cycle of unaffordable debt.⁵
- Section 15 of H.R. 2133 would undermine the statutorily-required CFPB “Qualified Mortgage” rules that have made mortgage loans fairer and simpler, and reduce the risk of default and foreclosure. The provision would exempt all mortgages held on bank portfolios – including those originated by the largest Wall Street banks – from these new rules. Unfortunately, evidence from the financial crisis makes it clear that banks holding loans on their books is not sufficient to ensure that they will not make predatory or exploitative loans on a large scale. Washington Mutual and Wachovia—two large regional banks—failed because of the significant losses in mortgage loans held in their

² AFR, 41 organizations oppose H.R. 5112, May 20, 2016, <http://ourfinancialsecurity.org/wp-content/uploads/2016/05/OppoLetterHR5112-5-12-16-1.pdf>.

³ *Id.*

⁴ Jeffrey S. Lubbers, “It’s Time to Remove the ‘Mossified’ Procedures for FTC Rulemaking,” *The George Washington Law Review*, Nov. 15, 2015, <http://www.gwlr.org/wp-content/uploads/2016/01/83-Geo-Wash-L-Rev-1979.pdf>.

⁵ Rebecca Borné and Peter Smith, *Triple Digit Danger: Bank Payday Lending Persists*, Center for Responsible Lending (March 2013), available at <http://www.responsiblelending.org/payday-lending/research-analysis/Triple-Digit-Bank-Payday-Loans.pdf>; the CFPB found consistent findings at CFPB White Paper, Payday Loans and Deposit Advance Products (2013), available at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

own portfolios. Congress should not allowing financial institutions to return to those practices.

- H.R. 2148 would reverse regulatory rules that require higher levels of private capital supporting higher-risk commercial real estate loans.
- Section 9 of H.R. 2133 would abandon the effort required by Dodd-Frank (Section 1071) to learn more about small business lending through systematic data collection, undermining enforcement of the Equal Credit Opportunity Act and missing a badly needed opportunity to better understand the small business lending market and help small businesses access credit.
- Section 10 of H.R. 2133 seeks to prevent banking agencies from discouraging a financial institution from providing financial services to facilitate fraud or other illegal activity.⁶

This hearing considers other problematic and poorly considered proposals as well. (Again, this is not an exhaustive list.) For example, draft legislation advanced by Representative Tenney would restructure the deposit insurance application process to exclude the Federal Deposit Insurance Corporation (FDIC) from the evaluation of deposit insurance applications. Instead, it would permit national banks chartered by the Office of the Comptroller of the Currency to receive deposit insurance without any requirement for approval by the FDIC, allowing institutions to shop for approval between multiple federal agencies. It is absurd to remove the agency with the greatest experience and interest in evaluating whether to pledge the full faith and credit of the United States to guarantee millions or billions of dollars of obligations of a private enterprise.

The few legislative proposals under consideration that do utilize size thresholds to determine eligibility for regulatory rollbacks are also largely not focused on community banks. For example, Section 13 of H.R. 2133 would end the CFPB's supervision of banks and credit unions with \$10 billion to \$50 billion in assets, reducing the number of depository institutions examined by the CFPB from 119 to 42.⁷ This would disperse the consumer protection supervision authority for these institutions to the other agencies that failed to use it effectively in the past, and provide opportunities for firms to play one regulator off against another. Some of the largest bank failures in the financial crisis were caused by poor consumer protection supervision of banks of this size. IndyMac failed with \$30.6 billion in assets as a result of risky mortgage lending,⁸ costing the Deposit Insurance Fund more than \$12 billion -- the largest loss in history.⁹ Poorly underwritten mortgage loans were also a principal cause in the failure of other institutions with

⁶ See also Letter to Congress: AFR, 37 Organizations Oppose HR 766, Urge Congress Not to Give Banks a Free Pass on Fraud, Feb. 2, 2016, available at http://ourfinancialsecurity.org/wp-content/uploads/2016/02/160203_HR766_house_oppose-1.pdf

⁷ *Institutions subject to CFPB supervisory authority*, available at <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/institutions/>

⁸ Office of Inspector General Department of the Treasury, *Material Loss Review of IndyMac Bank, FSB* (OIG-09-032), Feb. 26, 2009, available at <https://www.treasury.gov/about/organizational-structure/ig/Documents/oig09032.pdf>.

⁹ Federal Deposit Insurance Corporation: Failures and Assistance Transactions (Table BF01).

\$10 billion to \$50 billion in assets: BankUnited (\$13.1 billion in assets),¹⁰ Downey (\$12.7 billion),¹¹ and AmTrust (\$11.4 billion).¹²

With regard to those few provisions that seek to specially exempt community banks from generally applicable rules, we urge that the Committee consider carefully what the reasons for such exemptions might be, and what risks they pose. Certainly the blanket claim that Dodd-Frank has harmed community banks is simply not supported by the facts. Community bank earnings grew 10.1% from 2015 to 2016, outpacing those at larger banks, as they have done for the last several years. Total loan balances at community banks increased 8.3% in 2016, substantially more than at larger banks. The percentage of community banks making a profit has increased to 95.7%, up from 78.8% in 2010 when the Dodd-Frank Act was passed.¹³

* * *

Thank you for the opportunity to express AFR's views on these legislative proposals. For more information, please contact Marcus Stanley, Policy Director, at marcus@ourfinancialsecurity.org or 202-466-3672, or Brian Marshall, Policy Counsel, at brian@ourfinancialsecurity.org or 202-684-2974.

Respectfully submitted,

Americans for Financial Reform

¹⁰ Office of Inspector General Department of the Treasury, *Material Loss Review of BankUnited, FSB* (OIG-10-042), June 22, 2010, available at <https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG10042%20%28BankUnited%20MLR%29.pdf>.

¹¹ Office of Inspector General Department of the Treasury, *Material Loss Review of Downey Savings and Loan, FA* (OIG-09-039), June 15, 2009, available at <https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG09039.pdf>.

¹² Office of Inspector General Department of the Treasury, *Material Loss Review of AmTrust Bank* (OIG-11-076), July 6, 2011, available at <https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG-11-076.pdf>.

¹³ FDIC Quarterly Banking Profile, Fourth Quarter 2016, available at <https://www.fdic.gov/bank/analytical/qbp/2016dec/>.

**Written Testimony of William Bynum
Hope Federal Credit Union/ Hope Enterprise Corporation**

**House Financial Services Committee
Financial Institutions and Consumer Credit Subcommittee**

**“Examining Legislative Proposals to Provide Targeted Regulatory Relief to
Community Financial Institutions”**

July 12, 2017

Thank you for holding this hearing on proposals that would affect financial institutions like ours and, more importantly, the members that we serve. My name is William Bynum and I serve as the Chief Executive Officer of HOPE (Hope Enterprise Corporation / Hope Federal Credit Union) www.hope-ec.org and www.hopescu.org.

HOPE is a \$310 million community development financial institution (CDFI), credit union and policy institute with 36,000 members and 30 locations. Over 1/3 of HOPE’s members were unbanked prior to joining. Fifty-two percent (52%) of HOPE’s members have incomes below \$35,000 and one out of four used high cost financial services in the past.

Notably, HOPE’s service area, the Mid South states of AR, LA, MS and TN, is home to one fourth of the nation’s persistent poverty counties and parishes – places where the poverty rate has eclipsed 20% for three decades in a row. Roughly a third of the region’s persistent poverty counties are majority black and 35 of the 39 majority black counties within the region are persistently poor. The region also has notoriously weak consumer protection laws as documented by the Pew Charitable Trusts¹ and our own experience working with members who have fallen into a cycle of debt when loans were made by high cost lenders without any consideration for our members’ ability to repay the loans.²

For the purposes of this hearing, I will focus my comments on Sections 6-9 of the Community Lending Enhancement and Regulatory Relief Act of 2017 (CLEARR Act):

- Section 6: Bureau Authority Over Unfair and Deceptive Acts or Practices
- Section 7: Amendments to the Equal Credit Opportunity Act and the Fair Housing Act to Require Intent to Discriminate
- Section 8: Amendments to the Home Mortgage Disclosure Act of 1975
- Section 9: Repeal of Small Business Loan Collection Data

¹ State Payday Loan Regulation and Usage Rates. Pew Charitable Trusts.
<http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates>
January 14 2014.

² Written Testimony of Ed Sivak Hope Enterprise Corporation and Mississippi Economic Policy Center Before the Mississippi House of Representatives Banking and Financial Services Committee “Federal Regulation and Access to Small Dollar Credit” <http://hopepolicy.org/manage/wp-content/uploads/Written-Testimony-of-Ed-Sivak-Banking-5-20-2014-FINAL.pdf>

Underpinning all of our comments is a strong and inherent belief that the Consumer Financial Protection Bureau (CFPB) is critically important in the facilitation of equitable access to credit and financial services. Efforts to roll back its enforcement and rulemaking authority carry with them a great price that will be borne by the American people.

Section 6: Bureau Authority Over Unfair and Deceptive Acts or Practices

HOPE has grave concerns regarding the inclusion of Section 6 of the CLEARR Act which effectively eliminates the CFPB's enforcement and rulemaking abilities around the use of unfair deceptive and abusive practices (UDAAP). In the absence of this authority, we fear that predatory lending will proliferate and go unchecked without any remedy for the consumer. HOPE's mission is to strengthen communities, build assets, and improve lives in economically distressed parts of Arkansas, Louisiana, Mississippi, and Tennessee by providing access to affordable, responsibly-structured financial products and services. Vital to the fulfillment of this mission is the preservation of income and assets through strong consumer protections. Removing the CFPB's enforcement and rulemaking "abusive" UDAAP authority would reduce protections for consumers, effectively negating the work done by HOPE and similar organizations. The CFPB's ability to take action against institutions engaged in unfair, deceptive, or abusive acts or practices has been critically important in the Mid South, a region that experiences a disproportionate level of high cost lending relative to the rest of the nation.

Evidence of the importance of the CFPB is found in its enforcement actions "to end All American's unlawful practices, obtain redress for consumers, and impose penalties." All American Check Cashing is a check cashing and payday lending business that operated at least 50 stores in AL, LA and MS. Specifically, All American used deceptive tactics to facilitate high cost transactions and trap customers in a cycle of debt.³ Due to good work of CFPB, All American Cash Checking is no longer operating and subjecting consumers to deceptive financial practices.⁴ Without a strong CFPB focused on protecting consumer interests, this bad actor would continue its predatory practices on residents resident in the region.

Section 7: Amendments to the Equal Credit Opportunity Act and the Fair Housing Act to Require Intent to Discriminate

HOPE is against weakening the Fair Housing Act. The disparate impact liability has been a core component of the Fair Housing Act in addressing discrimination in housing and lending. HOPE strongly supports continuing the disparate impact doctrine to eliminate unnecessary discriminatory practices. HOPE believes that a strong Fair Housing Act is important to protecting people from discrimination when securing housing. HOPE's commitment to a strong

³ "CFPB Takes Action Against Check Cashing and Payday Lending Company for Tricking and Trapping Consumers." Press Release. Consumer Financial Protection Bureau. May 11, 2016.

⁴ Carter, Ted. "Lengthy probe, legal tussles end with All American Check Cashing shutdown, \$1.5 million penalty." Mississippi Business Journal. <http://msbusiness.com/2017/05/breaking-mississippi-shuts-payday-lender-orders-1-5m-fines/>

Fair Housing Act is affirmed by its participation in a 2015 Amicus Curiae brief with the National Fair Housing Alliance and the Center for Community Self-Help urging the Supreme Court to uphold the “disparate impact” doctrine within the application of the Fair Housing Act.⁵ The standard exists to limit the harmful effects of seemingly neutral policies on protected classes of people, which includes characteristics such as race, gender, age and disability. Maintaining the disparate impact doctrine is important in eliminating abusive, predatory practices in housing.

Section 8: Amendments to the Home Mortgage Disclosure Act of 1975

HOPE opposes raising the threshold to 1,000 closed-end mortgages or 2,000 open-end lines of credit for reporting requirements. The current reporting guidelines do not place a burden on HOPE. The current reporting requirements provide data that can help to ensure the flow of credit to qualified borrowers in underserved communities. Importantly, the data provides critical information about whether similarly situated borrowers and underserved communities are receiving equitable access to mortgage credit.

Section 9: Repeal of Small Business Loan Collection Data

HOPE opposes repealing the requirements of creditors to collect and publicly report certain loan and personal characteristic data on non-mortgage credit applications from women-owned, minority-owned, and small businesses. The data provides regulators and lenders with important insights with regard to access to small business credit, and about the capital gaps faced by historically, and continually underserved people and places.

Conclusion

The Mid South region faces some of the most severe poverty in the United States. Strong consumer protections are vital to ensuring that all people have access to responsible, affordable financial services required to support their families, create jobs, build assets and otherwise contribute to a strong, fair economy. Thank you for the opportunity to submit these comments.

⁵ Brief for the SEC as Amici Curiae National Fair Housing Alliance, Center for Community Self-Help and HOPE Enterprise Corporation. Texas Department of Housing and Community Affairs, et al., v. The Inclusive Communities Project No.13-1371



SINCE 1902

CONFERENCE OF STATE BANK SUPERVISORS

July 11, 2017

The Honorable Blaine Luetkemeyer
 Chairman
 Subcommittee on Financial Institutions and
 Consumer Credit
 House Committee on Financial Services
 U.S. House of Representatives
 Washington, DC 20515

The Honorable Wm. Lacy Clay
 Ranking Member
 Subcommittee on Financial Institutions and
 Consumer Credit
 House Committee on Financial Services
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

On behalf of the Conference of State Bank Supervisors,¹ I am writing to express our members' strong opposition to draft legislation that proposes to enable the Office of the Comptroller of the Currency (OCC) to approve deposit insurance without the approval of the Federal Deposit Insurance Corporation (FDIC).

Being a bank -- an insured depository institution -- means agreeing to a set of rights and responsibilities. Since 1991, federal banking laws have required a separation between the chartering and the deposit insurance function² in order to balance the goal of promoting a competitive marketplace with the importance of ensuring that deposit insurance -- and the taxpayer exposure that accompanies deposit insurance -- be conferred only on institutions with well-established and well-tested banking business models.

History has shown that the FDIC's role as deposit insurer necessitates the FDIC have responsibility for approving the grant of deposit insurance. This draft bill would be a return to the bad old days of the 1980s when the OCC, in attempting to promote the value of the national bank charter, effectively went on a chartering spree. Indeed, the OCC approved on average 89% of new bank charter applications a year that decade. At the time, the FDIC was required to grant deposit insurance to all nationally chartered banks even though it had no say in the process. Many of these national banks ultimately failed at significant taxpayer cost.

The draft bill could potentially expose taxpayers to new and untested companies that receive deposits, while simultaneously taking away the FDIC's existing authority to protect the Deposit

¹ CSBS is the nationwide organization of banking regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators charter and supervise approximately 4,570 institutions, representing over 78 percent of the nation's banks. Additionally, most state banking departments regulate a variety of non-bank financial services providers, including mortgage lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy.

² 12 U.S.C. 1815(a)

Insurance Fund. The banking system and broader financial services industry are in a unique period of innovation and disruption. New market entrants are developing and offering financial products and services via innovative business models, corporate structures, and delivery channels, many of which do not fit neatly inside existing federal banking legal and regulatory frameworks. These financial innovations hold much promise, but Congress, state and federal financial regulatory agencies, the industry, consumer groups, and other stakeholders should have a comprehensive and robust discussion over the future of banking and its regulation. The draft bill bypasses critical stakeholder deliberations, and essentially provides the OCC with sole discretion over which entities and business models have access to deposit insurance going forward.

State regulators recognize that the dearth of de novo institutions and the corresponding industry consolidation over the past decade has reduced the number of community-focused banks in this country. We also know that financial services innovations require a rethink of our state and federal financial legal and regulatory frameworks. However, this draft bill is not the solution. It would do nothing to promote locally accountable, community oriented banking. Instead, it would limit regulatory accountability and transparency by silencing others' voices and conferring greater authority on a single regulatory agency in Washington.

Sincerely,



John W. Ryan
President and CEO

cc: The Hon. Jeb Hensarling, Chairman, House Committee on Financial Services
The Hon. Maxine Waters, Ranking Member, House Committee on Financial Services

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW
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202.466.3311 voice
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www.civilrights.org



July 11, 2017

OPPOSE H.R. 2133, THE "CLEAR ACT OF 2017"

Dear Member of the House Committee on Financial Services:

On behalf of The Leadership Conference on Civil and Human Rights and the undersigned organizations, we write to express our strong opposition to H.R. 2133, the "Community Lending Enhancement and Regulatory Relief (CLEAR) Act of 2017." H.R. 2133 includes a number of provisions that would, under the innocent-sounding guise of "regulatory relief," drastically undermine our nation's most important civil rights and consumer protection laws. We urge you to speak out against this proposal in Wednesday's hearing.

We are especially troubled that H.R. 2133 would rewrite the Fair Housing Act of 1968 and the Equal Credit Opportunity Act to make it significantly harder for victims of discrimination to obtain relief. It would explicitly require plaintiffs to prove that defendants acted "intentionally," eliminating almost 50 years of congressional intent and federal courts' approval – most recently by the Supreme Court in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* (2015) – of the "disparate impact" standard.

When the Fair Housing Act was enacted a week after the assassination of Dr. Martin Luther King, Jr., Congress recognized that it was critical to prohibit all forms of discrimination – not only acts resulting from discriminatory intent, but also those resulting from policies and practices that appear neutral on their face but that have an unjustified discriminatory effect. Disparate impact litigation under this and other civil rights laws has allowed victims of discrimination to challenge obstacles that limit the availability of fair housing and credit for people based on characteristics such as race, color, national origin, religion, disability status, familial status, and gender. Such obstacles have included "one-child-per-bedroom" policies that force families with two or more children to pay higher rents for multibedroom apartments; "zero-tolerance" provisions in leases that allow the eviction of not just perpetrators, but also victims of offenses such as domestic violence; and mortgage lending practices that steered tens of thousands of minority borrowers into risky subprime mortgages even though they qualified for prime loans.

Equal opportunity is a bedrock American principle, and critical to our success as a nation. H.R. 2133 would undermine this principle, and make it far more difficult to ensure that all families are treated fairly in their search for a place to live and in their efforts to obtain greater financial security.

H.R. 2133 would undermine other important civil rights and consumer protection laws as well. For example:

- It would eliminate the authority of the Consumer Financial Protection Bureau (CFPB) to stop abusive financial products and services, by striking that word altogether from key consumer protection laws.

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Committee Chair**
Michael Lieberman
Anti-Defamation League
President & CEO
Vandita Gupta

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- It would repeal section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the CFPB to collect and release lending data on small, women-owned, and minority-owned businesses, making it harder to gather information on potentially discriminatory credit practices.
- Similarly, it would weaken the CFPB's Home Mortgage Disclosure Act (HMDA) rule and the ability for the public to discern mortgage lending trends, including critical problems such as redlining, by exempting many institutions currently covered by the law.
- It would undermine the CFPB's "Qualified Mortgage" rules – which have been carefully written to ensure that home loans are not made to borrowers who cannot afford them – by exempting loans held in bank portfolios, even though several banks failed during the mortgage crisis because of loans they retained on their own books.

In short, H.R. 2133 would undermine our nation's civil rights laws and discard the lessons of the 2008 financial crisis. We strongly urge you to oppose it.

Sincerely,

The Leadership Conference on Civil and Human Rights
ACCSES

Allied Progress

American Civil Liberties Union

Americans for Financial Reform

Autistic Self Advocacy Network

The Arc of the United States

Baltimore Neighborhoods, Inc.

California Reinvestment Coalition

Center for Responsible Lending

Consortium for Citizens with Disabilities Housing Task Force

Consumer Action

Consumer Federation of America

Housing Choice Partners

Human Rights Campaign

Interfaith Center on Corporate Responsibility

Lawyers' Committee for Civil Rights Under Law

NAACP

NAACP Legal Defense and Educational Fund, Inc.

National Alliance on Mental Illness

National Association for Latino Community Asset Builders

National Association of Consumer Advocates

National CAPACD

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

National Housing Law Project

National Housing Trust

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National Low Income Housing Coalition
National Urban League
New Economy Project
New Jersey Citizen Action
Paralyzed Veterans of America
PolicyLink
Poverty & Race Research Action Council
Prosperity Now (formerly CFED)
Public Citizen
U.S. PIRG
UnidosUS, previously known as National Council of La Raza
Woodstock Institute
World Privacy Forum

Statement for the Hearing Record, 12 July 2017

Financial Services Committee

Edmund Mierzwinski, Consumer Program Director

**U.S. PIRG Opposes HR 2396,
The So-Called Privacy Notification Technical Clarification Act (Trott)
Should Be Called "Wall Street, Payday Lender, Fly-By-Night Firm Sharing Loophole"**

Summary: We oppose HR 2396, the so-called Privacy Notification Technical Clarification Act. It is not a clarification, it minimizes if not removes substantive required annual disclosures that inform consumers they have the right to opt-out of the sharing by any financial institutions of their non-public personal information with nonaffiliated third parties. Previously-passed legislation (the End Privacy Notice Confusion Act embedded in 2015 transportation legislation known as the FAST Act) eliminated annual notices and provided regulatory relief only to companies – generally community banks -- that had not changed their privacy regimes since their last disclosure **and**, importantly, **do not share** personal information with nonaffiliated third parties.¹

HR2396 would minimize if not eliminate clear annual notices even for firms that do share information with nonaffiliated third parties, effectively helping large Wall Street banks, as well as payday lenders and even fly-by-night financial firms, at the expense of consumers learning their privacy rights. While consumer and privacy organizations would prefer more robust privacy protections, it is certainly important that consumers be given annual notice of their rights to opt-out of information sharing by those financial institutions that are promiscuous with their non-public personal information. Otherwise, consumers would only learn of the practice, and their right to stop it, upon opening an account but likely never again. Proponents may claim that the bill requires more frequent notice through a billing statement option, but this option could be ignored with a mere website post.

Background: The 1999 Gramm-Leach-Bliley Financial Services Modernization Act was enacted to respond to changes in the marketplace. Banks, insurance companies and securities firms were more and more selling products that looked alike. The firms wanted the privilege of and synergies derived from selling them all under one roof. Yet, the Gramm-Leach-Bliley Act was also enacted against a backdrop of financial privacy invasions, including some involving the nation's biggest banks, and members wanted to ensure that the new law wouldn't make things worse. Consumer and privacy groups argued that if the Congress was going to create one-stop financial supermarkets, then privacy protections ought to extend to all information sharing, whether with affiliates or with third parties.

The 1999 Gramm-Leach-Bliley Act was a joint product of the then-named Commerce Committee (with jurisdiction over securities and investments) and this committee's predecessor committee, the Banking Committee (with jurisdiction over banking).

The Commerce Committee mark of HR10 in 1999 included the bi-partisan Ed Markey (D-MA (now Senator Markey)-Joe Barton (R-TX (still a member of E&C)) amendment requiring financial institutions to provide customers a notice and right to opt-out before financial institutions shared their non-public personal information with **either** affiliates or nonaffiliated third parties.²

Conversely, the Banking Committee mark stated that sharing with either affiliates or nonaffiliated third parties acting as joint marketing partners selling financial products on behalf of the financial institution

would be under a **no-opt regime** (no consumer choice). Only sharing with nonaffiliated third parties could be stopped by a consumer opt-out included in Title V.

The Rules Committee accepted the Banking Committee's bill as base floor text and denied Messrs. Markey and Barton (a fair floor vote on their committee-approved amendment. Consequently, the Gramm-Leach-Bliley Act's consumer privacy provision was largely limited to annual disclosure of sharing practices, except in the case of sharing with nonaffiliated third parties selling non-financial products, where an opt-out was provided.

HR10 was then conferenced with S900, which became the Gramm-Leach-Bliley Act.³ The final act stated that sharing with either affiliates or nonaffiliated third parties acting as joint marketing partners selling financial products on behalf of the financial institution would be under a no-opt regime (no consumer choice). Only sharing with nonaffiliated third parties could be stopped by a consumer opt-out included in Title V.

It was Congressional intent in 1999 to warn consumers annually that their information was being shared and to give them an adequate opportunity to stop the sharing in some circumstances.

We urge opposition to this broadly drafted bill, which minimizes if not eliminates a clear annual warning even from a firm that is sharing your non-public information with nonaffiliated third parties selling non-financial products. It hides valuable information from you that you have the right to say no to this sharing, which could lead to unwanted marketing or, worse, identity theft.⁴

Please contact me if you have any questions.

Ed Mierzwinski, Consumer Program Director, U.S. PIRG, 202-461-3821 or edm@pirg.org

¹ Note that the CFPB has also taken regulatory action to modify Regulation P to provide firms with alternate disclosure methods wherever possible. <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/privacy-consumer-financial-information-gramm-leach-bliley-act-glba-examination-procedures/>

² See Title V of the Commerce Committee report of 15 June 1999 available at <https://www.congress.gov/congressional-report/106th-congress/house-report/74/3>

³ See the HR10 <https://www.congress.gov/bill/106th-congress/house-bill/10> and S900 pages <https://www.congress.gov/bill/106th-congress/senate-bill/900/>

⁴ The Electronic Privacy Information Center maintains a page on the GLBA, including descriptions of some of the serious privacy violations by banks (including a Bank of America predecessor and US Bank and/or their affiliates) that helped lead to inclusion of Title V (which also includes other data security provisions). See <https://epic.org/privacy/glba/>



July 12, 2017

The Honorable Jeb Hensarling
2228 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
2221 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the National Community Reinvestment Coalition (NCRC) and its 600 community-based organizations, I am writing to express our strong opposition to H.R. 2133, the “*Community Lending Enhancement and Regulatory Relief (CLEAR) Act of 2017*.” H.R. 2133 includes a number of provisions that would undermine our nation’s consumer protection and fair housing laws.

Complicates housing discrimination relief

NCRC is particularly concerned that, if passed, H.R. 2133 would make it difficult for victims of discrimination to obtain relief by rewriting provisions in both the *Fair Housing Act of 1968* and the *Equal Credit Opportunity Act*. In 2013, HUD finalized a Disparate Effects rule – a uniform standard for analyzing evidence of disparate impact in cases brought under the Fair Housing Act and in 2015, the U.S. Supreme Court upheld the Disparate Impact Doctrine under the Fair Housing Act in *Texas Department of Housing and Community Affairs vs. Inclusive Communities Project*. The Disparate Impact Doctrine bars policies that have a discriminatory impact even if there is no intention to discriminate. This tool is very important to fair housing and fair lending advocates, combating modern-day redlining where an intention to discriminate can be nearly impossible to prove.

To the contrary, H.R. 2133 would explicitly require plaintiffs to prove that defendants acted “intentionally,” however, we should note, most discrimination is not overt, but subtle. The CLEAR Act will make it far more difficult to ensure that Americans are treated fairly in their search for a place to live and in their efforts to obtain greater financial security.

Eliminates Consumer Financial Protection Bureau (CFPB) authority to stop abusive financial products and services

In the aftermath of the 2008 financial crisis the CFPB was established to enforce consumer financial laws so that “all consumers have access” to products and services, and to ensure that markets “are fair, transparent, and competitive.”¹ Since its creation the CFPB has been very successful in carrying out its statutory charge. In its short tenure, the agency has returned close to \$12 billion in relief to 29 million consumers through their supervisory and enforcement work, has proposed rules to put an end to payday debt traps, has handled over a million consumer complaints fair lending actions against lenders discriminating in the marketplace, and much more.²

The need for a strong CFPB to protect consumers from risky or unscrupulous financial servicers can be seen from the sheer number of complaints the agency has had to address. As of April 1, 2017, the CFPB has handled over a million consumer financial products and services complaints, most relating to debt collection, credit reporting, and mortgage issues.³ All of this reflected the agency’s regulatory focus. The CLEAR Act would undo much of the good work of the CFPB by eliminating its authority to stop abusive financial products and services, by striking the word “abusive” altogether from key consumer protection laws.

Repeal of Section 1071 of the Dodd Frank Act-Small Business Lending Data

The CLEAR Act, if passed in its current form, would also repeal section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the CFPB to centralize the collection and public release of lending data on small, women-owned, and minority-owned businesses. In 2015, over 80 members of the House of Representatives and 13 members of the House Financial Services Committee reaffirmed support for Section 1071, and the CFPB has been working diligently on the provision since finalizing its HMDA rulemaking in the fall of 2015.

Data on small businesses are needed more than ever. It was found in a 2008 report by the U.S. Government Accountability Office that studies using data collected by the Federal Reserve Boards suggested discrimination may play a role in small business lending, but that the data was limited overall.⁴ It was noted in the GAO report that the available data was unable to give a full picture of small business lending and only looked at data from borrowers. By comparison, HMDA data is comprehensive enough to identify discriminatory practices by lenders as well as lenders that might be at high risk of engaging in possible mortgage lending discrimination.⁵ HMDA data allows for a fuller view of lending that helps regulators better prioritize fair lending

¹ Dodd-Frank Act, Section 1021.

²CFPB. *CFPB by the Numbers*. http://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf

³ CFPB, Monthly Complaint Report: April 2017, Vol. 22.. <https://www.consumerfinance.gov/data-research/research-reports/monthly-complaint-report-vol-22/>

⁴ United States Government Accountability Office, *Fair Lending: Race and Gender Data Are Limited for Nonmortgage Lending*, June 2008, p. 11. <http://www.gao.gov/assets/280/277533.pdf>

⁵Ibid.

laws. With the importance of small businesses in the U.S. economy and the role discrimination appears to play in that segment, a full and comprehensive view of small business lending is needed.

Weaken the effectiveness of Home Mortgage Disclosure Act (HMDA) data

If implemented, H.R. 2133 would exempt nearly all of the nation's mortgage lenders from the CFPB's updated Home Mortgage Disclosure Act (HMDA) requirements, which would limit the ability of the public to discern mortgage lending trends, including critical problems such as redlining. This bill upsets the careful balance recently set by the CFPB by changing HMDA proposed reporting thresholds to 1,000 for closed end loans or 2,000 for open-end lines of credit.

Based on 2013 data, under the threshold set by the CFPB, 22 percent (1,400) of the depository institutions that currently report on their closed-end mortgages would be exempt.⁶ While the CFPB does not estimate for the number of banks or nonbanks that would be exempt under a 1,000 closed-end loan threshold, it does estimate that 85 percent (5,400) of depositories and 48 percent of nondepositories (497) would be exempt under a loan threshold half that size -- 500.⁷ This higher threshold would sacrifice key data about lending in underserved communities that would help to ensure the flow of credit to qualified borrowers, stimulate the economy, and prevent future mortgage crises.

Undermine the CFPB's "Qualified Mortgage" rules

The CLEAR Act would also would undermine the CFPB's "Qualified Mortgage" rules by exempting loans held in bank portfolios, even though several banks failed during the mortgage crisis because of loans they retained on their own books. The CFPB's Qualified Mortgage (QM) rule and ability-to-repay standards directly addressed the abuses that led up to the 2008 financial crisis. Those rules were specifically designed to reorient the market towards safe and sustainable, non-predatory lending. The QM rule supports sustainable homeownership and wealth building, and early HMDA data bears out that the rule has not curtailed credit availability.⁸ It should be noted that the QM rule was drafted to ensure that home loans are not made to borrowers who cannot afford them.

The CLEAR Act of 2017 would be major setback for Americans who depend on the fairness, transparency, and stability of the financial system. A vote for this bill is a vote against working class Americans, pure and simple, and would fly in the face of promises made to them by the administration, and historical lessons learned in the recent recession. The bill only helps financial institutions which are experiencing their greatest profitability in modern history.

I urge you in the strongest terms possible to reject this bill. Thank you again for your consideration. Should you have any questions or comments on NCRC's position, please feel free

⁶ Home Mortgage Disclosure (Regulation C), 12 CFR Part 1003 (2015)

⁷ *ibid*

⁸ FEDS Notes, *Effects of the Ability to Repay and Qualified Mortgage Rules on the Mortgage Market*, December 29, 2015. <https://www.federalreserve.gov/econresdata/notes/feds-notes/2015/effects-of-the-ability-to-repay-and-qualified-mortgage-rules-on-the-mortgage-market-20151229.html>

to contact me at (202) 464-2703 or Gerron Levi, our Director of Policy and Government Affairs at (202) 464-2708.

Sincerely,

A handwritten signature in black ink, appearing to read "John Taylor". The signature is stylized with a large, looped "J" and a cursive "T".

John Taylor
President and CEO

