

Testimony of

Kenneth L. Burgess Jr.

On behalf of the

American Bankers Association

before the

Subcommittee on Financial Institutions & Consumer Credit

of the

Committee on Financial Services

United States House of Representatives



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April 16, 2013

Chairman Capito, Ranking Member Meeks, my name is Kenneth Burgess, Chairman of FirstCapital Bank of Texas, in Midland, Texas. I am also the Chairman of the ABA Community Bankers Council. I appreciate the opportunity to be here to represent the American Bankers Association (ABA) to present the views of the ABA regarding regulatory relief for small financial institutions. ABA represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees.

Before I discuss the specific changes needed to help community banks, let me describe a bit about my bank. FirstCapital was formed in 1998 in Midland, Texas. At that time, a number of community banks had exited the community through failures or mergers and Midland only had two other locally owned community banks remaining. Our thoughts about the lack of community banks in Midland turned out to be right on point. Since that time we have entered into the Lubbock and Amarillo markets. We are now located in the three major markets in the Panhandle of Texas. Since we began in 1998, we have grown to over \$713 million in assets.

We are primarily a business bank, serving small- to medium-size businesses in each of our markets. We also serve many individuals of all means, especially through our mortgage division which provides over \$200 million per year in home loans to people living in our three markets. Because of the number of people we serve through our mortgage division each year, I am very concerned about our ability to continue serving these people to the extent we have in the past due to the significant changes in the mortgage rules. We are dedicated to the communities we serve and we strive to be a leader in helping to improve each of our communities. Just one example of this was our recent donation of 26 residential lots to Habitat for Humanity in our Midland market. That

donation provided Habitat with about a three-year supply of lots on which to build affordable housing for needy families. At the time, Habitat was almost out of lots on which to build.

Today, our diverse banking industry is made up of banks of all sizes and types, from small community banks to community-based regional banks, to large money center and global banks. This depth and breadth is required to meet the broad array of financial needs of our communities and customers. Our \$16 trillion economy requires a large and diverse U.S. banking system.

I realize there is a lot of talk about breaking up large financial institutions. We all agree that no bank—no matter how large—should be too big to fail and that policy makers should use all appropriate tools to ensure that large banks are not insulated from the consequences of their actions. But rhetoric about breaking up large banks does nothing to help community banks. It is a distraction from the fundamental and urgent need to promote the growth and vitality of community banks.

Community banks make up 95 percent of all U.S. banking organizations and have been the backbone of all the Main Streets across America. Our presence in small towns and large cities everywhere means we have a personal stake in the economic growth, health, and vitality of nearly every community. A bank's presence is a symbol of hope, a vote of confidence in a town's future. When a bank sets down roots, communities thrive.

The sad fact is that over the course of the last decade, 1,500 community banks have disappeared. Since Dodd-Frank, 475 are out of business. This is why hearings like today's are so important. It is an opportunity to change the dialogue from just talking about how important community banks are to what can be done to stop the rapid decline in the number of community banks and start taking action to assure we have a healthy and vibrant community bank sector.

There is a widespread appreciation for the benefits community banks provide to their communities across the country. For example, FDIC Chairman Martin Gruenberg said: "By its nature, small business lending is often labor intensive and highly customized, which is the kind of lending that community banks really are set up to do." Federal Reserve Chairman Bernanke recently noted that "community banks play an important part in the financial system and in our economy." Comptroller of the Currency, Thomas Curry, noted: "I am seeing on a daily basis the positive impact that federally chartered community banks and thrifts have upon the towns and cities they serve."

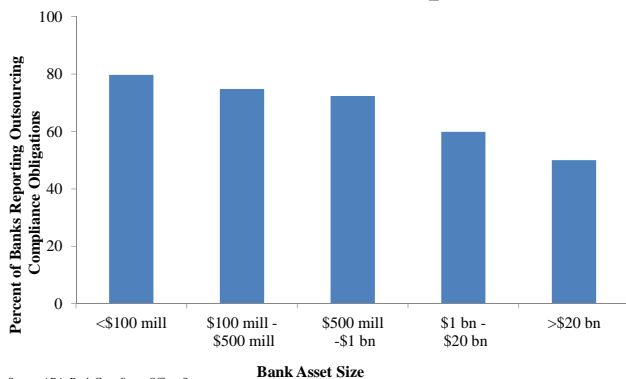
Despite the widespread understanding of the importance of community banks and the concern for the challenges they face, many of the actions taken by these very same agencies have had exactly the opposite effect—hurting, not helping community banks.

For example, at the same time policy makers were urging banks to make more loans to help boost the economy, regulators were clamping down in an effort to drive all risk from the system. At the same time that banks were trying to reach out to their local businesses, the growing list of new rules and regulations meant more compliance officers and fewer customer-facing employees.

At the same time regulators want to see banks grow, they were ratcheting up the required levels of capital and proposing new Basel III standards that will surely force community banks to reduce lending even more than they have had to do already.

At the same time as the housing market was in desperate need of community bank mortgage loans, the sheer volume of new rules and the limited time for compliance are imposing costs so high that many community banks will likely scale back their mortgage operations, lose market share, and may end up out of the mortgage business altogether. Depending on the level of risk and increasing costs of being in this business, our bank may choose to exit the business in the future. This means loans that we have historically provided in our markets will shift to either the big banks or the on-line mortgage providers and our customers will receive a much different level of service.

Smaller Banks Rely on Consultants for Compliance



regulatory compliance as a share of operating expenses is two and a half times greater for small banks than for large banks. It means more money spent on outside lawyers to manage the risk of compliance errors and greater risk of litigation. All of these expenditures take away from resources that can be directly applied to serving the bank’s community.

During the last decade the regulatory burden for community banks has multiplied tenfold, with more than 50 new rules in the two years *before* Dodd-Frank. Dodd Frank will add hundreds more affecting all banks. Managing this tsunami of regulation is a significant challenge for a bank of any size, but for the median-sized bank with only 39 employees, it is overwhelming. Historically, the cost of

For example, we originated 1,296 mortgage loans in 2009 with a total mortgage staff of 18. In 2012, we originated 1,080 mortgage loans with a total mortgage staff of 25. All of the additions were added to enable us to maintain compliance with all of the new requirements and ones expected.

Higher compliance costs, fewer sources of revenue and ever-increasing capital requirements have consequences. I recently learned that two banks have stopped all consumer lending and several others are stopping all mortgage lending that they did, not as a primary line of business but to accommodate the needs of their customers.

The fact that there were no new banks chartered in the last year—the first time in FDIC history—is a dramatic indication that the regulatory risk is too great. It is keeping capital on the sidelines rather than helping to finance new lending. I know first-hand the importance of new banks entering a market, as we did in 1998. We knew we could make a difference in our community and make a reasonable return to our investors that provided capital. We were able to survive the financial crisis and grow, continuing to support our communities when they needed it most. Our economy still needs support and we need to encourage new capital into the industry, not drive it away. The Basel III rules, if not corrected, only make matters worse.

Today, it is not unusual to hear bankers—from strong, healthy banks—say they are ready to sell to larger banks because the regulatory burden has become too much to manage. These are good banks that for decades have been contributing to the economic growth and vitality of their towns, cities, and counties but whose ability to serve their communities is being undermined by excessive regulation and government micro-management. Each bank that disappears from the community makes that community poorer.

It is time to move from good intentions to changes that have tangible results. We applaud the efforts of Congress to help community banks. For example, since the Jumpstart Our Business Startups Act went into effect last April, over 100 banks have voluntarily deregistered saving an average approximately \$200,000 annually. In addition, the amendment to the Electronic Fund Transfer Act eliminating the requirement that fee notices be affixed to or displayed on automated teller machines will protect ATM operators from frivolous lawsuits related to the fee disclosure.

Also, ABA appreciates the effort of Rep. Luetkemeyer (R-MO) and members of this Subcommittee in moving H.R. 749, the Eliminate Privacy Notice Confusion Act, through the House. This bill eliminates the requirement to provide an annual privacy notice when institutions

that do not share personal information (that can be opted-out of) have not made changes to their privacy practices. This eliminates customer confusion and saves considerable time and expense.

More can and needs to be done. For example,

- The financial services examination process can and should be improved;
- Basel III should be reformed so that capital rules enhance rather than inhibit the role of community and mid-sized banks in the economy;
- Mortgage rules should be simplified and consistent so that community banks are encouraged to make these loans rather than face compliance costs which could reduce their lending or force them to exit the market altogether; and
- Traditional banks should be exempt from registration requirements for municipal advisers.

I know the ABA opposition to expanding credit union business lending is well known by this Subcommittee and that it is not the subject of this hearing. I will only say that all competition is local and that means that the primary competitor for many community banks are credit unions which are often much larger than they are. Credit unions were never intended to be tax-exempt banks, but that is what many credit unions—particularly the largest and most aggressive ones—have become. Equal taxation and regulation of firms that provide the same products is a fundamental principle of fair competition. A vote for expanded credit union business lending would be a vote against community banks.

In the remainder of my testimony, I want to first briefly describe the reasons for the concern that I and my community bank colleagues have about our current regulatory environment. Following that, I will provide details about specific actions that can be taken. The ABA stands ready to work with this Subcommittee to make changes that will secure the future of one of this nation's most important assets—community banks.

I. The Costs To Implement New Regulations Are Substantial, Weighing Most Heavily On Community Banks

Community banks, as do all banks, work hard every day to meet the credit and financial needs of their customers and communities. Community banks have a presence much greater than their

total assets suggests. According to FDIC's Community Banking Study released in December 2012, community banks accounted for just 14 percent of the U.S. banking assets in our nation, but held 46 percent of all the small loans to businesses and farms made by FDIC-insured institutions. In 629 U.S. counties—or almost one-fifth of all U.S. counties—the only banking offices are operated by community banks. Without community banks, many rural areas, small towns and urban neighborhoods would have little or no physical access to mainstream banking services

The ability to meet local needs has not been easy with the increased regulatory costs and second-guessing by bank examiners. During the last decade, the regulatory burden for community banks has multiplied tenfold and it is no surprise that nearly 18 percent of community banks disappeared in that period. Dodd-Frank is already adding to that burden for all institutions with 5,286 pages of proposed regulations and 5,732 pages of final regulations (as of March 4, 2013) and we're only a third of the way through the 400-plus rules that must be promulgated.

Unfortunately, the cumulative impact of years of new regulations and the proliferation of non-bank and non-taxed competitors (such as credit unions) are combining into a potent mixture that will surely, if left unchecked, lead to more and more consolidations of small banks.

Make no mistake about it, this burden is keenly felt by all banks, but particularly small banks that do not have as many resources to manage all the new regulations and the changes in existing ones. Besides the real hard dollar costs, there are important opportunity costs related to the products and services that cannot be offered or offered only at higher costs to our customers. In dramatic illustration of this point, a 2011 ABA survey of bank compliance officers found that compliance burdens have caused almost 45 percent of the banks to stop offering loan or deposit accounts. In addition, almost 43 percent of the banks decided to not launch a new product, delivery channel or enter a geographic market because of the expected compliance cost or risk.

For my bank, we very conservatively estimate nearly \$1,000,000 in hard dollar compliance costs per year. This includes salaries attributable to compliance, annual bank-wide compliance training, legal and compliance consulting services, compliance software and other IT expenses, printing expenses and privacy mailing costs, and various record-keeping requirements. And there are other costs that we simply cannot capture.

We have a total of 13.5 people that are dedicated compliance officers just to handle all the legal and paperwork requirements. We have added 10 new people to staff in the past year directly related

to assuring our ability to meet compliance requirements. In addition, we estimate that 64 percent of our total staff have compliance obligations they must fulfill.

Historically, the cost of regulatory compliance as a share of operating expenses is two-and-a-half times greater for small banks than for large banks. In fact, research by the Federal Reserve over the years has confirmed that the burden of regulations falls disproportionately on smaller banks. The Federal Reserve Bank of Minneapolis has estimated that hiring one additional employee to respond to the increased regulatory requirements would reduce the return on assets by 23 basis points for the median bank with total assets of \$50 million or less. To put this estimate in perspective, such a decline could cause about 13 percent of the banks of that size to go from being profitable to unprofitable.

Our audit fees have increased by 64 percent from 2010 to 2013. Most of this relates to the new rules from Dodd Frank. We have spent \$62,000 in the first quarter on new software and on consulting fees directly related to compliance concerns.

For example, 70 percent of all banks have already incurred higher compliance costs due to Dodd-Frank Act. Of course, we are still in the early stages of the Dodd-Frank implementation, so we are bracing for additional costs that must somehow be borne. Almost 90 percent of bank compliance officers expect higher compliance costs over the next 3 years due to Dodd-Frank. All these extra expenses could have been more productive if they were devoted to providing services to our customers.

As a \$713 million bank, we are better able to spread out some of the compliance costs than our smaller brethren. For the median-sized bank in this country with \$168 million in assets and 39 employees, the burden is magnified tremendously. I was shocked to learn recently about a \$70 million bank in Kansas that has three and a half FTE compliance employees out of a total of 23 employees. He was particularly frustrated to have 15 percent of his staff dealing with government regulations that do nothing for lending in his small community. Besides internal audits, banks now have to have outside audits for compliance which is a significant expense for smaller banks. Then, the regulators spend time auditing the audits. Checkers checking checkers is a costly and wasteful exercise that provides no value-added for the safety and soundness of the bank and does nothing to protect the bank's customers

II. The Financial Services Examination Process Can And Should Be Improved

Bank examinations should add value. They help assure that risks are managed prudently, that bank officials and directors are aware and understand the risks, and the bank has sufficient capital and reserves to absorb losses when loans do not get repaid. While examinations may have fallen short before the financial crises, many of the ones since have gone to the other extreme. In other words, the pendulum has swung too far. Inconsistent examinations have had an unnecessary impact on lending, increased costs, and put in place red tape and other roadblocks that undermine the development of new products and services to bank customers. Our bank has been fortunate in that our exams have continued to be thorough and fair and we feel our regulators have helped us become better. However, I have heard from many other community bankers around the country, a much different story.

While the regulators have made improvements—many in response to Congressional pressure brought about with the introduction of the Financial Institutions Examination Accountability Act (H.R. 3461) in the last Congress—more can be done. For example, Congress could provide immediate relief by creating a more balanced and transparent approach to bank examinations and establishing a way for banks to appeal those examination decisions without fear of retaliation.

Although no single piece of legislation could deal with the wide range of concerns bankers have about the current supervisory environment, the following recommendations will go a long way towards improving the examination process. This would include how, and on what basis, decisions are made by the regulatory agencies in the examination process. The provisions below include the major elements of the Financial Institutions Examination Accountability Act (H.R. 3461), which ABA strongly supported in the 112th Congress and include the Consumer Financial Protection Bureau (Bureau) as one of the agencies that is subject to the bill, as it is actively engaged in bank examinations.

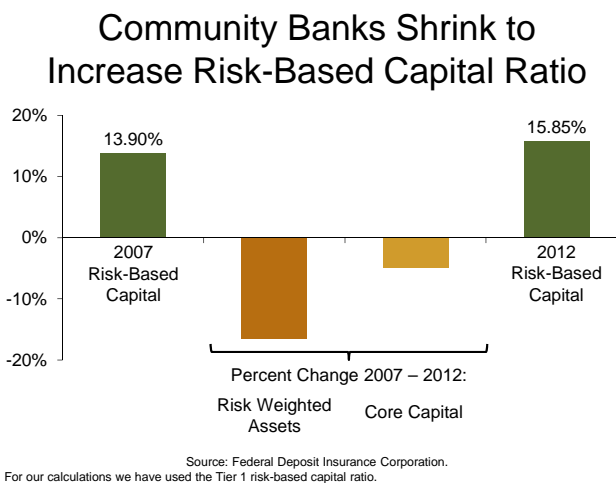
- **Timely Exam Reports.** Require regulators (including the Bureau) to provide banks with more timely examination reports and more information about the facts upon which the agency relied in making examination decisions.

- **Consistent Treatment.** Provide more clarity and consistency regarding how the regulatory agencies and their examiners treat loans with respect to nonaccrual, appraisal, classification, and capital issues.

- **Examination Ombudsman.** Create a new, independent inter-agency Examination Ombudsman within the Federal Financial Institutions Examination Council (FFIEC) to ensure the consistency and quality of all examinations.
- **Expedited Appeals.** Provide an expedited process for banks to appeal examination decisions without fear of reprisals.
- **No Retaliation.** Specifically prohibit regulatory agencies from retaliating against banks, including their service providers and any institution-affiliated party as defined in the Federal Deposit Insurance Act. An agency cannot delay or deny action that would benefit a bank or institution-affiliated party that is appealing an agency decision.

III. Unnecessary Limits on Bank Capital Should Be Removed

Another measure Congress could take that would provide immediate relief for community banks and allow them to better serve their communities is to remove unnecessary limits on bank capital. There are pending regulations that would unnecessarily limit bank capital formation and block some of the lending needed for economic growth and job creation. This section contains several recommendations for improving bank capital formation.



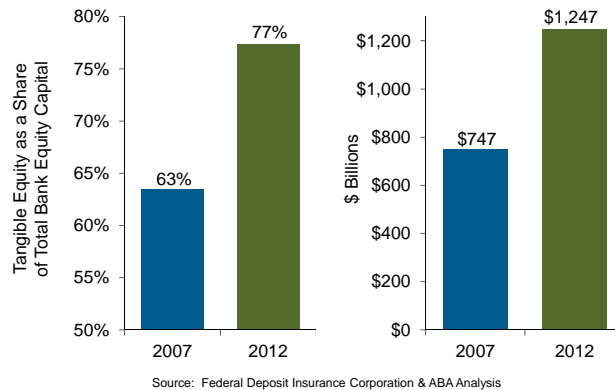
Reform Basel III

ABA recommends fixing the existing problems associated with proposed Basel III capital rules to make them workable for *all* banks. Simply ensuring Basel III standards do not apply to community banks will not fix the challenges associated with the proposed capital rules. Regulators would simply take Basel III standards and apply them, under a different name, to community banks creating the same problems. Below are several specific recommendations that would greatly improve the Basel III standards, and allow community banks to continue to serve their communities.

1. Eliminate the requirement that gains and losses on available for sale securities must flow through to regulatory capital

The basic theme of having better quality and adequate, up to date capital levels for all banks is a principle that we as an industry can embrace. In fact, the industry has been asked not only to increase the amount of capital it holds, but the quality as well.

Banks Raise Quality and Quantity of Capital



However, there are elements of this part of the proposal that are

counterproductive and need to be removed. These elements include the proposal to insert the volatility of unrecognized gains and losses into capital; capital is supposed to be a cushion to the ups and downs of the markets, not a transmitter and amplifier of volatility.

My bank and others around the country could be forced to reduce the size of our balance sheets as the economy begins to improve, simply because interest rates begin to rise. This could serve to undermine an economic recovery as banks reduce lending and concentrate on pulling back to maintain capital ratios. Our small business customers and consumer customers will be impacted by the reduced availability of credit under this scenario.

My bank’s reaction to this will probably be to sell all of our available for sale (AFS) securities and to place all future purchases in Hold to Maturity. This will eliminate the cyclical and volatility of the proposal, but it will also eliminate our ability to manage our investment portfolio through different interest rate and economic cycles, a core tool to offset the inherent rate risk in our loan and investment portfolios.

2. Grandfather Trust Preferred Securities (TruPS) for Smaller Institutions

The Dodd-Frank Act grandfathered TruPS for banks between \$500 million and \$15 billion in assets. Instead, Basel III requires the phase-out of TruPS for bank holding companies having between \$500 million and \$15 billion in total consolidated assets as of December 31, 2009. The regulators should not be changing the plan approved by Congress. Too many of the banks with grandfathered TruPS will likely have to shrink rather than be able to replace that capital.

My bank has held about \$3 million in Trust Preferred Securities for about 10 years. This is not a large portion of our capital, but is a very cost effective source of capital for us and has allowed us to grow the bank, and as a result, to better serve our customers. The elimination of this source of capital will reduce our ability to grow our balance sheet by about \$35 million. This will reduce the amount of loans we will be able to provide to our communities to support job growth. When you multiply this affect across the country, the potential reduction in loan availability is significant. This proposal is in direct contradiction of the country's goal to spur job growth.

3. Remove increased risk weighting for mortgage loans

The biggest impact on banks is not the change in the total amount of capital, but change in the way that banks do business. The new risk weightings are punitive to mortgage assets, particularly second mortgages and home-equity loans, which then “taint” underlying first mortgages. They are particularly hard on portfolio lenders, as the kind of loans that banks and thrifts hold tend not to be 30-year fixed rate loans with high down payments. Banks currently hold mostly non-standard mortgages, which will be hit with higher capital risk weights under the proposal.

Our bank provides a significant number of mortgages to people living in the three markets we serve. We are one of the largest community bank providers of mortgages in these markets. This proposal, along with some of the proposals being considered by the Consumer Financial Protection Bureau, threaten to significantly reduce or even drive our bank away from this very important business segment.

Since the inception of our bank, we have never lost one cent on a residential home loan. Our underwriting has been very strong as opposed to many of the non-bank mortgage lenders who were the real culprit in the housing crisis. However, the community banks are being forced to pay dearly for the sins of non-bank originators. The new capital proposals relative to the risk weighting of residential mortgages are higher in many cases than other loan types that would be considered much riskier in our experience. This one section of the proposal will definitely reduce the number of loans that we are able to provide in our markets.

4. Delay Basel Implementation

We appreciate the hard work and openness to discussion from the federal banking regulators. This is the most significant single change in regulation to face the banking industry in recent years. It should be taken only after ample input and discussion, because it will permanently change the banking industry, and it will have serious consequences for our customers and communities and for the economy overall. Regulators should consider very carefully the many comments that will be received from bankers. We also believe that on something as fundamental as capital rules, preservation of the dual banking system requires that the views of the state banking regulators be given in this discussion comparable weight to the views of the federal banking regulators. In addition, because of the significance of this rule for the economy and public policy, there should be greater consultation with Congress. There is no need to rush. The Europeans are already backtracking.

There are also other ways that Congress can help to increase the capital for community banks to support more lending. For example:

- ***Brokered Deposit Exception.*** Eliminate reciprocal deposits from FDIC’s definition of “brokered deposits.” Reciprocal deposits do not share the same characteristics as traditional brokered deposits. They are insured, low-cost, have high retention rates, and are based on relationships with local customers. They represent another low-risk source of deposits that can be used to fund local activities, with appropriate federal oversight against deposit outflow risk. Our bank has a significant amount of this type of deposit and all of them would be considered core deposits if not held in the reciprocal product that we offer. They are absolutely not brokered deposits, but they are classified as such.
- ***Small Thrift Holding Companies.*** Apply the “small bank holding company exemption” from the Collins Amendment to small thrift holding companies. This corrects a technical flaw which shields only small bank holding companies and not small thrift holding companies from various burdensome regulatory capital requirements.
- ***Amend the JOBS Act to Include Savings and Loan Holding Companies.*** The Jumpstart Our Business Startups ACT (JOBS Act) raised the shareholder registration threshold for banks and bank holding companies from 500 to 2,000. In addition, it increased the deregistration threshold from 300 to 1,200. Unfortunately, the JOBS Act omitted savings and loan holding companies. We urge Congress to amend the JOBS Act to extend the changes in shareholder limits to savings and loan holding companies.

IV. Mortgage Rules Should Encourage Community Banks Make These Loans

Mortgage rules should be simplified and consistent so that community banks are encouraged to make these loans rather than face compliance costs which could reduce their lending or force them to exit the market altogether. Also, the mortgage rules are creating severe legal risks and diminishing the types of loans we can offer in our communities. The result of the rules being proposed will be that fewer and fewer people will be able to get loans. Our bank and many bankers I have talked to will not make loans outside the box due to the greater risks. The potential for even higher legal risks in the future will likely force many community banks to exit the mortgage business altogether and out of retail lending altogether.

In examining the causes of the recent financial crisis, a general consensus was reached that traditional community bank lending, based on sound underwriting, conservative but fair and reasonable lending standards, and a demonstrated interest in the borrower's ability to repay were desirable features for the entire industry to follow. The cruel irony of the legislation and regulation that followed is that it imposes draconian new regulations on banks of all sizes-but which will have a disproportionate impact on the community banks whose lending practices never strayed from the tried and true. These lenders will face compliance costs and time constraints for compliance which could impact their continued ability to make mortgage loans.

At the core of community bank's concerns over the new regulations is timing. Most of the new rules required under the Dodd-Frank Act, including the Ability to Repay/Qualified Mortgage rule, new rules on Loan Originator Compensation and appraisal rules are statutorily mandated to take effect in January of 2014. Even as we speak, legal experts are dissecting the rules to understand our potential liability, and bank compliance officers, compliance software vendors and bank management are working to comprehend the 3,200 (and still growing) pages of new regulation, craft policies, construct employee training programs and undertake other necessary compliance activities in order to be in compliance by very early next year. Adding complexity and cost to the situation is the expectation that CFPB will soon release new RESPA/TILA merger rules which, even if relatively straightforward and modest, will still have the impact of forcing a further rewrite of forms, compliance manuals and training regimes as RESPA and TILA are the underpinnings of all mortgage lending. Community banks are struggling to keep up, and some are facing the reality that they will either have to curtail their lending until they can be certain they are in compliance,

and thus face losing market share, or worse, are considering exiting the mortgage business altogether. Driving these quality lenders from the marketplace is the exact opposite result of what advocates for mortgage reform intended. We do not come before you today asking that that reform be stopped, but we do ask that Congress and the regulators work to ensure that compliance timelines be made more reasonable.

Therefore we ask that Congress work with the CFPB to take necessary compliance efforts and appropriate time frames into consideration and work to find ways to allow further time for compliance for the entire industry if necessary. Holding to an arbitrary time frame for compliance with these complex new rules will not serve either the CFPB well in ensuring that the rules are workable, or the industry well in being able to comply, but most importantly, it will do a grave disservice to borrowers who will face fewer lending options and higher costs.

Additionally, we would ask Congress to look to several specific concerns posed by several of the new rules.

Balloon Loans and QM

The Ability to Repay/Qualified Mortgage rule required CFPB to provide Qualified Mortgage status to balloon loans, but only those made by a select set of small lenders in rural or underserved areas. The rule proposed by the CFPB adheres to this statutory limitation, but the result is far too narrow and will curtail the use of balloon loans as a tool best suited to some borrowers. Balloon loans have traditionally been made to borrowers with specific characteristics or for properties with specific characteristics which make the loan ineligible for sale into the secondary market, and thus held in portfolio by the originating lender. Borrowers who are not U.S. citizens on a short-term work visa or properties, for which a comparable appraisal is not available, are examples of situations where a balloon loan may be the best, most affordable option for a borrower. These situations arise not just in rural and underserved areas, and such loans are extended by banks of all sizes, not just small banks located in rural and underserved areas. ABA has shared with the CFPB a list of fifteen specific property or borrower characteristics for which balloon loans should be allowed (and eligible for QM status) regardless of geography or size of institution making the loan. We are including this list as an addendum to this testimony. While CFPB may adopt the ABA proposal, they will have to use their exemptive authority to do so beyond the scope of the requirements of the Dodd-Frank Act. A better approach would be for Congress to amend the balloon loan QM provisions to allow for such treatment under the statute.

QM and QRM

A still outstanding issue is the definition of the Qualified Residential Mortgage, or QRM under the Dodd-Frank risk retention provisions. Loans determined to meet the QRM definition will not be subject to the five percent risk retention requirements otherwise imposed under the statute. A proposed rule issued by the bank regulatory agencies along with the SEC, HUD and FHFA in 2011 would have only granted QRM status to loans with at least a twenty percent down payment. This approach has been widely criticized by the ABA along with a vast assortment of industry and consumer groups, as well as many Members of the House and Senate (54 Senators and 304 House members in the last Congress). A twenty percent down payment requirement will put homeownership out of the reach of millions of borrowers. Instead, a broad consensus has developed that a better approach is to align QRM with the already promulgated QM rule. Both rules were intended to improve underwriting. The QM rule puts into place strict new requirements for loan documentation and determination of a borrower's ability to repay. It is widely accepted that the QM rule goes beyond even the conservative underwriting standards prevalent in the market today and may restrict credit availability. The Dodd-Frank Act required that QRM could not be broader than QM, and anything narrower than QM would restrict credit even further. Therefore, consensus among industry and consumer groups, and joined by many members of Congress and some in the regulatory agencies is that QRM should be made co-incident with QM. We urge Congress to consider making the work of the regulators easier and making clear the statutory intent by clarifying that the QM rule and the QRM rule should be co-incident.

Address Loan Originator Compensation

We would also ask Congress to revisit the issue of loan originator compensation and the calculation of points and fees under the Qualified Mortgage rule. The addition of this fee to the points and fees calculation will have a very large impact in terms of disqualifying loans from the QM categories, which in turn means that these loans will likely not be extended. ABA believes that the elimination of such loans is entirely unnecessary, and does not serve to enhance consumer protection in any way. Because the Dodd-Frank Act generally prohibits any form of loan originator compensation based on the terms of the loan, there is no need to add further layers of protection through the inclusion of loan originator compensation in the points and fees triggers of the Qualified Mortgage provisions. Although language in Dodd-Frank can be read to instruct this duplicative

inclusion, we ask that Congress act to remove loan originator compensation from the points and fees calculation as being neither warranted nor necessary.

V. Congress Should Adopt Other Measures to Help Community Banks

There are a number of other measures that Congress could take to reduce red tape that imposes unnecessary costs on banks and siphons resources away from lending. The following would make several specific changes to current law to reduce some of these burdens. I am happy to provide additional information on any of these points.

Eliminate red tape

1. Eliminate the Dodd-Frank Act's small business loan data collection requirement.
This provision adds unnecessary regulatory burden.
2. Provide for a "seasoned customer" exception to the requirement for banks to file a Currency Transaction Report (CTR) for every deposit or withdrawal of \$10,000 or more. CTRs are routinely filed for deposits by well-known customers who run businesses that generate cash, such as retailers and farmers.
3. Eliminate the additional Home Mortgage Disclosure Act (HMDA) reporting requirements under the Dodd-Frank Act. According to an ABA survey, bank employees currently spend on average two hours per loan application record.

Improve Oversight of Securities and Investments

1. Clarify that banks, savings associations, and trust companies are exempt from municipal advisor registration requirements.
2. Clarify that banks may purchase and sell without restriction any bonds issued by municipalities and agencies of a state by modifying Section 619 of Dodd-Frank. The SEC's proposed rules could prohibit banks from purchasing debt that is issued by a state agency; this is a substantial portion of the debt that is issued at the state level.

3. Exempt banks with limited swaps activity from the new clearing requirements. Utilize a risk-based, not size-based, measurement to ensure limited swaps-based activity for risk management activity is not constrained by unnecessary regulatory requirements.

Flood Insurance Reform

1. Clarify that escrow provisions in Section 100209 of the Biggert-Waters Insurance Reform and Modernization Act apply only to new loans.
2. Improve access to cost-effective flood insurance by making needed clarifications to the law, allowing development of a private market for flood insurance. Private market providers, if allowed to compete on a level playing field, can develop more affordable products for consumers.
3. Modify the flood insurance requirements to exclude civil money penalty (CMP) authority where a statutory or regulatory violation does not result in a lack of coverage of property that is determined to otherwise require it.

Conclusion

Community banks are resilient, but even the most resilient institutions can only withstand so much. At some point there is a straw that will break the camel's back. Despite these regulatory headwinds, there are a number of fundamental strengths that community banks have to support them. With Congress's help in lifting some of the burden off of these local institutions, community banks are set to thrive and turn the tide in their favor. In order for this to happen, however, community banks need Congress's help. We need to move from simple, good intentions and bring about tangible results.

New laws and regulations have erected costly barriers to market entry beyond any benefit to our communities. Over-zealous examinations have been long on technical criticism and far too short on constructive supervision. All of these only make it more difficult for existing banks to survive, new investors to establish competitive institutions, or local communities to participate in our nation's economic resurgence.

An individual regulation may not seem oppressive, but the cumulative impact of all the new rules plus the revisions of existing regulations is oppressive. The regulatory burden from Dodd-

Frank and the excessive regulatory second-guessing must be addressed in order to give all banks, and especially community banks, a fighting chance to maintain long-term viability and meet the needs of local communities everywhere. The consequences of excessive regulation are real. Costs are rising, access to capital is limited for community banks, and revenue sources have been severely cut. It means a weaker economy. It means slower job growth. With the regulatory overreaction, piles of new laws, and uncertainty about government's role in the day-to-day business of banking, meeting local community needs is difficult at best.