

**LEGISLATIVE PROPOSALS FOR A MORE
EFFICIENT FEDERAL FINANCIAL REGULATORY
REGIME: PART II**

HEARING
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT
OF THE
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U.S. HOUSE OF REPRESENTATIVES
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**LEGISLATIVE PROPOSALS FOR A MORE
EFFICIENT FEDERAL FINANCIAL
REGULATORY
REGIME: PART II**

Thursday, December 7, 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 2:35 p.m., in room 2128, Rayburn House Office Building, Hon. Blaine Luetkemeyer [chairman of the subcommittee] presiding.

Present: Representatives Luetkemeyer, Rothfus, Lucas, Posey, Ross, Barr, Tipton, Williams, Trott, Loudermilk, Kustoff, Tenney, Clay, Maloney, Meeks, Scott, Velazquez, and Heck.

Also present: Representatives Duffy and Hollingsworth.

Chairman LUTKEMEYER. The committee will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time. This hearing is entitled “Legislative Proposals for a More Efficient Federal Regulatory Regime: Part II.”

Before we begin, I would like to thank the witnesses for appearing today. We appreciate your participation. We look forward to a very productive discussion. Thank you so much for taking time out of your busy schedules to be with us.

I now recognize myself for 5 minutes for the purposes of delivering an opening statement.

A common complaint heard throughout the financial services industry is that the regulatory pendulum has swung too far. Rules and regulations are driving financial institutions to merge, exit entire lines of businesses, and discontinue services to their customers. We see it every day and hear about it, not only from institutions, but also from their customers, many of whom have experienced increased difficulty getting access to credit and other financial products.

Today, we will consider five bills that seek to change the status quo. We will review legislation written by the gentleman from Florida, Mr. Posey, to amend the problematic points and fees rule that has frozen some buyers out of the housing market. We will also examine legislation offered by the gentleman from Indiana, Mr. Hollingsworth, which highlights the issue that U.S. regulators are consistently going well beyond and above international standards promulgated elsewhere around the world.

The gentleman from Wisconsin, Mr. Duffy, has introduced legislation to ensure that the CFPB (Consumer Financial Protection Bureau) stays out of the business of insurance. Dodd-Frank very clearly limited CFPB's authority in the area of insurance, yet the Bureau has demonstrated a keen interest in insurance products. This legislation would guard against the mission creep at CFPB.

We will examine a second bill introduced by Mr. Posey, which would repeal the National Credit Union Administration's risk-based capital rule. This is a rule that generated concern for more than 300 Members of Congress, and would have a dramatic impact on the ability of credit unions across Missouri and the State to serve their members.

Finally, the subcommittee will discuss a draft legislation offered by the gentleman from Georgia, Mr. Loudermilk, which would amend the Economic Growth and Regulatory Paperwork Reduction Act to require Federal banking agencies to conduct an annual review of all regulations and determine how those regulations impact the financial safety and soundness of an individual insured depository institution.

I don't think anyone in this room questions the importance of meaningful and thoughtful regulation of financial companies, but for too long, Washington bureaucrats have used and, in many cases, abused their authorities to overreach and create a regulatory regime that is unnecessarily punitive.

This subcommittee will continue its mission to restore sanity to the regulatory landscape, ensuring that those in the financial services industry are held accountable, while still having the ability to serve their customers. It is possible to have regulatory regime that protects the American people and financial system without curtailing customer choice. The legislation we discuss today helps to foster that smarter, more reasonable environment.

I want to thank Mr. Posey, Mr. Hollingsworth, Mr. Duffy, and Mr. Loudermilk for their good work on these bills.

We have a distinguished panel with us today. We look forward to hearing your thoughts on these important issues and proposals.

The Chair now recognizes the other gentleman from Missouri, Mr. Clay, the Ranking Member of the subcommittee, for 5 minutes for the purpose of an opening statement.

Mr. CLAY. Thank you, Mr. Chairman, for conducting this hearing. And in the interest of time, I will forego a opening statement, and I would like to hear from the witnesses.

I yield back.

Chairman LUETKEMEYER. Thank you, gentleman. I hope that is an endorsement of my previous opening statement.

Mr. CLAY. We shall see.

Chairman LUETKEMEYER. OK. Well, I tried.

Anyway, today we welcome a great panel, I believe. And we hope—anticipate your testimony. Mr. Anthony Cimino, Senior Vice President and Head of Government Affairs for the Financial Services Roundtable; Mr. Brian Ducharme, President and CEO of MIT Federal Credit Union, on behalf of the National Association of Federal Credit Unions; Mr. Christopher George, Chairman Elect of the Mortgage Bankers Association; and Mr. Marcus Stanley, Policy Director, Americans for Financial Reform.

Each of you will be recognized for 5 minutes to give an oral presentation of your testimony.

Without objection, each of your written statements will be made part of the record. Our lighting system is green means go, yellow means you have a minute to wrap up and finish your points. And we have the same timing mechanism up here. When red hits, hopefully you can stop it and withdraw and move on.

So with that, Mr. Cimino, you are recognized for 5 minutes.

STATEMENT OF ANTHONY CIMINO

Mr. CIMINO. Chairman Luetkemeyer, Ranking Member Clay, members of the committee, thank you for the opportunity to testify today.

My name is Anthony Cimino. I am with the Financial Services Roundtable. My comments today will focus on H.R. 3179, the Transparency and Accountability for Business Standards Act, and H.R. 3746, the Business of Insurance Regulatory Reform Act.

First, let me say that FSR applauds your efforts to assess and modernize the regulatory financial system. To that end, FSR supports H.R. 3179, the TABS Act. This legislation would require Federal banking agencies to perform an analysis and provide a rationale when promulgating standards that are more stringent than the related international standards.

In implementing the most recent agreement, Basel III, U.S. banking regulators have, in some cases, pursued a policy of, quote/unquote, gold plating or a heightened prudential scrutiny for U.S. companies.

I would like to touch on three areas in particular. The first example is the G-SIB surcharge. Basel III imposes a capital surcharge on global systemically important banks. U.S. regulators adopted this G-SIB surcharge, so-called model 1. But in addition to that, U.S. regulators also adopted an additional requirement, method 2, a more prescriptive surcharge. In some cases, it has forced an extra 2 percent capital charge, which according to one estimate, costs \$52 billion in capital and has reduced lending capacity of the U.S. financial system by \$287 billion.

The second example is the enhanced supplemental leverage ratio. In conjunction with international agreements, U.S. banking regulators imposed a 3 percent supplemental leverage ratio requirement on certain bank holding companies. They did then, however, apply an enhanced SLR (supplementary leverage ratio) that requires G-SIBs to meet a 5 percent SLR requirement at the holding company level and a 6 percent enhanced SLR at the bank level. That 6 percent is double the international standard.

The third area I would like to point out to you all deals with the liquidity coverage ratio, which requires banks to hold enough high-quality liquid assets to withstand a severe 30-day stress scenario. In setting the LCR (liquidity coverage ratio); however, U.S. agencies deviated from the internationally agreed to methodology specifically for inputs on cash outflow assumptions and maturity assumptions for options. This has led to different outcomes for the calculation, but estimates indicate that a 1 percent change in the calculation may increase bank lending by approximately \$17 billion.

These are just three examples where the U.S. has deviated from international standards. It is important to note that H.R. 3179 would not, however, weaken standards or repropose rules. The legislation merely establishes a transparent mechanism to assess, impact, and provide a rationale for any delta between the U.S. and the international standards. We believe that this understanding and related decisions can bolster U.S. competitiveness and drive economic growth.

Shifting gears, I would like to point out that FSR supports H.R. 3746, the Business of Insurance Regulatory Reform Act. Under McCarran-Ferguson, Congress granted States the authority to regulate the business of insurance. Title X of the Dodd-Frank Act reflected that as well. The law created the CFPB, but exempted the business of insurance from its authority.

Despite this, the CFPB has, at times, expanded its scope to include the business of insurance. For example, in 2016, as part of a request for information for certain loans and ancillary products, the CFPB requested information on credit insurance, which is an insurance product regulated by the States.

A second example comes to the CFPB's proposed rule on arbitration agreements. The proposal sought to apply the arbitration rule to policy loans made by life insurance policy providers. These policy loans are loans secured by the cash surrender value of the related policy. The life insurance policy providers are not creditors under the ECOA Act, and the products should not be subject to CFPB oversight. These are just two examples of that mission creep.

In each of these cases, State regulators and interested parties clarified the important role of State insurance regulators. H.R. 3746 seeks to address this ambiguity and potential mission creep by reiterating and clarifying that insurance regulation with respect to consumer products and services remain the purview of State insurance regulators. This legislation will create greater certainty, regulatory stability, and help the marketplace and consumers.

Financial Services Roundtable again commends the committee for its leadership and desire to assess and optimize the regulatory system. We urge the committee to advance these bills, and look forward to working with them on this.

I would also like to commend the staff on both sides of the aisle for their hard work on all of these issues, and continue to work with them as we go forward.

With that, Mr. Chairman, thank you. I would be happy to answer any questions.

[The prepared statement of Mr. Cimino can be found on page 38 of the Appendix.]

Chairman LUETKEMEYER. Thank you. With that, we appreciate your comments.

With that, I recognize Mr. Ducharme for 5 minutes to give us a presentation. You are recognized.

STATEMENT OF BRIAN DUCHARME

Mr. DUCHARME. Thank you, Mr. Chairman.

Good afternoon, Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee. Thank you for the invitation to appear before you today.

My name is Brian Ducharme, and I am the president and CEO of MIT Federal Credit Union headquarters in Cambridge, Massachusetts. My written testimony outlines a series of tenets that NAFCU (National Association of Federally-Insured Credit Unions) believes are necessary for credit unions to thrive. We hope you will consider these as you work to establish a more efficient Federal financial regulatory regime.

I would like to focus my comments on one key piece of legislation before the committee: the Common Sense Credit Union Capital Relief Act of 2017 introduced by Representative Posey. This legislation would stop NCUA's (National Credit Union Administration) risk-based capital rule, RBC, from taking effect on January 1, 2019. NAFCU believes this rule is ill-conceived, in its current form will have a negative impact on the credit union industry.

The process that NCUA used to establish this rule was very problematic and took nearly 2 years to complete, with the final rule being approved by a 2 to 1 vote in October 2015, with current NCUA board chairman, Mark McWatters, dissenting in that vote.

The health of the credit union industry has only continued to improve since the rule was adopted, with over 95 percent of the industry's assets held in CAMEL 1 and 2 credit unions, mitigating the need for this rule.

We thank Chairman McWatters for his leadership in recognizing that the current rule is problematic and needs reform. However, the political uncertainty due to the vacancies on the NCUA board is impacting the agency's ability to make timely changes.

With the rule set to take effect a year from now, credit unions must soon begin the review of their portfolios to come into compliance. This could lead to some institutions curtailing lending in 2018 as they seek to maintain their capital level and capital cushion.

Not only is compliance with this rule problematic for credit unions, it also ties up NCUA resources, as it prepares to implement a flawed rule. NAFCU believes that Congress should step in and stop this rule from taking effect.

NAFCU analysis has found that over 400 credit unions will see a combined \$1.4 billion decline in their capital cushion when the rule becomes effective. Over 40 credit unions will face a downgrade in their capital category, and MIT FCU is one of those credit unions facing a downgrade.

Our members look to us for many of their financial services, including a wide range of mortgage services. With young adult members, we have been an important option for them as they become first-time home buyers.

MIT FCU also provides advisory services relating to college planning, as well as Federal and private student loans. Today, MIT FCU helps individuals make important decisions, and provides funding in many cases when others will not.

Our products have been prudently managed. However, under the new RBC rule, MIT FCU's ability to continue to serve our members with these products will be constrained. The new RBC rule has also forced MIT FCU to reconsider offering business services as well.

Regardless of how prudently we have managed these programs, we may have to stop providing them, which is not in the best interest of our members, and many other credit unions will also find themselves in this very same situation.

Finally, it is important to remember that credit unions, unlike other financial institutions, are locked into a net-worth ratio system that does not evolve in the face of changing market conditions. A more flexible RBC framework could counterbalance the immutable requirements of credit union PCA laws.

In conclusion, one of the biggest and pending burdens on the credit union industry is the implementation of NCUA's risk-based capital rule. While NAFCU supports a true risk-based capital system for credit unions, the current rule set to take effect January 1, 2019, does not provide this and it is fundamentally flawed. The Common Sense Credit Union Capital Relief Act of 2017 is needed, and we would urge the committee to support this timely legislation.

Chairman, thank you for the opportunity to appear before you today, and I welcome any questions that you or the committee may have.

[The prepared statement of Mr. Ducharme can be found on page 45 of the Appendix.]

Chairman LUETKEMEYER. Thank you.

Mr. George is recognized for 5 minutes.

STATEMENT OF CHRISTOPHER M. GEORGE

Mr. GEORGE. Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, I appreciate the opportunity to testify this afternoon on behalf of the Mortgage Bankers Association.

My name is Chris George, and I am the founder, president, and chief executive officer at CMG Financial, a privately held mortgage bank in San Ramon, California. I also currently hold the position of chairman-elect at the MBA and have previously served as the chairman of the California Mortgage Bankers Association.

As a three-decade veteran in the mortgage industry, I am pleased to share my views today on, H.R. 2570, the Mortgage Fairness Act, and the Comprehensive, Regulatory Review Act. MBA supports both bills and believes they offer practical solutions to improve the efficiency of mortgage market regulations.

One of the most significant features of the Dodd-Frank Act was a requirement that lenders, during the underwriting process, carefully demonstrate a mortgage borrower's ability to repay their loan. And while the qualified mortgage standard that was developed by the CFPB was not meant to limit mortgage originations to only loans that meet this standard, the significant potential liability and litigation expense for violations of the ability to repay rule have directed the vast majority of the market toward QM (qualified mortgage) loans that provide safe harbor from potential litigation.

As the ATR rule and QM standard have been implemented, MBA has consistently maintained the view that mortgage originated with the same interest rate and other product features should be treated equally from a regulatory perspective, regardless of the originator's business model. H.R. 2570 aims to improve a provision

of the ATR rule and QM standard that generates unequal treatment of loans originated by mortgage brokers.

The ATR rule and QM standard includes fees paid by wholesale lenders to a mortgage broker in the calculation of points and fees, which is used to determine whether a loan qualifies for the QM safe harbor. However, fees paid by a wholesale lender to a mortgage broker are already reflected in the interest rate offered to the consumer, resulting in a double counting of those fees. Because of this double counting, loans originated through mortgage brokers are more likely to exceed the maximum allowable points and fees under the ATR rule and the QM standard. This treatment results in some loans originated by mortgage brokers failing to qualify for the QM safe harbor, while the exact same loans would have qualified if originated through a different channel.

H.R. 2570 would eliminate this double counting and level the playing field for mortgage brokers, increasing competition in the lending market. We think this would ultimately benefit consumers, in particular, low-to moderate-income consumers, by giving them greater choice when they go to shop for a loan and thus potentially lowering their borrowing cost.

MBA supports H.R. 2570 and urges the committee to advance this common sense provision to ensure that otherwise similar loans are not treated differently due simply to their origination channel.

MBA also supports the Comprehensive Regulatory Review Act, which amends the Economic Growth and Regulatory Paperwork Reduction Act. This legislation will clarify the EGRPRA review process and eliminate ambiguity to ensure the Federal Financial Institutions Examination Council undertakes a timely review and elimination of any unnecessary regulations.

EGRPRA is an oversight mechanism designed to ensure that regulations are reviewed and evaluated in light of changes in the market or the interlocking Federal regulatory structure. The proposed legislation seeks to improve the EGRPRA regime to better reflect significant structural changes to the Federal regulatory landscape that have occurred since its adoption in 1996. This legislation accomplishes this goal by increasing the frequency and expanding the breadth of reviews and also by incorporating additional regulators in the process.

The proposed legislation requires comprehensive review every 5 years, rather than the current once-per-decade requirement. A shorter interval between reviews will prompt regulators to move more quickly to review the burden of outdated regulations and identify those that are otherwise unnecessary.

Given the fast pace of the technological innovation in today's market, a more frequent regulatory review cycle is critical in ensuring that regulators keep pace with the market and do not stifle innovation.

If this legislation is codified, the regulator's responsibility would no longer end with just an inventory of unnecessary regulations but with the elimination of unnecessary regulations. In addition, each regulation must be tailored in a manner that limits its regulatory compliance impact, cost, and liability risk. In this way, the proposal provides actual regulatory relief. MBA sees this proposed

legislation as having a positive impact on the efficiency of the mortgage market regulations.

MBA urges the committee to pass this bill to ensure that the consumer finance regulatory regime is appropriately tailored to accommodate market changes and technological innovation.

Thank you again for the opportunity to testify today. I look forward to any questions you have.

[The prepared statement of Mr. George can be found on page 60 of the Appendix.]

Chairman LUETKEMEYER. Thank you, Mr. George.

Dr. Stanley, you are recognized for 5 minutes.

STATEMENT OF MARCUS STANLEY

Mr. STANLEY. Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, thank you for the opportunity to testify before you today on behalf of Americans for Financial Reform.

AFR was created as a response to the disastrous financial crisis of 2008. That crisis caused 9 million workers to lose their jobs, 7 million families to lose their home, and the Nation to lose over \$10 trillion in economic wealth. A key lesson learned in the financial crisis was the importance of strong regulatory protections in protecting consumers and the economy.

Contrary to the claims of some, the financial industry is alive and well under Dodd-Frank. Since Dodd-Frank was passed, the financial sector has grown more quickly than other industries. In 2016, banking industry revenues rose to record levels. The fraction of community banks showing a profit increased from 79 percent in 2010, the year Dodd-Frank was passed, to 96 percent in 2016.

Another metric of the health of the banking sector, the growth rate of bank commercial lending, has also exceeded historical averages since the passage of Dodd-Frank.

In light of the extraordinary damage created by the 2008 financial crisis and the lack of evidence for an economically harmful effect of post-crisis regulations, it is very disappointing that the bills under consideration by the subcommittee today would uniformly lower regulatory protections for consumers in the economy.

I will now briefly discuss each bill. Given the time limitations in my oral testimony, I urge interested parties to consult my written testimony for additional detail.

H.R. 2570 would make it easier for lenders to steer homeowners into high cost, potentially abusive loans, uncertain mortgages, notably, home equity lines of credit. It would exempt yield spread premiums from tests used to determine whether a loan counted as a high-cost mortgage loan.

These premiums often act as what are effectively kickbacks to the mortgage broker from the lender in exchange for an increased interest rate, a pernicious form of incentive payment that has been shown to contribute to steering, discrimination, and lending without regard to ability to repay.

H.R. 3179 seeks to restrict Federal banking agencies from issuing regulations more stringent than those laid out by international regulatory bodies. This bill would be a bad idea at any time, but it seems particularly misplaced today when many are

claiming to advance an America First agenda in economic policy. H.R. 3179 could instead be described as an America Last bill, as its effect would be to reduce our ability to protect the American economy against the negative effect of poor decisions made by international bodies.

If international rules were conceived of as dictating to member countries the strongest level of safety that could be required, this will result in imposing on each country the lowest common denominator acceptable to the more than 2 dozen nations that are members of the Basel Committee on Banking Supervision. This would be a dangerous limitation on the ability of the United States to address risks of financial instability. This risk is particularly salient today, given the weaknesses in the European banking system.

The weakness in the European banking system and practice means that Basel rules can be deeply influenced by the desire of European regulators to avoid placing stress on very weak and, in some cases, perhaps even insolvent banks. Subordinating U.S. bank regulations to what is attainable in a Basel consensus would be an extremely dangerous move.

H.R. 3746 amends the Dodd-Frank Act in a manner that would significantly narrow and call into question the Consumer Financial Protection Bureau's authority to regulate entities engaged—to regulate insurance entities, even if these entities were engaged in consumer financial activities that would normally be regulated by the CFPB.

If H.R. 3746 were passed, it would significantly limit the CFPB's ability to investigate and enforce against consumer abuses in the many financial markets that involve both lending and insurance sales. There are numerous products and activities that span the insurance credit divide in this way.

In my written testimony, there is a detailed example of the way the limitations in H.R. 3746 would have damaged the CFPB's ability to investigate and punish the Wells Fargo scheme to sell unnecessary insurance to its auto credit customers.

Finally, the Comprehensive Regulatory Review Act would modify EGRPRA. Currently, the EGRPRA regulatory requirement is simple, direct, and clear. The statute requires regulators to review regulations and eliminate unnecessary regulations at least once every 10 years.

The language inserted into EGRPRA by the Act would significantly slant regulatory consideration away from a true comparison of the costs and benefits of regulation and toward an attempt to minimize costs for regulated entities, without considering benefits to the public. In addition, the change in the minimum required review cycle from 10 years to 5 years is also inappropriate, as the compliance costs of new regulations are front-loaded, while benefits to the public are weighted toward later periods.

Thank you, and I am happy to answer questions.

[The prepared statement of Mr. Stanley can be found on page 66 of the Appendix.]

Chairman LUETKEMEYER. Thank you, Dr. Stanley.

One bit of housekeeping here. We have a couple of members of the Financial Services Committee that are not members of this committee that would like to participate. So without objection, the

gentleman from Wisconsin, Mr. Duffy, and the gentleman from Indiana, Mr. Hollingsworth, are permitted to participate in today's subcommittee hearing.

And while they aren't members of the subcommittee, Mr. Duffy and Mr. Hollingsworth are members of the full committee, and we appreciate their participation today. They are not present in the room at the moment, but I understand they are coming. So thank you for that.

I now recognize myself for 5 minutes. And because we have a number of the sponsors of the bills here in the committee today, I am going to keep my questions pretty short so we have more time to let them talk about their own bills. So I will be very brief.

Dr. Stanley, I have a question for you with regards to your testimony. Over the last several years, the regulators have changed the way they regulate from being a group that is—in general. And these bills are here to try and solve a problem, I think, that has occurred over the last several years.

Well, they have taken this attitude that you are guilty until proven innocent, that you are doing something wrong till you can prove that you are not doing something wrong, that are—they are playing a game of got you, and they want to be punitive to almost every action. They are not willing to be sitting there willing to listen to the institution and say, hey, we didn't understand the rule or regulation, can you explain it to us so we can get it right. And instead, they slap you with a fine and off they go.

Do you think that is the way to do business?

Mr. STANLEY. I guess all I can say is that in our involvement in the regulatory process, we have seen very extensive comments filed and considered by the regulators. We have seen numerous exemptions put into regulations, *de minimis* exemptions. You can see that in the CFPBs. Smaller banks, in many cases, were exempted from various rules, and we have seen very large—if you simply look at the regulator's calendars, there are many, many more meetings with regulated banks and regulated entities than with public interest groups. So I think we have seen that effort by the regulators to reach out.

Chairman LUETKEMEYER. I respectfully disagree. I think the reason for these bills today are that there are concerns that have been raised by these various institutions that are represented on the panel today that, in many cases, whether it is Dodd-Frank or some other banking regulations, have gone so far as that they do not—the cost benefit of the rule or regulation is such that it does more harm than good.

Mr. Cimino, I think you mentioned in some of your testimony here with regards to the impact of pricing availability to credit, because I don't think that there is a benefit—cost-benefit analysis done. Would you like to elaborate on it just a little bit?

Mr. CIMINO. Yes. I think when we approach things, we are always trying to figure out how to optimize the regulatory framework, how do we match a safety and soundness regulatory framework to address the risks in the system appropriately, while optimizing how the financial services sector can invest in the economy, can invest in consumers and in businesses.

And when you look at some of these regulations, especially when we are talking about one of the bills before us today, the TABS Act, the delta between international and U.S. clearly indicates that there should be an assessment as to is this the right regulatory approach, because in some cases, we are seeing a lot of capital held on the sidelines that could be injected in the economy through lending, that could be helping to grow that economic opportunity out there. I will be happy to talk about any more of those details.

Chairman LUETKEMEYER. Thank you very much.

I am going to stop my questioning here, and we will recognize the Ranking Member, the other gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Dr. Stanley, with respect to H.R. 2570, can you discuss how yield spread premium payments operate and how leaving them out of the consumer bureau points and fees calculations for mortgage loans could potentially result in borrower's harm?

Mr. STANLEY. Yes. The yield spread premium is a—what yield spread premiums do is they take what would otherwise be an upfront fee paid by the borrower and converted into an increase in the interest rate that the borrower would have to pay over the life of the loan, and this can considerably increase cost to the borrower.

For example, over a 30-year \$300,000 loan, a quarter percentage point increase, which would probably be too small to really be noticed by the borrower, would increase cost by something like \$16,000 over the life of the loan. And in many cases, what we saw prior to the financial crisis, was that part of those financial benefits from the yield spread premium were given to the broker in order to steer the borrower into that higher cost loan, and that was very harmful. I cite research in my testimony showing that that was very harmful prior to the financial crisis.

And by limiting the upfront points and fees, including the yield spread premiums that can be included in a mortgage, the CFPB has really prevented these kinds of abuses, that if these fees are put in, a mortgage would be classified as a high-cost mortgage.

Mr. CLAY. And so over time, depending on what the interest rate is and how it is calculated, then that means people either pay more or less over 30 years for a mortgage.

Mr. STANLEY. They could pay considerably more, and especially if they are steered into a product which would be a higher interest rate than what they would qualify for, higher than the minimum interest rate that they would qualify for. They could pay tens of thousands of dollars more.

Mr. CLAY. And those interest rates are set based on credit ratings and credit history. And so I guess—and sometimes other factors are taken into consideration, such as race. Am I correct?

Mr. STANLEY. Yes. Minority communities, communities of color were targeted for predatory lending prior to the financial crisis and paid a very heavy cost in terms of loss of equity in their homes.

Mr. CLAY. So people with the least means paid more. Wow.

Mr. STANLEY. That is right.

Mr. CLAY. Oh, I see.

Let me ask you about H.R. 3179. Would you discuss for the committee why this legislation may be the wrong approach for this

country? Doesn't it make it harder for our regulators to implement strong capital requirements for our largest banks to better protect American taxpayers and the economy?

Mr. STANLEY. That is exactly right. What we have seen is that, as I said, the Basel Committee has 24 different countries, and it has to reach an agreement on the safety standards for banks. And I know everyone in this room is familiar with the difficulty of reaching agreement when you have dozens of different people on a committee. And a lot of those countries have very weak banks, much weaker than the United States, and there is a lot of pressure toward a lowest common denominator, toward low safety standards for U.S. banks.

And I just wanted to respond to what was said by Mr. Cimino about the costs and benefits of these U.S. rules. The Federal Reserve did an extensive study just this year of the costs and benefits of our bank capital rules, and it found out that the U.S. bank capital rules were well justified in terms of protecting the economy and the public, whereas the bank capital minimums laid out by the Basel Committee were too low.

Mr. CLAY. Do you find it strange that a cost-benefit analysis is required only if the U.S. rules are more stringent instead of less stringent than international standards?

Mr. STANLEY. I find it very strange, especially because most unbiased cost-benefit analyses by independent actors show that those international rules are already less stringent than they should be.

Mr. CLAY. Any other key highlights of the bill that give you concern at this stage?

Mr. STANLEY. Yes. The fact that it empowers large Wall Street banks to sue regulators to overturn these safety standards. In a lot of cases, the court would be far less expert on the quantitative analysis of these regulations than the expert regulators in the Federal Reserve.

Mr. CLAY. So we would be going back to conditions prerecession?

Mr. STANLEY. That is right, and we would be empowering foreign countries to govern our regulations.

Mr. CLAY. That is all I need to know.

Thank you, and I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

With that, we go to the gentleman from Pennsylvania, Mr. Rothfus, is recognized for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Mr. Ducharme, one of things that we often hear about from financial institutions of all sizes is that the costs associated with complying with all of these new regulations have been skyrocketing.

As a veteran of the credit union industry and as someone who has grown an institution from less than \$100 million to over \$540 million, perhaps you can comment on the explicit costs associated with this increased regulatory burden. Taking the MIT Federal Credit Union as an example, how have your compliance costs changed since the financial crisis?

Mr. DUCHARME. The impact that has been placed on my organization since the financial crisis has been pretty significant, and it is commensurate with our growth in assets as well as the addi-

tional regulatory burden that we have incurred with these additional regulations.

To quantify that, I think you would look at the personnel that we have created—or departments that we have created and the personnel that we have had to add in the risk compliance and risk management area of the credit union. We have had to add a number of individuals that have expertise in these areas that we previously did not have to employ.

Mr. ROTHFUS. How many people are we talking about that you have had to add?

Mr. DUCHARME. Currently, in our risk management department, we have a senior vice president that oversees that. She was part of the organization before, but there are four individuals that are part of that risk management department that we previously didn't have.

Mr. ROTHFUS. And there is a cost associated with that, correct?

Mr. DUCHARME. Absolutely. Absolutely.

Mr. ROTHFUS. What are the consumer impacts of these higher costs and the increased focus of resources toward compliance activities as opposed to actually working with customers?

Mr. DUCHARME. I am sorry. Say that again, please.

Mr. ROTHFUS. The consumer impacts of these additional costs that you are experiencing.

Mr. DUCHARME. So allocating resources for this is prudent, right, and so there are regulatory requirements that we have to ensure that there are sound practices in place. It is the additional burden in the addition of staff that takes away from us to be able to provide those resources to the members that we serve. So—

Mr. ROTHFUS. Now, your credit union didn't cause the financial crisis, correct?

Mr. DUCHARME. That is a very good point, Congressman. No, our credit union itself did not. Actually, during the financial crisis, our credit union performed extremely well. Our delinquency rate is a third of the industry. Our loan losses—

Mr. ROTHFUS. You are incurring all these additional costs for something that you really had no role in at all.

Mr. DUCHARME. That is correct.

Mr. ROTHFUS. Mr. Cimino, I appreciate your comments on the TABS Act. As a cosponsor of this bill, I understand how important it is to ensure that our prudential regulations are based on sound analysis that take into account market impacts. I am especially concerned by the practice of gold plating, which I worry puts American firms at a needless disadvantage. Can you describe the impact of past gold plating on U.S. competitiveness and growth?

Mr. CIMINO. Yes. Thank you for the question, Congressman. This is a key factor, and again, this bill is going to add transparency to, not only identify what that competitive impact is, but provide a rationale if that rule is, in fact, different. But we see, on something as simple as a G-SIB surcharge, \$52 billion of capital on the sideline.

Now, if you were able to invest that in the economy through a normal financial mechanism, you could see up to \$287 billion in new lending out there. That is just one example of how this can

impact and create economic growth and opportunity to the United States.

But I think when you look at the competitive environment more broadly, when you look at rules like supplemental leverage ratio or the liquidity coverage ratio, you are talking about even different calculations that are going to incentivize different firms to behave differently. And when those calculations come out more beneficially for those not subject to the U.S. regulations, you are inherently hindering how U.S. firms can offer these types of products and services they can offer and what they can do to invest in the U.S. economy.

Mr. ROTHFUS. I am mindful of the research that Steven Strongin has done where he estimates that the impact of all the regulation that we have had over the last 8 years, 650,000 fewer small businesses, translating to 6-1/2 million fewer jobs. That is 6-1/2 million people not paying Social Security tax, 6-1/2 million people not paying Medicare tax, 6-1/2 million people not paying income tax that help us to underwrite the cost of things for education, for veterans benefits, for maintaining a robust defense. I appreciate your comments there.

Mr. Chairman, I am going to yield back the balance of my time.

Chairman LUETKEMEYER. The gentleman yields back.

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

Mrs. MALONEY. I thank you, Mr. Chairman and Ranking Member and panelists.

Mr. Cimino, I would like to ask you about H.R. 3746, the Business of Insurance Regulatory Reform Act. I understand that the goal of this bill is to clarify that the CFPB does not have the authority to regulate insurance companies that are engaged in the business of insurance, but isn't this what Dodd-Frank already says?

Mr. CIMINO. We do believe that it is, in fact, trying to clarify what Dodd-Frank already says. And I don't believe that it is a downside to provide more clarity to that. But the reason why I think this bill is necessary is, since the CFPB is established, we have seen a few instances where we have seen it creep into other areas that I don't believe Dodd-Frank intended it do so.

One of those is when it did, in fact, request information on some ancillary products, including things like credit insurance, and that was opening a door toward an area that is a clearly State-regulated product. And another area, we noticed that the arbitration rule would, as proposed, apply to life insurance providers when making policy loans. Again, that is an area where we believe the State regulatory system is well within the purview of oversight there.

So we are trying to clarify that and recodify the intent of what we believed Congress was doing with the Dodd-Frank Title X.

Mrs. MALONEY. Dr. Stanley, what do you think of this bill? Do you think it curtails the CFPB's authority too much?

Mr. STANLEY. Yes, I do. I think the current Dodd-Frank language is clear and well drafted. It states that the CFPB does not have authority over insurance companies, except insofar as those insurance companies engage in consumer financial activity that falls under bills that the CFPB is already supposed to enforce.

And what this bill would do is it would modify that language to add a very broad and vague proviso that the CFPB could not act in any case where the entity was engaged in the business of insurance. And I think that it is very likely that the courts would interpret that to say that the CFPB could not act, even if that insurance company was providing a consumer financial product.

And what that would do is it would set up a two-tier system where companies could evade CFPB jurisdiction under—doing consumer financial activities simply by claiming that they were doing the business of insurance, and my written testimony lays out how that works.

Mrs. MALONEY. Thank you. I would like to follow up on a point that the Ranking Member raised, Dr. Stanley. I want to ask you about H.R. 3179. And the way I read the bill, it would require the banking regulators to conduct a cost-benefit analysis any time a U.S. rule is more stringent than the international standard, but not when the U.S. rule is less stringent than the international standard. It would also allow the industry to sue the regulators over their cost-benefit analysis, potentially delaying important safety and soundness measures by tying them up in court.

So do you think it is fair to require the regulators to conduct a cost-benefit analysis only when the U.S. rule is more stringent than the international standard but not when it is less stringent? Dr. Stanley.

Mr. STANLEY. I don't. And I think the statutory cost-benefit requirements, even if you did require an analysis when it was less stringent, which I think is obviously called for, I think these statutory cost-benefit analysis requirements have big problems because they end up throwing things into court, they empower the big banks to sue to overturn regulatory standards, and then you have nonexperts in court making a decision on how strong these standards should be, and often doing it based on industry research, research financed by industry consultants.

And I just wanted to also respond to what Mr. Cimino said about U.S. competitiveness and growth. I think the U.S. banking industry is the most competitive banking industry in the world right now, and the reason for that is that it is well capitalized, it is strongly capitalized, and it is well regulated. I think the European banking industry is much less competitive because it is poorly regulated and people feel that it is poorly capitalized.

Mrs. MALONEY. I agree.

Mr. Cimino, very quickly, can you speak to this, to this issue that we talked about? Why should the regulators be required to conduct a cost-benefit analysis when the U.S. rule is more stringent but not when it is less stringent? And do you think it is helpful to allow the industry to sue regulators over the cost-benefit analysis?

I have 6 seconds left.

Mr. CIMINO. I think that we are all trying to get at the same intent. To the extent that we are creating different standards that would place U.S. firms at a competitive advantage, that is an acute area of focus, but there is an openness to trying to figure out why that delta would exist on the other side in making sure that we would have the appropriate review in place to ensure that we are

getting at the appropriate standards at home and abroad here. So I do think that we can work on things like that.

As to the litigation area, we see this transparency mechanism as an opportunity for greater information, greater clarity, and understanding what that looks like. And that is something subject to a lot of the different regulatory fields, not just this particular function.

I am sorry. I have run out of time, sir.

Chairman LUETKEMEYER. The gentlelady's time has expired.

We recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman.

And I would like to briefly discuss two solutions on the agenda today, briefly. And thank you for holding this hearing.

H.R. 2570, the Mortgage Relief Fairness Act, is a common sense solution that will provide more options for home buyers, particularly low- and middle-income consumers.

When consumers purchase a home through a mortgage broker company, they can either pay the fees to the company upfront through their own personal bank account or pay the fees over time in the form of higher interest rates from the lender. If the consumer elects the second option, then fees are reflected in the form of a higher interest rate and essentially become cash paid to the mortgage broker for commission or fees. Many borrowers choose the second option because it enables them to have more capital on hand for home renovations or for other purposes.

Unfortunately, the CFPB is currently counting the interest rate and then the fees included in that rate on top of it within the 3 percent qualified mortgage calculations. Essentially, the CFPB is double-counting, and this policy risks taking away a competitive channel that helps consumers obtain financing through multiple sources with just one application process. As a result, the double-counting of loan origination fees could have an adverse impact on low- and moderate-income borrowers by limiting their options to obtain financing.

Although the CFPB has acknowledged this is a problem, the Bureau says they are locked into this interpretation because of their interpretation of the current law.

The Mortgage Fairness Act will correct this by amending the Truth in Lending Act to prohibit counting any payments that are reflected in the mortgage rate offered by the creditor or lender in the 3 percent qualified mortgage calculations.

I would also like to address H.R. 4464, the Common Sense Credit Union Capital Relief Act. It would address the National Credit Union Administration's final risk-based capital rule. In January 2014, the NCUA board initially proposed a risk-based capital system for credit unions. The proposal drew over 2,000 comments and over 360 Members of Congress expressed concerns. Based on those comments and concerns, the NCUA board issued, by a 2 to 1 vote, a revised risk-based capital proposal in January 2015.

The revised rule establishes a new method for computing NCUA's risk-based requirement that would include a risk-based capital ratio measure for complex credit unions, and that is those defined by rule as any credit union over \$100 million in assets. The

revised rule drew 2,167 comments, an even higher number of comments than the first public comment period.

In addition, NCUA's now Chairman McWatters opposed the rule's implementation in 2015, stating that, in his dissent, he did not believe that the NCUA possesses the legal authority to adopt the rule's two-tier risk-based net worth regulatory standard. And yet the rule moved forward and was finalized in October 2015, regardless of the many concerns voiced by the industry and the dissent of NCUA's Chairman McWatters.

Questions continue to be raised regularly about the cost of this rule in the industry, the legal authority of the agency to implement this rule, and the regulatory burden that this rule will have on credit unions, and the impact on credit unions' capital buffers or capital cushions, which could extend into the hundreds of millions of dollars. Remember, we are talking about credit unions owned by members.

The rule is a costly solution in search of a problem. And so the Common Sense Credit Union Capital Relief Act offers a simple solution. It would require NCUA's final risk-based capital rule to ensure that we don't unnecessarily burden credit unions and their members. I am confident this bill will set us on the right track toward a better designed risk-based capital system, a system that won't adversely impact our credit unions, their members, and the important services they provide to our communities.

I would just wonder if any of the witnesses would want to comment on what they think would make it easier to comply with the implementation in 2019, and how they think it would affect the business model that we now have. Any comments from any of you?

Chairman LUETKEMEYER. Any responses from the panel?

Mr. DUCHARME. Thank you, Congressman Posey. If you look at the risk-based capital rule that is set to be implemented in January 2019, it really does three things. You talked a little bit about defining complex credit unions. It basically takes this very broad definition and takes 1,200 credit unions and says, you are complex. It doesn't look at the way they conduct business or the risk that they are currently in.

It also takes 40 credit unions and it says that you are downgraded in how you are looked at from this risk-based capital rule. And MIT FCU is one of them. So with the implementation of this rule, you are now seeing that graduates of MIT are now more risky to lend to or to provide services to than you were prior to this rule.

Bottom line is that the requirement does three things. First of all, it requires credit unions to set capital aside, \$1.4 billion in cushion that is going to go away. It is going to take that money out of the lending cycle, and so we are not going to be able to provide services to our members as we have in the past. And, therefore, it is going to hurt more than 110 million Americans and members across the country.

Mr. POSEY. Thank you, Mr. Chairman.

Chairman LUETKEMEYER. The gentleman's time has expired.

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

Mr. SCOTT. Thank you very much, Mr. Chairman. This is an interesting hearing, very knowledgeable.

I want to focus my points on H.R. 3179. And, Mr. Cimino—Cimino, correct?

Mr. CIMINO. Very good. Yes, sir.

Mr. SCOTT. I got it. Let me focus on you for a second. You said, and I quote, in your testimony, you said that you felt this would bolster U.S. competitiveness relative to foreign firms, and that is one of the solid good reasons we should be supportive of 3179.

And I agree with you. I am a very determined person on this committee, ever since I have been here, to make sure that our financial system is No. 1 in the world. So that registers very well with me.

And I think it is also important to note that the bill doesn't touch the baseline internationally agreed-upon standards, and that all Mr. Hollingsworth is asking that we do is to take a more serious look at the gold-plate standards our regulators are layering on top of the Basel capital standards.

Now, where I have a little bit of a wrinkle that I want you to help me out with is in the cost-benefit analysis. Now, I am a firm believer in cost-benefit analysis, because I think it could be very, very productive. But there has been a tendency, oftentimes for the purpose of putting cost-benefit analysis in things, is it adds extra burdensome duties. And I think that if the intent of the cost-benefit analysis is to simply clog up the system with hurdles and provide—and you were at the Financial Roundtable, and you were aware it has been in the history that oftentimes that is what side benefits or purposes of cost-benefit analysis is. So I want to be clear that we can address this issue in a way that it is not used to clog up the courts or for that sort of thing.

The other thing is that I do have a little bit of concern that the cost-benefit analysis could give industry a private right of action. And if a private right of action could be used, has been used, for the purpose of clogging up the system.

So I want to ask you, do you think that we could modify this a bit, maybe have some language or amendment added to this bill to help it along its way that could clarify these concerns? Could we do that?

Mr. CIMINO. Well, thank you for the question. If I could unpack a few things.

First, I do want to go to your first point. This is by no means reopening the Basel Accords, and to Dr. Stanley's point, not making that consensus harder. What we are doing is looking at the U.S. pieces and whether or not they are adding on there.

To your point, I think we are sharing that goal. And it is not the intention of this bill to clog up the system or delay things. What it is trying to do is making sure that we are getting, in a transparent manner, the best information possible to inform these rulemakings and understand the rationale beyond that. So it is not our intention necessarily to clog up the system as to the—

Mr. SCOTT. OK.

Mr. CIMINO. Yes, sir.

Mr. SCOTT. I have only 50 seconds.

But, Dr. Stanley, let me ask you, if I were to offer an amendment to this bill, to the cost-benefit analysis provision that explicitly precluded a private right of action, plus added a requirement that the

measure—that we would measure any impact on the safety and soundness of the U.S. financial institutions, do you think that that could get the Americans for Financial Reform more comfortable, more comfortable, could help us along the way? We clearly want to make this a bipartisan effort. But I think if we did that, it doesn't hurt what Mr. Cimino is saying. It is not to clog it up, but this could give us some assurance to do that. Could you go along with that if we could put that amendment in?

Mr. STANLEY. Obviously, we have significant concerns about this bill, but we would be happy to talk to your office, because I think that that private right of action, that ability to take it into court, is really a very serious issue, one of our top issues with the bill. So—

Mr. SCOTT. Good. And, Mr. Cimino, you could work with us on that?

Mr. CIMINO. Yes, happy to collaborate. I think we are sharing the same goal, so we will work with your office.

Mr. SCOTT. All right. Thank you.

Chairman LUTKEMEYER. The gentleman's time has expired.

With that, we recognize the gentleman from Florida, Mr. Ross, for 5 minutes.

Mr. ROSS. Thank you, Chairman, and thank the panel for being here.

I and I think—I am not speaking on behalf of my colleagues on either side of the aisle, but agree that regulation is good. Regulation is necessary. We have to be able to have rules in a game, and those rules have to be able to, not only make sure we have competitive markets, but also that we protect our consumers.

But to the extent that the regulations become so overly burdensome and cost-prohibitive that we start seeing a presumption by the regulators that the financial service provider is really there for unjust enrichment and undue influence over its customers when, in fact, as I look at your industries, with the exception of Dr. Stanley, I understand and firmly believe that the sustainability of success in your particular industry is completely dependent upon the satisfaction and success of your clients, which in and of itself is a regulatory scheme that has worked for years called the private enterprise, the markets.

And so my concern is as to what point do we finally say, wait a second, what is this regulator's goal and what presumptions have we given them that put such a burden on our consumers that we are hurting our consumers in the name of consumer protection?

And, Mr. George, to your point, with regard to the ability to pay rule and qualified mortgage standards, the doubling of points and fees. What does that lead to? That leads to a loophole of a scheme that works, not to the advantage of the consumer, but to the advantage of that financial service provider, who can take the best advantage of it, contrary to what I think our regulators want to see.

Mr. GEORGE. Well, thank you, Congressman, for the comment. My response will be that—a couple of things. Those of you in the room that have purchased a home before, you understand that the process is fraught with a fair amount of anxiety. There is a lot of uncertainty that goes through the process. What we are trying to

do, this isn't about disclosure. It is not about compensation. Dr. Stanley did a very good job—

Mr. ROSS. It is about assessment of risk, a risk that you choose to bear. Go ahead.

Mr. GEORGE. It is really about a fairness component. If you have a broker and a retail loan officer both disclose a loan, both of those loans will come out with the same number at the bottom, the same cost at the bottom, except the broker loan will be subject to a calculation that could disqualify the loan simply the way we calculate the points and fees. That is it. That borrower would have to start over with someone else.

And a large amount of our business is about trust. It is about understanding that the person is working on your best behalf, but it is not about further compensation. Yield spread premium today does not yield a single penny to a loan officer, regardless of where they sell it.

And to your point about regulations, loan costs have nearly doubled in the last 12 years that I have been in this business. I have been doing it now for 35 years. It is largely based on the regulatory oversight. I am not saying get rid of all of the regulations. There are a lot of good ones.

Mr. ROSS. Of course not.

Mr. GEORGE. I am saying to you the ones that are unnecessary, redundant, that stifle innovation, we need to look at those.

Mr. ROSS. And how does that impact the challenges that we have for affordable housing today?

Mr. GEORGE. Oh, it is a huge impact, because as loans are smaller loans—

Mr. ROSS. A huge negative impact.

Mr. GEORGE. It has a much bigger impact on smaller loans because you are trying to spread that dollar over a smaller dollar.

Mr. ROSS. And we are hurting more than we are ever trying to help because of it.

Mr. Cimino—

Mr. GEORGE. It is the low-to moderate-income people that suffer the most.

Mr. ROSS. I agree.

Mr. Cimino, absent a private right to sue, how in the world do we hold accountable these regulators?

Mr. CIMINO. Well, I do think that that is what this is trying to get out to.

Mr. ROSS. Really? A sense of due process, to say, we challenge what you are doing, then saying you didn't apply a cost-benefit analysis. And suddenly, we, that are probably the judicial model of all other nations in this country, say, oh, by the way, we are not going to give you a private right of action to sue because we are not going to want to hold you accountable. Why is that such a big issue?

Mr. CIMINO. I wouldn't want to speak for folks that are very concerned with it, but I do think that it is applied in all other areas. And relinquishing that right in this particular area is something we would have to discuss as to what the implications are. But when you are talking about transparency, we are trying to get to better outcomes here. And to the point of accountability—

Mr. ROSS. And all I am trying to do is hold our regulators' feet to the fire to make sure they do what they are supposed to do without overreaching.

And one last quick question: The CFPB, they have no business in the business of insurance, and Dodd-Frank suggests that, but H.R. 3746 confirms that.

Mr. CIMINO. That is correct, sir.

Mr. ROSS. What is wrong with doing that? You said in your statements McCarran-Ferguson is probably the best thing that has happened.

Dr. Stanley, you said we have the best system of insurance regulation in the world, and I agree with that. It is a State-based—It is a risk-based capital system. Let's just confirm that and make sure that there is no mission creep from the CFPB.

And I see my time is up.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from Washington. Mr. Heck is recognized for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman.

Mr. George, I want to start with you, ask you a question that is, frankly, off topic, but I never want to miss this opportunity and I was given the perfect setup by my predecessor's questions. I am going to give you a fact pattern and then ask you to answer a question.

Last year was the best construction year for home building we have had in this country in a decade, and yet it was still only at the level of 1994. Indeed, the home-building industry is a third smaller than it was in 2005, but our number of households is growing even faster than it was in that year. The estimates that I have seen and I am sure you have seen are that we are building millions fewer units than we need, and we all know what that results in: young people living together, doubling up, tripling up or living in mom and dad's basement. Trust me, I know this story well. Home prices are soaring. Rents are soaring. And those are the lucky ones that get to do that, because the truth is, when you have this picture, you inarguably, inevitably create more homeless people. It is a natural law and consequence.

So without respect to the bills before us, you are in the business, why aren't we building more homes?

Mr. GEORGE. OK. Well, let's just start about that. I am not a home builder. I certainly do represent a whole bunch of them. But I can tell you that a number of things are happening.

First of all, I think that a lot of people blame it on the Federal Government. I actually think there are a lot of State statutes that puts a lot of additional expense into home building today. It is hard to break ground on a piece of property and make a decent return on that, given the oversight and regulatory burden that happens locally.

The second thing is, is that I would say to you that it is hard to find skilled labor. We aren't doing a very good job in this country in training people how to be electricians, plumbers, framers, roofers, et cetera. I know that personally, particularly right now. There is a glut of that labor in the State of California.

Last but not least, I think it is incumbent upon us as a lending industry to become a little more innovative in the way we look at loans. Let me give you a quick example. Generally speaking, the No. 1 impediment for somebody buying a first-time home is their downpayment. Particularly today, it is hard to raise money with student debt that they have as an overhang from going to school or even, for that matter, when you see rental being 40, 50, 60 percent of somebody's income, you are almost always going to not be able to save a couple of bucks at the end of the day to be able to put a downpayment.

There is innovation in the marketplace recently introduced that is talking about having a broader way that people can gift money to people, not borrow money, but gift money. So it forms itself in a crowdfunding environment, so that millennials today are thinking more of different ways to be able to come up with their downpayment.

Fannie and Freddie are both looking at the way loans can operate. Two identical borrowers, one with no downpayment but 2 years' worth of reserves, one with a minimal downpayment and 2 months' worth of reserves. Both of the agencies are seeing that having a deeper level of reserves protects them against a default than what we saw previously.

I also think that we are doing a far better job servicing loans. Previously, prior to the housing crisis, a loan could go 30, 60, 90, or 120 days delinquent, well before anyone reached out to the borrower to talk to them about solutions. That whole process is wildly different. You get a single point of contact. We are reaching out to you aggressively, trying to figure out what is going on. And in many cases, we are modifying your loan so that you don't go that far behind.

Answering your question as it relates to builders, I do think that there's a number of things impeding this. And so the move-up customer moving from their starter home today isn't moving up. And I think that is leaving inventory really strangled, particularly in parts of California and all throughout the United States.

Mr. HECK. Mr. George, for somebody that answered a question that wasn't on your agenda today, I thought you did an outstanding job and that you were comprehensive, and I express my appreciation to you.

Mr. GEORGE. With my last name George, it is almost incumbent upon me to be curious, so thanks for the remark.

Mr. HECK. I want to conclude with two observations that I have come to in my years' work on this, the first of which is this is a bigger crisis in this country than we are acknowledging, i.e., not building homes at sufficient pace to keep up with demand.

And the second is, it is an ecosystem, and everything we do in one part affects another. You made reference to the GSEs. There is kind of underlying consensus in this environment that GSE reform will allow for more upfront risk capital. Inevitably, that will ratchet up the number of basis points of a cost of a mortgage. Inevitably, that will make more homes out of reach for people. And so my final point would be, whatever we do in the way of GSE reform and housing reform, we have to remember it is an ecosystem. Every piece affects the rest of it.

Thank you very much for your excellent answer.

Chairman LUTKEMEYER. The gentleman's time has expired.

With that, we recognize the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Dr. Stanley, if you were to give a grade to former Vice Chair of Supervision at the Fed, Daniel Tarullo, what grade would you have given him, in terms of financial regulation?

Mr. STANLEY. I would say I would give him a solid grade, a B or a B-plus. There are some things that—areas where we disagreed with him, but I think he drove through rules to completion, and that was positive. And, frankly, I agree with the fact that he did so-called goldplate the Basel rules. I think that was actually a wise move.

Mr. BARR. What do you think about his parting comments, his parting observations as he departed from the Federal Reserve when he said that the new capital requirements have impinged on market liquidity?

Mr. STANLEY. Have—excuse me?

Mr. BARR. What do you make of former Vice Chair of Supervision Tarullo's comment in his waning days in his position when he said that, upon reflection, that the new capital requirements impinged on market liquidity?

Mr. STANLEY. Impinged on market liquidity. Well, frankly, that parting speech was one reason I downgraded him into the Bs, because I felt that he undercut some of the advances he had made. But I really feel that the capital markets—if you look at the capital markets, we have set records in bond issuance each of the last 5 years. So it looks like we are going to—

Mr. BARR. Well, let me ask you this: Do you agree with Mr. Tarullo when he conceded that local or community banks should not be subject to the same Dodd-Frank requirements as big banks?

Mr. STANLEY. Well, I think that they—I do agree with that, and I think they already are not subject to the same Dodd-Frank requirements as the big banks. I feel the Fed has scaled the rules.

Mr. BARR. Mr. Cimino, is there any reason to believe that international standards are deficient, in terms of prudential regulation?

Mr. CIMINO. The international standards themselves?

Mr. BARR. The international standards.

Mr. CIMINO. We don't necessarily have data or examples of that at this stage.

Mr. BARR. Yes. So the point would be that with Basel and with all of the other international rules relating to safety and soundness, my question is, is there any reason why goldplating would be required, given some of the stringent standards that international bodies have recommended for banks?

Mr. CIMINO. I don't necessarily believe there to be, but I guess what we are asking for is let's examine that. If there is a delta, it should stand up to scrutiny and transparent input here. So if the affirmative decision is that there should be by regulators, there should be a rationale behind it. Now, different people and smart people can disagree on that, but I think, to your point, we have not seen a deficiency in the international standards themselves, much

less a rationale as to why you would need to goldplate those standards.

Mr. BARR. The next question is for Mr. Cimino and maybe Mr. Ducharme as well, to the extent that your institution does do any small business lending. And I note some credit unions do some of that and some don't. But my question would be, Dr. Stanley's testimony, and I have heard many of our colleagues on the other side of the aisle talk about the health in C&I lending and that lending is up under Dodd-Frank. And yet small business lending volume is way down, and that is a Harvard Business School study. And regulatory burdens clearly are impeding banks in their ability to participate in small business lending markets.

So is that your observation as well? And is that attributable to regulation/overregulation, Dodd-Frank?

Mr. CIMINO. I think there are probably a number of factors, but one clear factor is, of course, regulation. And I do think that you are seeing that the misapplication of regulation can drive a wedge in between the access to credit or the cost of credit from large borrowers, whether that happens to be an affluent consumer, a large business, versus the small borrower or lower- or moderate-income borrower. And that is going to create a delta that over time is going to have big ramifications.

Mr. BARR. This is, I think, one of the deficiencies in, with all respect, Dr. Stanley's analysis, because in Kentucky, where we are served mostly by small community rural banks and credit unions, they are disappearing. We have lost one in five community banks. Small business lending comes from community banks and credit unions.

So this idea that lending is strong in the aftermath of Dodd-Frank and that Dodd-Frank actually did tailor regulations, well, that defies the evidence, the record. The record is that one in five community financial institutions in rural America has disappeared, and that is why small business lending is down.

So this analysis that commercial/industrial loans are up does not account for the reality that entrepreneurship is at a 20-year low, because community banks have disappeared because of overregulation.

In the remaining time, Mr. Ducharme, would you like to comment on that?

Mr. DUCHARME. Thank you, Congressman. You are correct in your statement that there are some credit unions that are in small business and business lending. My credit union is not one of them.

Mr. BARR. OK. Thank you.

I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

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

Mr. TIPTON. Thank you, Mr. Chairman.

I apologize for being late, gentlemen. I appreciate you taking time today.

Let me get this. Ducharme, how do you pronounce that? I want to get that correct. Ducharme, correct?

Mr. DUCHARME. Ducharme, Congressman.

Mr. TIPTON. Would you possibly speak to the impact that you think that the tailoring process through EGRPRA would have on your industry?

Mr. DUCHARME. One of the benefits that it would have is threefold. First of all, although NCUA volunteers to be part of the process, it would now, regulatorywise, statutorywise, place them in it. It would also include the CFPB.

Primarily, as we see it, it would require the institutions identified in the legislation to review all rules and regulations every 5 years. And that would certainly lead to the review and possibly the relief of regulatory burdens of unnecessary rules and regulations that are placed on financial institutions.

Mr. TIPTON. I would like to be able to kind of get your view, looking back just a little bit. Had regulations been appropriately tailored, do you think that fewer credit unions would have closed after the financial crisis and the passage of Dodd-Frank had we had those regulations tailored?

Mr. DUCHARME. And, again, this is just my opinion. Clearly, the number of credit unions, smaller credit unions that have closed in the last 5 to 7 years have been because of the excessive regulatory burden that has been placed on them, Dodd-Frank being one of those.

Mr. TIPTON. So that tailoring would help.

Mr. George, do you have anything maybe you would like to add to that?

Mr. GEORGE. Yes. I mean, my comment about it is, is that I am not a fan of throwing out every single regulation. I just think that we ought to revisit some of the ones that are overburdensome and unnecessary. I am not trying to say that they are going to be changing congressional-mandated regulations. I am talking about regulations that the regulator could take a look at and say, these particular regulations are stifling innovation, they are stifling growth.

Keep in mind that, yes, some of the companies that are up here and have been up here before are big companies, and they can absorb that kind of expense associated with the regulatory oversight. But the vast majority of this industry is largely small businesses that operate in the communities that best need them, best are suited for them, the low to moderate communities, the people of color, the folks that are the first-time home buyers that are having trouble thinking through the process. Those organizations work tightly with housing counseling organizations and help people, usher them responsibly into home ownership.

I think if you overburden them with things that are not productive or not useful, I think it is defeating the purpose, right. It is working against us.

Mr. TIPTON. Great. Thank you.

Mr. Cimino, you stated in your testimony that between the first quarter of 2009 and the end of 2016, common equity capital ratios at our largest banks climbed from 5.5 to 12.5 percent, representing a new capital cushion over \$750 billion. And you went on to say that the globally systemic important banks were subject to a method 2 methodology for capital surcharge, which in some cases produced an extra 2 percent capital charge, in addition to the inter-

national standard, and has reduced the lending capacity of the U.S. financial system by \$287 billion.

Mr. Cimino, in the aforementioned capital figures, had they been subject to internationally agreed-upon standards instead of the gold-plating regulatory regime imposed by the Federal prudential regulators, do you believe that the U.S. would have had a stronger economic recovery?

Mr. CIMINO. I think you hit it on the head. The U.S. financial system has undergone a substantial recovery. They are strong, they are well-capitalized, they are resilient. And we have not necessarily seen economic growth translate. We want to get more investment in the economy.

And when you look at the G-SIB surcharge, I think we are talking about approximately \$52 billion sitting on the sidelines, based on the delta between the internationally agreed-to standards and what U.S. regulators have applied to. When you go there with that financial mechanism, putting that \$52 billion into the economy, potentially \$287 billion of investment. Investment in people, investment in businesses, investment in communities. And that is really where we are going to see that economic growth drive forward and that economic opportunity available to more and more Americans.

Mr. TIPTON. Great. We are in the process right now of trying to be able to deal with the Tax Code, to be able to make us more competitive. It is equally important to make sure that we have a regulatory policy that keeps that competitive edge for us as well?

Mr. CIMINO. Very true, sir.

Mr. TIPTON. Thank you.

Mr. Chairman, I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

With that, we go to the gentleman from Texas. Mr. Williams is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And thank you for the witnesses being here today. It is a good dialog, and we appreciate you being here.

Mr. George, first of all, thank you for bringing up the lack of welders, plumbers, and so forth. I talk about that all the time, and we need it. So thank you for reminding us.

In your testimony, you offer a lengthy discussion about your support of the Comprehensive Regulatory Review Act. I too feel that the CRRA too an important piece of legislation and will lead to better regulatory policy. Our agencies should strive to create policies which are effective and necessary, and timely review of EGRPRA, review like what is called for in the CRRA, will help to ensure that.

So my question to you would be—you mentioned in your testimony that the faster review period will help regulations keep pace with the market and do not stifle technical innovation. So how does the current EGRPRA review timeline stifle technological innovation?

Mr. GEORGE. Well, certainly. And listen, there has been not a whole lot of innovation in our industry over the last 10 years. I think that that is for a variety of reasons. Some of it that has come out has really helped the consumer and also helped lending overall. We are much more precise in the way we do things today.

So what I mean by that is, is that today we verify everything. So everything that comes through our loan package is not left subject to either a document that is provided. There is independent verification of your income, your assets, your credit, your history, your employment, your evaluation, everything. And we have done that through technology to speed that process up. Previously, it was a much more manual process.

No. 2, as I mentioned earlier, since there is such a hindrance of folks being able to come up with a downpayment, we are starting to think differently about downpayment. We are starting to think differently how people can come up with their downpayment and how we can make that process simpler, not because we are trying to get people who do not qualify into a mortgage, but what we are trying to do is get people who qualify into a mortgage beyond the minimum required to get into the mortgage. Clearly, a person who puts down 3 percent versus 30 percent is going to have a lot bigger buffer to weather a storm if there is a downturn in value.

What we think, though, is that there is a reluctance to innovate, and the reluctance to innovate is largely based on, if I create this new process, product, or procedure, am I suddenly going to be attacked from a regulator because it is something different. Forget about the headline risk. What we are simply trying to do is put together a set of rules and make sure that we are not using outdated or useless rules that stifle that kind of innovation.

Mr. WILLIAMS. OK. Another question for you. I would like to talk a little bit about the CFPB—we talk about that a lot—aspect of the CRRRA. Since its inception, the CFPB has finalized over 60 rules and changed several more. And I believe that this agency has done nothing good, absolutely nothing, and that we should do all we can to lessen its harmful impact on American consumers and businesses.

And specifically, I am glad to see the provision in the CRRRA that would require the CFPB to be included in the EGRPRA reviews. So under this proposal, the CFPB can't pick and choose which rules it will review and which it won't. So given this, can you elaborate on whether or not the CFPB, under this proposal, would be able to react to the market changes and technological innovations you mentioned in your testimony?

Mr. GEORGE. I believe they can. And listen, I think that if you—and sometimes I think that the CFPB is focused on a particular rule or regulation when that particular rule or regulation isn't germane or important to what is necessary for oversight. I think that the CFPB does have the ability to be able to review and regulate this entire process.

I also think that—and I mentioned this once before. There have been a whole bunch of rules and regulations that I think have actually been helpful for this industry. There was—back in the day, just about anybody could get in. It was a little bit of the Wild West back then. And nowadays, it is much more pragmatic. This is what I have done my entire life. I have been in this since I was 19 years old. I am very proud of what we have done and the customers that we have reached.

And I think today, with some refining, I think we can reduce some of that regulatory over—that burden and also reduce some of

that expense, which, by the way, I think reduces expense to borrowers.

Mr. WILLIAMS. Thank you.

Real quick, Mr. Ducharme, credit unions, I believe, are essential to Main Street America. I am a Main Street borrower. It is important that we do all we can to make sure that they are not overburdened by regulation. We have talked about that.

In your testimony, you briefly touched on H.R. 3746, which would clarify the limits of the CFPB in regulating insurance. So can you elaborate more on how the CFPB's regulation affects a credit union and the concerns that you have with this jurisdiction creep that we have?

Mr. DUCHARME. Thank you, Congressman. Well, I can tell you how it applies to my credit union. So we have about 15,000 individuals that work in the MIT community, and a number of them appreciate the value of credit protection products, in that it really provides them a benefit if there is a life event that they may, unfortunately, go through.

If you look at life insurance, those products, it is currently regulated by the Commonwealth of Massachusetts, in my case, State, at the State level. If the CFPB would find itself in that area—

Chairman LUTKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from Michigan. Mr. Trott is recognized for 5 minutes.

Mr. TROTT. Thank you, Chairman.

I also want to thank everyone on the panel for your time this afternoon.

Dr. Stanley, let's start with you. So you obviously haven't met or seen a regulator or a regulation that you don't love. So let's talk about one of the regulators you have mentioned a couple times today, the CFPB. And specifically, let's talk about the PHH case. Are you familiar with that case?

Mr. STANLEY. I have to—I am not our main person on the CFPB—

Mr. TROTT. Let me give you a couple facts and just get your off-the-cuff opinion on the good work of the regulators in that case.

So PHH was accused of some Section 8 RESPA violations. HUD imposed a penalty, I believe, of \$8 million. The then-czar swooped in on behalf of the CFPB and said the statute of limitations isn't relevant. The HUD review and findings are irrelevant. There is no due process, and the penalty is \$109 million.

Does that seem like a fair result for a business or does that not bother you because, again, we are talking about a bank and all banks are bad? What is your thought on the fairness of that scenario? Because those are the facts. And the Court of Appeals agreed with my analysis, that it is not fair. What are your thoughts?

Mr. STANLEY. I am not trying to dodge the question, but I just genuinely just don't know the background.

Mr. TROTT. All right. That is fair enough.

So let's move on to something you mentioned in your testimony then, and I want to ask Mr. George this question. What is the fee if the borrower chose not to roll the brokerage fee into the—in the

interest rate? Dr. Stanley said 25 basis points might increase the interest rate. What is the fee on a \$300,000 loan?

Mr. GEORGE. On how much of a loan? Thank you for the question. What was the—on how much of a loan?

Mr. TROTT. Well, Dr. Stanley in his example said that on a \$300,000 30-year mortgage, it could end up costing the borrower an extra \$16,000. What is the fee if they decided to pay it at closing?

Mr. GEORGE. I don't understand where that statistic comes from. I suspect you know that we have a pretty competitive marketplace, and that competitive marketplace is much, much simpler today for a consumer to shop a price. You know that. Today, you can get online and you can look at 50 different lenders with the push of a button. There are systems in place for people to compete for those loans.

So I don't understand the quarter point cost. I think it was—I would guess that it is just a relative number. On any loan, if you charge an extra quarter, it would be an additional X amount of dollars over 30 years.

Mr. TROTT. Hypothetically, if the fee is \$500 at closing, the future value of that money over 30 years is \$10,000 almost. So a little misleading in the example insofar as, you can pay now and use your capital now at closing to accomplish the dream of home ownership or you can roll it into the fee.

I think the arguments made by Dr. Stanley with respect to the impact it has on low- and moderate-income folks is completely wrong, and I think your point was spot on.

You made a comment about the cost of closings doubling over the last 10 to 12 years, and I think that is the most telling comment and a lot of what we are focused on today. In my opinion, Washington and Congress and the regulators—I spent many years in the mortgage banking industry—have it all wrong. They should be focused on trying to simplify the rules and make the cost of obtaining, originating a loan as least expensive as possible. And we have done everything the exact opposite. We have made it so complex, the borrower doesn't know what they are signing at closing and they have doubled the cost of loans.

Last question and then I will yield back. Dr. Stanley, with respect to the Regulatory Review Act proposed by Mr. Loudermilk from Georgia, you oppose that. Do you think Dodd-Frank is perfect?

Mr. STANLEY. No, I don't think Dodd-Frank is perfect.

Mr. TROTT. Do you think there are some unintended consequences that maybe Congress didn't anticipate when they wrote Dodd-Frank, there are some unintended consequences from that law?

Mr. STANLEY. Well, I think Dodd-Frank was a compromise, like many things that come out of Congress. And in some ways, I think that Dodd-Frank didn't go far enough in some areas, such as eliminating too-big-to-fail banks and so on.

Mr. TROTT. So you oppose the review act every 5 to 7 years. Why? Wouldn't it be a good idea to see if any of the regulations are working as intended or may be outdated or should be revised or tailored to suit current business practices?

Mr. STANLEY. Well, we have a review act right now that requires review every 10 years and the regulators to get rid of unnecessary regulations, and I think that is very straightforward and clear. And a lot of the language added here would focus exclusively on the cost to businesses and not the benefits to customers or the economy, and I feel that language is unbalanced.

Mr. TROTT. Well, we probably fundamentally disagree on the impact on cost to business and who bears the brunt of that cost, but I appreciate your time.

And I yield back.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to the gentleman from Georgia. Mr. Loudermilk is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

And I appreciate the comments from my colleague, Mr. Trott, on the Comprehensive Regulatory Review Act. And let me also start off by thanking my colleagues on the other side of the aisle who have been working very closely with us to make this a bipartisan bill. I think they realize that government often doesn't get it right the first time and it takes a lot of work to get it right over time. And it is an ever-evolving process.

I remember my daughter was doing a presentation years ago. And I was in the State legislature and she said, Dad, I want to do a presentation on leadership, and so she said, I have decided to focus on the importance of continuing to lead, not just establishing a rule or regulation once, but continue to work on it. And so she did this presentation, and she brought up several outdated laws even in the State of Georgia. One of them I particularly remember was, and just so anyone visiting Georgia realizes this, it is illegal to walk down the street with an ice cream cone in your back pocket. It was actually a law on the books in the State of Georgia.

That prompted me to go back and start looking at some of the laws we had on the book. And I remember I was in the technology industry, and we found out that some of the telecommunications companies were still having to submit reports on their Morse code stations and teletypes, and there weren't any. And so we started looking at why were they putting that report in. They said, because it is still on the books as a requirement, but the regulators have never gone back and reviewed it and took that off. And we talked to the regulators, said why? They said, look, we are too busy doing our regulation to go into this. So we passed legislation to remove it.

Now, in 1996, Congress I think took a pretty good step, Mr. Chairman. They passed the Economic Growth and Regulatory Paperwork Reduction Act, which basically said, look, every 10 years you need to go and review your regulations, and if there are any duplicative regulations or those that are outdated, you need to report those back to Congress.

But we really just lacked a little bit of teeth in there, saying, you really need to do more than just check the box. You need to look at the regulations and let's get rid of those regulations that are duplicative. Let's not force people to report on things that they are not doing.

And let's take it a step further, and this is what we are doing in the regulation, is just saying, let's broaden that to all these financial regulators. Let's include the CFPB. And let's also give them the opportunity to tailor regulations instead of painting with a broad brush.

I think that is a pretty reasonable way of doing business. I think that is a very effective way of doing business, that we can let the regulators focus on regulating in the areas that are important and imperative and not just regulate based on an arcane regulation that happens to be in the book that no one is taking the time to review.

So, Mr. George, can you briefly explain why EGRPRA really provides a good basis for cleaning up these duplicative regulations, but from whatever, I assume that you would like to see it strengthened. What do you think is positive and why we should strengthen it?

Mr. GEORGE. I couldn't agree with you more. Listen, think about this: In 2006 versus 2016, the lending environment is wildly different. We are on a different planet. In 2006, CFPB didn't exist, TRID didn't exist, HVCC didn't exist. LO Comp, Dodd-Frank, all of those rules did not exist.

If we are going to say we are going to wait another 10 years to look at a change, I think that that really harms our industry. I think that we are far better off taking a look at this on a much—5 years, 5-year period of time, to be able to see whether or not we have accidentally created a rule that stifles either innovation or competition, which is what we are trying to fix with 2570.

In my opinion, when you are talking about brokers and lenders that are side by side, two offices next to one another, and the broker loses a transaction simply because his loan is calculated different, not disclosed different, just calculated different, those are the kinds of things that we have to revisit and look at.

Congressman Trott said something. He said it is—the things of price and oversight of regulation are true. But let me tell you something, what keeps this industry honest is competition. You put more players in this thing, they are going to compete hard to get that transaction. It is hard.

Mr. LOUDERMILK. And I appreciate that.

And, Mr. Chairman, the American Bankers Association agree with Mr. George and myself in a letter that they have provided in support of the Comprehensive Regulatory Review Act. And I would like to submit that for the official record, if that is possible.

Mr. HOLLINGSWORTH [presiding]. Without objection.

Mr. LOUDERMILK. Thank you. New voice in the chair there.

And I think this is—and I know there are people out there that have never met a regulation that they didn't like. But if you really drill down to the regulators, they, just like the business, are looking at stability. I think we can give—we are putting them in the driver's seat of their own house.

Mr. HECK. Mr. Chairman?

Will the gentleman yield? Will the gentleman yield?

Mr. LOUDERMILK. I am out of time.

Mr. HECK. I was just wondering if there was ever a point in time when the—

Mr. HOLLINGSWORTH. The gentleman's time has expired.

Mr. HECK. If it was a problem that the people of Georgia were walking down the street with an ice cream cone in their back pocket.

Mr. LOUDERMILK. If the gentleman yields. I imagine that there was a reason, but around the same time, it was illegal to walk an elephant down the city streets in the middle of the day. So go figure.

Mr. HOLLINGSWORTH. The gentleman yields back.

The Chair now recognizes the gentlelady from New York, Ms. Tenney, for 5 minutes.

Ms. TENNEY. Thank you, Mr. Chairman.

And I just want to commend my colleague, Mr. Hollingsworth, on H.R. 3179, the Transparency and Accountability for Business Standards Act, of which I am a cosponsor. But also, I know a lot of people who don't like regulation—who haven't met a regulation they don't like. But can you imagine our own Federal regulators working against the interests of our U.S.-based banks and affecting our business community and our competitive nature.

I would like to yield back my time to the gentleman from Indiana, Mr. Hollingsworth.

Mr. HOLLINGSWORTH. Well, I thank my colleague, Ms. Tenney, and appreciate her kind words.

Dr. Stanley, my first question is for you. I know that there has been some banter here this afternoon, but something you wrote in your testimony really struck me in a positive way. You said the following: H.R. 3179 would impose additional administrative barriers to action on Federal banking agencies in cases where they wish to issue prudential regulations.

And what I think you mean by that is we need to be really, really thoughtful and really, really serious and go through a real diligent process before we restrict the freedom of our U.S. regulators to be able to take the actions that they think are necessary. And we owe it to them to be thoughtful and diligent in that process, right?

Mr. STANLEY. Well, it depends specifically on the barriers. But, yes, I think we need to be thoughtful. Yes, I guess I would agree with that.

Mr. HOLLINGSWORTH. Yes. We need to be thoughtful and diligent and go through a real process. The question I have for you is exactly how we are doing this, right? The way that we have guidelines to regulators is we go through an open and transparent process. Right here we are having a legislative hearing today about things like that.

I think the American people are owed the exact same thing from their regulators. When costs are imposed upon the American people, when companies' freedoms are restricted by regulators, they should be owed the same diligent, thoughtful, transparent process, and they should know what that cost benefit looks like. That is what I think the American people are owed. I think we do the same thing here when we impose additional burdens on those regulatory agencies.

And so when I think about the bill that I have filed and my colleagues have been in support of, the Transparency and Account-

ability for Business Standards Act, that is how I think about it. I think it is demanding transparency and accountability from regulators because, ultimately, those regulations that may be in excess, that are in excess of international standards, are imposing costs on Americans. And those costs are real. And here, sometimes we talk about it like the baseline is zero and any loan growth greater than zero is suddenly OK. But the reality is, according to National Bureau of Economic Research, that over the period since prior recessions, in the 6 years following recessions, throughout the previous century, loan growth, on average, was 63 percent. Since 2009, loan growth has been 18 percent.

That difference, that difference is the difference between real economic growth that lifts wages for Hoosiers back home in Indiana and mediocre economic growth that has led to stagnant wages. I want to unlock some of that capital so that people can get the capital they need to start businesses, so that people can get the capital they need to grow businesses, so we can empower Hoosiers and Americans across this country to be able to take control of their financial future again.

And I wanted to direct my next question to Mr. Cimino, and just talk a little bit—there are two pieces to this, but the first big piece is the capital that is trapped in U.S. financial institutions that we need to unlock to enable and empower economic growth, and I wanted to see if you had a comment on that.

Mr. CIMINO. Yes. I think you hit it on the head, and Mr. Tipton spoke about it as well. This is an in and of itself of translating into economic growth. That is what the financial system does when it is thriving. It is investing in communities, people, and businesses. And when you have \$52 billion sitting on the sideline because of a G-SIB surcharge or \$75 billion sitting on the sideline because of a supplemental leverage ratio that is applied on an enhanced basis, that is capital that in and of itself is not out there, but also is not being leveraged through loans at an even higher rate and driving that economic growth and opportunity.

Mr. HOLLINGSWORTH. That is exactly right.

Now, the second big piece to this is ensuring that our U.S. institutions have the opportunity to compete around the world, right? And that is really, really important, because financial services is something the United States has done exceptionally well, and we export that abroad, to the benefit of, frankly, many other economies, many market economies, many countries around the world. I want to make sure that we still have the opportunity to do that, and we are putting our U.S. banks and financial institutions at a disadvantage to that.

Can you speak a little bit to that?

Mr. CIMINO. Yes. I think that is absolutely right. Actually, if I could just go back to a quick point.

Mr. HOLLINGSWORTH. Of course.

Mr. CIMINO. You talked about that transparency and accountability being owed to the taxpayers, being owed to the businesses. I not only think that is right, but that transparency and accountability gets to better public policy outcomes.

So when you talk about that and how it leads to a competitiveness issue, if you are applying more stringent standards that don't

have a benefit but are just applied and misapplied, all of a sudden you are tying the hands behind the back of many institutions. And these are the institutions that are not only helping drive American growth, but they are supporting companies that are performing cross-border services in the global footprint. I mean, everybody from Ford and Chevron to General Electric and General Mills.

Mr. HOLLINGSWORTH. Hold on just 1 second. The gentlelady's time has expired.

Ms. TENNEY. I yield back.

Mr. HOLLINGSWORTH. The gentlelady yields back.

The Chair now recognizes himself for 5 minutes.

Please continue, Mr. Cimino.

Mr. CIMINO. Have to love parliamentary procedure.

But yes. So not only are you putting a competitive disadvantage in place, but we are talking about companies that do operate across global barriers to help support businesses, drive economic growth. And so when you have Ford and General Electric out there trying to operate, it is these large service providers that can help them do so, and we don't want to limit their ability to compete and have that business go to foreign institutions that might not be able to do as well by these U.S. institutions.

Mr. HOLLINGSWORTH. Right. So when I am thinking about this, what I am asking myself is, why shouldn't we have the transparency and accountability to the American people? Because ultimately, these burdens—and we may, frankly, through this cost-benefit analysis and this comprehensive view, determine that U.S. institutions should be held to a stricter standard than international standards, which this certainly doesn't prevent if that is borne out in that cost-benefit analysis.

Why aren't the American people owed the transparency from their regulators to ensure that their interests are being protected, their interests are being weighed in every single regulation that exceeds international standard?

Mr. CIMINO. We think they are owed that. And, again, I think a more inclusive and transparent approach ultimately yields a better outcome. And if that outcome is, in fact, a difference between the international and U.S. standard, well, there should be a rationale behind it. And we are not necessarily saying these rules are wrong; we are just saying that they deserve that level of scrutiny.

Mr. HOLLINGSWORTH. That is exactly right.

And one of the other things that has been brought up a lot today is this private right of action business. And believe you me, I am no attorney. I am an old business guy. But what I understand is that, currently, the Administrative Procedures Act has a base requirement of a cost-benefit analysis for every rule that is promulgated. This has required a much more detailed cost-benefit analysis. I get that. But there is no giving of a further private right of action than is already afforded to U.S. citizens and companies.

I want to make sure that we are clear that we are requiring more transparency and accountability. Because what I hear back home, Hoosiers are tired of bureaucrats in D.C. determining their future instead of them being able to determine their own future. They want to take back some of that power so they can build better futures for their families.

And while sometimes in this committee we do work that is really arcane, esoteric, and seems far removed from something that really matters to Hoosiers, this is not that. This is something that makes a meaningful difference. This has two big effects, again: One, unlocking the capital for our U.S. financial institutions to be able to make loans, to be able to provide capital, to be able to help people get ahead in their lives; and then two, ensure that what we do well in the United States we can export around the world so that we benefit from the innovations, the hard work, and the diligence of Americans all the way across this country.

And so I obviously strongly support the bill.

In addition to that, I wanted to submit for the record for a Chamber of Commerce letter of support for the bill as well.

Well, I guess since I am the Chairman, I can say.

And, with that, I will yield back my time.

Mr. HOLLINGSWORTH. And I would like to thank our witnesses for their testimony today. I appreciate everybody coming out today.

Without objection, all members will have 5 legislative days within which to submit additional written questions for the witnesses to the Chair, which will be forwarded to the witnesses for their response. I ask our witnesses to please respond as promptly as you are able.

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 4:19 p.m., the subcommittee was adjourned.]

A P P E N D I X

December 7, 2017

Subcommittee on Financial Institutions and Consumer Credit
Hearing Entitled
“Legislative Proposals for a More Efficient Federal Financial Regulatory System: Part II”
Testimony of Anthony Cimino

Chairman Luetkemeyer, Ranking Member Clay, Members of the Subcommittee, thank you for the opportunity to testify before the Subcommittee on Financial Institutions and Consumer Credit.

My name is Anthony Cimino, I am Senior Vice President and Head of Government Affairs at the Financial Services Roundtable. I am appearing today on behalf of FSR's membership, which is comprised of the CEOs and senior executives of the nation's leading banks, asset managers, insurers, card companies, and other financial institutions. Today I will focus my testimony on *H.R. 3179, the “Transparency and Accountability for Business Standards Act,”* sponsored by Representative Hollingsworth, and *H.R. 3746, the “Business of Insurance Regulatory Reform Act”* sponsored by Representatives Duffy and Moore.

I would like to note that although the Financial Services Roundtable is submitting this testimony, both of these legislative initiatives have broader industry support, and fellow trade associations have worked to drive policy and advocacy efforts on these important bills.

FSR applauds the Committee's leadership and supports efforts to assess and modernize the regulatory system. In the past decade, Congress, financial regulators, and the financial industry itself have acted to strengthen the financial system and to address gaps. FSR believes it is important to assess the impact of a wide variety of post-crisis reforms and take appropriate action to recalibrate the regulatory system to address risks and create economic opportunity for all Americans.¹

The goal of FSR and its members is to ensure that the financial system can meet the needs of consumers and business while maintaining the confidence of shareholders and counterparties, and the soundness of the broader market. We can achieve this objective when regulators carefully implement new regulations to ensure they are tailored to market needs and avoid regulatory duplication. Following these principles ensures that the financial regulatory system works to grow American economic opportunities.

Today I will speak in favor of two bills that seek to reduce overlap and maintain the competitiveness of U.S. markets both domestically and globally.

H.R. 3179, the “Transparency and Accountability for Business Standards Act”

FSR supports *H.R. 3179, the “Transparency and Accountability for Business Standards Act,”* sponsored by Representative Hollingsworth. This legislation would require federal banking agencies to provide a rationale and perform an in-depth analysis when promulgating prudential standards that impose different requirements than related international standards. Legislation in this area is needed to address multiple areas where U.S. standards are currently out of step with non-U.S. institutions.

¹ Letter from the Financial Services Roundtable to Craig Phillips, Counselor to the Secretary, U.S. Department of the Treasury, May 3, 2017. Available at <http://www.fsroundtable.org/wp-content/uploads/2017/06/FSR-Letter-to-Treasury-on-Core-Principles-May-3.pdf>.

Strength of the Banking Sector

Since the crisis, the financial system has grown more resilient and better capitalized. Between the first quarter of 2009 until the end of 2016, common equity capital ratios at the nation's largest banks increased from 5.5% to 12.5% representing a new capital cushion of \$750 billion.² The amount of liquid assets on bank balance sheets has also risen dramatically. For example, the eight most closely regulated U.S. institutions now hold about \$1.7 trillion of cash or treasury securities on their balance sheets, representing over 15% of their total assets.³

The Federal Reserve's most recent stress tests of bank balance sheets show financial institutions would be resilient and well capitalized even when facing severely adverse economic conditions. The 2017 stress test scenario included a severe recession, double-digit unemployment rates, and high-rates of corporate loan and commercial defaults. The post stress test results, however, projected bank capital levels that were still higher than 2009 capital levels.⁴

As some commenters have noted, however, the rebound in our country's financial stability has not been met with a particularly strong economic recovery. Weak growth in several areas, including small business and mortgage borrowing has been pronounced.⁵ As noted in several regulatory reports issued by the Treasury Department this year, FSR believes better-tailored regulation can spur greater economic growth.

Basel Committee & U.S. Regulatory Implementation

Beginning the 1980s, the Basel Committee on Banking Supervision, an international body which now includes representatives from 28 different jurisdictions, has adopted various recommendations with the intent of encouraging the adoption of prudential standards that protect the stability of the international banking system. Importantly, any internationally agreed-upon standards that are released by the Basel Committee or other similar organizations are subject to separate adoption by U.S. agencies under the requirements of the Administrative Procedure Act.

Starting in 2010, the Basel Committee began finalizing elements of Basel III, its most recent capital standards recommendation. The new accord provided for heightened capital and liquidity requirements to enhance the stability of internationally active banks.

Importantly, in implementing many of the Basel III standards, which focus most acutely on the nation's largest bank holding companies, the Federal Reserve Board and other U.S. banking regulators have pursued a policy of "gold plating" or heightened prudential scrutiny. This means in many instances where international supervisory bodies have agreed upon a specific prudential standard, the Board, FDIC, or OCC has subjected U.S. bank holding companies to even more stringent requirements, imposing additional capital and liquidity requirements.

² Board of Governors of the Federal Reserve System, COMPREHENSIVE CAPITAL ANALYSIS AND REVIEW 2017: ASSESSMENT FRAMEWORK AND RESULTS ("CCAR 2017"), June 2017, 2.

³ U.S. Department of the Treasury, A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: BANKS AND CREDIT UNIONS ("Treasury Report on Banking"), June 2017, 37-38.

⁴ CCAR 2017, 2-4.

⁵ Treasury Report on Banking, 43-48.

At a macro level, the U.S. regulators' implementation of the related Basel III standards requires that banks maintain high-levels of risk absorbing capital (CE 1), far in excess of pre-crisis levels. The Liquidity Coverage Ratio (LCR) requires that covered banks keep enough cash and other high-quality liquid assets (HQLA) to protect themselves against severe market shocks. The Supplemental Leverage Ratio (SLR) was established as a backstop to risk-weighted capital requirements and is similar to leverage ratio requirements that, while not used elsewhere, are already binding on U.S. institutions. The SLR differs, however, by including more items, including certain off-balance sheet calculations, in determining a bank's capital requirement.

Enhanced Capital Surcharges on Institutions Defined as G-SIBs

Basel III imposes a capital surcharge on Global Systemically Important Banks (G-SIBs). U.S. regulators adopted a G-SIB surcharge consistent with international agreements (method 1), but then adopted an additional requirement (method 2) that set forth a more prescriptive ("gold-plated") surcharge beyond the international standard. Method 1 is based on the internationally accepted G-SIB surcharge framework, which produces a score derived from a firm's attributes in five categories: size, interconnectedness, complexity, cross-jurisdictional activity, and substitutability. Method 2 replaces method 1's substitutability category with a measure of a firm's reliance on short-term wholesale funding, which, in nearly all cases, produces a higher surcharge. The method 2 methodology has proven costly. In some cases it has forced an extra 2% capital charge in addition to the international standard.

To bolster US competitiveness relative to foreign firms, FSR supports a review and possible elimination of the method 2 requirement, which has required firms to hold billions in excess capital beyond what was contemplated or suggested within the Basel standard. According to one estimate, the method 2 methodology used by the Federal Reserve has reduced the lending capacity of the U.S. financial system by \$287 billion dollars.⁶

H.R. 3179 would enable this review, allowing for an analysis of the surcharge's ramifications on the competitiveness of U.S. firms. Regulators would undertake a cost-benefit analysis to comprehensively scope the impact of the rule on U.S. economic growth and determine if other regulatory requirements, such as annual capital planning and stress testing exercises, might justify the adoption of a standard that more closely tracks the attributes adopted by the Basel Committee. Conducting this review allows the Federal Reserve the flexibility to reach similar policy outcomes, but ensures that key rules which impact nearly all aspects of the U.S. financial system are tailored based on a thorough and robust process.

Enhanced Supplementary Leverage Ratio (eSLR) Requirements

Following international agreements, U.S. banking regulators imposed a 3% SLR requirement on bank holding companies with more than \$250 billion in assets and more than \$10 billion in on-balance sheet foreign exposures. In 2014, however, U.S. regulators adopted an eSLR requirement for the eight U.S. bank holding companies classified by the Financial Stability Board as G-SIBs. The eSLR requires these G-SIBs to meet a 5% SLR requirement at the holding company level and a 6% eSLR requirements (double the international standard) at the bank level. Foreign banks in most

⁶ Bank of America Merrill Lynch, *Treasury Proposal Could Unlock \$2tn of Balance Sheet Capacity*, June 13, 2017, 3.

jurisdictions are not subject to this enhanced SLR requirement which has important implications for the ability of U.S. firms to be competitive in the market for certain financial products.

Taking action to modify the eSLR requirement may provide covered institutions with up to \$300 billion in increased balance sheet flexibility to meet the needs of certain markets, especially certain business customers.⁷ The SLR is a non-risk weighted measure, meaning it can be biased against activities that, while stable, provide only limited financial returns such as clearing and settlement services.

Consistent with the principle that U.S. regulations enable American companies to be competitive with foreign firms, we support the reconsideration of the eSLR requirement.

Liquidity Coverage Ratio

The liquidity coverage ratio (LCR) requires banks to hold enough high-quality liquid assets (cash, treasury securities, etc.) or HQLA to withstand a severe 30-day stress scenario. This is a reasonable policy goal to ensure that banks will meet their obligations to depositors. Higher required amounts of liquid assets, however, reduce the investments that financial institutions can make into loans and other investments that create jobs and grow the economy.

In setting the LCR, however, U.S. agencies again deviated from the internationally agreed upon standards in key areas, including Adjustments to Cash Flow Assumptions and Revisions to Maturity Assumptions for Options. In addition to harmonizing with international standards, making the following suggested revisions to the LCR would also diminish the need for institutions to unnecessarily hold higher levels of LCR-approved liquid assets in lieu of utilizing their resources to make loans and other direct investments into the economy:

Adjust Cash Outflow Assumptions

FSR supports reforms to the calculation of net cash outflow (the denominator of the LCR) so that it better aligns with the Basel agreement. Currently, the U.S. LCR overstates the factors used to project the extreme stress scenario when compared to other jurisdictions. Appropriate changes would include: (1) eliminating the maturity mismatch add-on component of the U.S. LCR calculation in place of cumulative net cash outflow amounts; and (2) allowing net cash outflows to be calculated on the final business day of every month instead of daily. Additionally, the agencies should modify excessively conservative and unrealistic cash outflow rates and assumptions to align with international standards. For example, the final U.S. LCR rules provide for 0% liquidity value for non-operating commercial deposits and excess operational deposits of financial institutions. Reviewing this portion of the rule, as directed under H.R. 3179, will enable regulators to better refine its standards for operational deposits or to conduct further analysis on how U.S. liquidity rules compare to non-U.S. jurisdictions.

Revise Maturity Assumptions for Options

The LCR rule contains certain maturity assumptions for capital markets options. These assumptions require covered firms to assume the worst possible cash outflow outcome when

⁷ See *Global Capital Index*, June 30, 2017 available at <https://www.fdic.gov/about/learn/board/hoenig/capitalizationratio2q2017.pdf>.

determining the maturity of an exposure, an especially punitive approach. The Basel Committee did not include that approach, which discourages reliable risk management practices and imposes a higher net cash outflow cost on U.S. banks. This outcome hinders the ability of banks to provide the liquidity and credit facilities that are cornerstones of traditional commercial banking.

By contrast, under the Basel Committee approach, banks are subject to a more principles-based framework where they need to consider stressful scenarios and incorporate the BCBS Principles for Sound Liquidity Risk Management and Supervision. We recommend that U.S. regulators align their maturity assumptions with international standards. A more principles-based approach, combined with liquidity stress testing, would likely ensure appropriate attention to risk without placing U.S. firms at a competitive disadvantage to foreign firms. Such changes, furthermore, would not need to undercut the strong liquidity position of U.S. banks. Even a 1 basis point change in LCR requirements would provide assets to fund \$170 million in additional loans or other investments.

These are examples of U.S. deviation from, or gold-plating of, international standards. FSR is not advocating for sovereign countries to delegate regulatory authority to international bodies, nor are we asking for mandated uniformity. We are merely asking for a clear, transparent assessment and rationale to explain deviations that impact U.S. competitiveness and potentially disrupt the marketplace.

H.R. 3746, the Business of Insurance Regulatory Reform Act

FSR supports *H.R. 3746, the Business of Insurance Regulatory Reform Act*, sponsored by Representatives Duffy and Moore. This legislation would clarify the Consumer Financial Protection Bureau's authority with respect to persons regulated by a State insurance regulator.

Title X of the *Wall Street Reform and Consumer Protection Act*, the Dodd-Frank Act, established the Consumer Financial Protection Bureau (CFPB) and charged it with the enforcement of specific consumer protections. Title X of Dodd-Frank also exempted the business of insurance from CFPB authority. The Dodd-Frank Act defines the "business of insurance" as the following:

The writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

H.R. 3746 seeks to reiterate and clarify that insurance regulation is the purview of State insurance regulators. The legislation also includes a rule of construction that construes deference to State regulators.

Legislators seemingly elected to exempt insurance from CFPB authority because of the strong state-based insurance regulatory framework. The McCarran-Ferguson Act contains a provision which delegates to States the power to regulate the business of insurance by providing that:

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or

which imposes a fee upon such business, unless such Act specifically relates to the business of insurance.⁸

Despite this, the CFPB has expanded its scope and regulatory activities to include the business of insurance. In 2016, the CFPB issued a *Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit*. As part of this RFI, the CFPB requested information on credit insurance, which is an insurance product regulated by the States. This CFPB action impinges on the statutory exemption the Dodd-Frank Act provides regarding the business of insurance.

The Arbitration Rule and Policy Loans

Another example of CFPB mission creep into the business of insurance is in the CFPB's Proposed Rule on Arbitration Agreements. The proposal sought to apply the Arbitration rule to the extension of credit by whole life insurance policy providers. These "policy loans" are loans secured by the cash surrender value of the related policy. According to a comment submitted by the National Association of Insurance Commissioners (NAIC), "The policyholder taking out a policy loan is not an applicant seeking credit to defer payment of a debt, incur debt or defer its payment, or purchase property or services and defer payment."⁹

The underlying CFPB rationale was to apply its arbitration rules to entities covered under the Equal Credit Opportunity Act (ECOA). To this point, and reiterating the CFPB's misapplication of its proposed rule, the NAIC argued that life insurance policy providers are not "creditors" under ECOA. The same NAIC comment letter continued, "While there is a general expectation that the policy loan will be repaid, that does not make the policy provider a creditor as defined by ECOA. If a policyholder does not repay the loan, the policy benefits are simply reduced by the outstanding balance of the loan."

Clarifying Intent & Legislative Action

In addition to Congress's decision to grant States the authority to regulate the business of insurance, the Treasury Department's recent report endorsed the existing state-based regulatory system.¹⁰ FSR supports the state-based system of insurance regulation and seeks to ensure that insurance companies do not face duplicated regulations at the Federal and State level. The state-based system has provided effective oversight of the insurance marketplace and has robust consumer protections. This legislation – and the original vision of Title X – does not diminish consumer protections related to insurance, but maintains a robust framework and protections at a State level.

The Financial Services Roundtable again commends the Subcommittee for its leadership and desire assess and optimize the regulatory system. *H.R. 3179, the "Transparency and*

⁸ 15 U.S.C. § 1012(b).

⁹ NAIC Submission re: Docket No. CFPB-2016-0020; RIN 3170-AA51 – Arbitration Agreements. August 4, 2016

¹⁰ U.S. Department of the Treasury, A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: ASSET MANAGEMENT AND INSURANCE, October 2017, 107-108.

Accountability for Business Standards Act," provides a mechanism for a transparent assessment and rationale for regulatory deviations between the U.S. and international banking standards that may adversely impact the U.S. firms' ability to compete and economic growth. With respect to *H.R. 3746, the Business of Insurance Regulatory Reform Act*, FSR believes it is an important measure to clarify the authority of State insurance regulators on consumer protection. We urge you to move the bills forward.

Thank you for the opportunity to testify. I am happy to take any questions.



Testimony of

Brian Ducharme

President/CEO

MIT Federal Credit Union

on behalf of

The National Association of Federally-Insured Credit Unions

“Legislative Proposals for a More Efficient Federal Financial Regulatory Regime: Part II”

Before the

House Financial Services Subcommittee on Financial Institutions and Consumer Credit

December 7, 2017

Introduction

Good afternoon Chairman Luetkemeyer, Ranking Member Clay and Members of the Subcommittee. Thank you for the invitation to appear before you today. My name is Brian Ducharme and I am testifying today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU). I am the President/CEO of MIT Federal Credit Union, headquartered in Cambridge, Massachusetts.

MIT is a federally chartered credit union serving the Massachusetts Institute of Technology and the life sciences community in Cambridge. MIT FCU was founded in April of 1940, when 12 employees of MIT each placed \$5.00 in a strong box while working out of the basement of a campus building. The purpose then, just as it is today, was to provide the financial services people needed to live a better life.

MIT FCU has three branch locations, however most members conduct business with us through a 24/7 contact service center and an array of electronic delivery channels that provide members immediate access to services and account information.

Today, we serve more than 38,000 members. I have seen the credit union grow from \$94 million to over \$540 million today. Prior to my time at MIT FCU, I spent time at two other credit unions, and have 25 years of experience in the financial services industry.

As you are aware, NAFCU is the only national organization exclusively representing the interests of the nation's federally-insured credit unions. NAFCU-member credit unions

collectively account for approximately 70 percent of the assets of all federal credit unions. It is my privilege to submit the following testimony on behalf of NAFCU, our credit unions and the 110 million credit union members they represent as you seek to create a more efficient Federal regulatory regime.

Regulatory Environment and Economic Growth

NAFCU has always believed that credit unions play an essential and vital role in the economic health of local economies. This was again demonstrated during the recent financial crisis when credit unions were able to continue to lend and help credit worthy consumers and small businesses during difficult times, often when no one else would. Despite the fact that credit unions played no part in causing the financial crisis, they are still heavily regulated and affected by many of the rules meant for those entities that did.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the CFPB having authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true. As expected, the breadth and pace of the CFPB's rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense. NAFCU continues to believe that credit unions should be exempted from CFPB rulemaking, with authority returned to the National Credit Union Administration (NCUA).

The impact of the growing compliance burden is evident in the declining number of credit unions. Since the second quarter of 2010, we have lost more than 1,700 federally-insured credit

unions – over 20% of the industry. The overwhelming majority of these were smaller institutions below \$100 million in assets. While it is true that there has been a historical consolidation trend in the industry, the passage of the *Dodd-Frank Act* has accelerated this trend. The fact is that many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or close their doors. This is why regulatory relief remains a top priority for our nation's credit unions and a key to the continuation of relationship banking in the communities where my credit union operates.

Tenets of a Healthy and Appropriate Regulatory Environment for Credit Unions

NAFCU believes a healthy and appropriate environment is important for credit unions to thrive. History has shown that a robust and thriving credit union industry is good for our nation's economy, as credit unions fill a need for consumers and small businesses in the financial services marketplace that may otherwise not be met by other institutions.

There are some basic tenets of a healthy and appropriate regulatory environment that NAFCU supports:

NAFCU supports a regulatory environment that allows credit unions to grow. NAFCU believes that there must be a regulatory environment that neither stifles innovation nor discourages credit unions from providing consumers and small businesses with access to credit. This includes the ability of credit unions to establish healthy fields of membership that are not limited by outdated laws or regulatory red tape. It also includes modernized capital standards for credit unions that reflect the realities of the 21st century financial marketplace.

NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens. Credit unions are swamped by an ever-increasing regulatory burden from regulators, often on rules that are targeting bad actors and not community institutions. NAFCU supports cost-benefit analysis in regulation, and wants to ensure that we have an effective regulatory environment where positive regulations may be easily implemented and negative ones may be quickly eliminated. NAFCU also believes that enforcement orders from regulators should not be used in lieu of clear guidance or regulation.

NAFCU supports a fair playing field. NAFCU believes that credit unions should have as many opportunities as banks and non-regulated entities to provide provident credit to our nations' consumers. NAFCU wants to ensure that all similarly situated depositories follow the same rules of the road and unregulated entities, such as payday lenders, do not escape oversight. We also believe that there should be a federal regulatory structure for non-bank financial services market players that do not have a prudential regulator, including emerging Fintech companies.

NAFCU supports transparency and independent oversight. NAFCU believes regulators need to be transparent in their actions, with the opportunity for public input, and should respect possible different viewpoints. We believe a bipartisan commission structure is the best form of regulatory governance for independent agencies, and all stakeholders should be able to have input into the regulatory process.

NAFCU supports a strong, independent NCUA as the primary regulator for credit unions.

NAFCU believes that the National Credit Union Administration (NCUA) is best situated with the knowledge and expertise to regulate credit unions due to their unique nature. The current structure of NCUA, including a 3-person board, has a track record of success. NCUA should be the sole regulator for credit unions and work with other regulators on joint rulemaking when appropriate. Congress should make sure that NCUA has the tools and powers that it needs to effectively regulate the industry.

Legislative Proposals Before the Subcommittee Today

NAFCU thanks the Subcommittee for holding this important hearing on legislative proposals to create a more efficient regulatory regime. In particular, we are pleased to see the introduction of the *Common Sense Credit Union Capital Relief Act of 2017* (H.R. 4464) by Representative Posey and we would urge the Committee to support and advance this legislation. This legislation would stop the NCUA's risk-based capital rule from taking effect, which is scheduled for January 1, 2019. NAFCU believes this rule is ill-conceived in its current form and will have a negative impact on the credit union industry if it is implemented without changes.

Background on NCUA's Risk-Based Capital (RBC) Rule

In 1998, Congress enacted the *Credit Union Membership Access Act* (CUMAA). Section 301 of CUMAA added section 216 to the *Federal Credit Union Act* (FCU Act), which required the NCUA Board to adopt by regulation a system of Prompt Corrective Action (PCA) to restore the net worth of federally insured "natural person" credit unions that become inadequately capitalized. In 2000, the Board implemented the required system of PCA primarily under Part

702 of NCUA's regulations. Congress set forth a basic structure for PCA in section 216 that consists of three principal components: (1) a framework combining mandatory actions prescribed by statute with discretionary actions developed by NCUA; (2) an alternative system of PCA to be developed by NCUA for credit unions defined as "new"; and (3) a risk-based net worth requirement to apply to credit unions that NCUA defines as "complex." Congress also mandated that the NCUA Board provide a system of PCA that is "consistent...and comparable" to similar banking regulations. In 2013, the Federal Reserve Board of Governors (the Fed) along with other federal banking regulators promulgated comprehensive reform to banking capital requirements to align with international standards under Basel III. As a result, NCUA is statutorily obligated to update its capital adequacy framework.

In January, 2014, NCUA issued its first RBC proposal. The agency received 2,056 comment letters, many of which urged the agency to make significant changes to the proposed rule particularly with regard to interest rate risk (IRR) and risk-weighting. On May 15, 2014, during the rulemaking process, a bipartisan majority of the U.S. House of Representatives – 324 Members – wrote to NCUA to express concerns about the agency's proposed risk-based capital rule.

After reviewing these comments, NCUA determined that it would incorporate significant changes to the proposal including removing IRR as a factor for setting risk-weights. As such, the *Administrative Procedure Act* required that the agency re-propose the rule with a new comment period. On January 15, 2015, the NCUA board issued a revised RBC proposal. On April 23, 2015, NAFCU submitted an official comment letter, urging the NCUA Board to withdraw the

proposal in its entirety, or, at minimum, make additional modifications to ensure that the proposed RBC structure would not unjustly and unnecessarily stifle growth, innovation, and diversification within credit unions. On October 15, 2015, the NCUA board voted to approve this final rule.

The final rule makes the following key changes to the agency's existing capital requirements:

- Establishes a new RBC ratio for federally insured natural person credit unions with over \$100 million in assets;
- Changes the definition of "complex credit union," for the purposes of capital requirements, to include credit unions greater than \$100 million in assets;
- Establishes a RBC ratio of 10 percent for well-capitalized credit unions;
- Establishes a RBC ratio of 8 percent for adequately-capitalized credit unions;
- Revises existing risk weights to reflect recent changes made by other banking regulators under the Basel System;
- Requires higher minimum levels of capital for credit unions with concentrations of assets in real estate loans, commercial loans or non-current loans; and,
- Sets forth how NCUA, through its supervisory authority, can address a credit union that does not hold capital that is commensurate with its risks.

These changes will take effect on January 1, 2019.

NCUA's RBC Rule is Still Problematic

Credit unions and the National Credit Union Share Insurance Fund (NCUSIF) performed very

well during the financial crisis, and since RBC was first proposed, the health of the credit union industry has only continued to improve. In fact, as of September 2017, the number of CAMEL code 4 and 5 credit unions has fallen from 409 in December 2011 to 204. Likewise, the number of CAMEL code 3 credit unions has fallen to 1,086 from a total of 1,741. As a result, over 95 percent of the industry's assets are held in CAMEL 1 or 2 credit unions. Given the continued health of the credit union industry under the current capital regime, as well as continued pressure on earnings, NAFCU still has concerns with going forward with implementing NCUA's risk based capital rule.

Multiple financial experts and economists have conducted in-depth examination of rules similar to RBC, and have found them to be failed experiments. Most recently, at a July 6, 2016, event, Federal Reserve Board Governor Daniel Tarullo acknowledged that risk-based capital requirements are not appropriate for smaller banks and credit unions, noting that the requirements are too complicated. He stated, "when it comes to smaller institutions...any institution under \$10 billion, I think we can and should have a substantially simpler capital system."

Similarly, researchers at the Mercatus Center and Heritage Foundation have found that risk-based capital requirements will likely impede economic growth without reductions in systemic-risk, especially considering the fact that risk-based standards based on a set of subjective assessments proved to be inadequate during the financial crisis.

As NCUA explained in the rule's preamble, RBC was developed, in part, to identify risk outliers that posed potential threats to the National Credit Union Share Insurance Fund (NCUSIF). In the months since RBC has been finalized, though, there have been several regulatory developments that more adequately confront the risks that RBC was initially intended to address. One of these risks was interest rate risk (IRR). Thankfully, the agency removed IRR provisions from the final rule, electing instead to address IRR through the use of a tool during examinations.

The IRR examination tool will provide NCUA with increased clarity around the actual levels of market risk in the system, and will allow NCUA to generate more precise methods to measure and address risk at individual credit unions. While the IRR tool will be a minimally invasive procedure allowing NCUA to focus on risk outliers, NAFCU believes that the RBC rule is a blunt instrument that is not as precise, effective, or useful. The IRR tool stands in stark contrast to the RBC rule. Unfortunately, RBC's implementation will unintentionally ensnare healthy credit unions in the attempt to identify outlier risk.

In September of 2017, the NCUA Board raised the normal operating level of the NCUSIF from 1.30% to 1.39%. One effect of this change was to create an additional buffer in the credit union system, mitigating one of the arguments for having the current RBC rule requiring credit unions to hold more capital.

In addition to NCUA developments that address risks, other regulators have also developed new

rules since RBC was first proposed. As recently as June 2016, the Financial Accounting Standards Board (FASB) released a final accounting standards update (ASU), which is intended to address the need for a more predictive model for the financial reporting of credit losses on loans and other financial instruments held by lending institutions.

The ASU establishes a “current expected credit loss” (CECL) model for financial institutions that would require credit unions to immediately increase their Allowance for Loan and Lease Loss (ALLL) balance and reduce capital. Again, this is a rule that will address the risks that RBC was initially intended to address, and as such, create a redundant regulatory environment. Now that such significant threats are being addressed independent of the RBC rule, the agency’s stated need for this rule is no longer essential, and the rule no longer serves the agency’s stated purpose. Quite simply, the rule is now outdated.

Finally, credit unions are locked into a static net-worth ratio system that does not evolve in the face of changing market conditions, unlike other financial institutions. A more flexible RBC framework could counterbalance the immutable requirements of credit union PCA laws, as well as the myriad of other requirements noted above. With all of these factors in mind, credit unions need a fresh approach on capital. NAFCU believes it is even more vital for credit unions than banks, due to the static statutory system credit unions face.

We are pleased that NCUA Chairman Mark McWatters has agreed with NAFCU and indicated

that the current rule is problematic and needs reforms. However, the political uncertainty due to one (or potentially two) vacancies on the NCUA Board is impacting the Agency's ability to make timely changes. With the rule set to take effect a year from now, credit unions must soon begin shifting their portfolios to come into compliance. This could lead to some institutions constraining lending in 2018 as they seek to maintain their capital level and capital cushion under the new regime. NAFCU believes that Congress should step in and stop this rule from taking effect on January 1, 2019, and give the NCUA Board time to re-examine and establish a risk-based capital standard that reflects current realities.

RBC's Impact on Credit Unions.

Recent NAFCU analysis has found that over 400 credit unions will see declines in their capital cushions when the rule becomes effective. Over 40 credit unions will face a downgrade in their capital level with their current portfolio under the terms of the new rule. MIT FCU is one of those facing a downgrade.

Our members look to us for many of their financial needs including a wide-range of mortgage services, college advisory, and ways to fund their education. With young adult members, we have been an attractive option for first time home buyers with programs that allow them to balance the needs of a growing family along with owning their first home. Remaining competitive to fund their needs allows us to deliver a diverse set of products that is competitive in a very crowded marketplace.

MIT FCU also provides advisory services on selecting a college, qualifying for grants, scholarships, and other no-cost financial aid as well as federal and private student loans. All of these are important choices and decisions members face. Today MIT FCU helps individuals make informed decisions and provides funding, in many cases, when others will not. Today MIT FCU is the 3rd largest private student loan lender in the credit union industry.

Both of these products, as well as others, have been prudently managed. However, under the new Risk Based Capital (RBC) Rule, MIT FCU's ability to continue servicing our members with these products will be constrained. The new RBC rule has also forced MIT FCU to reconsider offering business services as well as continuing its purchase of SBA loans that are guaranteed by the federal government. Regardless of how prudently we have managed these programs they would all have a negative impact on our risk-based capital ratio, and we may have to stop providing them - which may not be in the best interest of our members.

Enacting H.R. 4464 would stop the outdated NCUA risk-based capital rule from being implemented and, instead, allow the agency to craft a new RBC rule that considers recent developments and better reflects the needs of the credit union system.

Other Bills Before the Committee Today

NAFCU is pleased to see several other bills under consideration by the Subcommittee today and would like to offer comments on a couple of those as well.

H.R. 3746, the *Business of Insurance Regulatory Reform Act of 2017*. Introduced by Representatives Duffy and Moore, this NAFCU-supported legislation would help clarify the limits of the CFPB regulating insurance. The insurance industry is already highly regulated by the states, and Congress rightfully recognized this when drafting the *Dodd-Frank Act* which stated that the CFPB was not to regulate the "business of insurance." Unfortunately, we have seen jurisdiction creep from the CFPC into this realm. Credit unions such as MIT FCU offer regulated insurance products with some loans and we have concern that this jurisdiction creep could create new burdens on institutions like mine.

The *Comprehensive Regulatory Review Act of 2017*. Offered by Representative Loudermilk, this legislation would amend the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* to include both NCUA and CFPB as official participants and increase the frequency from every 10 years to every five years. NAFCU appreciates that NCUA has been voluntarily participating in the EGRPRA review process and we are pleased to see the legislation extending it to the CFPB. We also appreciate increasing the frequency of the process, as it provides the credit union industry with the opportunity to voice concerns over outdated and burdensome regulatory requirements.

Conclusion

The growing regulatory burden on credit unions is the top challenge facing the industry today. One of the biggest impending burdens is the implementation of NCUA's risk-based capital rule. While NAFCU supports a true risk-based capital system for credit unions, the current rule, set to take effect on January 1, 2019, does not provide that and is flawed. We are pleased that NCUA

Chairman Mark McWatters has recognized this as well. However, circumstances necessitate Congress stepping in and stopping this rule in a timely manner in order to give credit unions certainty and NCUA the ability to craft a new rule should they desire. The *Common Sense Credit Union Capital Relief Act of 2017* (H.R. 4464) is needed and we would urge the Committee's support of this timely legislation.

Thank you for the opportunity to appear before you today on behalf of NAFCU. I welcome any questions you may have.

Testimony of
Christopher M. George
President and Chief Executive Officer
CMG Financial

On behalf of the
Mortgage Bankers Association

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

**“Legislative Proposals for a More Efficient
Federal Financial Regulatory Regime: Part II”**

December 7, 2017

Testimony of Christopher M. George
House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
December 7, 2017

Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, thank you for the opportunity to testify on behalf of the Mortgage Bankers Association (MBA). My name is Chris George, and I am the Founder, President, and CEO of CMG Financial, a privately-held mortgage banking firm headquartered in San Ramon, California. I also currently hold the position of Chairman-Elect of the MBA, and I have previously served as Chairman of the California Mortgage Bankers Association.

MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. The association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. MBA's membership of over 2,300 companies represents all elements of real estate finance, including firms serving both the single-family and commercial/multifamily markets. Our membership features commercial banks, community banks, credit unions, independent mortgage bankers, investors, brokers, conduits, and industry vendors, among others.

I applaud the subcommittee for its efforts to improve the efficiency of federal financial regulation. In particular, I wish to express my support for the *Mortgage Fairness Act of 2017* and the *Comprehensive Regulatory Review Act of 2017*.

* * *

One of the most significant features of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) and the subsequent rulemakings that followed was the requirement that lenders verify a borrower's ability to repay (ATR) a mortgage loan during the underwriting process. There is ample justification for this concept, particularly given the structural problems in the mortgage market that were exposed during the financial crisis.

And while the Qualified Mortgage (QM) standard that was developed by the Consumer Financial Protection Bureau (CFPB) was not meant to limit mortgage originations to loans that meet this standard, the significant potential liability and litigation expenses for violations of the ATR rule have directed the vast majority of the market toward QM loans that receive safe harbor treatment.

As the ATR rule and QM standard have been implemented, MBA has consistently maintained its view that mortgages originated with the same interest rate and other product features should be treated equally from a regulatory perspective, regardless of the channel through which the loan is originated.

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The *Mortgage Fairness Act of 2017* addresses and improves upon a provision of the ATR rule and QM standard that generates unequal treatment of loans originated through mortgage brokers. The ATR rule and QM standard includes fees paid by a wholesale lender to a mortgage broker in the calculation of points and fees, which is used to determine whether a loan qualifies for QM safe harbor. However, fees paid by a wholesale lender to a mortgage broker are already reflected in the interest rate offered to the consumer. As such, their inclusion in the calculation of points and fees represents a double-counting of these fees.

Because of this double-counting, loans originated through mortgage brokers, and particularly small-balance loans, are more likely to exceed the maximum allowable points and fees under the ATR rule and QM standard. This anomaly results in some loans originated through mortgage brokers failing to qualify for the QM safe harbor, whereas the same loans would have qualified if originated through a different channel.

This provision in the ATR rule and QM standard is derived from language provided under Dodd-Frank, which amends the Truth in Lending Act to include in the calculation of points and fees, "all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction."¹ More directly, this language specifies that compensation (fees) paid by a creditor (wholesale lender) to a mortgage originator (mortgage broker) must be included in the calculation of points and fees.

The *Mortgage Fairness Act of 2017* corrects this flaw by clarifying that fees paid by a wholesale lender to a mortgage broker are not to be counted toward the maximum allowable points and fees under the ATR rule and QM standard. It does so by providing that "compensation taken into account in setting the interest rate and for which there is no separate charge to the consumer" not be included in the calculation of points and fees. Fees paid by a wholesale lender to a mortgage broker satisfy both conditions—they are reflected in the interest rate and there is no separate charge to the consumer. The double-counting described above would be eliminated and loans originated through mortgage brokers would no longer be more likely to exceed the maximum allowable points and fees, relative to loans originated through other channels, solely because of the compensation paid to mortgage brokers.

Because of the strong market preference for QM loans, this correction would put wholesale lenders and mortgage brokers on a level playing field with other market participants in the dominant segment of residential mortgage originations. Such an outcome would increase competition in the market, ultimately benefiting consumers through greater choice and lower costs. I therefore urge the full committee to advance

¹ Dodd-Frank §1431(c)(1)(A)

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this common-sense provision to ensure that otherwise similar loans are not treated differently purely due to their origination channels.

* * *

The *Comprehensive Regulatory Review Act of 2017* (CRRRA) seeks to amend the *Economic Growth and Regulatory Paperwork Reduction Act of 1996* (EGRPRA). The EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC), as well as each federal banking agency represented on the FFIEC², to conduct a comprehensive review of their regulations at least once every ten years. They are directed to identify outdated or unnecessary regulations imposed on insured depository institutions. Once identified, regulators must eliminate unnecessary regulations, *but only to the extent the regulators believe elimination is appropriate*.

EGRPRA is an important tool to ensure that regulations are reviewed and evaluated in light of changes in the market or the interlocking federal regulatory structure. The CRRRA furthers this goal by improving the EGRPRA regime to better reflect significant structural changes to the federal regulatory landscape since 1996. CRRRA does so by increasing the frequency of reviews, expanding the breadth of reviews, and incorporating additional regulators. Most importantly, the CRRRA strengthens the impact of the EGRPRA by requiring regulators to act in response to concerns identified during the review process.

Under the CRRRA, regulators must eliminate regulations deemed unnecessary by the EGRPRA review process. In addition, each regulation must be tailored in a manner that limits its regulatory compliance impact, cost, liability risk, and other burdens. Unlike the current state under the EGRPRA, the regulator's responsibility no longer ends with an inventory of unnecessary regulations, but with the elimination of unnecessary regulations. In this way, the proposal provides actual regulatory relief.

Next, the proposed bill requires comprehensive reviews every five years, rather than the current once-per-decade requirement. A shorter interval between reviews will prompt regulators to move more quickly to relieve the burden of outdated regulations or identify those that are otherwise unnecessary. Given the increasingly fast pace of technological innovation, a more frequent regulatory review cycle is critical to ensuring that regulations keep pace with the market and do not stifle innovation or beneficial change.

Indeed, the appropriateness of a five-year review cycle was recognized by Dodd-Frank, which requires the CFPB to review "each significant rule or order adopted by the Bureau under Federal consumer financial law...not later than 5 years after the effective date of

² Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation

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the subject rule or order.”³ The CRRA further improves upon this structure by requiring an ongoing review during five-year cycles rather than a one-time review.

In addition to more frequent regulatory reviews, the CRRA calls for more thorough reviews. Under EGRPRA, regulators must only consider the regulatory burden on insured depository institutions. The CRRA greatly expands the scope of the reviews to include any ‘covered person,’ a term defined under Dodd-Frank to include “any person that engages in offering or providing a consumer financial product or service.”⁴ The CRRA’s addition of covered persons requires that regulators assess the regulatory burden on a wider set of industry participants. This expansion is both necessary and appropriate to reflect the broad scope of the regulations promulgated by Dodd-Frank. Absent this expansion outlined in the CRRA, EGRPRA reviews will not consider the burden of regulation on many of the new and innovative market entrants that expand credit through business models that deviate from those of depository institutions. More frequent reviews may also turn up regulatory gaps that should be filled, allowing for regulations that ensure a level playing field while creating space for positive improvements.

The proposed CRRA legislation also adds clarity to the review process. Regulators must consider the impact of regulations on the financial safety and soundness of covered persons, as well as the impact on their risk profile and business models. Once these effects are known, agencies must determine the necessity, appropriateness, and impact of “continuing to apply such regulatory action to such covered persons.”

Next, the proposed amendment expands the review requirement beyond the federal banking agencies. The CRRA’s proposals extend the regulatory review requirement to the CFPB and the National Credit Union Administration (NCUA) Board. While both agencies have shown interest in taking part in the review process, with the NCUA voluntarily participating in the most recent EGRPRA review, neither are required to do so under current law.

Officially extending EGRPRA to these agencies will eliminate ambiguity and ensure that they undertake reviews of their regulations consistently in the future. This is particularly important for the CFPB given its expansive regulatory jurisdiction and the frequently high costs incurred by regulated entities to comply with some of its regulations. While the CFPB does have the responsibility discussed above under Dodd-Frank to review its “significant” rulemakings within five years of enactment, this statutory mandate is broadly discretionary. It has been interpreted by CFPB to not apply to many of its recent regulatory actions, nor does it establish a framework for the assessment. The CRRA

³ Dodd-Frank §1022(d)(1); §1022(d)(2)

⁴ Dodd-Frank §1002(6)

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addresses both of these weaknesses by eliminating the CFPB's discretion as to which regulations to review and how to review them.

I therefore urge the full committee to advance the CRRRA to ensure that the consumer financial regulatory regime is appropriately tailored and nimble enough to accommodate market changes or technological innovation.

* * *

Once again, I appreciate the opportunity to present this testimony, and I look forward to working with the subcommittee to help develop practical solutions to improve the efficiency of mortgage market regulations.



TESTIMONY TO HOUSE FINANCIAL SERVICES COMMITTEE

Subcommittee on Financial Institutions And Consumer Credit

December 7, 2017

Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, thank you for the opportunity to testify before you today on behalf of Americans for Financial Reform. AFR is a coalition of more than 200 national, state and local organizations who have come together to advocate for stronger and more effective oversight of the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, and faith based groups.¹

AFR came together in 2009 as a response to the disastrous financial crisis of 2008. During the financial collapse and the Great Recession that followed, almost nine million workers lost their jobs, almost seven million families lost their homes, and the nation lost over \$10 trillion in economic wealth.²

One of the lessons learned in the financial crisis was the importance of strong financial regulatory protections in preserving economic growth and well-being, and the significance of even what appear to be technical details of regulation in protecting consumers and preserving financial stability. Prior to the 2008 crisis, very few people would even have been aware of seeming regulatory minutiae such as the classification of payments to mortgage brokers under TILA and RESPA, or the treatment of bank liquidity guarantees to special purpose vehicles under regulatory capital rules. Yet weak rules in these areas caused grave harm to consumers and the public during the crisis.

In response to the crisis, the Dodd-Frank Act significantly strengthened key regulatory authorities and mandates, and created an independent bureau to enforce consumer protections in financial markets. Contrary to industry claims, the financial industry has not been harmed by the implementation of these new protections. Since Dodd-Frank was passed, the financial sector has grown more quickly than other segments of the economy, growing from 6.6% to 7.4% of total value added in the economy. In 2016, banking industry revenues rose to record levels. The fraction of community banks showing a profit increased from 78.8% in 2010, the year Dodd-Frank was passed, to 95.7% in 2016.³

¹ A list of AFR members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

² Americans for Financial Reform, "The Costs of the Crisis", July, 2015. <http://bit.ly/2jeY6fx>

³ Federal Deposit Insurance Commission, *Quarterly Banking Report*, Q4 2010 and Q4 2016, <https://www.fdic.gov/bank/analytical/qbr/>

As the table below shows, another metric of the health of the banking sector, the growth rate of bank commercial lending, has also exceeded historical averages since the passage of Dodd-Frank in 2010. While recent commercial lending growth rates are below the risky and unsustainable levels recorded immediately before the crisis, they still exceed long-run historical averages, and growth rates in business lending are especially rapid.

PERIOD	REAL ANNUAL GROWTH RATES IN BANK LENDING	
	TOTAL	BUSINESS LENDING
Historical Average: 1973-2016	3.7%	2.7%
Pre Financial Crisis: 2003-2008	7.4%	7.6%
Post Dodd-Frank: 2011-2016	4.1%	8.9%

SOURCE: Federal Reserve Release H-8, AFR calculations.

In light of the extraordinary damage created by the 2008 financial crisis and the lack of evidence for an economically harmful effect of post-crisis regulations, it is very disappointing that the bills under consideration by the Subcommittee today would uniformly and dangerously lower regulatory protections for consumers and for the economy. As we learned during the crisis, such deregulation can have grave negative impacts on the public. Below, we analyze each of the bills under consideration.⁴

HR 2570, the Mortgage Fairness Act of 2017

HR 2570 would amend the Truth in Lending Act (TILA) to exempt payments to a mortgage broker from the definition of “points and fees” if such payments were reimbursed by the buyer through changes in the mortgage interest rate rather than directly through a separate charge.

This change would make it easier for lenders to steer homeowners into high-cost, abusive deals on certain mortgages, notably home equity lines of credit and construction loans. It would exempt “yield spread premiums” (YSPs), or payments from the lender to the mortgage broker reimbursed by increasing the borrower’s interest rate, from tests used to determine whether a loan counted as a high cost mortgage loan. Currently, a mortgage loan may be classified as a high cost loan either due to interest rate on the loan or the level of “points and fees” charged on

⁴ Bills are considered in order of bill number, and do not reflect priority of concern.

the loan. The inclusion of YSPs as "points and fees" in the current high cost mortgage test discourages the charging of such fees to the buyer.

YSPs often act as what are effectively kickbacks to the mortgage broker from the lender in exchange for an increased interest rate -- a pernicious form of incentive payment that has been shown to contribute to steering, discrimination, and lending without regard to ability to repay.⁵ These potential abuse of these kickbacks is such a significant issue that Dodd-Frank restricted YSPs for more typical, "closed-end" home mortgages. But they are still legal in other loans--like home equity lines of credit and certain construction loans. Home equity lines of credit are often used for second mortgages and can be used to purchase homes.

The high-cost loan rules currently discourage kickbacks on loans where they are still allowed because these payments count toward the coverage threshold based on points and fees. By exempting YSPs from this trigger, HR 2570 would create an incentive for loan originators to steer borrowers to overpriced loans that did not have high-cost loan protections.

Omitting YSPs makes it easier to charge higher prices to consumers. For example, a YSP that led to raising the interest rate from 5% to 5.25%, on a thirty year, \$300,000 loan would generate over \$16,600 more in interest payments over the life of the loan, some portion of which would be paid to the broker as a result of selling a higher interest rate loan. This is an extraordinarily high additional payment and a significant cost to the borrower. Yet if HR 2570 were passed it would not be counted as a fee at all for the purposes of classifying the loan as high cost.

Supporters of this bill point out that these YSP payments are incorporated into the interest rate paid by the borrower, and that there is also an interest rate threshold test used for classifying a loan as high cost. But this does not justify a carve-out of these fees from the points and fees threshold for high-cost loan protections. The two high cost thresholds are alternatives -- either a loan meets the test due to its interest rate or due to the points and fees test. Accordingly, inclusion of the yield spread premium in the points and fees threshold is not redundant or double counting, as claimed by advocates of HR 2570. It would be relatively easy for mortgage originators to use YSPs to charge high fees while evading the interest rate trigger for high cost loans, by charging fees that raise the interest rate to a point just short of the threshold for high cost loan classification.

In sum, carving out YSPs from the high-cost coverage rules would promote abusive loan steering and price gouging.

⁵ Burlingame, Laurie and Jackson, Howell E., Kickbacks or Compensation: The Case of Yield Spread Premiums (February 19, 2009). *Stanford Journal of Law, Business & Finance*, Vol. 12, p. 289, 2007. Available at SSRN: <https://ssrn.com/abstract=1346548>

HR 3179, The Transparency and Accountability for Business Standards Act

HR 3179 would impose additional administrative barriers to action on Federal banking agencies in cases where they wished to issue prudential regulations that were more stringent than those laid out by international regulatory bodies such as the Basel Committee on Banking Supervision (BCBS).

This bill would be a bad idea at any time, but it seems particularly misplaced today, when many are claiming to advance an “America First” agenda in economic policy. Indeed, HR 3179 could be accurately described as an “America Last” bill, as its effect would be to reduce our sovereign ability to protect the American economy and financial system against the negative effects of poor decisions made by international bodies.

The purpose of international bodies such as the BCBS or the Financial Stability Board is not to directly dictate rules to individual member states, but instead to come to general agreement on a minimum “floor” for prudential standards. Such a floor facilitates international commerce by giving some assurance that cross-border banking activity does not expose well capitalized banks to foreign bank counterparties that are dangerously undercapitalized or risky.

If Basel rules were instead conceived as dictating to member countries the strongest level of safety and soundness that could be required, this would result in imposing on each country the lowest common denominator acceptable to the more than two dozen nations that are members of the Basel Committee. Such an arrangement would lead to a very dangerous limitation on the ability of individual nations, particularly the United States, to address risks of financial instability in their own financial systems.

This risk is particularly salient for the U.S. today, given the weaknesses in the European banking system. The prominent role of European countries in the Basel process means that it is difficult to reach international agreements setting standards that European banks find it difficult to meet. The European banking system is far weaker than the U.S. system, with banks less profitable, less well capitalized, and the system at greater risk of a potential banking crisis.⁶ Investors understand this and are more reluctant to provide capital to European banks, expressing grave concerns about the state of their balance sheets.⁷ This in practice means that Basel rules can be deeply influenced by the desire of European regulators to avoid placing stress on very weak and in some cases perhaps even insolvent banks. Subordinating U.S. bank regulations to what is attainable in a Basel consensus would be an extremely dangerous move.

HR 3179 does not of course explicitly forbid U.S. regulators from exceeding Basel minimum standards. However, the requirement for special additional analysis to justify such action is

⁶ The Economist, “American Banks Have Recovered Well, Many European Banks Much Less So”, Economist Special Report, May 6, 2017; <http://econ.st/2sek3hJ>

⁷ <http://fortune.com/2016/08/03/europe-hsbc-deutsche-bank-mess/>

clearly designed to discourage them from doing so. Furthermore, the listed considerations for the analysis are exclusively focused on the costs to regulated entities and the financial system, and do not include any of the costs to the economy that could be created by inadequate prudential rules. Such an analysis would be weighted from the beginning against taking stronger action than the Basel minimum.

In fact, regulators have already performed considerable analysis on existing U.S. prudential rules, and this analysis supports the decision to exceed Basel minimum standards. A recent and comprehensive Federal Reserve analysis of the costs and benefits of capital standards finds that current U.S. capital requirements are at the bottom end of the estimated range of optimal (net benefit maximizing) capital standards.⁸ This implies that the so-called “gold plated” or “super equivalent” regulatory standards set by U.S. bank regulators are very well justified by cost-benefit analysis; in fact significantly higher standards could be justified. In contrast, the study implies that Basel minimum capital standards for large banks cannot be justified on a cost-benefit basis.

Unfortunately, even regulations that are very well justified analytically could be overturned or undermined by the kind of requirements in HR 3179. The statutory analytic requirements in HR 3179 could and would be used as the basis for lawsuits by large Wall Street banks seeking to weaken safety and soundness regulations to increase their own profits. Modeling the effects of regulation on the economy is heavily dependent on assumptions, and it is easy to pay consultants to develop a model that will minimize benefits and exaggerate costs. Indeed, an extensive analysis of economic studies of financial regulations led one Harvard professor to describe the state of cost-benefit analysis as “quantified guesstimation.”⁹ Courts judging lawsuits based on cost-benefit analysis may not be expert in the quantitative analysis of financial regulation, but their decisions in lawsuits enabled by bills like HR 3179 could strip away important financial protections advocated by expert regulators.

HR 3746, the Business of Insurance Regulatory Reform Act of 2017

Section 1027(f) of the Consumer Financial Protection Act of 2010 (Title X of the Dodd-Frank Act) limits the CFPB’s regulatory authority over “the business of insurance” and limits its regulatory powers with respect to a person regulated by a State insurance regulator. However, those limitations do not apply, and the Consumer Financial Protection Bureau (CFPB) can still apply regulatory authority over insurance companies when they are “engaged in the offering or

⁸ Firestone, Simon, Amy Lorenc and Ben Ranish, “An Empirical Economic Assessment of the Costs and Benefits of Bank Capital in the US,” Finance and Economics Discussion Series 2017-034, March 31, 2017. Washington: Board of Governors of the Federal Reserve System, <https://doi.org/10.17016/FEDS.2017.034>

⁹ Coates, IV, John C., “Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications”, May 7, 2014, Yale Law Journal, Forthcoming; Harvard Public Law Working Paper No. 14-33. Available at SSRN: <https://ssrn.com/abstract=2434103>

provision of any consumer financial product or service” or subject to any “enumerated consumer laws” (e.g., the Fair Credit Reporting Act, TILA, HMDA, RESPA, among other).

HR 3746 amends this section in a manner that would greatly narrow and call into question the CFPB’s authority to regulate entities engaged in the business of insurance. If HR 3746 were passed, it would eliminate or sharply curtail the CFPB’s ability to investigate and enforce consumer abuses in the many consumer financial markets that involve both lending and insurance sales. There are numerous products and activities that span the insurance/credit divide in this manner, including credit insurance sold with loans, title insurance sold with home mortgages, auto GAP insurance, and many other instances. Limits on CFPB authority would be particularly severe in cases where lenders owned insurance companies, or insurance companies engaged directly in credit-related activities, ranging from lending to reporting information to credit bureaus. Below, we give a more detailed example of the way the limitations in HR 3746 would have damaged the CFPB’s ability to investigate and punish the Wells Fargo scheme to sell unnecessary insurance to its auto credit customers.

HR 3746 as drafted is somewhat ambiguous.¹⁰ One plausible interpretation is that the bill completely deprives the CFPB of jurisdiction over firms that are “regulated by a State insurance regulator” and “engaged in the business of insurance,” even if such a firm offered or provided a consumer financial product or was otherwise subject to the laws transferred to the CFPB’s authority. This reading would strike a fundamental blow to the CFPB and the underlying principles that motivated its creation. The CFPB is premised on the idea there should be one national set of consumer protection rules for credit-related products, which are enforced and implemented consistently by one agency, irrespective of the identity of the individual or charter type of the firm who is selling those products. This functional approach to defining the CFPB’s jurisdiction creates a level-playing field for firms selling credit-related products, while preventing the type of regulatory arbitrage that was so prominent before Dodd-Frank, when similar products were regulated very differently depending on who sold them.

In direct contravention of these principles, this interpretation of HR 3746 would allow insurers and other persons engaged in the business of insurance to sell the very same financial products as other firms and individuals, but to be shielded from scrutiny by the CFPB. This result would not only produce potential competitive advantages for insurance entities over non-insurers with respect to the sale of consumer financial products, but it would also create the risk of dangerous regulatory arbitrage that could produce a race to the bottom in consumer protections. Firms and individuals seeking to avoid CFPB scrutiny could simply funnel their sales of consumer financial products through an insurer. If the language of the legislation remains as drafted, we expect firms

¹⁰ The rest of the analysis of HR 3746 in this testimony is greatly indebted to discussions with Professor Daniel Schwarcz of the University of Minnesota Law School.

seeking to avoid regulation of abusive practices to argue for this interpretation.

A second, less aggressive reading of HR 3746 would be that the CFPB's enforcement authority does not extend to the business of insurance when an entity is regulated by state insurance regulator, even though the CFPB does retain some authority over such an entity's credit-related products and services. Under this second reading, HR 3746 adopts a strong presumption that, in close cases, the CFPB's authority should be curtailed in favor of the authority of state insurance regulators. Under current law the CFPB already does not have jurisdiction over insurance products or "persons" regulated by a state regulator, except to the extent that such person is offering or providing consumer financial services or subject to laws that the CFPB is authorized to enforce. But under the less aggressive reading, HR 3746 would greatly limit any CFPB authority at the borderline between credit-related products and the business of insurance.

This more narrow interpretation would still significantly limit the CFPB's capacity to develop a consolidated approach to investigation and enforcement of consumer abuses that span credit-insurance boundary lines. Effectively regulating products and practices that span this regulatory perimeter requires a single regulator to have the capacity to investigate, understand, and penalize these practices. By contrast, if the authority of a regulator is sharply curtailed when products or practices cross cut the insurance/credit divide, then the regulator may be unable to understand or address the broader set of abusive or unfair patterns or practices. This is true even if a different regulator (or set of regulators) is entrusted with policing practices and products on the other side of the borderline. The problem is that regulators on either side of the divide will only see a part of the broader practice or scheme, and so may fail to appreciate its implications or scale. Even worse, these artificial boundaries are likely to promote regulatory arbitrage that is specifically designed to exploit these restrictions in regulators' authority.

To take just one example of the ways in which insurance is involved in consumer lending, take the case of Wells Fargo's sale of unnecessary auto insurance to its auto credit customers. As has been well-documented in the popular press, Wells Fargo allegedly required customers who financed their cars with the bank to purchase unnecessary and expensive insurance, in many cases failing to provide those customers with mandated disclosures and refusing to cancel the duplicative insurance even after customers provided evidence that they were independently insured. The scheme allegedly relied on a partnership with National General Insurer. According to the NY Times, "when customers financed cars with Wells Fargo, the buyers' information would go to National General, which was supposed to check a database to see if the owner had insurance coverage. If not, the insurer would automatically impose coverage on the customers' accounts, adding an extra layer of premiums and interest to their loans."¹¹

¹¹ Morgenson, Gretchen, "Wells Fargo Forced Unwanted Auto Insurance on Borrowers", *New York Times*, Business Section, July 27, 2017. <http://nyti.ms/2uHZfkc>

Under current law, the CFPB is rightly allowed to take action against National General if the reported facts are accurate and the insurer acted unfairly or abusively. Even though National General is a “person regulated by a state insurance regulator,” it also was “engaged in the ... provision of [a] consumer financial...service.”¹² In particular, National General was not just providing insurance, but also determined which Wells Fargo borrowers required insurance to protect the underlying loan collateral. Determining whether a borrower is maintaining insurance on collateral underlying a loan or instead must be “force-placed” into coverage is a quintessential function of a loan servicer.

This result – that the CFPB could proceed against National General in connection with its role in the Wells Fargo auto insurance scandal – is entirely appropriate. In order to fully respond to the auto insurance abuse scheme, the Bureau must be able to understand how, and if, Wells Fargo worked with National General to cheat consumers in connection with the servicing of auto loans, or whether it alone was responsible for these abuses. Moreover, the CFPB has particular expertise with respect to the obligations of loan servicers, expertise that state insurance regulators would not have. This makes the CFPB a sensible regulator to take enforcement actions against National General to the extent that it violated these obligations.

By contrast, it is probable that under either of the interpretations of H.R. 3746 described above, the legislation would have eliminated the CFPB’s capacity to take action or investigate National General in connection with the auto insurance scandal at Wells Fargo. Not only might National General invoke the presumption against CFPB enforcement against an entity engaged in the business of insurance, but it might claim that checking records to determine the existence of borrowers’ independent coverage of loan collateral constitutes the “business of insurance.” This result, in turn, could not only immunize National General from wrongdoing in connection with the Wells Fargo auto insurance abuses, but could also undermine the capacity of the CFPB to fully understand the nature of the abuses at Wells Fargo and take appropriate remedial measures.

Preserving the CFPB’s capacity to address consumer abuses that span the insurance / credit divide, such as those involving Wells Fargo’s auto insurance scheme, would not limit the authority of state insurance regulators. To the extent that a state insurance regulator deemed National General to have violated state insurance laws in connection with the Wells Fargo scheme, it could take appropriate action against the insurer irrespective of the CFPB’s actions.

In general, the argument made by proponents of HR 3746 that CFPB enforcement authority at the borderline between credit and insurance somehow harms the authority of state insurance regulators is not true. Although overlapping *supervisory* authority among different regulators can create various inefficiencies, overlapping *enforcement* authority with respect to consumer abuses involving activities that are close to a regulatory perimeter, such as the insurance/credit divide, is

¹² 12 USC 5517 (2)

entirely appropriate. Such overlapping enforcement authority does not create large costs for most firms, because the overlap is only relevant if there is a potential consumer protection problem requiring enforcement. Moreover, the inherent difficulty that all regulators face in identifying consumer protection problems that span traditional regulatory perimeters suggests that it is appropriate to take countervailing measures to police against such violations. Overlapping enforcement authority is one commonly used and effective way to increase the likelihood that regulators will detect abuses.

HR 4464, the Common Sense Credit Union Capital Relief Act of 2017

The bill would eliminate the National Credit Union Administration's (NCUA) "Risk-Based Capital" rule requiring credit unions taking certain risks to hold capital in proportion to those risks. The rule is scheduled to go into effect in January, 2019.

It is appropriate for Congress and regulators to seek to limit negative impacts of unnecessary or unjustifiably burdensome regulations on small credit unions. However, at the same time Congress should be aware that credit unions hold \$1.3 trillion in assets, almost all of which are Federally insured and thus involve public exposure. Currently the Credit Union Share Insurance Fund holds only \$13.2 billion to cover losses on insured credit union deposits, a ratio of just one cent on each dollar of assets.¹³ Any significant losses on insured deposits due to credit union insolvency would trigger the need for solvent credit unions to pay significant amounts into the insurance fund, and/or create public exposure that could require greater government resources from taxpayers.

This is not just a theoretical danger. During the financial crisis dozens of credit unions failed, and the Federal government was forced to place large "wholesale" credit unions into public conservatorship due to large unexpected losses on subprime mortgage securities.¹⁴

According to the NCUA the final risk based capital rules exempts all small credit unions with under \$100 million in assets, accounting for 76 percent of credit unions nationally. Such small credit unions should experience no impact of the new rules. Furthermore, among the 1,489 credit unions with over \$100 million in assets subject to the rule, just 16 credit unions would be downgraded in their capitalization classification due to the new risk based asset requirements. Thus, only about one-quarter of one percent of all credit unions nationally would be required to take significant action to improve their safety and soundness due to the new rule.¹⁵

¹³ National Credit Union Administration, "Industry At A Glance, June 2017.

<https://www.ncua.gov/analysis/Pages/industry/industry-at-a-glance-june-2017.pdf>

¹⁴ Maremont, Mark and Victoria McGrane, "Credit Unions Bailed Out", *Wall Street Journal*, September 25, 2010. <http://on.wsj.com/2j2Jin9>

¹⁵ National Credit Union Administration, "Frequently Asked Questions: Risk Based Capital Rule", <https://www.ncua.gov/Legal/Documents/RBC/RBC-Final-Rule-FAQs.pdf>

We recommend that Congress work with the NCUA to investigate means of assisting credit unions that are less extreme than simply repealing new risk based capital rules.

Comprehensive Regulatory Review Act

This legislation would modify the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) by greatly shortening the cycle on which regulations must be reviewed and inserting a large number of additional factors regulators would be required to consider.

Currently the EGRPRA regulatory requirement is simple, direct, and clear. The statute requires regulators to ask the public for comment on aspects of regulations that are “outdated, unnecessary, or unduly burdensome”, and to do so not less than once every ten years. After review of these comments regulators must “eliminate unnecessary regulations to the extent such action is appropriate”. The Comprehensive Regulatory Review Act (the “Act”) would shorten the time requirement for regulatory review to not less than once per five years, and would add significant language requiring regulators to limit regulatory costs on businesses.

We believe both of these changes are unnecessary and would be harmful to the public interest. The language inserted into EGRPRA by the Act would significantly slant regulatory consideration away from a true comparison of the costs and benefits of regulation and toward an attempt to minimize costs for regulated entities, without considering benefits to the public. For example, Section 4(3) of the Act changes the mandate on regulators from simply eliminating “unnecessary regulations”, and requires them to “eliminate unnecessary regulations and *tailor other regulations... in a manner that limits the regulatory compliance impact, liability risk, and other burdens*” (Additions in italics). Missing here is any consideration of the public benefits that are the justification for creating the regulations in the first place, and which regulators should be seeking to preserve. Likewise, the additional regulatory considerations inserted in Section 4(2) of the Act require regulators to consider the impact of regulations on regulated entities (“covered persons”), without any consideration of the effect of regulations on the broader public, the economy as a whole, or even on the customers of regulated entities.

The change in the minimum required regulatory review cycle from ten years to five years is also inappropriate, as the compliance costs of new regulations are front-loaded while benefits to consumers and the public are weighted toward later periods when businesses have fully complied with the new requirements.

The Comprehensive Regulatory Review Act is unnecessary and harmful.



James Ballentine
Executive Vice President
Congressional Relations
And Political Affairs
202-663-5359
jballent@aba.com

December 6, 2017

The Honorable Bill Posey
2150 Rayburn House Office Building
Washington, D.C. 20515
Dear Representative Posey:

We write to express our strong concerns regarding H. R. 4464, the Common Sense Credit Union Capital Relief Act of 2017.

While the National Credit Union Administration's (NCUA) risk based capital rules may not be perfect from the perspective of credit union executives, they are an important step toward protecting the taxpayer-backed insurance fund from the losses that are likely to occur should the industry be allowed to continue to operate under antiquated rules.

The existing credit union capital scheme was designed for a less complex industry than exists today, and does not adequately protect the taxpayer. As NCUA noted in a 2015 [report](#) to the House Financial Services Committee, the risk based capital rule your legislation would repeal was pursued because:

both the GAO and NCUA's Inspector General found that the existing NCUA rule on risk-based net worth failed to prevent credit union losses as a result of the financial crisis. GAO concluded that NCUA should propose "additional triggers" for prompt corrective action that "would require early and forceful regulatory action." The Inspector General noted that NCUA needs a prompt corrective action framework that will identify increasing risks on a timely basis, before losses occur.

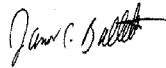
As you know, the credit union industry has seen exponential growth in the recent past, with industry assets now exceeding \$1.34 trillion. The nearly 300 credit unions larger than \$1 billion in size are each larger than 88% of the banks in this country. Not only are the products banks and credit unions provide consumers virtually identical, the consumers the two industries serve are virtually identical as well; the industry now claims one out of every three Americans as a customer. A systemic shock to the National Credit Union Share Insurance Fund would have ripple effects throughout the economy. Congress should take seriously the rules that govern this expansive industry that, in all important respects, has graduated.

Congress cannot rely on NCUA to fill in gaps through adequate supervision. NCUA's Inspector General in 2010 issued a report sharply critical of the quality of credit union supervision, and "identified examiner deficiencies in quality control efforts, examination procedures... as well as enforcement issues." While the agency has unveiled new initiatives in an attempt to address these concerns, Congress should rightly question NCUA's past performance as credit unions argue for flexibility that puts taxpayers at risk.

We note that the NCUA Chairman has indicated that revisiting the risk based capital rule is a priority, so this legislation may be premature at this time. That is especially true given the risk based capital rule does not become effective until 2019, while banks are already living under the Basel III regime.

We strongly urge the Committee to examine this legislation carefully to ensure that it does not do anything that would place the taxpayer at unnecessary risk as a tax subsidized industry continues its expansion.

Sincerely,



James C. Ballentine

cc: The Honorable Jeb Hensarling
The Honorable Blaine Luetkemeyer



Jim Nussle
President & CEO

Phone: 202-508-6745
jnussle@cuna.coop

601 Pennsylvania Avenue NW
South Building, Suite 600
Washington, D.C. 20004-2601

December 7, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives
Washington DC, 20515

Chairman Hensarling and Ranking Member Waters,

I am writing on behalf of the Credit Union National Association (CUNA) to express our support for certain regulatory relief measures the Committee is discussing in a hearing this week. CUNA represents America's credit unions and their 110 million members.

Credit unions throughout the United States have expressed significant concern over the National Credit Union Administration's (NCUA) risk-based capital standards rule which imposes risk-based capital standards for the purpose of determining whether a credit union is well-capitalized. Credit unions are concerned with NCUA's legal authority to implement such standards and the substantial regulatory burdens and additional cost they impose. We fully support H.R. 4464, the Common Sense Credit Union Capital Relief Act of 2017, which would repeal NCUA's risk-based capital rule.

Many Americans rely on credit unions for their insurance products, especially those who may not have access through their employer. The business of insurance is state-regulated, however, actions by the Consumer Financial Protection Bureau (CFPB) have created some uncertainty and cause for concern. For example, CFPB issued a Request for Information, which includes questions about the sale of credit insurance. Credit unions provide some of the safest and most affordable products offered and unclear rules surrounding their offering harm consumers. We strongly support H.R. 3746, the Business of Insurance Regulatory Reform Act of 2017, which clarifies Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act to ensure that the regulation of insurance is done at the state level.

Currently, as a matter of policy, NCUA reviews all existing regulations every three years. NCUA accomplishes this by identifying one-third of those for review each year and provides notice to the public for comment. We appreciate NCUA's diligent effort to regularly review existing regulations. The Comprehensive Regulatory Review Act of 2017 amends the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) to require the Federal Financial Institutions Examination Council and federal financial regulators, including the CFPB and NCUA, to review all existing regulations once every five years. While we support this bill and the timely review of regulations, we acknowledge NCUA's effective regulatory review and do not wish to see that affected by any legislation.

We appreciate that the Committee is considering legislation to provide meaningful regulatory relief for credit unions. On behalf of America's credit unions, thank you for your time and leadership.

Sincerely,

Jim Nussle
President & CEO

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
SENIOR VICE PRESIDENT &
CHIEF POLICY OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

December 6, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters,

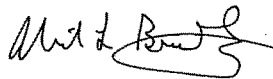
The U.S. Chamber of Commerce supports H.R. 3179, the "Transparency and Accountability for Business Standards Act," which would require the federal banking regulators to justify the decision to implement a prudential standard which is substantively more stringent than the negotiated international standard.

In the wake of the 2008 financial crisis, the Basel Committee on Banking Supervision negotiated a wide-ranging framework of bank capital and liquidity standards known as Basel III. Implementation has been grossly inconsistent; U.S. regulators view international capital standards as a floor, while European regulators view those same standards as a ceiling.

U.S. regulators promulgated more onerous standards that have put U.S. firms at a global competitive disadvantage and have reduced access to capital and credit for Main Street businesses. Furthermore, banking regulators did not conduct a cost-benefit analysis on how those standards would impact the broader economy.

The Chamber urges the Committee's quick consideration of the Transparency and Accountability for Business Standards Act.

Sincerely,



Neil L. Bradley

cc: Members of the Committee on Financial Services



James Ballentine
 Executive Vice President
 Congressional Relations
 And Political Affairs
 202-663-5359
jballent@aba.com

December 6, 2017

The Honorable Barry Loudermilk
 329 Cannon House Office Building
 Washington, D.C. 20515

Dear Congressman Loudermilk:

We are writing to express our support for the Comprehensive Regulatory Review Act. This legislation is timely and would provide much needed improvements to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).

To be clear, the EGRPRA process has merit. It is a process that allows the prudential banking regulators to review their regulatory processes once every ten years and produce a report to Congress. ABA supports the intent and purpose of this law and has strongly encouraged regulators to use the EGRPRA review process to find ways to provide meaningful regulatory reforms that will allow banks to better serve consumers.

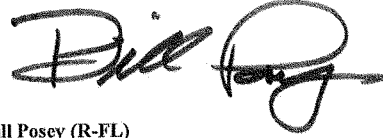
The legislation you have proposed will substantially improve the EGRPRA law by requiring a review to be conducted every five years, rather than ten years; it will expand the review to regulated institutions, not just insured depository institutions; will add the Consumer Financial Protection Bureau to the list of prudential regulators that participate in the EGRPRA process, and importantly, the bill empowers the regulators to take action to eliminate or tailor regulations that they identify as duplicative, outdated, or unnecessary.

We applaud you for offering legislation that updates the EGRPRA process while keeping the tenets of this important legislation intact. We look forward to working with you as this legislation moves through the legislative process and we will be urging the House Financial Services Committee to consider this important measure.

Sincerely,

James C. Ballentine

cc: Members of the House Committee on Financial Services



**Statement of Representative Bill Posey (R-FL)
To the House Financial Institutions and Consumer Credit Subcommittee
Concerning the Hearing:
“Legislative Proposals for a More Efficient Federal Financial Regulatory Regime: Part II”**

**December 7, 2017
2:00 p.m.**

Mr. Chairman, Ranking Member, and Members of the Subcommittee,

I appreciate the efforts of my colleagues on the House Financial Services – Financial Institutions and Consumer Credit Subcommittee in holding a hearing on various legislative proposals to reduce regulatory burdens across our nation’s financial system. Thank you for your leadership on this important issue.

My bill, *H.R. 2570, the Mortgage Fairness Act of 2017* – which was considered during the House Financial Institutions and Consumer Credit Subcommittee hearing on December 7, 2017, is a common sense measure that will provide more options for homebuyers, particularly low and middle income consumers.

When consumers purchase a home through a mortgage broker company, they can either pay the fees to the company upfront, through their own personal bank account or pay the fees over time in the form of a higher interest rate from the lender. If consumers elect the second option, then the fees are reflected in the form of a higher interest rate and essentially become cash paid to the mortgage brokers for commissions and fees.

Many borrowers choose this second option because it enables them to have more capital on hand for home renovations and for other purposes. Unfortunately, the Consumer Financial Protection Bureau is currently counting (1) the interest rate and then (2) the fees included in that rate on top of it within the 3 percent Qualified Mortgage calculations. Essentially, the CFPB is “double counting” and this policy risks taking away a competitive channel that helps consumers obtain financing through multiple sources with just one application process. As a result, the “double counting” of loan origination fees could have an adverse impact on low and moderate income borrowers by limiting their options to obtain financing.

Although the CFPB has acknowledged this issue, the Bureau says they are locked-into this interpretation because of their interpretation of current law.

The *Mortgage Fairness Act* will correct this issue by amending the Truth in Lending Act to prohibit counting any payment(s) that are reflected in the mortgage rate offered by the creditor/lender in the 3 percent Qualified Mortgage calculations. Regulations on loan originator compensation would continue to protect the consumer.

On February 15, 2013, the CFPB published the Loan Originator Compensation Rule. This rule sets loan originator compensation at a set percentage of the loan amount and is set by contract

and the amount cannot be increased or decreased. Because of this loan originator compensation limitation, making the legislative change to the 3 percent cap will not permit mortgage loan originators to over-charge borrowers; it will permit them to operate and compete in the \$100,000 to \$200,000 mortgage loan market.

This bill enjoys the support of the **Mortgage Bankers Association, the National Association of Mortgage Brokers, and America's Homeowner Alliance.**

I would like to include the following questions in my statement for the record on this hearing:

Questions for the Record:

1). Does any witness know how the CFPB determined that the 3 percent was the best percentage for the cap?

Questions 2—5 should be directed to Mortgage Bankers Association witness, Christopher M. George, President and CEO CMG Financial

2). Do lenders set their calculation below the 3 percent cap in order to have a "safety barrier" or buffer in case an unanticipated cost arises? More specifically, is the real cap used in the market less than 3 percent?

3). Please tell us specifically how the double counting of origination fees puts certain mortgage lenders at a disadvantage in competing in the market and thus may restrict the overall availability of mortgage funding to consumers.

4). In its official interpretation of the QM rule, the CFPB noted that it was:
"particularly concerned about situations in which the creditor pays compensation to a mortgage broker or its own loan originator employees because there is no simple way to determine whether the compensation is paid from money the creditor collected from up-front charges to the consumer (which would already be counted against the points and fees thresholds) – or from the interest rate on the loan (which would not be counted toward the thresholds)."

Can you please explain why it is difficult to make this determination?

5). If a lender is faced with charges and fees that push past the 3 percent cap, can they increase the mortgage loan interest rate and stay under the 3 percent cap?