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FOSTERING ECONOMIC GROWTH: THE ROLE OF FINANCIAL INSTITUTIONS IN LOCAL COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE CURRENT STATE OF COMMUNITY BANKS AND CREDIT UNIONS, INCLUDING THEIR EXISTING REGULATORY FRAMEWORK AND IMPACT ON THEIR CUSTOMERS, AND GATHERING LEGISLATIVE AND REGULATORY RECOMMENDATIONS THAT WOULD FOSTER ECONOMIC GROWTH

JUNE 8, 2017

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C O N T E N T S

THURSDAY, JUNE 8, 2017

	Page
Opening statement of Chairman Crapo	1
Opening statements, comments, or prepared statements of:	
Senator Brown	2

WITNESSES

Dorothy A. Savarese, Chairman, President, and Chief Executive Officer, Cape Cod Five Cents Savings Bank, on behalf of the American Bankers Association	5
Prepared statement	33
Responses to written questions of:	
Senator Brown	91
Senator Sasse	95
Steve Grooms, President and CEO, 1st Liberty Federal Credit Union, on behalf of the National Association of Federally Insured Credit Unions	6
Prepared statement	45
Responses to written questions of:	
Senator Brown	99
Senator Sasse	101
R. Scott Heitkamp, President and CEO, ValueBank Texas, on behalf of the Independent Community Bankers of America	7
Prepared statement	55
Dallas Bergl, Chief Executive Officer, Inova Federal Credit Union, on behalf of the Credit Union National Association	8
Prepared statement	58
Responses to written questions of:	
Senator Brown	104
Senator Sasse	108
John Bissell, President and CEO, Greylock Federal Credit Union	9
Prepared statement	72
Responses to written questions of:	
Senator Brown	112
Senator Sasse	115
Senator Toomey	117
Adam J. Levitin, Professor of Law, Georgetown University Law Center	11
Prepared statement	74
Responses to written questions of:	
Senator Brown	118
Senator Reed	119
Senator Sasse	120

FOSTERING ECONOMIC GROWTH: THE ROLE OF FINANCIAL INSTITUTIONS IN LOCAL COMMUNITIES

THURSDAY, JUNE 8, 2017

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:04 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order.

Before we begin the formal hearing, I want to take a point of personal privilege right now and give my thanks and best wishes to one of my great staffers who has chosen to move on to—I was going to say "greener pastures," but newer pastures. You cannot get greener pastures than here in the Banking Committee.

[Laughter.]

Chairman CRAPO. But Jared Sawyer is going to be moving over to the Department of Treasury as the Deputy Assistant Secretary for Financial Institution Policy, and Jared has just been an outstanding help to me for years now on all the issues that we have been working on here in the Banking Committee. So, Jared, best wishes.

And now let us move on into the meat of the hearing. Today we will receive testimony on the role financial institutions play in fostering economic growth in local communities. Community financial institutions are the pillars of communities across America, particularly those in mostly rural States like Idaho.

A Harvard University study appropriately described community banking by stating, "Their competitive advantage is a knowledge and history of their customers and a willingness to be flexible."

Unfortunately, the operating landscape facing these institutions has changed dramatically over the last several years. The industry has become increasingly concentrated, and that concentration has accelerated since the passage of Dodd-Frank. The regulatory rules dictated from Washington are often contradictory, complex, and confusing, and they sharply restrict community lenders' ability to be flexible.

I am concerned that in a rush to implement new regulation, regulators have often ignored the cumulative impact of the rules and that there is a lack of coordination among them. We want our

Nation's financial institutions to be well capitalized and well regulated, but they should not be drowned by unnecessary compliance costs.

Financial regulation should promote safety and soundness while enabling a vibrant and growing economy. This is especially important for community financial institutions, which lack the personnel and infrastructure to handle the overwhelming regulatory burden of the past few years.

Since 2010 we have lost roughly 2,000 banks and over 1,500 credit unions. In local economies, this places a strain on small businesses looking to open or grow. Further, it can cause American consumers to lose access to traditional banking services or pay more for these services.

Today, however, I am hopeful about the prospects of reversing the damaging trends facing these types of institutions. In March, Senator Brown and I announced a process to receive and consider proposals to help foster economic growth. Similarly, the Federal banking agencies submitted their EGRPRA report to Congress with several recommendations. The Treasury Department is also currently working on several reports to identify ways to improve our regulatory framework. Together, these steps demonstrate a commitment to reviewing our financial regulatory framework to determine what is working and what is not working.

Today's hearing is the first of several Committee hearings over the coming months that will begin to explore these proposals with the goal of ultimately passing a meaningful and bipartisan reform package. Community financial institutions are critically important to the constituents in each of our States. That has been clearly demonstrated in the conversations I have had with Members on both sides of the aisle who are committed to pursuing bipartisan reform measures.

Some measures would have an immediate impact on the regulatory burden facing these institutions. For example, an automatic qualified mortgage status for loans held in portfolio would provide much needed flexibility for lenders without increasing risk in the system. Another example is to simplify and streamline capital requirements for community financial institutions by reexamining Basel III and the risk-based capital rule. Finally, an exemption for some financial institutions from some HMDA reporting requirements would decrease the paperwork burden for small lenders.

As this process moves forward, I want to encourage all Members of the Committee to engage with us, work together with each other, and bring bipartisan legislation forward. Together, we can have a very strong opportunity to make a significant impact.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Chairman Crapo, and thanks for holding this hearing and for the work we have done together to solicit ideas from any and all who have useful, productive thoughts about economic growth and some maybe that were not useful and thoughtful, but thank you for that.

[Laughter.]

Senator BROWN. I want to echo the Chairman thanking all the groups and individuals who submitted those proposals.

With the loss of good manufacturing jobs afflicting pretty much all of our States, but especially through the industrial heartland, prior to and during the 2008 financial crisis, it is no wonder the economic crisis and the economic recovery has been uneven. The crisis was devastating to millions of our fellow citizens, and for those who want full-time work, the jobs just are not there.

Foreclosures and job losses hit African American and Latino communities particularly hard during the crisis. One study found the average wealth of white families has grown 3 times as fast as the rate for African American families and 1.2 times the growth rate for Latino families. At these rates, it will take hundreds of years for these families just to match what white families have today.

Across Ohio, I have seen the impact of the uneven economic recovery in both urban and rural areas. The lack of opportunities in communities has contributed to an increase, as we know, in prescription opioid abuse and dependence. Between now and lunchtime, odds are that one Ohioan, at least, will die of an overdose.

One of my staff members was meeting with the Chair of a small bank in Gallipolis, Ohio, on the Ohio River. He thought the banker would want to talk about Dodd-Frank, but what he really wanted to talk about was opioid addiction and how it was ravaging his community. By one estimate, this crisis has cost our economy more than $70 billion, to say nothing of the physical and the social and the emotional cost to individuals and families who cope with addiction.

We cannot ignore issues like this and pretend they do not affect the economy. We also know that the opioid epidemic is not unique to Ohio or to the industrial Midwest. I am curious to hear how it impacts our witnesses' communities and the institutions they represent.

Yet the President's proposed budget makes the situation worse. He wants to slash or eliminate entirely programs that support economic development in both urban and rural communities, including job creation and transportation. It cuts important programs to provide access to affordable housing. It takes away health care from literally millions of Americans, including as many as 1 million Ohioans. Right now in Ohio, 200,000 people are getting opioid treatment who have that treatment because they are insured by the Affordable Care Act. Yet members of this body and in the House of Representatives who have Government-paid insurance are willing to take that insurance—who have Government-paid insurance ourselves are willing to take it away from those 200,000 families.

While I keep hearing promises of an infrastructure package—the President was in my State, in Cincinnati yesterday—the infrastructure package to make up for housing and transportation cuts and other things, you cannot build a bridge with bullet points or Wall Street fees. So as we discuss the role of financial institutions in local communities, I look forward to hearing ideas, real ideas about promoting economic growth. I am less interested in hearing old complaints about issues that have little to do with solving the economic issues plaguing our communities.

The evidence from the crisis shows that deregulation does not lead to sustainable economic growth, but a breakdown in consumer protections can lead to a financial crisis. Community banks and credit unions play a vital role in urban and rural communities. I am glad their loan volume has grown and they are on a solid financial footing, those communities banks and small credit unions.

I am pleased we have a representative from the community development financial institutions community at this hearing. Every dollar of public investment in CDFIs generates $12 of private capital. They work in low-income communities. They find alternatives to payday loans. And institutions like John Bissell's are finding solutions in communities where manufacturers have left, giving small business loans to former employees of GE, for instance, and working to solve housing and transportation needs. For that we thank you.

They also are not afraid to do work in communities that other financial institutions have left. There are 242 CDFIs in 35 States headquartered in counties hard hit by the opioid epidemic, and CDFI program awardees have made nearly 115,000 loans in these communities across 43 States totaling $6.5 billion, helping to create or retain some 65,000 jobs. Yet the Trump budget has proposed to eliminate CDFI, yet another example of the President's agenda that I believe will do more harm than good to struggling communities in my State.

I am open to considering proposals for small institutions that lower costs or cut red tape so they can better serve their customers. There is obviously no point in paying for red tape we do not need. And Congress has passed bills to do that. The regulators have made changes at the urging of pretty much every Member of this Committee, Democrat and Republican alike.

But I will be interested in hearing the amount, the real amount of economic growth that such changes would produce. For real economic growth, financial institutions need to be partners with struggling communities, finding solutions to create jobs, to make housing more affordable, and to access transportation. I look forward to hearing about ideas from all six of you.

Thank you so much.

Chairman CRAPO. Thank you, Senator.

Now we will turn to the oral testimony. First we will receive testimony from Ms. Dorothy Savarese, Chairman and CEO of Cape Cod Five Cents Savings Bank, and on behalf of the American Bankers Association.

Following her——

Ms. SAVARESE. Thank you——

Chairman CRAPO. I will introduce all six first, and then we will let you start.

Following Dorothy, we will hear from Mr. Steve Grooms, President and CEO of 1st Liberty Federal Credit Union, on behalf of the National Association of Federally Insured Credit Unions.

Then we will hear from Mr. Scott Heitkamp, President and CEO of ValueBank, on behalf of the Independent Community Bankers of America.

Following Mr. Heitkamp, we will hear from Mr. Dallas Bergl, CEO of INOVA Federal Credit Union, on behalf of the Credit Union National Association.

Then we will hear from Mr. John Bissell, President and CEO of Greylock Federal Credit Union.

And, finally, we will hear from Mr. Adam Levitin, Professor of Law at Georgetown University Law Center.

There has been an intense interest in this hearing, and that is why we have six witnesses. Because of that, however, it is going to require that we reduce the time allocated to each of you, and I think you have each been told that we are going to reduce your time for your presentations to 3 minutes. But do not worry, there will be plenty of opportunity for you to continue addressing the issue as you get questions from the Senators.

I will tell the Senators we are still having 5 minutes for each Senator, but we are starting to have Senators try to push that limit. So I am going to remind the Senators they have 5 minutes, not 5 ½, 6, or 7.

So, with that, now let us return and, Ms. Savarese, you may begin.

STATEMENT OF DOROTHY A. SAVARESE, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, CAPE COD FIVE CENTS SAVINGS BANK, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION

Ms. SAVARESE. Thank you, Chairman Crapo, Ranking Member Brown, Members of the Committee. My name, as the Chairman said, is Dorothy Savarese, and I am Chairman, President, and CEO of Cape Cod Five Cents Savings Bank, which was formed in 1855. I appreciate the opportunity to be here to present ABA's views on the important role of community financial institutions growing their local economies.

Let me begin by stressing that we agree on the need for strong regulation. Indeed, lawmakers, regulators, and bankers themselves took important steps after the crisis to improve safety and soundness. Our experience since Dodd-Frank became law demonstrated the effectiveness of many of these measures, and at the same time showed that included in the 25,000 pages of new and proposed rules are requirements that are harming our ability to serve creditworthy customers and our communities.

ABA is committed to working with Members of the Senate on targeted, sensible changes to financial regulations that will help us accelerate economic growth and opportunities for all Americans without compromising safety and soundness.

Some observers have used the community banks' resilience in the face of these regulatory challenges as an excuse to leave the regulatory environment untouched. Indeed, banks are profitable and loans are growing. That is a good thing and a sign of economic recovery. We have found ways to meet our customers' needs in spite of the unnecessary burden we must carry. That burden is too much for some banks. The fact remains that every business day a bank in this country is either acquired or merged. That is not good for competition, consumers, or the U.S. economy.

We have the potential to do more for our economy. Loans are growing—however, at half the pace they did years before the financial crisis. Without reasonable reform, we will never realize the thousands of businesses that could be started or scaled, the hundreds of thousands of creditworthy families that could move into a new home, and the millions of dreams that could come true because they did not fit into the restrictive boxes our policymakers have contrived.

The avalanche of new regulations has caused some banks to stop offering some products or to cease operations. I just heard a story of a branch closing down in a town in a rural area in the Intermountain West, and the family wrote a letter to their local banking official saying this meant their mother would have to drive 60 miles to get to a bank, and they were not going to let her do that.

As I travel the country, I hear story after story like this, and I know Members of the Committee have heard these stories as well. Each and every bank in this country helps fuel our economy. Each has a direct impact on job creation, growth, and prosperity. That is why it is imperative that Congress take reasonable steps to fix the regulatory burden before it becomes impossible to reverse the negative impact.

My written testimony includes several recommendations that are part of ABA's blueprint for growth and were also included in our recommendations to this Committee.

I am happy to discuss ideas and answer any questions you may have about the impact of regulations on the Nation's banks and how we can work to refine them to support the American economy.

Thank you.

Chairman CRAPO. Thank you, Ms. Savarese.

Mr. Grooms.

STATEMENT OF STEVE GROOMS, PRESIDENT AND CEO, 1ST LIBERTY FEDERAL CREDIT UNION, ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERALLY INSURED CREDIT UNIONS

Mr. GROOMS. Good morning, Chairman Crapo, Ranking Member Brown, Members of the Committee. My name is Steve Grooms, and I serve as the President and CEO of Liberty Federal Credit Union. First Liberty is a $170 million institution with over 17,000 members, with branches in Montana and North Dakota. I am testifying today on behalf of NAFCU. Thank you for holding this important hearing on community financial institutions fostering economic growth.

NAFCU believes that credit unions play an essential role in their local economies, and their 108 million members agree. During the recent financial crisis, credit unions were able to continue to lend and help creditworthy 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.

We have lost more than 1,500 federally insured credit unions—over 20 percent of the industry—since the second quarter of 2010, with many citing the growing compliance burden as a reason they cannot survive. My written testimony outlines what will ensure a healthy and competitive environment and help credit unions foster economic growth. I would like to highlight five key principles from my testimony.

First, NAFCU supports a regulatory environment that allows credit unions to grow. To accomplish this, we would encourage the Committee to act on improving field of membership restrictions for credit unions, modernizing credit union capital standards, and ensuring credit unions can meet the needs of small businesses.

Second, NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens. We would encourage the Committee to exempt all credit unions from the CFPB; ensure credit unions have greater exemptions from new rules, such as the new HMDA requirements; and require better tailoring of regulations, including accurate cost burdens.

Third, NAFCU supports a fair playing field and believes that credit unions should have as many opportunities as banks and nonregulated entities to provide provident credit to our Nation's consumers. This includes ensuring regulatory relief is balanced between credit unions and banks, keeping nonbank financial entities such as payday lenders subject to regulation, and enacting a national data security standard for all who would handle financial information.

Fourth, NAFCU supports transparency and independent oversight. Steps to accomplish this include making common-sense improvements to the CFPB, requiring the CFPB to provide rulemaking or guidance on UDAAP, and enacting common-sense examination reforms.

Fifth, NAFCU supports a strong, independent NCUA as the regulator for credit unions. NCUA's independence and structure should be maintained, and we believe it should have the sole authority for rule writing and supervision of credit unions.

In conclusion, if Congress wants to help foster economic growth, enacting the regulatory relief provisions outlined in my testimony is key. The time to act is now, and we stand ready to work with you.

Thank you for the opportunity to share our thoughts with you today. I welcome any questions you might have.

Chairman CRAPO. Thank you.

Mr. Heitkamp.

STATEMENT OF R. SCOTT HEITKAMP, PRESIDENT AND CEO, VALUEBANK TEXAS, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA

Mr. HEITKAMP. Good morning, Chairman Crapo, Ranking Member Brown, and Members of the Committee. My name is Scott Heitkamp, and I am President and CEO of ValueBank Texas, in Corpus Christi, Texas. I am also Chairman of the Independent Community Bankers of America, and I testify today on behalf of more than 5,800 community banks we represent. Thank you for convening today's hearing.

ValueBank Texas is a $213 million bank with nine offices in Corpus Christi, Texas, and Houston and 114 employees. We specialize in small business and residential mortgage lending. What

ValueBank and other community banks do from inside a local community cannot be done from outside the community. With the direct knowledge of the borrower, the community, and local economic conditions, we offer customized terms and make loans that larger banks pass over. This is our competitive advantage and the reason why we must be part of any plan to foster local economic growth.

The economic recovery has been painfully slow and has failed to reach many individuals and communities. Community banks are uniquely suited to reach struggling households and small businesses. We have a direct stake in the success of communities, and we are eager to help.

Unfortunately, in recent years a sharp growth in regulatory burden has made it increasingly difficult for community banks to lend and foster local economic growth. Regulatory overreach has created two problems in particular:

First, it has contributed to rapid consolidations. Banks need a larger scale to amortize the increasing cost of compliance. Today there are some 1,700 fewer community banks than there were in 2010. This will harm competition and leave many small communities stranded without a local community bank.

Second, overregulation has created a very tight credit box. Too many would-be borrowers are being denied credit in today's environment.

The good news is that solutions are at hand. ICBA's Plan for Prosperity includes over 40 recommendations that will allow Main Street and rural America to prosper. A copy of the plan is attached to my written statement. Provisions of the Plan for Prosperity are found in a number of bills introduced in the House and the Senate, including the CLEAR Relief Act, S. 1002, a consensus, bipartisan bill introduced by Senators Moran and Tester. ICBA thanks the Members of this Committee who have cosponsored S. 1002.

I would also like to thank Senators Rounds and Heitkamp for introducing S. 1310, a bill to provide relief from the new HMDA mandates. The bill is also cosponsored by Senators Hoeven, Kennedy, Donnelly, and Tester. We strongly encourage this Committee to consider S. 1002 and S. 1310 and other bills that would include meaningful regulatory relief for community banks.

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

Chairman CRAPO. Thank you, Mr. Heitkamp.

Mr. Bergl.

STATEMENT OF DALLAS BERGL, CHIEF EXECUTIVE OFFICER, INOVA FEDERAL CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION

Mr. BERGL. Chairman Crapo, Ranking Member Brown, Members of the Committee, I am Dallas Bergl, the CEO of INOVA Federal Credit Union, in Elkhart, Indiana. I am also a member of the Board of Directors of the Credit Union National Association on whose behalf I testify today.

INOVA Federal Credit Union is celebrating our 75th anniversary and proudly serves over 32,000 members with small loans, auto loans, mortgages, and a variety of deposit accounts, along with member financial education. INOVA has $336 million in assets, but we are quite small compared to the large national banks. To our community, however, our credit union is an invaluable financial lifeline because we provide products and services that larger financial institutions and nonbank lenders often do not.

Elkhart became a symbol of distressed Middle America during the Great Recession. Our area is a national leader for RV manufacturing, and we were really hit hard during the recession. In fact, our community's unemployment rate tripled, to over 20 percent. It was during this downturn that the importance of a credit union to a community like ours became even more apparent.

Many consumers across America are facing financial struggles. Our credit union strives to meet their needs. That is because Congress gave us a mission to promote thrift and provide access to credit for productive purposes, and this investment pays off. When individual communities like Elkhart thrive, so does the Nation.

I would like to be able to say that credit unions face no hurdles in our pursuit to fulfill this statutory mission. Sadly, this is not the case. We supported the Government's reaction to the bad policies that allowed anti-consumer practices, "too big to fail" institutions, and economic harm to Americans. We did not expect and we do not support the onslaught of new regulatory burdens on credit unions while the biggest banks get even bigger. That simply does not make sense, but we are the ones who put our members first.

Credit unions have expressed concern over new regulations on mortgages, remittances, and other financial products. We have repeatedly asked for tailored regulations that allow credit unions to responsibly serve their members and protect consumers from bad practices elsewhere in the industry.

Contrary to what has been said, opposing one-size-fits-all regulations is not caving in to Wall Street; rather, it is untying the hands of credit unions and small banks to allow us to better serve our communities. In truth, the current regulatory scheme only serves to benefit the largest banks and predatory lenders that have resources to game the system. This should not be how the world works.

I truly believe that my credit union and their members, as they thrive, so does our community. My written testimony provides specific recommendations on how Congress and the regulators can provide common-sense regulations to ensure that credit unions can do even more to promote economic growth across the country. I fear that without regulatory reforms, credit unions and community banks in their current form will not survive.

Thank you.

Chairman CRAPO. Thank you.

Mr. Bissell.

STATEMENT OF JOHN BISSELL, PRESIDENT AND CEO, GREYLOCK FEDERAL CREDIT UNION

Mr. BISSELL. Chairman Crapo, Ranking Member Brown, and Members of the Committee, it is my honor today to share the experiences of Greylock Federal, where we serve more than 75,000 families and small businesses in rural Berkshire County in the hills of western Massachusetts. Our region, like so many, is making the painful transition from a manufacturing base that once offered

12,000 GE jobs to a service economy with close to zero GE jobs. The population in my hometown of Pittsfield, Massachussetts, has dropped from 58,000 to 40,000 just during the course of my lifetime.

While we are relieved to now see our local economy recovering, too many families are being left out. Twenty percent of families with children younger than 5 are living in poverty, and 34 percent of children in my area are growing up in single-parent households.

In addition, when we think about putting people back to work, our mass transit system in western Massachusetts is very weak. For working families living on the edge of financial stability, a failed transmission or a dead battery in their car means an immediate loss of income.

As the only CDFI credit union in the region and with our strong $1 billion balance sheet, we at Greylock recognize our responsibility to do more. We formed a community development team with two full-time employees and seven certified financial counselors who are now offering free financial education, credit counseling, and budgeting assistance to every person in our community.

Further, to put more people to work, we are expanding our New Road Loan Program for people with credit challenges. When they buy a reliable car and make on-time payments, their credit score goes up and their interest rate goes down. We are also expanding our Greylock Safety Net lending so that when a family has an unexpected emergency, they can come to us instead of falling in with a predatory lender. And, finally, we are broadening our small business lending and technical assistance to help more people transition to entrepreneurship. These steps all taken together should help nearly 3,000 more local families participate in the economic turnaround.

In conclusion, I want to offer my own thoughts on the role of regulation. The people I am concerned about in Berkshire County are still hurting. And make no mistake about it, these consumers need protection. The abuses and predatory practices that brought about the Great Recession destroyed 40 percent of American household wealth. Black families lost 50 percent of their household wealth, and Latino families lost 67 percent.

If we thought the abusive and fraudulent practices exercised by big banks had ended, we received a rude awakening with the Wells Fargo scandal.

Consumers need and deserve much stronger protection than they had previous to 2010. And while I want smarter regulation as much as anybody, I ask that you please, as you think about steps to refine regulation, do not allow a repeat of the excesses and predatory practices that precipitated the crisis in the first place. Please remember that 6,000 credit unions across this country are hard at work to grow their local economies, and we are a vital force in that effort.

I thank you for your kind attention, and I am happy to answer any questions you may have.

Chairman CRAPO. Thank you.

Mr. Levitin.

STATEMENT OF ADAM J. LEVITIN, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

Mr. LEVITIN. Chairman Crapo, Ranking Member Brown, Members of the Committee, good morning and thank you for inviting me to testify today.

There is good news and bad news about the role of local financial institutions in creating economic growth. The good news is that community banks and credit unions are thriving. A higher percentage of community banks are profitable today than at any point in the last 20 years, and the percentage of profitable credit unions has increased every year since the Dodd-Frank Act.

To be sure, consolidation continues among both banks and credit unions, but industry consolidation is a long-term trend that predates Dodd-Frank. There is no indication that Dodd-Frank is contributing to community banking or credit union consolidation. The chart on page 6 of my written testimony shows that there is no change in the rate of consolidation since Dodd-Frank. Instead, consolidation is driven by small institutions' lack of economies of scale and for community banks by generational transition problems when they are family-owned banks.

In spite of these challenges, however, credit unions and community banks are prospering. Credit union assets and membership are up substantially since Dodd-Frank. Likewise, community banks' return on assets and return on equity are both up substantially. In fact, since Dodd-Frank, community banks' equity has substantially outperformed the S&P 500. That is the good news.

The bad news is that most American families do not have it so good. Most American families have seen their real incomes drop since 2010. Thus, during a period when the U.S. economy grew 9 percent on an inflation-adjusted basis, median household income fell by 0.6 percent.

Of course, not all families are doing poorly. The real income of the top 10 percent of American households increased, and most of that went to the top 1 percent. And what this tells us is that the problem is not one of economic growth but of economic distribution. It is important that economic growth be a tide that lifts all ships, and that has not been happening.

Unfortunately, many of the proposals made by the financial services industry in response to this Committee's request for proposals have little or nothing to do with improving the economic condition of American families. Instead, the bank trade groups have proposed a set of deregulations that are not appropriately tailored to small institutions but would also cover mega banks and, thus, put the American families and the stability of the financial system at risk.

Rather than pretending that deregulation is synonymous with growth, we should be having a conversation about how to ensure that growth benefits all Americans. In terms of this Committee's ambit, it means addressing the continued specter of too-big-to-fail so that we do not end up with privatized gains and socialized losses and that we do not have harmful spillovers from risky behavior by mega banks that hurt families, small businesses, and small banks and credit unions.

It means addressing anticompetitive practices such as credit card swipe fee pricing, which is a $73 billion annual regressive wealth transfer from American consumers to banks. It means facilitating more robust competition among financial institutions for deposits by enhancing account and financial data portability. And it means tamping down on excessive speculative activity, such as by maintaining the Volcker rule and enacting a 21st century Glass-Steagall Act.

I look forward to having that conversation.

Chairman CRAPO. Thank you very much.

My first question will be to Ms. Savarese and Mr. Heitkamp. The Volcker rule was implemented to prohibit trading by banks using their own money or proprietary trading. Community banks, by and large, have very little trading activity with the exception of general operational hedging. The OCC and former Governor Tarullo have expressed support for exempting community banks from the Volcker rule.

Ms. Savarese and Mr. Heitkamp, can you elaborate on the importance of reforming the Volcker rule by exempting financial institutions that do not engage in significant trading activity?

Ms. SAVARESE. Chairman Crapo, no one would encourage the speculative use of customers' money for investments, and so the Volcker rule was intended to direct itself at that. You know, one of the things in my bank is we consider ourselves a learning organization, and I think that we have seen from the implementation of the Volcker rule that there have been complications that have arisen as a result of that. And to your point, there are some institutions for which it is just simply not applicable.

Having a more nuanced approach, which has been encouraged by the regulatory agencies, to reflect an appropriate application of this rule based on size and complexity certainly seems to be in order.

Chairman CRAPO. Mr. Heitkamp.

Mr. HEITKAMP. I tend to agree. The Volcker rule—size and complexity is where we need to be. I think you are looking at how you handle those individual issues are very important, size and matter, and how they are fundamentally handled.

Chairman CRAPO. Thank you.

Mr. Levitin, you mentioned the Volcker rule. I was curious as to whether you agree that, with regard to community banks and credit unions, there is a justification for exemption.

Mr. LEVITIN. I believe that for small community banks and credit unions there is reasonable grounds for an exemption. But I think it is important to keep any exemption narrowly tailored to what are truly community financial institutions. Institutions that start passing a $10 billion threshold I think we need to be much more careful about.

Chairman CRAPO. All right. Thank you.

And for Mr. Grooms and Mr. Bergl, studies demonstrate that many small lenders have stopped or significantly decreased mortgage lending since the passage of the qualified mortgage rule. There has been bipartisan support for providing qualified mortgage status for loans held in portfolio by the lender.

Mr. Grooms and Mr. Bergl, can you describe how this reform would allow you to have more flexibility in extending credit?

Mr. GROOMS. Thank you, Chairman Crapo. We feel mortgages are an integral part of what we do to take care of our members.

What we have seen is an increase in regulation associated with the paperwork and the ability to grant loans to our members. Our goal is to make it easy for them, and what we have seen recently with Dodd-Frank and the increased paperwork associated with that is anywhere from 85 to 100 pages worth of documentation that they have to review and sign, and the reality is that they are just not going to go through and read each one of those.

With the qualified mortgage rule, with a debt-to-income ratio of 43 percent, it limits our ability to go beyond that and to exercise some good judgment to those that really would qualify. Our concern is we do not want to put ourselves at risk and take any undue risk to make that loan. So it has made it a little bit more difficult as well as a little bit more expensive with the costs associated with the increased regulation.

Chairman CRAPO. Mr. Bergl.

Mr. BERGL. Thank you, Chairman. The changes in the mortgage rules, particularly around TRID and QM, have adversely affected our mortgage lending considerably. It has become about three times more expensive to produce the documents under the TRID rules, and the QM rule's 43 percent debt-to-income is adversely selecting borrowers that might otherwise qualify had the QM rules not been in place.

The peril to us as a financial institution for holding QM loans on our portfolio would be that they are potentially not going to be available for sale in the secondary market for liquidity reasons and other asset/liability management reasons for a credit union. So relief from that would certainly be a helpful thing both for consumers, for economic growth in our community, and for our credit union, and any relief around the mortgage rules would also help our mortgage lending. Mortgage lending has truly grown. However, the fact of the matter is that smaller banks and credit unions are not getting as much of that business.

Chairman CRAPO. All right. Thank you.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

I remember about a decade ago, soon after I got on this Committee—maybe a little less than a decade—when it was clear what was happening to the financial industry in large part because of Wall Street malfeasance and misfeasance, I remember a conservation I had with a community banker in southwest Ohio who was pretty shocked by what was happening to his FDIC costs and FDIC assessments.

Wall Street reform, as you remember, changed to be very—as we were very aware of what was happening in community banks with FDIC charges, assessments, we changed under Dodd-Frank how the FDIC charges those assessments on insured banks. Risky or large banks now pay more than smaller, less risky banks.

Ms. Savarese and Mr. Heitkamp, how much have you saved on assessments since the second quarter of 2011 when the change was put in place? You spoke eloquently and directly on what Dodd-Frank meant to you on maybe the more negative side. What did it mean to you in terms of FDIC assessments beginning, as I said, the second quarter of 2011? Ms. Savarese, if you would answer, and then Mr. Heitkamp.

Ms. SAVARESE. Ranking Member Brown, that is not information I have with me today, but I would be more than happy to share that with you as a follow-up and give you detailed information.

Senator BROWN. Thank you. Do you remember, Ms. Savarese, that it was significant for your bottom line and for your cost savings?

Ms. SAVARESE. It was a meaningful impact. It certainly was. I just cannot recall percentage-wise what that was.

Senator BROWN. I would like to see the numbers. Fair enough.

Ms. SAVARESE. I would be happy to, Senator.

Senator BROWN. OK. Thank you.

Senator BROWN. Mr. Heitkamp.

Mr. HEITKAMP. I do not have the numbers here either. I can tell you that it did help us. I do not think it was something that was huge, but it was a positive way to get the assessments back. But I do not have that number, and I can provide that for you, too.

Senator BROWN. I just think it is important. I asked that question; I did not expect you necessarily to be able to just, you know, easily regurgitate the number. But I think it is important to remember that sometimes some of these rules may have cost some money, but they helped with safety and soundness of the whole system, always understanding that you two did not contribute to the financial implosion that Wall Street contributed to. But I think it is important to sort of look at all sides of savings and costs.

Mr. Bissell, similarly, the cost to the NCUA Corporate Stabilization Program was $4.8 billion, which came straight out of the pockets of credit unions and was a direct result of the financial crisis. These costs obviously hurt credit union bottom lines. How did these costs impact your credit union in relation to the costs of regulation or compliance?

Mr. BISSELL. If I could use the example that has been brought up so far of the TRID changes, when that change came down, our teams got together, figured out what the impact was going to be on our systems and our membership, and we made plans to replace one of our software vendors so that we could keep up with the changes in TRID. And that entire process cost us about $50,000.

By contrast, the corporate credit union bailout that you referenced that took place during the crash, the Great Recession, cost our credit union more than $8 million. So the cost, as I said, is unacceptably high of the factors that led to the Great Recession. So Greylock's share of the corporate credit union bailout process was more than $8 million.

Senator BROWN. Would you think that when something happens like happened 10 years ago, when we tried to—people suggest cost-benefit analysis, which may be a little easier on a worker safety rule or a clean up Lake Erie rule cost-benefit analysis than it is a financial services rule. Would you suggest that the cost of a rule or something you need to implement may be significantly less than the cost to your institution if there is a financial implosion of some kind?

Mr. BISSELL. Well, I certainly would. The $50,000 expense that we put in place to deal with TRID was largely a one-time expense. We now run a better software platform than we ran before. But that $8 million is not coming back. That is our members' money. It came straight out of our capital.

In addition, it cost us a great deal more than that in loan charge-offs when the Great Recession hit, both mortgage loans and commercial loans. We took a big hit. Our entire community did. So, yeah, I mean, the cost-benefit to me is not at all equal.

Senator BROWN. Are you different from any other—are you markedly different in that assessment of the cost you had versus the—the cost you had with TRID versus the cost of the bailout, as you call it, are you significantly different from other credit unions, or is that pretty widely held——

Mr. BISSELL. No, my understanding is it was based on, you know, a ratio across assets, and healthy credit unions needed to pay—I mean, the good news is that the credit union system bailed itself out. There was no taxpayer dollars expended during that. That is the really good news. We were the resilient system that we are supposed to be during a downturn. The bad news is it cost my credit union $8 million, and if you look at other credit unions that might be smaller, they also paid a large percentage based on their assets.

Senator BROWN. Thank you very much.

Mr. BISSELL. Thank you.

Chairman CRAPO. Thank you.

Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman. Good morning to the panel. Certainly I have some experience with credit unions. I served on a credit union board for about 7 years in a former life many, many years ago, so I appreciate the impact that small financial institutions have in our communities. It is an impact that is really hard to replace. You do not have a number. You have a name, and you have a relationship with so many folks in those financial institutions, so it is without doubt very important that we continue to see more credit unions and more small banks populate throughout our Nation.

Unfortunately, that is not the trend, and that leads to a very important point that in South Carolina, about 9 percent of our population is totally unbanked; another 23.5 percent or so are underbanked. When you look at the trends in financial institutions consolidating as well as closing, it means that those folks in rural communities in South Carolina—South Carolina being such a rural State—will have fewer options, less access—less access to start a business, less access to sit down and have the conversation with someone in a financial institution who is an expert at borrowing money for a home. So these impacts have a real manifestation on the quality of life that will be experienced by those folks.

I think that we are seeing a financial institution or credit union closing at least about one a day. Somewhere around 1,917 banks have disappeared since Dodd-Frank. We have only seen, I think it is, one credit union open in the last year or so. We were averaging eight beforehand. This is a devastating and persistent trend that means it really has a negative impact on the very folks who are fragile and vulnerable in our economy.

I would love to hear, Ms. Savarese, what you think the major factors are driving the consolidation that is happening as well as the lack of new financial institutions. And, Mr. Grooms, I would love to hear your comments as well.

Ms. SAVARESE. Thank you, Senator Scott. You have said so much that I would like to say. In fact, there has only been five new banks chartered in the last 7 years, so to your point, and this consolidation trend continues to accelerate.

I have spent the last 3 years traveling around the country into a lot of rural areas. I have visited with bankers from 33 States and heard from all 50, and I was just with a banker on Monday who lives in a town of 68, and I know that if he goes away, the people in his town will not have access to that.

So what are the factors that are leading to that, you are asking. Well, certainly, we can argue the low interest rate environment, the protracted recovery have had an implication for this. Economies of scale and technology, those are all factors.

In addition, the additional regulatory burden and the expenses with that are something that these bankers tell me are forcing them to make the strategic decisions about merging or selling or closing. Succession issues are a challenge in rural areas. They have that as well. But if you think about it, do we really want to add to that consolidation trend if there is a way that we can support those communities banks in serving the unique needs of their communities? And you have heard all the stories from your constituents about that person-to-person relationship. Right now, in one out of five counties in the United States, the only financial services they have there is a community bank. And if that community banker and our brethren, the credit unions, go away, what is going to happen?

So what can we do to lessen the expense of the compliance overlay? And how can we mitigate that to help those community banks and financial institutions?

Senator SCOTT. Mr. Grooms, I only have about 40 seconds left.

Ms. SAVARESE. Sorry.

Senator SCOTT. You will have to be succinct.

Mr. GROOMS. Not a problem. Thank you for that question. Because of the financial meltdown, margins shrunk as rates went down. The increase in regulatory burdens, expenses associated with that, we have seen smaller credit unions not able to take care of the costs associated with that and have to merge.

Senator SCOTT. Yes, sir.

Mr. GROOMS. We have shut 3 out of 10 branches down over the last 4 years as a result of the challenges that we have faced with costs associated with increased regulatory burdens.

Senator SCOTT. Thank you. And, Mr. Chairman, I will just say in my last seconds here that a couple days ago we had Dr. Hassett testifying before this Committee, and he was testifying on the fact that we have had a very uneven economic recovery. If you think about the lack of access to financial institutions to borrow money for a home or to start a new business, we might ask ourselves how do we expect for those rural areas that are on the wrong side of an uneven economic recovery to stimulate growth and opportunities when the access to the capital, the glue that makes things happen, is missing.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. And I would want to welcome my friend Steve Grooms here today. Steve, we do not often get a Montanan in front of this Committee. I think we have two this month. You are here this week, and we have got another one next week. But I just want to let the Committee know that Steve runs a great institution, and he understands small institutions but, more importantly, understands rural America. So it is great to have you here.

I am going to start out with my question to Mr. Levitin, and that is, would you agree that access to capital is pretty critical when it comes to economic development?

Mr. LEVITIN. Absolutely.

Senator TESTER. Yes. Let me give you the lay of the land in Montana, not from a credit union standpoint but from a banking standpoint, because I have got those statistics in front of me. We currently have 42 banks that are domiciled in Montana. Twenty of those banks are less than $100 million. Twenty of those, almost half, less than $100 million. Three are over $1 billion, and we do not have a one over $10 billion. Since 2010, we have had 30 mergers in the banks alone—not the credit unions, just the banks. And so that is a pretty good cut. Now, that is the bad news.

The good news is that they have been bought up mostly by banks inside Montana, so those branches have stayed open. But if we continue down this line, I will tell you they will sell out to the big guys, to one of the five big ones, and then I guarantee you those communities will not have branches because they will close them down the same way Steve has had to with four of his branches. And those communities will not have access to credit.

We are talking about areas where, if you close the bank down in my little town, I have got to go 50 miles. And I guarantee you that if JPMorgan Chase owned that bank, they would close the one down that is 50 miles away.

So we have got a real problem in rural America, and it is one of the reasons why I think it is very critical that we address this issue of regulation because, as Ms. Savarese has pointed out, you have economies of scale with regulation and technology. And if we continue the way we are, the very people that we are concerned about, the big guys, we are empowering them by reducing competition in the marketplace.

So, Steve, I am going to go back to you now since I have been talking about banks. Over the last 8 years, can you tell me how your regulatory burden has changed in a credit union of $170 million?

Mr. GROOMS. Thank you, Senator Tester. Thank you for your support of credit unions and all you do to help the little guy, make sure they are taken care of.

Over the last 8 years, we have seen significant increases to the regulatory burden. With CFPB, we have an additional regulator that is an added burden that we have to deal with. We have talked about the TRID, the qualified mortgages. It has been about $350,000 worth of added expense we have calculated, as we have had to hire an additional compliance specialist. We have had to bring in three or four different pieces of software to assist us. We are having to do some reporting with the HMDA manually and collect some of this information. So rules are changing in January of 2018, went from 13 to 25, they are talking 40 to 48 more data points that we have to figure out how to collect. This is a pretty significant burden, and when the financial meltdown took place, we felt like we were wearing the white hat helping those that needed the help. But we are getting painted with a broad brush with the big guys that has really made it difficult, particularly for small credit unions.

Senator TESTER. So in your bank of $170 million, it was an additional cost of about $350,000. Is that over the 8 years or is that per year?

Mr. GROOMS. That is over the last 7 years.

Senator TESTER. Over the last 7 years. And could you, Ms. Savarese, very quickly tell me what kind of impact it has had on your bank?

Ms. SAVARESE. Well, one of the things that we just did, Senator, was an analysis of our non-interest expense in the institution and how much was related to compliance. And I do not have a baseline from before Dodd-Frank, but right now over 24 percent—so $1 out of every $4—goes to compliance-related expenses. And on the mortgage side, it is over a third. So out of every dollar that I spend that is not related to interest, is related to compliance.

Senator TESTER. Thanks for those comments. I would just say this: I mean, I think that we need to have profitable community banks. We need to have a profitable banking system, quite frankly, and we need to have credit unions out there that are doing what they need to do to make sure that they are serving their customers.

My concern is from a Montana perspective that if we continue without adjustment, with all the best of interest, we will end up not having access to capital in rural America. When that happens, we have got a big problem in this country.

I want to thank the Chairman and Ranking Member for having this hearing.

Chairman CRAPO. Thank you, Senator Tester. I agree with those concerns.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

During the 114th Congress, I introduced legislation that would provide relief for community financial institutions that would have to report new data points as a result of CFPB's amending of the Home Mortgage Disclosure Act, or HMDA. I have been working at introducing new legislation in this Congress—as a matter of fact, we introduced it yesterday—that basically would exempt smaller institutions from the post Dodd-Frank HMDA data reporting requirements due to come online in January of 2018, I believe. Senator Heitkamp and I are cosponsoring that legislation.

For those on the panel whose institutions would be involved in the consumer mortgage market, could you comment on some of the challenges you face getting ready for the new HMDA data reporting requirements and the relief that this legislation might offer to you and your institutions?

Mr. HEITKAMP. Happy to. I think it is huge. I want to tell you thank you very much for that. Right now, the 23 points that we are collecting right now is already a lot of work that we are doing, but we are already trying to get ready for the new collection. We are starting to implement processes in the bank to actually collect that data so we will be ready for next year when we do have to start reporting. And I can tell you my staff has already reported it is substantial because it is now going to 48 data points. So it is checking. So we have hired several—well, we have two people in our bank instead of one, and then we have also hired outside counsel to help us with making sure that we are getting the right data in the right places.

Senator ROUNDS. It would be an ongoing cost?

Mr. HEITKAMP. It would be ongoing.

Ms. SAVARESE. And, Senator, in addition to the ongoing cost, the startup cost, as Scott is saying, is—we set up priorities for strategic projects in the bank, and it sort of makes me sad that on top of doing things like introducing new basic banking, checking account, and some things that serve our consumers more effectively, we have to have the HMDA preparation as a major initiative taking up time, technology, and taking it away from the things that we could do to serve our customers.

Senator ROUNDS. Well, unfortunately, we probably will not be able to save the costs, the originating costs that some of you are going to bear, and I notice all of you—have all of you made money in the last couple years? Is anybody not making money? See, you are business people. You are going to make money. You are going to spend the money when it comes to the regulatory requirements. But then you are going to pass it on. Somebody else is going to take that cost, and I think that is the part that sometimes gets lost, particularly in our smaller banks.

Let me just ask—and I am just going to ask for a yes or no. Have you raised fees in the last couple of years to your consumers? Let us go right down the line.

Ms. SAVARESE. Yes.

Mr. GROOMS. Yes.

Mr. HEITKAMP. Yes.

Mr. BERGL. We had to raise our mortgage origination fees specifically.

Senator ROUNDS. Sir?

Mr. BISSELL. We have begun to cut as many fees as possible for our customers. You are right that those costs have to go somewhere, but we have tried very hard to not put that into fees and put it on the backs of our membership.

Senator ROUNDS. In this particular case—and I will ask this of Mr. Bissell—would the HMDA legislation that we have proposed impact your institution?

Mr. BISSELL. It would, yes. We are the top mortgage provider in our market. About one out of every four mortgages is originated by Greylock.

Senator ROUNDS. I recognize that each of you will have a different opinion on it, but I am just curious. Do you see the additional data points that would be required under this legislation—

did you feel it was necessary that your institution collect those data points?

Mr. BISSELL. Well, I want to acknowledge up front that we are a larger institution. We are $1 billion. And so as a larger institution, I have the luxury of a large IT department, a large lending department, and a large risk management and compliance department. So I am certainly conscious of the fact that at a smaller institution the impact of collecting those data points could feel much larger to them. So our approach is we understand what is coming down, and we adjust our business model to meet that.

Senator ROUNDS. And I think that is a lot of what we are hearing here today when we talk about fewer banks being created in terms of new ones coming online, and those that are smaller are being picked up by large ones who actually have the size to be able to afford the added regulatory compliance capabilities.

I am just curious. I want to run into another one that we have talked about, and that is the TAILOR Act. Earlier this year, we introduced the TAILOR Act, which would require Federal regulators to more precisely tailor the regulations they issued based upon the risk profile of the institutions. Secretary Mnuchin echoed the idea that the bank regulations should be tailored to the activity, not based on size alone. And I am running out of time, but could I just very quickly get either agree or disagree that something along the lines of the TAILOR Act would be beneficial or not beneficial to the consumers that you serve?

Ms. SAVARESE. Completely agree.

Mr. GROOMS. Agree.

Mr. HEITKAMP. Agree.

Mr. BERGL. Agree.

Mr. BISSELL. I think scaling things appropriately makes sense.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman. Thank you all for being here. I am glad to see that two of our witnesses here today are from Massachusetts: Ms. Savarese, Mr. Bissell. So thank you for the work you do. It is good to see you in DC.

These hearings are about ideas to encourage economic growth, and every single banking trade group represented on this panel sings pretty much the same song, and that is that the key to stimulating economic growth is rolling back the rules in their part of the banking industry.

I have concerns about these proposals, but today I want to focus on just one. In Dodd-Frank, Congress directed the Fed to impose tougher rules on banks with more than $50 billion in assets. That is about 40 giant banks altogether, the top one-half of 1 percent. Now, together, these 40 banks control more than $14 trillion in assets, which is about 95 percent of all the banking assets in the country by just these 40 banks.

One proposal which Republicans on this Committee pushed last year is to raise that $50 billion threshold to $500 billion, exempting dozens of huge banks from tougher scrutiny.

Professor Levitin, do you think that this poses risks to the safety of the financial system?

Mr. LEVITIN. Yes, I absolutely do, Senator Warren. We know that the failure of banks that were far smaller than $500 billion—such as Washington Mutual, which I think was around $300 billion; Countrywide, which was never more than about $120 billion—we know that the failures of much smaller institutions than $500 billion have had serious systemic effects on the financial system. Frankly, it is rather reckless to consider a $500 billion threshold.

Senator WARREN. So this change would pose real risks. In your view, would the change stimulate any meaningful economic growth?

Mr. LEVITIN. No. To the extent that there are any savings from compliance costs there for the larger banks, it is much more likely that they would get passed on to the banks' shareholders in the form of higher dividends than to consumers in terms of lower rates on loans because the market for capital is more competitive than the market for—than the consumer market.

Senator WARREN. Thank you.

Now, an alternative proposal may actually be worse, and that is eliminate the $50 billion threshold entirely, cut nearly every giant bank loose, and direct American regulators to apply stricter standards to these banks only if they meet a set of criteria established by an international banking regulatory body.

Ms. Savarese, your organization submitted a letter to this Committee in support of that proposal. One of the factors the bill requires is that our regulators must look at the global reach of a bank. Do you think that a bank can impose a risk on the U.S. economy only if it has international operations?

Ms. SAVARESE. I think what the bill proposes is that there is a broader analysis of the complexity of the institution and the systemic risk that it presents. And so there were actually five different things that could be taken into account. Each one was not mandatory, so, for example, you could have an institution that did not have international interconnectedness and, therefore, that would not be applicable to that circumstance.

However, what they are saying is for those that do, you should take that into account in judging the risk. It is a risk-based approach.

Senator WARREN. If I can, I just want to understand, and that is the part I am not quite getting. There are only five factors. One of the five factors is about international connections, and I am just trying to understand why it is there.

The way I see it, it makes no sense to apply a set of international standards to determine whether or not there is a threat to our domestic economic system, that that is actually where we should keep our attention. And I do not quite understand the ABA's argument on this aspect of financial regulation.

Ms. SAVARESE. I think that the point is to enhance the risk-based analysis by adding factors, and if you think about it, if a bank has international interconnectedness, it actually has a little bit of a higher risk profile than one that does not. And so if I am the regulator, I am going to want to understand that so that I can then say, hey, are those global events going to impact this? And, by the way, we still have an invitation to you to come to our bank.

Senator WARREN. And I am ready.

Ms. SAVARESE. I would like you to do that. Good.

Senator WARREN. You know, the only thing I would say on this—because I do worry about banks like Countrywide that were entirely—had nothing but domestic operations, obviously got big and brought down the economy. I think it is really dangerous to mess with the $50 billion threshold. The banks that would be cut loose under these proposals can pose a real threat to the economy. Look at what happened in the 2008 crisis. You know, Countrywide in 2006 had less than $200 billion in assets, but was responsible for 17 percent of all the mortgage originations in the country. And when they failed, it sent shock waves throughout the entire economy.

The same thing could happen again with a bank of that size. In my view, it is better to keep the regulation threshold where it is. Let the Fed tailor their rules, as it has been doing already, and stay focused on risk.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman. And I want to also thank our Ranking Member. And I want to quickly recognize one of today's witnesses: Dallas Bergl, the CEO of INOVA Federal Credit Union, in Elkhart, Indiana. I am pleased to see someone else from Indiana here before us. I have known Dallas for a long time. He has been an extraordinary leader not only in the credit union world but in the financial world as well.

As I said, within the credit union industry, Dallas is very, very respected not only in Indiana but nationally, as he serves on the Board of Directors of both the Indiana Credit Union League and CUNA. We appreciate you being here today, Mr. Bergl, and I look forward to your testimony and, therefore, I will start with you.

While we look at this, last summer Senator Ben Sasse and I wrote a letter to CFPB Director Cordray, garnered roughly 70 signatures from our colleagues urging the CFPB to utilize their Dodd-Frank authority to more carefully tailor financial rules to match the unique roles of community banks and credit unions. The fact that 70 Senators agreed to sign speaks to the widespread support here for common-sense regulatory relief.

And so what I would like to ask you is to bring that Hoosier common-sense perspective to this. Can you highlight the section of your testimony that you think speaks to the need for a more tailored approach from the CFPB and from any other regulators?

Mr. BERGL. Thank you, Senator, and we very much appreciate your leadership on that letter and the work you did in the House as Dodd-Frank was being structured to try to provide a system in which smaller banks and credit unions would not be swept up with the bad players of the time.

Unfortunately, today the reality is we have effectively, although we are well below that threshold, the $10 billion threshold at $336 million in assets, gotten swept up in most of the regulatory reforms that have been promulgated by the CFPB. Our organization is not large enough or structured, and certainly was not prior to a number of these regulations coming out, to handle the additional financial burden related to that. So we have had to make numerous changes within our own organization, and, in fact, we have reduced the overall force, the head count in our organization, in order to generate enough revenue for some of the implementation of the software we needed and to bring in the kind of expertise that we needed in reg compliance, not only in the mortgage area but globally. So the financial burden for us has been greater than what may be a $1 billion credit union or larger.

Senator DONNELLY. And those people could have been out developing or approving loans for small businesses, for mortgages, for similar things that can make the community grow?

Mr. BERGL. Yes, Senator. I tell people that when I was younger, I used to wake up every day working for a credit union. I loved the job, and I would think, "What great things can I do for my members today?" I wake up today thinking, "How am I going to deal with the regulations and avoid my regulator in NCUA coming down on me, let alone the CFPB?"

Senator DONNELLY. Well, not to get personal, but I like the way you used to wake up before rather than now.

[Laughter.]

Senator DONNELLY. To the other witnesses as well, most of us agree community banks and credit unions are overburdened by regulations and need relief, but—and you have all said it, too—at the same time, there is no desire to roll back the rules on the Wall Street banks and financial institutions that caused so much of the pain. Even the regulators, however, do not always have a uniform opinion on what makes a community financial institution.

And so, you know, is it institutions below $10 billion in assets? Below 50? Should we consider geographic scope in lending activities?

I would love for each of you to tell me what you think helps to define a community financial institution. Ms. Savarese?

Ms. SAVARESE. Thank you, and——

Senator DONNELLY. If I had 5 cents, I would save with you.

Ms. SAVARESE. Well, thank you.

Senator DONNELLY. Actually, I would save with Dallas.

[Laughter.]

Ms. SAVARESE. Well, it is good to know you are loyal. You know, when I keynoted at the first Federal Reserve Community Bank Conference, that was half of what we were trying to focus on, is what defines a community bank. What I think is wonderful about the approach that has been taken by this Committee is understanding there are many factors that go into defining that.

I have a colleague who has a bank that is now exceeding $10 billion, and yet if you looked at his operations, you would say it is so values-driven, it is so focused on his community, he is so generous.

So I think arbitrary thresholds are very difficult, and instead, taking in scale and scope and complexity and risk profile is the appropriate way to deal with it. We are $3 billion now. When I started with my institution, we were 500. I would say we are still a community bank.

Senator DONNELLY. Well, thank you. And I can see I am out of time, and I know our Chairman is trying to keep this in line. But I want to say to Mr. Heitkamp that your cousin is a terrific member of the Committee.

[Laughter.]

Chairman CRAPO. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. I am sorry I have been popping in and out, but they do not check with us first before the Chairman schedules these hearings, you see. So we have to be several places at one time.

Since I am here on the end, I cannot see your name plates, so I will just—thank you. Thank you. I will just kind of throw this out to anyone. Do you still think we have institutions that are too-big-to-fail in America?

Mr. BERGL. I believe that to be the case, Senator. I think that we have—if you just look at the pure numbers in the banking industry, the largest banks have gotten even larger at the same time that we have lost the smallest financial institutions in both credit union and banking space over the last decade.

Senator KENNEDY. Does anybody disagree with that?

Ms. SAVARESE. Yeah, I would like to take a contrary view. I think one of the things that the legislature has done with its leadership in the last 7 years, and the regulators, and the banks themselves in terms of simplification, is mitigated those exposures.

One of the things we have to think about is we have a large and diverse economy, and we want our large customers to go to our institutions, not have to go overseas——

Senator KENNEDY. I do not mean to be rude, but I want to respect my 5 minutes. Well, let me ask you this: Let us suppose Morgan Stanley went bankrupt tomorrow. You do not think it would have a substantial impact on the American economy——

Ms. SAVARESE. You asked——

Senator KENNEDY.——scare the living daylights out of everybody else and cause other banks to stop trusting each other?

Ms. SAVARESE. I think that it would certainly have an impact. I would argue that I think that through Dodd-Frank and a variety of other measures that have been taken, we have an orderly, non-chaotic way to deal with that that would protect the financial system.

Senator KENNEDY. Have you read Dodd-Frank?

Ms. SAVARESE. Yes, sir.

Senator KENNEDY. All 2,000 pages?

Ms. SAVARESE. Yes, sir.

Senator KENNEDY. And 22,000 regulations?

Ms. SAVARESE. Twenty-five thousand.

Senator KENNEDY. You can stand on it and paint that ceiling.

Ms. SAVARESE. Yes, sir. I know that.

Senator KENNEDY. It is an embarrassment.

Does anybody really believe on the panel that our community—I will call them our "community banks." I am talking about banks and credit unions with less than, say, $10 billion in assets. Does anybody here believe they did anything to contribute to the meltdown in 2008?

[A chorus of noes.]

Senator KENNEDY. Well, geez, I thought this great bill, Dodd-Frank, decided to regulate them to half to death. Am I wrong? Haven't we lost 1,700 small banks and credit unions which have been forced, because of the outrageous regulatory costs, to either sell or merge, which further concentrates assets, which undermines the whole purpose of Dodd-Frank? I mean, was I playing Frisbee in the quad when they discussed that in class?

Mr. LEVITIN. With respect, Senator, there has certainly been consolidation of the community banking and credit union industry, but I do not know that it can be pinned on Dodd-Frank. That consolidation has been going on for decades. Credit unions have been declining in number since 1979, and the pace has not picked up since Dodd-Frank.

Now, Dodd-Frank certainly increases regulatory burdens, but there are a lot of other factors that are going on.

Senator KENNEDY. Mr. Levitin, have you ever run a small bank?

Mr. LEVITIN. No, I have not.

Senator KENNEDY. OK. If you were head of a small bank, you have got, let us say, 60 employees, and all of a sudden they put in front of you a 2,000-plus-page bill and 25,000 pages of regulations. You are telling me that is not going to dominate your entire business to the point that you cannot even worry about making loans to the community? Are you telling me this is a coincidence?

Mr. LEVITIN. First of all, I think I would dispute your characterization of the number of pages of regulations. The actual regulations are more like a few hundred pages, and they apply to very specific things. Most of it is——

Senator KENNEDY. Well, one of you all is wrong then.

Mr. LEVITIN. Most of that is—no, I can tell you what the rest of the number is. It is the background materials on why the regulation is needed. Those can be hundreds and hundreds of pages for each regulation. The actual rules are not very long. I read these, I teach these. They are masterable. It takes some time. I am not going to argue with you that there is an increase in regulatory costs from Dodd-Frank. But it is not a game changer.

Senator KENNEDY. I am out of time. Thank you, folks, very much. Forgive me for being so candid, but you have got to cover a lot of ground in 5 minutes.

Chairman CRAPO. You did a good job.

Senator Heitkamp.

Senator HEITKAMP. Thank you so much, Mr. Chairman, and I want to take a little credit for Mr. Grooms, too, because you represent my State, and you are part of that vibrant community bank network that we have. We are grateful to have you, and I am not going to let Tester take all the credit.

Mr. GROOMS. Thank you. We are pleased to be in North Dakota as well.

Senator HEITKAMP. You like it better than Montana, don't you?

Mr. GROOMS. That will be our secret.

[Laughter.]

Senator HEITKAMP. Yeah, do not tell anyone, especially Jon. And, also, if the last name is Heitkamp, we are related. And we have tried to trace it back, but, you know, it is great to see you here, and it is great to see all of you. A lot of ground has been covered that I wanted to also cover, especially as it relates to mortgage lending. But I will start out by saying I think there is a great will on this Committee to actually do what you need us to do.

Unfortunately, in Washington, DC, trying seems to get some attention, but doing, we never seem to get it over the finish line. And I know the Chairman and the Ranking Member, especially the Chairman, we have been involved in a number of groups since I have been on this Committee that, really, we get it. We understand what you are saying. We understand the additional burdens, the additional costs, and we understand how difficult that is to maneuver.

One of the things that I will say that we see trends on is that the application of artificial intelligence in compliance, and I wonder: Well, how is Lincoln State Bank in Hankinson going to be able to afford? So they are going to have to do all the compliance by hiring people. But the big banks, the big institutions, will see their compliance go down by application of artificial intelligence, and that is something that we have not even had a conversation about.

And so kind of looking forward beyond the challenges of Dodd-Frank, I would like to just have a discussion on what you think threatens banks your size. You know, take us out of the regulatory world. And what can we anticipate 10, 15 years into the future so that we can keep you in business? And we will start with Ms. Savarese?

Ms. SAVARESE. You know, Senator Heitkamp, I was just with your constituents on Monday.

Senator HEITKAMP. Yes, and thank you.

Ms. SAVARESE. And they all say thank you for your support. You know, it is such a forward-looking question, and thank you. And also to your point about the bipartisan approach that this Committee is taking, it is so exciting to see. You know, FinTech—you talked about AI, artificial intelligence—is a huge issue, and what has been wonderful is the regulatory agencies are trying to support community banks, understanding how to partner with FinTech so that they can be competitive. It could be a leveler, a field leveler, for them.

Senator HEITKAMP. That is very interesting.

Ms. SAVARESE. So we are working at ABA—we actually published a playbook for community banks on how to navigate through FinTech. I think that is a big thing.

Senator HEITKAMP. OK. Mr. Grooms?

Mr. GROOMS. Thank you, Senator Heitkamp. Thank you for your support of credit unions as well. FinTech and nonregulated entities, payday lenders, a big issue, and we want to make sure we take care of those that need taking care of and not let the entities that are not regulated get away with things that we cannot.

Senator HEITKAMP. That is a dirty little secret about payday and predatory lending. The more we squeeze legitimate community-based organizations, the more the nefarious, truly predatory folks crop up.

Mr. GROOMS. Exactly. Thank you.

Senator HEITKAMP. Mr. Heitkamp.

Mr. HEITKAMP. I kind of agree with—FinTech is going to where we are going to be able to look in the future, how we are going to deal with technology, how we are going to deal with those—what did you say, the word that you used for pseudo——

Mr. GROOMS. AI.

Mr. HEITKAMP. AI, artificial intelligence, yeah, is what you are looking for down the future is what we are going to have to really pay attention to and how we are going to comply with that.

Senator HEITKAMP. OK. Thank you.

Mr. BERGL. I would say what you might see in the future 10 years from now if things do not change is that the small credit unions and banks that you are looking at might be $100 billion or $500 billion instead of what you are looking at today. But a couple of things, quickly, that could help in the credit union space, there is a 15-year consumer loan limit. We cannot make loans longer than 15 years by statute. That could quickly and easily be corrected. There is also a one-to-four family home regulation whereby if you are a bank and you do a home for one-to-four family for an investor, it is a mortgage, which it should be. In the credit union world, it is considered a commercial loan or a business loan. So that is a little bit of a road block for us, a major road block for us in serving small individual investors who want to buy these homes because it counts against their business gap. Those two relief items could help us immensely in improving economic growth in our community.

Senator HEITKAMP. Mr. Bissell?

Mr. BISSELL. Thank you for the question. I think you had asked what is the biggest threat or the biggest opportunity for us going forward. I actually want to go back to one other issue that came up earlier, and that is the opioid crisis. When I think about economic development, growing the economy, I think about putting people back to work. One of our largest and best-run family-owned companies in my region is a concrete construction firm that won a contract, needed to hire hundreds of people. Sixty-plus percent of the people that applied failed the drug test. Another chunk of them refused to take the drug test upon learning that it was necessary. So those are good-paying union jobs with full benefits that they eventually were able to fill, but you can imagine what a struggle that was. And it is because the opioid epidemic is all across the Northeast. So that is an issue that actually ties directly into economic development for us.

Senator HEITKAMP. Thank you.

Mr. LEVITIN. FinTechs offer a lot of possible opportunities, especially on the compliance side. But, remember, FinTechs also include consumer-facing FinTechs, and those pose some real risks because they may not have the same regulatory burdens as community financial institutions. They are competition. So a company like Quicken Loans that is not a bank, if they get a Federal FinTech charter, they are going to be able to operate nationally presumably without regard to any State usury laws and the like. But they are not going to have the same regulatory burdens as other banks, and that seems to me to be a problem.

Senator HEITKAMP. And I only do this because, honestly, we spend a lot of time—we have been swirling around all the issues on qualified mortgages and appraisals and all the things we know that challenge local folks. I think way too often in Washington, DC, we deal with the problem that is immediate in front of us, only to look up and see a crisis looming. And if the Chairman will just indulge me one question, since there is no one else here, if——

Chairman CRAPO. One very brief question and a brief answer.

Senator HEITKAMP. One very brief question. Ex-Im Bank, I know that your bank, Mr. Bissell, does a lot of work, obviously with GE being a major employer and no longer a major employer, can you just give me some idea on how significant you think Ex-Im Bank is to the work that banks your size do?

Mr. BISSELL. Yeah. In our region, there are quite a few spinoffs, smaller subsidiaries that came off of GE's presence formerly in our community, and there are a lot of specialty manufacturers that do import and export work. And so it is troubling to see the Export-Import Bank really not functioning. I was reading that some of those GE jobs, they are no longer in my community, but they are actually moving to Europe now because there are export-import type agencies that are fully functioning in competing countries.

Senator HEITKAMP. We need you guys to tell that story more.

Mr. BISSELL. Thank you.

Senator HEITKAMP. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you. And Senator Brown has one more question.

Senator BROWN. Actually, I thought it was one more round. Is it?

Chairman CRAPO. One more round for you.

Senator BROWN. OK. Thank you. Considering this is the first time ever that Senator Heitkamp has had her first cousin, although they do not admit to knowing each other——

[Laughter.]

Senator BROWN. How many Heitkamps have any of us ever met? So I would stand up for my friend from North Dakota.

Senator HEITKAMP. And all Heitkamps are high quality. I want you to know that.

Chairman CRAPO. So stipulated.

Senator BROWN. That counted as her second round, that comment.

Mr. Levitin and Mr. Bissell, some witnesses suggested that one way to spur economic growth is to change the structure and funding of the Consumer Bureau, the CFPB. Would you agree with this, the two of you?

Mr. LEVITIN. Absolutely not. The CFPB certainly does have a different structure than other bank regulators, but that was deliberate because Congress learned that there were problems with the effectiveness of other regulators. The CFPB has been remarkably effective, and to the extent that you hear industry complaints about it, that is probably an indication that it might be doing its job. No industry likes a regulator that is being tough about enforcing rules, but that is what the CFPB does. And the almost $12 billion in consumer relief that the CFPB has brought in in 6 years is unparalleled to anything we saw from financial regulators in the decades before it.

Senator BROWN. Mr. Bissell.

Mr. BISSELL. Senator, how the CFPB is structured, how it is structured going forward, is above my pay grade, but I will give you my opinion on the importance of it. When I think about, as I said, the $8 million of expense that we paid during the recession and I think about the tens of millions of dollars in loan losses that we took and the vast loss of American household wealth, it is a cost that is just unacceptably high. And what I worry about is that somewhere in the U.S. financial system right now is the next Wells Fargo scandal taking shape. None of us knows where it is or what it is, but we cannot afford to let those kinds of scandals and unethical predatory practices take hold. When they do and they get out of control, we experience the significant financial crisis that we just finally are healing from. That is what I worry about.

Senator BROWN. Thank you. And my last question, Mr. Chairman, will be a yes or no across the panel, but thank you. And I have one comment on their comments, particularly on Mr. Levitin's. I sat through this Committee for 2 years. Senator Crapo was not the Chairman. It would have been different, I believe, if he had been. But this Committee did not—failed to fill out, failed to confirm, even to have hearings on a number of nominees to fill out the Federal Reserve, the SEC, the Export-Import Bank. This Committee, for whatever reason, refused to do it, Senator Crapo's predecessor. Again, no blame at all on Senator Crapo.

My question is a yes or no, and I will start with Mr. Levitin. The President proposes to eliminate two important programs for economic development: Community Development Block Grants and the CDFI Fund, which we have talked about. Could you just give yeses or noes? Have these programs been valuable to economic development in your region? Speaking for all of you, each of you, Community Development Block Grants and Community Development Financial Institution Funds, have they been valuable to economic development in your region? Mr. Levitin.

Mr. LEVITIN. Yes.

Mr. BISSELL. Yes, absolutely.

Mr. BERGL. They have been a part of much bigger programs in our community.

Mr. HEITKAMP. Yeah, they have been a part also.

Mr. GROOMS. Yes.

Ms. SAVARESE. Not as much of an impact in our community because of the demographics.

Senator BROWN. OK. Perfect. Thank you. Thank you all, and thank you, Mr. Chairman, always for your help.

Chairman CRAPO. Thank you, Senator Brown.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman and Ranking Member, and thank you to all of you.

I have been in and out because I am juggling three meetings at the same time, so not only as freshmen Senators, they make us run around, so I may be a little bit out of breath, but they put me at the kids' table. So I am over here. And I appreciate you being here today. Thank you. And I appreciate the conversation, and along with that a lot of the written testimony that you provided ahead of time.

Let me start with Mr. Bissell. Mr. Bissell, in Nevada, like Massachusetts, we have legalized recreational use of marijuana, and the legalization of cannabis at the State level raises many concerns and ambiguities for banks and credit unions subject to Federal rules. As a result, many lawful marijuana businesses find themselves unbanked. Employees, vendors, and taxes must be paid in cash. Customers cannot pay with debit or credit cards, and legal businesses may have trouble getting small business loans or mortgages.

From a law enforcement perspective—and I worked in law enforcement for most of my career—I am concerned about the security risks that this presents, which is why I cosponsored legislation to provide certainty for lawful cannabis-related businesses to gain access to the banking system.

As a Massachusetts financial institution, what would it take at a Federal level for you to become comfortable doing business with a lawful marijuana business? And I am not only curious about how you will respond, but the rest of you as well, because I am sure you have thought about this, the other panel members as well.

Mr. BISSELL. Yes, Senator. Thank you for that question. In my opinion, it is critical that the Federal structure line up with the State structures. As these kinds of businesses have been legalized State by State, it does create, as you said, a significant security risk. I have talked to credit union colleagues in Colorado who have been working on these issues for years, and they did see initially significant amounts of cash moving around in a very concerning way.

Some of my colleagues in that State were able to come up with a safe harbor banking approach that was effective, but it took a ton of work, a lot of investment. I think it would be much, much better for the whole financial system and for these businesses if the regulatory structure were rationalized so that—I think in Massachusetts there is only one bank providing these services currently to marijuana-related businesses.

Senator CORTEZ MASTO. Thank you.

Any other comments from anyone else?

Mr. BERGL. Our position is that legitimate businesses—credit unions should be allowed to serve legitimate businesses in the United States. That is not our job to sort out what those are.

Senator CORTEZ MASTO. I appreciate that. Thank you.

I am going to open this question up as well, and this is really around GSE reform and small lender access. When FHFA Director Watt was before this Committee a few weeks ago, I asked him about small lender access in the context of reform of Fannie Mae and Freddie Mac, and specifically I think any reform of the GSEs should ensure that community banks and credit unions have equal access to the secondary mortgage market, and any efforts to expand credit risk transfer should not unfairly privilege the big banks with securitization operations over small lenders without them.

Can you discuss the Credit Union National Association's priorities for GSE reform and specific concerns about small lender access? And let me start with Mr. Bergl, and if anybody else wants to join in.

Mr. BERGL. Absolutely. Thank you very much for the question. We are very concerned about ensuring any GSE reform, including small banks and credit unions, and particularly access to secondary market, is vital to our ability to continue mortgage lending. Smaller institutions can easily outlend their asset base if they do not have a market to provide—or to sell mortgages into. And credit unions actually have a fantastic track record through the financial crisis that our loans perform better than the ones that were being done at some of the larger national banks. And I think that we should—well, we definitely need to ensure that we have continued access and the same pricing that is made available to those kind of institutions.

Senator CORTEZ MASTO. Thank you.

Anyone else?

Mr. BISSELL. I would agree. At Greylock, we sell about $30 to $40 million of mortgages into the secondary market every year to Fannie Mae. We still service those mortgages. We are the top mortgage provider in our market. So it is critically important that the GSEs—the resolution there be done very carefully and in a way that maintains ample access for us.

Senator CORTEZ MASTO. OK. Thank you.

And I know my time is running out, but I have a quick question, because I am from Nevada and we were ground zero for the crisis. And I know that oftentimes we have to find that balance between regulation but letting the community grow and the economy grow as well. And we certainly want to calibrate rules appropriately for community financial institutions, but at the same time, we do not want to forget the causes and consequences of the last crisis.

And so I guess, Mr. Levitin, I am curious: In the long run, would it be bad for community banks, credit unions, small businesses, and consumers to roll back some of the safeguards we imposed after the crisis?

Mr. LEVITIN. To roll back the safeguards wholesale, absolutely. To have targeted rollbacks, no. But, unfortunately, the asks that are being put forward by some of the trade groups are not tailored just to small institutions. Let me give you one example. National Association of Federal Credit Unions has proposed raising the threshold for CFPB examination and supervision to $150 billion from $10 billion. That is a proposal that will benefit only, I think, three of NAFCU's members directly, which makes it a little strange. But it is not in any way about small institutions. We already have a small institutions exemption from CFPB examination and enforcement. The CFPB has itself enacted a number of small institution exemptions. Continuing on that path of tailored small institution exemptions I think is a very reasonable approach. But wholesale exemptions of institutions of $150 billion or, as Senator Warren was asking me about, a $500 billion level, there is no cause for that.

Senator CORTEZ MASTO. Great. Thank you. Thank you all very much. I appreciate the conversation today.

Chairman CRAPO. Thank you, Senator. And I, too, thank all of our witnesses for being here today and sharing your information with us.

Some Senators may wish to submit questions to you. I will tell the Senators those questions are due Monday, and we would encourage the witnesses, if you receive further questions, to please respond promptly.

Before we end today's hearing, I would like to touch briefly on housing finance reform. Housing finance reform is a top priority for this Committee, and the role of small lenders in that discussion is very important. And so actually I guess I am asking another question but not one I want you to answer today. I would like to ask each of your organizations to commit to work with us and with each other to engage with the Committee as we examine how small lender access in the secondary market can be achieved effectively and efficiently.

Also, one more bit of housekeeping. This morning, Senator Brown and I have made public the stakeholder submissions that the Committee has received in response to our request for recommendations about how we can approach and achieve greater economic growth, and those submissions may be found on the Committee's website. I encourage not only our witnesses but everyone to review those, and we welcome further comment and analysis on these issues as well.

With that, this hearing is adjourned.

[Whereupon, at 11:38 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow]:

June 8, 2017

Testimony of

Dorothy A. Savarese

On behalf of the

American Bankers Association

before the

Committee on Banking, Housing, and Urban Affairs
United States Senate

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June 8, 2017

Chairman Crapo, Ranking Member Brown, and members of the committee, my name is Dorothy Savarese. I am chairman, president and chief executive officer of the Cape Cod Five Cents Savings Bank which is an independent Massachusetts state-chartered savings bank founded in 1855. My bank has $3.1 billion in assets and 24 locations throughout Cape Cod, the islands and Southeastern Massachusetts.

I am also the chairman of the American Bankers Association and I appreciate the opportunity to be here to present ABA's views regarding regulatory relief for small financial institutions. The ABA is the voice of the nation's $14 trillion banking industry, which is composed of small, mid-size, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend more than $9 trillion in loans.

Regulatory relief is not a new subject, yet the imperative to do something grows every day. The growing volume of bank regulation—particularly for community banks—is negatively impacting the ability of banks throughout the nation to meet our customers' and communities' needs. We believe that targeted, sensible changes to financial regulations will help us accelerate growth in the American economy, without compromising safety and soundness. Our request is simple: remove regulatory impediments and let us accelerate growth in the American economy.

Let me begin by stressing that we agree on the need for strong regulation. Indeed, lawmakers, regulators and bankers themselves took important steps after the crisis to improve safety and soundness. But included in the 25,000 pages of new and proposed rules since Dodd-Frank became law, are requirements that are harming our ability to serve creditworthy customers and our communities.

In addition, the cost of compliance is driving some banks to close their doors. Every business day a bank in this country is either acquired or merged. That's not good for competition, consumers, or the U.S. economy.

Some in Congress have attempted to use community banks' continued resilience in the face of this onslaught as an excuse to leave the regulatory environment untouched. Indeed, as the wave of consolidation continues, banks are profitable and loans are growing. But that is what we should expect in a growing economy. Banks are lending because that is what banks do. We have found ways to meet our customers' needs in spite of the ups and downs of the economy and the regulatory challenges we face.[1]

The "everything's just fine" point of view also loses perspective on potential. Banks could be lending more, and the economy could be growing faster, if regulations were rationalized. Consider loan growth. Loans are growing, but at half the pace they did years before the financial crisis.[2] Community banks power the economy in part by providing nearly half of loans less than $1 million that go to small businesses, which in turn account for more than half of net new job creation. Is it any accident that both GDP growth and the business startup rate are running well below historical levels, especially at this point in an economic recovery?

Mortgages in particular remain tightly bound by a web of Dodd-Frank rules. According to a recent ABA survey, just 9 percent of single-family mortgage loans made in 2016 were made outside of the "qualified mortgage" box, which means a one-size-fits-all arbitrary regulatory standard is keeping too many creditworthy families out of homes they can readily afford.

[1] While nominal net income has grown, key measures of profitability still lag historic norms. For example, Return on Assets has averaged 1.0% over the last five years compared to 1.3% the five years before the Great Recession. More troubling is the Return on Equity has averaged just 9.0% over the last five years compared with 13.3% prior to the recession. Without sufficient returns to investors, capital flows elsewhere and less lending flows into communities.

[2] For example, from 2000-2005 (before the run up to the financial crisis) average quarterly loan growth was 1.9%. From 2011-2016 (after Dodd-Frank and again excluding the impact of the financial crisis where many banks were shrinking) average quarterly loan growth was only 1%.

Perhaps the most striking and obvious impact of excessive regulation has been on the rapid consolidation of the industry. Today, there are fewer than 6,000 banks—the first time since the 1890s. Since Dodd-Frank was enacted ***1,976 banks—or 25% of the industry—have disappeared***. Certainly, consolidation would have occurred without Dodd-Frank, but the ***increased pace*** of that consolidation since it was enacted has been extraordinary. More than 43% of banks under $100 million in assets have disappeared, as has 17% of banks between $100 million and $1 billion (see Table). This is a trend that will continue until some rational changes are made that will provide some relief to America's banks.

Consolidation Accelerates After Dodd-Frank Act

Asset	2004-2010	2010-2016
< $100m	-36.1%	-43.9%
$100m – 1b	4.4%	-17.8%
$1b - 10b	19.4%	11.9%
>$10b	-7.1%	8.6%
All Banks	-14.1%	-24.5%

Each and every bank in this country helps fuel our economy. Each has a direct impact on job creation, economic growth and prosperity. Community bankers are community leaders. They are involved in many local organizations, serve on school and hospital boards, donate thousands of volunteer hours to charities—all in addition to the advice they provide to small businesses, families and individuals, young and old, about their daily financial and banking needs. If this trend continues unabated, there will be fewer financial services in communities and less economic growth. Whether intended or not, the Dodd-Frank Act has added fuel to industry consolidation, reduced flexibility for product offerings, and increased the cost of providing financial services—a cost that is ultimately borne by customers.

This is why it is imperative that Congress take steps to ensure and enhance the banking industry's ability to facilitate job creation and economic growth through the credit cycle. The time to address these issues is now before it becomes impossible to reverse their negative impacts. When a bank disappears everyone is affected.

In the remainder of my testimony I would like to: (1) provide examples of how the regulatory burden has had an impact, and (2) provide details on a few of the many legislative actions that could provide relief to community banks.

I. Excessive Regulation Has Consequences for Banks and Their Communities

Regulation shapes the way banks do business and can help or hinder the smooth functioning of the credit cycle and economic expansion. Bank regulatory changes—through each and every law and regulation, court case and legal settlement—directly affect the cost of providing banking products and services to customers. Even small changes can have a big impact on bank customers by reducing credit availability, raising costs and driving consolidation in the industry. Everyone who uses banking products or services is touched by changes in bank regulation. Congress can help by eliminating unnecessary impediments which negatively impact every community across the United States.

The rules in Dodd-Frank have caused some banks to stop offering certain products altogether, such as mortgage and other consumer loans. For example, I recently heard from a bank in Southern California that, to its great regret, had to end its mortgage loan program. Dodd-Frank's mortgage regulations and disclosures meant the bank would have to purchase expensive software to manage the new layers of red tape—so expensive, in fact, that the bank was going to lose money on every single loan.

The fact is that most community banks are small businesses by any definition. ***The median sized bank in this country has only 44 employees***. There is simply not enough capacity to read and understand what rules apply (especially as rules are modified); implement, train, and test for compliance with those that do; and still have the time and resources to meet with individuals and businesses about their financial needs. Faced with the thousands of new regulations, the economics have forced many strong, well-run community banks to sell or merge with another bank.

Just last year, a banker in the Northeast wrote:

> "Unfortunately we became a victim of Dodd-Frank. The effects of Dodd-Frank, including the TILA-RESPA integration, the pending expansion of HMDA, ability to repay, forced-placed hazard insurance requirements, plus other regulatory issues such as the pending overdrafts rules, restrictions on small dollar lending, the military lending rule, the Durbin Amendment, etc… resulted in financial projections showing substantial declines in revenues and increases in compliance costs, reaching the point that in a few short years an otherwise healthy community bank with strong capital and satisfactory earnings could no longer meet a number of financial bench-marks set by the regulators. These conclusions forced the bank to

sell now when our shareholders and some of our employees would be less adversely affected."

In May of 2016 this bank merged with a much larger bank, resulting in approximately ***50% of the employees losing their jobs, all because of the cumulative impact of regulation***. Sadly, this is not an isolated case. This cannot be what Congress intended when it enacted Dodd-Frank.

Let me share a few more of the many examples I've heard as I travel the country for ABA of how bank regulation has impacted consumers across the country:

- One of my colleagues relayed the story of how, in the pre-Dodd-Frank world, a customer of hers whoneeded a new backhoe for his contracting business could call her up on a Friday night and get a verbal "okay" from the bank to make the purchase at a Saturday morning auction, knowing that he could come in first thing on Monday, fill out the paperwork, and be approved for the loan. She explained how, due to the inflexibility of regulations today, this kind of true relationship-based lending is no longer possible.

- Another $500 million bank in Texas has had to take all lending discretion away from loan officers and rely exclusively on a numbers-driven computerized underwriting model for fear of inadvertently violating fair lending regulations. As a result, they were forced to turn down a 30-year customer who has never been late on a payment and who wanted to guarantee a loan to fund a new HVAC system to restore heat to his daughter's home. Another customer was denied a loan despite having fully paid 20 loans to the bank.

- In another case, the customer of an Oklahoma bank passed away. The customer's daughter had been living with the mother and supplementing her mortgage payments while she was alive. Upon the mother's death the daughter wanted to remain in the house and continue paying the mortgage. The daughter did not qualify to purchase the home under ability to repay standards. This left the bank with the choice of foreclosing on the home and evicting the daughter or ignoring its policy and making a non-QM loan. **Instead this bank decided to charge off the loan – taking an immediate loss – and allow the daughter to continue making payments on her deceased mother's loan,** recapturing portions of the loss as the daughter makes monthly payments.

These stories are common at banks across the country. Together, they tell a story where regulation has meant product offerings are reduced, resources are reallocated to compliance rather than services, and good banks are forced to exit the market. It's the banks' customers who end up being hurt by all of these rules.

II. Legislative Proposals to Improve the Regulatory Environment and Our Economy

It is encouraging to hear lawmakers of both parties acknowledge the need for common-sense changes—regulatory calibrations that can kick-start our economy while maintaining a financial system that is safe, sound and resilient. ABA members have long advocated regulatory relief and other proposals that would help us better serve consumers and our local communities. When the full potential of America's banks to drive economic growth is realized, our customers, communities and country thrive.

ABA has, and continues to support, several legislative proposals as part of our *Blueprint for Growth* plan that would improve the regulatory environment and our overall economy. For example, we strongly support:

- The TAILOR Act (S.366), introduced by Senator Mike Rounds (R-SD), that would empower the regulators to "tailor" regulatory actions so that they apply only when required by the bank's business model and risk profile. Time and again, I hear from bankers wondering why the complex set of rules, reporting requirements, and testing that are imposed upon the largest, most diverse and global institutions become the standard applied to the smaller community banks in the country. The key to changing the consolidation trend is to stop treating all banks as if they were the largest and most complex institutions. Financial regulation and examination should not be one-size-fits-all.

- The Federal Savings Association Charter Flexibility Act (S. 567), bipartisan legislation sponsored by Senators Jerry Moran (R-KS) and Heidi Heitkamp (D-ND), that would provide thrifts with additional flexibility to adapt to and better meet the needs of changing economic conditions and business environments of their communities.

- Bipartisan legislation (S. 828) introduced by Senators Mike Rounds (R-SD) and Mark Warner (D-VA) that would expand banks' abilities to count municipal securities as high-quality liquid assets under the Liquidity Coverage Ratio. This legislation could be improved by removing similar impediments that discourage banks from taking municipal deposits.

- S. 1139, introduced by Sens. Jon Tester, Jerry Moran, and Heidi Heitkamp would provide relief from the Dodd-Frank Act stress tests, reducing the mandated frequency of testing for all institutions and removing many from the stress test process altogether. The Dodd-Frank Act, without real analysis, inserted artificial asset thresholds within the regulatory system. ABA has long sought reform of the stress test process as this imposes excessively heavy burdens on institutions for which stress tests are superfluous or not well suited. The legislation takes a critical first step to reform this process and we urge the Committee do more to broaden this relief even further.

- Legislation that streamlines the rules for Currency Transaction Reporting (CTR) by establishing an exception for very well-known customers and raising the current threshold for filings from $10,000 to $20,000.

- Bills and legislative proposals that would improve the regulatory environment and enable banks to better serve their communities by: raising the threshold for small bank holding company relief from $1 billion to at least $5 billion (S.1284); providing relief for mortgage servicing rights and trust preferred securities from Basel III capital requirements; creating a mutual bank certificate to help mutual institutions raise capital; and providing relief from regulatory requirements penalizing custody banks for taking deposits.

We hope that these bills can receive consideration by your Committee, either as part of this process or separately. As ABA noted in our April 12, 2017, letter to you Mr. Chairman and Ranking Member Brown, there are several additional proposals that we believe could both receive bipartisan support and achieve your goals of economic growth and community development. Specifically:

Increase Mortgage Lending

Existing mortgage rules are too restrictive and have made it difficult, and in some cases impossible, for creditworthy borrowers—especially low-income families—to obtain safe and sound loans from portfolio lenders. The complex and liability-laden maze of compliance has made home loan origination more difficult, especially for borrowers with little or weak credit history. Over-regulation of the mortgage market has reduced credit available to bank customers, raised the cost of services, and limited bank products. It is no wonder that the housing market—which drives much of our economy—has as taken so long to regain any momentum.

This concept has been supported by members on both sides of this committee and members of the House. ABA has long advocated for legislation that would treat any loan made by an insured depository and held in that lender's portfolio as compliant with the Ability to Repay and Qualified Mortgage (QM) requirements. Loans held in portfolio are, by their very nature, loans which can be repaid because the bank takes **all** the risk that the loan might default. These loans must be conservatively underwritten to protect the safety and soundness of the bank. Simply put: a bank would not stay in business very long if it made and held loans on their books that cannot be repaid.

Effective Bank Supervision and Regulation

There is a growing recognition of a bad fit in applying some regulations across the whole range of the very diverse American banking industry. Our industry is composed of small , midsize, regional and large banks; some with state charters, some with national charters, some that are commercial banks, others savings associations, some that are publicly owned, others family owned, and still others that are mutually owned by their customers. Others are diverse by their specialization, from agriculture banks, to trust companies, to wealth management, to banks that emphasize business lending, among others. The one-size-fits-all regulatory approach is the most notorious problem, but there can be an equally bad fit with regulations that are applied based upon size thresholds, such as labeling all banks with $50 billion in assets as "Systemically Important Financial Institutions" or SIFIs, or the host of new regulatory requirements that hit a bank when it crosses the $10 billion asset threshold.

What is needed is an overall principle for how we apply bank regulation. If we do not get it right, then we end up misapplying the regulations, which harms banks' ability to serve their customers, while providing suboptimal regulatory results. The overall trend of bank regulation in the last several years has been to standardize or homogenize the industry, making banks look more and more alike, when in fact we have a highly diversified industry necessary for a highly diversified $19 trillion economy.

ABA believes that the best solution is to tailor regulations according to the risks and business model of the bank. This will be the most comprehensive road to successful bank regulation. It encourages diversity of business models while providing a regulatory program most adapted to the risks of each bank.

Modernize Regulations that Prevent Acceptance of Stable Deposits

The FDIC has determined that certain traditional deposit accounts are considered to be "brokered deposits" and subjects them to supervisory limits and additional deposit insurance assessments. These restrictions and additional costs have limited the access of banks, including community banks, to a stable source of deposits that would increase liquidity. This unnecessarily limits the funding banks can make available for lending to small businesses and consumers. Legislation is needed to direct the FDIC to clarify that traditional deposit account products involving a direct, continuing relationship between a customer and an insured depository institution are not brokered deposits.

Create CFPB Advisory Opinion Process

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

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

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

Joint CFPB Small Business Administration Study and Recommendations on Collection of Minority and Women-owned Business Loan Data

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

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

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

Ensure proper oversight of the CFPB

As mentioned earlier, ABA members support strong consumer protection. Consumers are our customers, and we need to earn their trust every day to stay in business. We believe the CFPB is making important contributions to consumer protection, but we also believe the bureau needs more accountability. ABA has long supported the commission concept and believes that a commission structure is appropriate to address the extremely broad authority of the Bureau's Director. We believe that the commission approach would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and it would provide needed balance and appropriate checks in the exercise of the Bureau's authority. We urge Congress to require the commission to include members with consumer finance business experience and direct safety and soundness regulatory expertise. We believe this expertise provides an important and necessary perspective as standards are set and enforcement activities are undertaken.

Conclusion

Rules and requirements surround every bank activity. When it works well, bank regulation helps ensure the safety and soundness of the overall banking system. When it does not, it constricts the natural cycle of facilitating credit, job growth and economic expansion. Finding the right balance is key to encouraging growth and prosperity as unnecessary regulatory requirements lead to inefficiencies and higher expenses which reduce resources devoted to lending and investment.

Without reasonable and rational reform, we will never realize the thousands of businesses that could be started or scaled, the hundreds of thousands of homes that could be built and purchased and the millions of financial dreams that could come true but won't because they don't fit into the unnecessarily restrictive boxes our policymakers have contrived.

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

By eliminating unnecessary impediments to the natural credit cycle, Congress can help stem the tide of community bank consolidation driven by these unnecessary impediments which negatively impact every community across the United States.

PREPARED STATEMENT OF STEVE GROOMS

PRESIDENT AND CEO, 1ST LIBERTY FEDERAL CREDIT UNION,

ON BEHALF OF THE NATIONAL ASSOCIATION OF FEDERALLY INSURED CREDIT UNIONS

JUNE 8, 2017

Introduction

Good morning, Chairman Crapo, Ranking Member Brown and Members of the Committee. My name is Steve Grooms and I serve as the President/CEO of 1st Liberty Federal Credit Union in Great Falls, Montana. I am testifying today on behalf of the National Association of Federally Insured Credit Unions (NAFCU). Thank you for holding this important hearing today on ways to help community financial institutions foster economic growth.

I have 34 years of experience in the credit union industry, including the last 17 as the President/CEO of 1st Liberty Federal Credit Union. 1st Liberty FCU is a $170 million Federal credit union with over 17,000 members. It has seven branch offices and serves as the on-base credit union for Malmstrom AFB. In addition 1st Liberty FCU is located in the communities of Grand Forks, North Dakota and North Central Montana serving members of Grand Forks AFB, and the communities of Grand Forks, Conrad, and Cut Bank, Montana.

As you may know, NAFCU is the only national organization that exclusively represents the interests of the Nation's federally insured credit unions at the Federal level. NAFCU is celebrating its 50th anniversary this year. NAFCU member credit unions collectively account for approximately 70 percent of the assets of federally insured credit unions. NAFCU and the entire credit union community appreciate the opportunity to participate in this discussion on fostering economic growth.

Background on Credit Unions

Historically, credit unions have served a unique function in the delivery of essential financial services to American consumers. Established by an Act of Congress in 1934, the Federal credit union system was created, and has been recognized, as a way to promote thrift and to make financial services available to all Americans, many of whom may otherwise have limited access to such services. Congress established credit unions as an alternative to banks and to meet a precise public need—a niche that credit unions still fill today.

Every credit union, regardless of size, is a cooperative institution organized "for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes." (12 USC 1752(1)). While over 80 years have passed since the Federal Credit Union Act (FCUA) was signed into law, two fundamental principles regarding the operation of credit unions remain every bit as important today as in 1934:

- credit unions remain wholly committed to providing their members with efficient, low-cost, personal financial service; and
- credit unions continue to emphasize traditional cooperative values such as democracy and volunteerism.

Credit unions are not banks. The Nation's approximately 6,000 federally insured credit unions serve a different purpose and have a fundamentally different structure than banks. Credit unions exist solely for the purpose of providing financial services to their members, while banks aim to make a profit for a limited number of shareholders. As owners of cooperative financial institutions united by a common bond, all credit union members have an equal say in the operation of their credit union—"one member, one vote"—regardless of the dollar amount they have on account. Furthermore, unlike their counterparts at banks and thrifts, Federal credit union directors generally serve without remuneration—a fact epitomizing the true "volunteer spirit" permeating the credit union community.

Credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital. There are many consumer protections built into the Federal Credit Union Act, such as the only Federal usury ceiling on financial institutions and the prohibition on prepayment penalties that other institutions have often used to bait and trap consumers into high cost products.

Despite the fact that credit unions are already heavily regulated, were not the cause of the financial crisis, and actually helped blunt the crisis by continuing to lend to credit worthy consumers during difficult times, they are still firmly within the regulatory reach of the Dodd-Frank Act, including all rules promulgated by the Consumer Financial Protection Bureau (CFPB).

The growing regulatory burden on credit unions was demonstrated by a recent NAFCU survey of our membership that found that nearly 97 percent of respondents were spending more time on regulatory compliance issues than they did in 2009. In addition to hiring new compliance personnel, many credit unions have reported that noncompliance staff are regularly called upon to help with the compliance workload. In fact, another recent survey found that over 70 percent of respondents have had noncompliance staff members take on compliance-related duties due to the increasing regulatory burden. This highlights the fact that many noncompliance staff are forced to take time away from serving members to spend time on compliance issues. Most credit unions have limited staff to tackle their daily challenges, and often find themselves in a situation where compliance, not service, becomes the main focus. Every dollar, or hour, spent on compliance is time or money taken away from member service, additional loans, or better rates.

At 1st Liberty, we conservatively estimate that our compliance costs have increased by over $350,000 since 2009. While that may not seem like a lot to Washington bureaucrats, it is a lot in Great Falls, Montana. These costs come from hiring new compliance employees, dealing with third-party vendors, increased software costs, as well as time and training for our staff. As regulation increases compliance costs smaller credit unions like mine are having an increasingly difficult time surviving. We've had to shut down three branches in the last 4 years because of increased costs and tighter margins. Many other smaller credit unions have been merged into larger credit unions, and, while their members maintain the credit union benefits, relationship banking found in towns like Great Falls and Grand Forks is lost.

Lawmakers and regulators readily agree that credit unions did not participate in the reckless activities that led to the financial crisis, so they shouldn't be caught in the crosshairs of regulations aimed at those entities that did. Unfortunately, that has not been the case thus far. Accordingly, finding ways to cut-down on burdensome and unnecessary regulations and compliance costs is a chief priority of NAFCU members.

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). As you examine the Federal financial regulatory system, we urge you to support such a reform.

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 1,500 federally insured credit unions—over 20 percent 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.

We are pleased to see Senators recognizing this need and introducing regulatory relief packages to help community financial institutions. An example is S. 1002, The Community Lending Enhancement and Regulatory Relief Act of 2017 (CLEAR Relief Act), introduced by Senators Moran, Tester, Heitkamp and Tillis. This regulatory relief package is a positive first step for community institutions. Section 3 on escrow requirements, section 4 on QM relief and section 6 on TILA/RESPA relief would have benefits to credit unions and their members. Should this legislation move forward, we would also urge you to include the additional provisions from the

House-introduced version of this legislation, H.R. 2133, from Representative Blaine Leutkemeyer. Including this language would provide additional and meaningful relief to credit unions on mortgage lending and capital requirements, in addition to regulatory relief and greater clarity from the CFPB.

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 the CFPB, 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 take the place of regulation or agency guidance to provide clear rules of the road.

NAFCU supports a fair playing field. NAFCU believes that credit unions should have as many opportunities as banks and nonregulated 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 nonbank 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 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.

Ideas to Help Foster Economic Growth

We need both congressional and regulatory action under each of these tenets to help credit unions and the communities that they serve. Action to reduce and streamline unnecessary regulatory burdens will help credit unions, and all community financial institutions, foster economic growth. The next several pages of my testimony will outline areas under each of these tenets where legislative or regulatory action can help foster economic growth.

A. Credit Unions Need an Environment to Thrive and Grow

Credit unions play a key role in providing consumers and small businesses access to credit, often when others will not. These are areas where action will help credit unions:

- **Improvements to Field-of-Membership Restrictions for Credit Unions**

While NCUA has taken recent steps on the regulatory side, NAFCU believes there should be improvements to the Federal Credit Union Act to help enhance the Federal credit union charter. First, a series of improvements should be made to the field of membership (FOM) restrictions that credit unions face expanding the criteria for defining "urban" and "rural." Furthermore, the Federal Credit Union Act should be updated to allow voluntary mergers involving multiple common bond credit unions and to allow credit unions that convert to community charters to retain their current select employee groups (SEGs). Additionally, the word "local" should be removed from the phrase "well-defined, local community" in Section 109(b)(3) of the Federal Credit Union Act.

Second, all credit unions, regardless of charter type, should be allowed to add underserved areas to their field of membership.

Third, the NCUA should have authority to grant parity to a Federal credit union on a broader State rule, if such a shift would allow them to better serve their members and continue to protect the National Credit Union Share Insurance Fund.

- **Capital Reforms for Credit Unions**

NAFCU believes that capital standards for credit unions should be modernized to reflect the realities of the 21st century financial marketplace. As Congress examines and considers modernizing capital standards for community banks, modernizing credit union capital standards must be part of the discussion.

First, a true risk-based capital system for credit unions that more accurately reflects a credit union's risk profile should be authorized by Congress. As part of this effort, NAFCU supports suspending the implementation of NCUA's recent risk-based capital rule, to allow the new leadership at the agency time to review the rule and request any statutory changes that the agency deems necessary to institute a capital system for credit unions that accurately accounts for risk. NAFCU continues to advocate for NCUA to revisit and reconsider the agency's approach to its risk-based capital (RBC) rule, currently set to take effect on January 1, 2019. We were pleased to see in the recent EGRPRA report, Acting Chairman J. Mark McWatters specifically noted risk-based capital as an area NCUA plans to "substantially revise"—which NAFCU strongly supports.

Second, the NCUA should be given the authority to allow supplemental capital accounts for credit unions that meet certain standards.

- **Allow Credit Unions to Meet the Needs of Small Businesses**

A critical step to foster economic growth in local communities is for Congress to modify the arbitrary and outdated credit union member business lending (MBL) cap. This can be done by raising the current 12.25 percent limit to 27.5 percent for credit unions that meet certain criteria or by raising the outdated "definition" of a MBL from last century's $50,000 to a new 21st century standard of $250,000, with indexing for inflation to prevent future erosion. Furthermore, MBLs made to veterans, nonprofit religious organizations, businesses in "underserved areas," 1–4 non-owner occupied homes, or small businesses with fewer than 20 employees should be given special exemptions from the arbitrary cap.

B. Credit Unions Need Appropriate, Tailored Regulation and Relief from Growing Regulatory Burdens

Credit unions did not cause the financial crisis, but have been victims in the new tide of regulations aimed at those institutions who did, with over 1,500 institutions disappearing since the passage of the Dodd-Frank Act, primarily due to the new regulatory burdens. Many credit unions have limited compliance teams and, even if they are doing nothing wrong, burdens can stem from the necessity to read thousands of pages of regulation and analysis just to figure out that they are already in compliance or how to use some formula to see if a rule applies to them.

NAFCU believes that, given their unique nature, all credit unions should be exempt from CFPB rulemaking and examination authority, with NCUA once again given authority to write all rules for credit unions, tailoring new proposals to meet the special nature of the credit union industry. One way to do this would be to expand on S. 923, the Reforming Finance for Local Economies Act, introduced by Senator Kennedy, that exempts financial institutions under $10 billion from CFPB rules, to include all credit unions.

Short of that, there are other steps which Congress can take to help:

- **Provide Greater Clarity to CFPB's 1022 Exemption Authority**

Congress should modify Section 1022 of the Dodd-Frank Act to specify the ability of the CFPB to exempt credit unions from CFPB rules. NAFCU believes Section 1022 currently gives the CFPB broad exemption authority to exempt classes of institutions, including credit unions, from CFPB rules on a case-by-case basis. We believe that this was also the congressional intent of this provision. However, CFPB Director Richard Cordray has testified before Congress that he believes he does not have the authority to outright exempt credit unions from various CFPB rules under Section 1022. This failure of the Bureau to provide outright exemptions for credit unions to various rules, has greatly increased the compliance burden on the credit union industry, as credit unions are now forced to spend time and resources reviewing rules to see if they meet any arbitrary exemption threshold the Bureau may set. Time and money spent on this effort takes away from economic benefits that credit unions could be providing to their members.

Last year, a bipartisan group of 70 Senators sent a letter to Director Cordray urging him to do more with the authority under Section 1022 to reduce the burden on community institutions such as credit unions. We would urge you to adopt legislation to clarify the ability of the CFPB to specifically exempt credit unions from a CFPB rule. We were also pleased to see a May 24, 2017, letter from Acting NCUA Chairman McWatters to CFPB Director Richard Cordray urging CFPB to make greater use of its 1022 authority when it comes to credit unions.

- **Require the CFPB to Better Tailor Regulations and Subject Them to Review**

NAFCU supports measures that would require the CFPB to better tailor its regulations. Despite credit unions being smaller and less risky than mega banks, they have too often found themselves subject to burdensome new regulations designed for big banks, and this has a negative impact on their ability to serve their members and foster economic development. This is why we support S. 366, the Taking Account of Institutions with Low Operation Risk (TAILOR) Act (introduced by Senator Rounds) and S. 21, the Regulations From the Executive in Need of Scrutiny (REINS) Act (introduced by Senator Paul), as well as subjecting the CFPB to the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review.

- **Hold Regulators Accountable for Cost and Compliance Burden Estimates**

Cost and time burden estimates issued by regulators such as NCUA and CFPB are often grossly understated. Unfortunately, there often is never any effort to go back and review these estimates for accuracy once a proposal is final. We believe Congress should require periodic reviews of "actual" regulatory burdens of finalized rules and ensure agencies remove or amend those rules that vastly underestimated the compliance burden. A recent survey of NAFCU's membership found that over 55 percent of credit unions believe compliance cost estimates from NCUA and the CFPB are lower than they are when the credit union actually has to implement the proposal.

We believe Congress should use their oversight authority to require regulators to provide specific details on how they determined their assumptions in their cost estimates when submitting those estimates to OMB and publishing them with proposed rules. It is important that regulators be held to a standard that recognizes that burdens at a financial institution go well beyond additional recordkeeping.

Finally, there are some other areas where the CFPB has been active that are of growing concern to credit unions:

Home Mortgage Disclosure Act (HMDA)

NAFCU and our members support the intended purpose of HMDA, which is to promote fair lending and ensure that consumers receive equitable access to credit in the housing market. Yet the CFPB's Final Rule is not entirely suitable for achieving this statutory purpose, particularly where data collection demands are so costly that they impede lending activity. Furthermore, NAFCU's concerns regarding the Final Rule remain largely unaddressed, and a recent proposal making technical revisions to Regulation C does little to mitigate the burdens arising from collection of increasingly granular HMDA data points. While NAFCU has appreciated the Bureau's efforts to offer technical corrections and additional clarifications, the proposed amendments do not offset the tremendous operational challenges created by the Final Rule.

Under current reporting thresholds, the collection of a vastly expanded HMDA dataset from credit unions that do not originate a significant number of home mortgage loans would be counterproductive and ultimately harm access to credit. Accordingly, NAFCU urges the Bureau to consider amendments that would raise the reporting threshold for close-end mortgage loans in Section 1003.2(g) of the Final Rule.

NAFCU believes that by raising the reporting threshold, smaller credit unions will be spared unreasonable compliance costs that would otherwise impact their capacity to originate affordable mortgages. Furthermore, NAFCU believes that the minimal data received from institutions reporting just above the thresholds in Section 1003.2(g) would be statistically insignificant and yield minimal insight about the communities they serve. NAFCU believes that the resources of small lenders should be spent in their communities, originating the loans that members need rather than satiating the CFPB's appetite for data.

We are also concerned that the vastly expanded HMDA data collection raises serious privacy considerations. HMDA reports currently include the name of the credit union, mortgage amount, year of transaction, and census tract of the property. This information already provides an opportunity to identify the majority of mortgagors being reported under HMDA. Because there is little privacy protection in HMDA data—and because the Bureau has so far offered only future assurances that a balancing test will be developed to determine the extent of public disclosure—adding more sensitive and nonpublic information, such as debt-to-income ratios, credit scores, creditworthiness, or borrower age, will leave members less secure and potentially more vulnerable to targeted scams. NAFCU asks that the Bureau provide clarification as soon as possible about how data security concerns will be mitigated through controls on public disclosure of HMDA data.

NAFCU believes the Bureau has failed to adequately consider the net cost of requiring credit unions that originate relatively few mortgage loans to expend considerable resources on reporting new data that would not aid in fulfilling the statutory objectives of HMDA. Additionally, the CFPB has not provided satisfactory justification for requiring collection of new data points that were not specifically mandated by the Dodd-Frank Act. Although there may be academic interest in numerous, marginally significant data points, the Bureau has yet to show that these inputs actually achieve HMDA's stated purpose, which is to ensure fair lending and nondiscrimination in the housing market. We agree with Acting NCUA Chairman McWatters' request of the CFPB to use its authority to exempt credit unions from these additional data points.

One approach to providing relief on the HMDA issue would be to pass the Home Mortgage Disclosure Adjustment Act, offered by several Members of this Committee, to raise the HMDA reporting threshold to 500 loans for both closed-end mortgage loans and open-end lines of credit. The new HMDA reporting requirements will be especially burdensome on smaller credit unions like mine, and that is why we also would support the CFPB delaying implementation of the new rule while giving Congress a chance to review it.

Qualified Mortgages

The CFPB has issued a final rule that imposes requirements on credit unions to assess and verify a borrower's ability to repay a mortgage loan before extending the loan. In that same rule, the CFPB defined "qualified mortgage" and extended safe harbor legal protections to mortgages that meet the definition. Many financial institutions have decided to extend only mortgages that meet the definition of safe harbor "qualified mortgage" as they are concerned that they will not be able to sell nonqualified mortgages and are worried about the legal and regulatory risks associated with extending nonqualified mortgages. At 1st Liberty, even though we are small enough to be exempt, we still limit our loans to 43 percent debt-to-income ratio because of concerns about liability.

NAFCU believes the definition of qualified mortgage must be revised in a number of ways to reduce the enormous negative impact the rule places on credit unions and their members, in particular the debt-to-income (DTI) threshold (43 percent of the total loan) and the inclusion of affiliate fees in the calculation of points and fees. While the CFPB finalized a cure for unintentional points and fees overages, NAFCU still believes a legislative change may be necessary to resolve the issue. We also support legislation to create a safe-harbor for mortgage loans held in portfolio at credit unions.

Small Business Data Collection

Section 1071 of the Dodd-Frank Act assigns the CFPB the responsibility to issue implementing regulations for collection of small business loan data. In general, Section 1071 aims to facilitate enforcement of fair lending laws and enable communities, businesses and other entities to better identify the needs of women-owned, minority-owned, and small businesses. Section 1071 requires financial institutions to collect and report information to the CFPB using systems and procedures similar to those currently used in connection with the Home Mortgage Disclosure Act (HMDA).

While NAFCU acknowledges that taken on its own, Section 1071 is a well-intentioned provision, but when added to other laws and regulations, future implementation of this provision could negatively impact credit unions originating MBLs and other commercial loans. A disclosure regime similar to HMDA could increase MBL underwriting costs and necessitate substantially increased spending on compliance resources. Furthermore, if the ultimate aim of Section 1071 is to promote small business lending, then credit unions have already achieved great success. For example, credit union small business loan growth has dramatically outpaced banks both during and after the financial crisis. Credit unions have maintained strong small business loan growth despite field of membership and other statutory restrictions; however, this trend may experience disruption if the CFPB sees fit to impose additional regulatory burdens.

NAFCU is also concerned that future implementation of Section 1071 may yield confusing information about credit unions and further restrict lending activity as a result of increased compliance costs. Credit unions serve distinct fields of membership, and as a result, institution-level data related to women-owned, minority-owned, and small business lending substantially differs in relation to other lenders. Given the unique characteristics of credit unions and the limits placed on member business loans (MBLs), the CFPB should seek to exempt credit unions from any future rulemaking that compels disclosure of business loan information. We believe it is important that Congress be prepared to step in and legislate in this area if necessary.

C. There Must be a Fair Playing Field in Financial Services

As Congress looks at measures to foster economic growth, it is important the any legislative package be balanced in addressing needs of credit unions and community banks. Capital relief provisions for banks should be paired with capital relief provisions for credit unions. Business lending provisions for banks should be paired with business lending relief provisions for credit unions. Credit unions want to do their share for economic growth, and they want to ensure that there is a proper regulatory environment for all players in the financial services and payments realm.

- **Provide Credit Unions Parity in the Treatment of Residential Loans**

One easy step to provide parity in business lending relief is in the treatment of certain residential loans. NAFCU urges you to exempt loans for one- to four-unit non-owner occupied dwellings from the credit union member business lending (MBL) definition. This idea was recently introduced as bipartisan legislation, S. 836, the Credit Union Residential Loan Parity Act, by Senators Ron Wyden and Lisa Murkowski, which would allow credit unions to treat loans that qualify for the exemption as residential loans with lower interest rates—similar to how banks make those same loans—and not have to count them toward their MBL cap. This would free up capital for additional lending and help foster economic growth.

- **Payday Lenders Need To Be Regulated; Credit Unions Need Flexibility to Help**

The concept of a fair playing field also applies when dealing with regulated financial institutions and unregulated entities, who should not be let off the hook as part of regulatory relief.

A prime example is payday lending. NAFCU believes that unregulated actors in this area need to be regulated, but that flexibility should be provided to regulated entities that offer regulated products to meet demand. At 1st Liberty, we were able to help a veteran who was struggling financially and had gotten into trouble with payday lenders. He had already filed bankruptcy and had been in debt to nine different payday lenders for the last 5 years when he came to us. He wasn't even a member yet. He had $500 loans with each lender, was paying them $10 every week each to roll the debt another week, he had paid them roughly $21,600 already and had not reduced the principle balance on any of them.

Based on his circumstances, he did not qualify for a loan, but based on what we do to try to help members where we are able, he needed our help fast. We were able to set up a signature loan for $4,500 to be paid off over 3 years at a 12 percent interest rate (unsecured rate) with payments of $150 month. We had to go outside of our policies to deal with his unique circumstance—a prime example of why credit unions need to have regulatory flexibility to serve the needs of their members.

In July, 2016, the CFPB published a proposed rule for Payday, Vehicle Title, and Certain High Cost Installment Loans. NAFCU maintains serious concerns about this rule and how it will hamper credit union's ability to meet the credit needs of their members. NCUA has even weighed-in with a similar concern. NAFCU has asked that the CFPB withdraw its rule and consult with NCUA regarding any future plans to regulate short-term, small dollar lending at credit unions. NAFCU strongly recommends that the Bureau exercise its exemption authority granted by Congress to preserve the ability of credit unions to accommodate members with consumer-friendly, short-term, small dollar loans.

An exemption for credit unions from the entirety of the rule would represent the only true solution for mitigating the overwhelming burden imposed by a novel and complex compliance regime. Credit unions cannot reasonably meet the needs of financially distressed members when the cost and time associated with originating just one short-term, small-dollar loan skyrockets to satisfy the CFPB's unwieldly underwriting requirements.

The need for a fair playing field does not just apply across financial services, but with others in the payments eco-system, such as retailers. There is a need for Congress to act to ensure a fair playing field in this realm as well.

- **21st Century Data Security Standards Are Needed**

Credit unions are being adversely impacted by ongoing cyber-attacks against the United States and continued data breaches at numerous merchants. The cost of dealing with these issues hinders the ability of credit unions to serve their members. Congress needs to enact new 21st century data security standards that include: the payment of costs associated with a data breach by those entities that were breached; establishing national standards for the safekeeping of all financial information; require merchants to disclose their data security policies to their customers; requiring the timely disclosure of entities that have suffered a data breach; establishing enforcement standards for provisions prohibiting merchants from retaining financial data; requiring the timely notification of the account servicer if an account has been compromised by a data breach; and, requiring breached entities to prove a "lack-of-fault" if they have suffered from a data breach.

- **Repeal the Durbin Debit Interchange Amendment**

The interchange price caps passed as part of the Dodd-Frank Act have failed to produce the consumer benefits that proponents promised. This provision has essentially been a windfall to merchants and their stockholders, while costing credit unions and their members billions of dollars that could have been used to help foster economic growth through better rates and more loans. We urge you to repeal the debit interchange provision found in the Dodd-Frank Act and protect community financial institutions from future harm by opposing any efforts to expand the Durbin price controls to credit interchange.

D. Transparency and Independent Oversight of Regulators

NAFCU believes regulators need to be transparent in their actions, with the opportunity for public input, and should respect possible different viewpoints. Financial institutions should have clear rules of the road to follow, and have an independent process to appeal actions of regulators. Congress should make sure regulators are focusing on sound public policy and not political agendas.

There are a series of steps NAFCU believes can be taken that will be beneficial to credit unions and community financial institutions in this area:

- **Make Common-Sense Improvements to the CFPB**

We believe that one way to improve the Bureau would be to change the leadership structure from a single director to a five-member bipartisan commission appointed by the President. NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decisionmaking process. A bipartisan board structure at the CFPB would also help to provide community financial institutions more regulatory certainty by lowering the possibility that the Bureau could become subject to drastic political swings from a single director that could change with each Administration.

We also believe that the main focus of the CFPB should be on unregulated entities operating in the financial services arena and other significant market actors that have a national impact, and thus we believe that the supervision threshold for the CFPB should be raised to $150 billion and indexed for inflation. Making this change would allow functional regulators to focus on community and regional institutions, while allowing the CFPB to focus on the Nation's largest financial institutions and otherwise unregulated entities.

- **Require the CFPB to Provide Guidance or Rulemaking for its UDAAP Authority**

Uncertainty stemming from CFPB's authority to take action on entities committing unfair, deceptive, or abusive acts or practices (UDAAP), can prevent institutions from providing services that consumers may want. Credit unions want to comply and provide the services that their members want and need. However, when the CFPB does not provide clarity in regards to UDAAP, either through rulemaking or guidance, economic opportunity is stymied as institutions fear the CFPB will only regulate through enforcement action. We would urge the adoption of legislative language to require the CFPB to provide more clarity and guidance to those they regulate.

- **Common-Sense Examination Reform**

Credit unions face more examiner scrutiny than ever, as the examination cycles for credit unions went from 18 months to 12 months since the onset of the financial crisis, even though credit union financial conditions continue to improve. We are pleased to see that NCUA has started to return to extended examination cycles, but we think the extended cycles should be available to all low-risk, well-run credit unions. Additional exams mean additional staff time and resources to prepare and respond to examiner inquiries. NAFCU supports effective exams that are focused on safety and soundness and flow out of clear regulatory directives. NAFCU also supports examination fairness legislation to ensure timeliness, clear guidance and an independent appeal process free of examiner retaliation.

E. A Strong, Independent NCUA should be the sole regulator of credit unions

As noted earlier, NAFCU strongly believes that credit unions should be exempt from CFPB regulation and supervision, with that authority for all credit unions returned to the National Credit Union Administration (NCUA). NCUA has the knowledge and expertise that other regulators simply do not about the unique nature of credit unions.

- **NCUA should have pre-emption authority over CFPB rules**

NCUA should have the authority to delay the implementation of a CFPB rule that applies to credit unions, if complying with the proposed timeline would create an undue hardship. Furthermore, given the unique nature of credit unions, the NCUA should have authority to modify a CFPB rule for credit unions, provided that the objectives of the CFPB rule continue to be met.

- **NCUA Needs Proper Authority and Flexibility To Govern Credit Unions**

We are pleased NCUA has been willing to use its authority in recent years to provide credit unions with much-needed relief when congressional action has stalled. A few prime examples of this willingness are the agency's rules relative to member business lending, field of membership, and fixed-assets. However, in each of these rulemakings, the agency stopped short of providing relief to the fullest extent possible so there is more work to be done, whether by the agency or by Congressional action.

We continue to appreciate NCUA's voluntary participation in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) regulation review process. This review provided an important opportunity for credit unions to voice their concerns about outdated, unnecessary or unduly burdensome requirements within NCUA's Rules and Regulations. The EGRPRA report issued in March 2017 was the culmination of a long process and we were encouraged to see the regulators admit that there are many opportunities to do better. In particular, the NCUA portion of the report touched on a number of key areas where NAFCU has sought reform, including risk-based capital. We look forward to continuing to work with NCUA and other regulators to address the problem of regulatory burden and we urge Congress to ensure that they have the tools they need.

- **NCUA Independence and Structure Should be Maintained**

NAFCU also believes that NCUA should continue to be governed by a three-person bipartisan board, and not subject to congressional appropriations. However, we do think there are areas where it is appropriate for congressional oversight of NCUA, including the agency's budget, which is funded by our Nation's credit unions and, ultimately, their 108 million members.

Additional Areas To Help Economic Growth

There are a few additional areas where Congress can help credit unions foster economic growth that I would like to outline:

- **Promote Regulatory Coordination**

NAFCU believes that a large part of the regulatory burden problem stems from the cumulative impact of numerous regulations. That is why NAFCU applauded President Donald Trump's "Executive Order on Core Principles for Regulating the United States Financial System," which directed the U.S. Department of the Treasury to conduct a comprehensive review of the financial regulatory landscape. We are pleased that NCUA has participated in discussions with Treasury as part of the review process and hope they will continue to cooperate with the Administration in a productive manner.

With numerous new rulemakings coming from regulators, coordination between the agencies is more important than ever. Congress should use its oversight authority to make sure that regulators are coordinating their efforts and not duplicating burdens on credit unions by working independently on changes to regulations that impact the same areas of jurisdiction. There are a number of areas where opportunities for coordination exist and can be beneficial.

NAFCU has been on the forefront encouraging the Financial Stability Oversight Council (FSOC) regulators to fulfill their Dodd-Frank mandated duty to facilitate rule coordination. This duty includes facilitating information sharing and coordination among the member agencies of domestic financial services policy development, rulemaking, examinations, reporting requirements and enforcement actions. Through this role, the FSOC is effectively charged with ameliorating weaknesses within the regulatory structure and promoting a safer and more stable system. It is extremely important to credit unions for our industry's copious regulators to coordinate with each other to help mitigate regulatory burden.

In addition, Section 1023 of the Dodd-Frank Act grants the FSOC the authority to stay and set aside Bureau rules by a vote of two-thirds of the members of the Council. A decision to set aside a Bureau regulation renders the rule unenforceable. This authority could spur renewed dialog between the Bureau and the Federal banking agencies regarding rules that may actually pose systemic risk to the financial sector.

As the new Administration continues to review and reform financial regulations, NAFCU welcomes efforts by the members of the FSOC to strongly consider their authority to start holding the Bureau accountable for rules that pose serious risks to financial institutions and the consumers they serve.

- **Support the CDFI Fund**

The Administration's FY 2018 budget proposal has proposed cutting funding for the Community Development Financial Institution (CDFI) Fund. As of January 31, 2017, there were 287 credit unions certified as CDFIs. Representing approximately 27 percent of the total number of certified institutions, CDFI certified credit unions hold more than 50 percent of total CDFI assets. Clearly, CDFI credit unions are critical partners in the CDFI Fund's mission. In recognition of this importance, and in exploring ways to enable even more credit unions to be recognized as CDFIs, the NCUA, CDFI Fund and Treasury entered into a trilateral Memorandum of Understanding (MOU) in January 2016. A significant component of the MOU included the introduction of a streamlined CDFI application process for credit unions, paving the path for more credit unions to seek the designation.

Because they are not-for-profit, cooperative financial institutions, credit unions are focused on providing financial services that are in the best interest of their members. Since CDFI credit unions predominantly serve low-income areas and other target markets, CDFI credit unions are often the only financial services option for consumers in those communities that live paycheck to paycheck. The CDFI Fund grant program helps credit unions serve communities and consumers that large banks don't focus on.

Additionally, because many credit unions cannot raise funds from the capital markets, access to the CDFI Fund grant program is an incentive for credit unions to obtain certification. The grants provided by the Fund are an invaluable resource that aids CDFI credit unions in providing financial services to millions of credit union members. Without these grant funds, thousands of consumers could find themselves without credit union products, such as small dollar loans, credit builder programs, and access to financial education.

Over the past 2 years, CDFI credit unions received roughly $70 million in grant funding to aid in their efforts to offer financial services to their low- and moderate-income members. Without the CDFI grant program, many CDFI credit unions would not have been able offer new products and loans that provide financial stability for members and their families. It is with this in mind that we would urge Congress to continue funding for CDFIs. Providing funding for the grant program is an important step in helping credit unions foster economic growth in their local communities.

- **Fix the Department of Defense (DoD) Military Lending Act Final Rule**

As a defense credit union, I would like to share some concerns over potential unintended consequences and negative impacts from DoD's recent MLA rule. NAFCU is in full support of protecting service members from predatory and unscrupulous lenders. It is clear this is the intent of the rule DoD has issued. Credit unions have undertaken considerable efforts to comply with the MLA Rule, and they will continue to do so. However, the challenges presented by the MLA Rule are substantial and many financial institutions continue to struggle to determine the parameters of the rule due to ambiguous text and slim guidance.

Credit unions, as member-owned, not-for-profit cooperatives, consistently provide their members with products and services designed to help each member achieve their individual financial goals. In addition, credit unions have a strong track record of helping active duty members of the armed forces and their families avoid the kinds of debt traps that prompted the passage of the MLA by Congress. That is why NAFCU and our members support the Department's primary goal of protecting active duty members of the armed forces and their families from financial exploitation. However, implementing the MLA Rule has proven to be a difficult undertaking for many credit unions.

NAFCU has, on several occasions, requested the DoD exercise its authority under Section 232.13(c)(2) of the MLA Rule and issue an order extending the limited exemption for credit card accounts until October 3, 2018. NAFCU believes that extending the deadline for credit card account compliance with the MLA Rule is necessary to allow the DoD additional time to consider the consequences of the MLA Rule as applied to credit card accounts, and to develop effective solutions to prevent those consequences from taking place. Given that we are merely months from the current credit card implementation deadline, it is imperative the DoD act quickly and provide relief to the industry.

Conclusion

The growing regulatory burden on credit unions is the top challenge facing the industry today and credit unions are saying "enough is enough" when it comes to the overregulation of the industry. If Congress wants to help foster economic growth, enacting the regulatory relief provisions outlined in my testimony to provide regulatory relief to credit unions and community financial institutions is key. Credit unions need a healthy regulatory environment to succeed and serve the needs of their 108 million members. Small credit unions are disappearing at an ever-increasing pace, and cannot wait forever for congressional action. The time to act is now. Regulators must also do their part and we are encouraged that some are starting to take steps to do so. But more must be done and the Committee should also encourage regulators to act to provide relief where they can without additional congressional action.

We thank you for the opportunity to share our thoughts with you today. I welcome any questions you might have.

PREPARED STATEMENT OF R. SCOTT HEITKAMP

PRESIDENT AND CEO, VALUEBANK TEXAS, ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA

JUNE 8, 2017

Opening

Chairman Crapo, Ranking Member Brown, and Members of the Committee, my name is Scott Heitkamp, and I am President and CEO of ValueBank Texas in Corpus Christi, Texas. I am also Chairman of the Independent Community Bankers of America, and I testify today on behalf of the more than 5,800 community banks we represent. Thank you for convening today's hearing on "Fostering Economic Growth: The Role of Financial Institutions in Local Communities."

What ValueBank and other community banks do from inside a local community cannot be replicated from outside the community. This isn't just my opinion; this is what a number of empirical studies have found.[1] With a direct knowledge of the

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[1] See "The State and Fate of Community Banking." Marshall Lux and Robert Greene. Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School. February 2015. This paper discusses a number of studies, both governmental and academic, that have found a community bank advantage based on their proximity to the communities they serve.

borrower, the community, and local economic conditions, community banks offer customized terms and make loans passed over by larger lenders based outside of the community or that rely on algorithms and other impersonal methods of evaluating credit. This is the community bank competitive advantage and the reason we must be part of any plan to foster local economic growth.

Before I discuss ICBA's plan for fostering local economic growth, I'd like to give you some background on my bank. ValueBank Texas was chartered in 1967 and later acquired by my father. I'm proud to carry on his legacy as a second-generation community banker. Today, ValueBank Texas is a $213 million-dollar bank with 10 offices in Corpus Christi and suburban Houston with 114 employees. We specialize in small business and residential mortgage lending. As our name suggests, we are dedicated to creating value for our customers and our community.

The economic recovery has been painfully slow and has failed to reach many individuals and communities. Today, a customer with a pristine credit score or a large, established business can get a loan. But this isn't the measure of a strong economy. When the credit box is artificially tight, we have subpar economic growth. To break out of this rut and strengthen economic growth, we must expand credit availability to millions of hardworking households and would-be borrowers with less-than-perfect credit scores. Many of these borrowers are on the middle-to-lower end of the income scale.

Community banks are uniquely suited to reach struggling households and small businesses. An intangible, yet critical, factor that separates community banks from other financial institutions is the direct stake and vested interest we have in the success of our communities. We cannot thrive in a community that is failing or stagnant. Every loan we make is a vote of confidence in the community and a deepening of our commitment, not a one-off transaction. Unfortunately, in recent years, a sharp growth in regulatory burden has made it increasingly difficult for community banks to lend and foster local economic growth.

Regulatory overreach has created two problems in particular. First, it has contributed to rapid consolidation. Banks need a larger scale to amortize the increasing cost of compliance, and this has been driving many mergers and acquisitions. At the same time, a daunting compliance burden and heightened legal risk deter the formation of de novo charters. As a result, today there are some 1,700 fewer community banks than there were in 2010 and only a handful of new bank charters. This often harms competition and leaves many small communities stranded without a local community bank.

Second, overregulation has created a very tight credit box by choking off community banks' capacity to take on and manage reasonable credit risk. Too many would-be borrowers—often people with lower credit scores and lower income or newly established small businesses who are still creditworthy—are being denied credit in today's environment.

Solutions

The good news is that solutions are at hand. ICBA's "Plan for Prosperity" includes over 40 recommendations that will allow Main Street and rural America to prosper. A copy of the Plan is attached to my written statement. In April of this year, at the request of Chairman Crapo and Ranking Member Brown, ICBA submitted a short list of recommendations, drawn from the Plan for Prosperity, which were selected based on two criteria: their positive impact on local communities and their history of bipartisan support. What follows is a discussion of these recommendations.

Access to Mortgage Credit

The following recommendations would enhance access to mortgage credit and support a robust housing market by providing relief from new mortgage regulations, especially for loans held in portfolio.

1. Expand Exemption Thresholds Under the Home Mortgage Disclosure Act (HMDA) and Repeal New Data Points

The CFPB's new rule under HMDA, when it becomes effective, will require covered banks and credit unions to collect and report 48 unique data points on each mortgage loan they make, more than double the number of data points covered lenders are currently required to collect. The proliferation of data points will amplify the number of inadvertent data entry errors and penalties, especially among institutions that upload data manually, including many community banks and small credit unions.

ICBA believe the exemption thresholds should be increased to provide relief for small lenders without materially impacting the mortgage data available to the

CFPB or impairing the purpose of the HMDA statute. Specifically, ICBA recommends that:

- Depository institutions that have originated 1,000 or fewer closed-end mortgages in each of the two preceding calendar years be exempt from reporting on such loans; and
- Depository institutions that have originated 2,000 or fewer open-end lines of credit in each of the two preceding calendar years will be exempt from reporting on such loans.

The exemption thresholds should be applied separately so that a lender may be exempt from reporting on its closed-end mortgages but not on its open-end lines of credit, or vice versa.

ICBA also recommends that statutory authority under Dodd-Frank for the additional data points be repealed.

2. Automatic Qualified Mortgage Status for Loans Held in Portfolio

The "qualified mortgage" (QM)/ability-to-repay rule is overly complex and prescriptive and excludes otherwise creditworthy mortgages. When a community bank holds a mortgage in portfolio, it has every incentive to ensure it understands the borrower's financial condition and to work with the borrower to structure the loan properly and make sure it is affordable. For this reason, mortgages held in portfolio by a community bank should have automatic "qualified mortgage" (QM) status under the CFPB's ability-to-repay rule.

3. Ease Escrow and Appraisal Requirements for Community Bank Portfolio Lenders

Mandatory escrow requirements raise the cost of credit for those borrowers who can least afford it, and impose additional, unnecessary compliance costs for community bank lenders. Appraisal requirements have become costly in recent years, and rural America is experiencing a shortage of licensed appraisers. Escrow and appraisal requirements deter community bank mortgage lending and reduce borrower choice. Portfolio lenders have every incentive to ensure that collateralized properties are accurately appraised and that taxes and insurance are paid on a timely basis. Community bank employees often understand local real property values better than licensed appraisers who operate from outside of the county or State where the property is located. When a mortgage is held in portfolio by a community bank, it should be exempt from escrow requirements and the lender should be able to substitute an in-house "property evaluation" for a full residential property appraisal completed by a Licensed appraiser.

Access to Capital

Community banks need better access to capital and simplified capital regulation to best serve the lending needs of their communities.

4. Exempt Non-Systemically Important Financial Institutions from Basel III

Basel III was originally intended to apply only to the largest, systemically important and internationally active banks. Imposing complex and excessive capital standards on the Nation's community banks will limit lending, investment, and credit availability in local communities.

Community banks should be exempt from Basel III and subject to Basel I, a capital framework that more accurately aligns community banks' regulatory capital with the types of assets they hold and the relationship model they follow. Basel I has served the relationship-based banking model well for over a generation.

Community Bank Small Business Lending

5. Repeal New Small Business Loan Data Collection Requirement for Small Financial Institutions

Section 1071 of the Dodd-Frank Act requires the collection and reporting of 12 pieces of data in connection with credit applications made by women- or minority-owned businesses of any size as well as all small businesses regardless of ownership, including the race, sex, and ethnicity of the principal owners of the business. Section 1071 also gives the Bureau discretion to require the reporting of any additional information that would assist it in fulfilling the purposes of the statute. Section 1071 is fraught with unintended consequences that will only harm small business borrowers.

Small businesses create more new jobs in the American economy than any other sector. They rely heavily on credit to fund their payrolls, working capital, inventory, and capital investments. Any new compliance burden of the magnitude contemplated under Section 1071 will likely drive smaller creditors out of the marketplace and shrink access to credit for the most credit-dependent businesses. Because the compliance costs would be fixed, the smallest borrowers would be at the greatest risk. Data collection and reporting for a small loan application would cost a lender the same as for a larger loan application, giving lenders a strong incentive to forgo smaller borrowers.

Pending Legislation

The recommendations listed above, as well as other recommendations of the Plan for Prosperity, are found in a number of bills introduced in the House and Senate.

The Clear Relief Act (S. 1002), a bipartisan bill introduced by Senators Moran and Tester, provides "qualified mortgage" status and escrow relief for mortgages held in portfolio by institutions with assets of less than $10 billion. S. 1002 also includes three other provisions from the Plan for Prosperity: Relief for community banks with assets of $1 billion or less from redundant internal controls assessment mandates of Sarbanes-Oxley 404(b); an exemption for banks with assets of $10 billion or less from the Volcker Rule; and a waiver from the mandatory waiting period prior to closure that is triggered when a lender extends a second offer of credit with a lower interest rate.

ICBA strongly supports S. 1002 and thanks the Members of this Committee who have cosponsored this bill: Senators Heitkamp, Tillis, and Donnelly.

I would also like to recommend a bill Senator Rounds introduced last Congress, the Community Bank Access to Capital Act, which included an exemption from Basel III for banks with assets of $50 billion or less; SOX 404(b) relief similar to what is included in S. 1002; and amendments to the Securities and Exchange Commission's Regulation D that would make is easier for community banks to raise equity capital through private securities offerings. These critical capital provisions would result in more robust community lending and local economic growth. ICBA looks forward to the reintroduction of the Community Bank Access to Capital Act.

We strongly encourage this Committee to consider S. 1002, the Community Bank Access to Capital Act, and other bills that include meaningful regulatory relief for community banks.

Closing

Thank you again for the invitation to testify today on behalf of ICBA and community banks nationwide. The 115th Congress has an opportunity to comprehensively rethink, restructure, and modernize the regulation of the American financial services industry to ensure that it promotes local economic growth, prosperity, and job creation. Regulatory relief for community banks is a critical part of this effort. Today's hearing will set the parameters for the important work ahead of us.

PREPARED STATEMENT OF DALLAS BERGL

CHIEF EXECUTIVE OFFICER, INOVA FEDERAL CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION

JUNE 8, 2017

Chairman Crapo, Ranking Member Brown, Members of the Committee:

Thank you for the opportunity to testify on this important topic. My name is Dallas Bergl, and I am the Chief Executive Officer for the INOVA Federal Credit Union, headquartered in Elkhart, Indiana. I am also a member of the Board of Directors of the Credit Union National Association (CUNA),[1] on whose behalf I testify today.

INOVA Federal Credit Union proudly serves over 32,000 members, providing small dollar loans, mortgage loans, and automobile refinance loans along with a variety of savings and deposit accounts. By asset size ($336 million), loans outstanding ($285 million), and member deposits ($291 million), we are small relative to the big banks. Nevertheless, we are an invaluable financial lifeline to our community: we provide products and services that larger financial institutions often do not, because it may not be worth their time or resources to do so.

Elkhart, in northern Indiana, became a symbol of distressed Middle America during and after the Great Recession. Among a variety of other manufacturing activity,

[1] Credit Union National Association represents America's credit unions and their 110 million members.

the area is a hub of recreational vehicle manufacturing, one of the first industries to falter in the recession. In fact, less than a year into the recession, our community's unemployment rate tripled, peaking at 18.9 percent by early 2009. It was during this downturn that the importance of a credit union to a community like ours became apparent.

Life does not treat people equally or fairly, and economic disparity is clearly seen through the eyes of those with little or no savings at all. They struggle to afford life, to purchase a home, to pay their rent, or to put a meal on the table for their family. Consumers who do not have robust savings often also do not have solid credit histories or individuals who can cosign a loan for them. And, they end up borrowing small amounts of money, where the cost of making the loan often equals and sometimes exceeds the interest paid. It's understandable that this is not an attractive investment for larger, for-profit financial institutions to undertake.

My credit union, and others like it throughout the country, lend and provide deposit accounts to these individuals, and other credit union members, because Congress gave us a mission to promote thrift and provide access to credit for provident purposes to our members. Serving our members and investing in their success, especially during tough economic times, is a key element to ensuring our communities grow and thrive. But the investments credit unions make do not just help our individual communities. Success begets success, and when individual communities grow and thrive, so does this country. It is the growth and success of individual communities, like Elkhart, that allows this country to achieve economic growth and be a competitive force in the international community. It is critical that credit unions can continue to support economic development in the United States. Congress has given us a big job, and we're helping consumers every day in ways that large, for-profit institutions simply will not: we're helping them put gas in their car, buy appliances, cover medical expenses, send their children to college, and purchase homes of their own.

I would like to say that credit unions face no hurdles in their pursuit of this statutory mission, but this has not been the case. The 2008 economic crisis hit small communities, like Elkhart, hard. So, when our Government had to react and fix the bad policies that led to too-big-to-fail institutions, their irresponsible practices, and the subsequent economic harm to everyday Americans, we supported this effort. Consumers were losing their homes, life savings, and everything they worked for years to earn. Credit unions and their leaders, such as myself, expected a reaction from our Government that was targeted to the abusers of consumers. What we did not expect, what we did not support, and what continues to perplex us, are the considerable new regulatory requirements for our institutions—the ones who put consumers, as their member-owners, first.

New mortgage requirements intended to prevent an economic crisis in the future have had the unintended effect of preventing credit unions like mine from lending at the same levels as before the crisis. Prior to the mortgage disclosure and underwriting requirements imposed by the Consumer Financial Protection Bureau (CFPB), my credit union closed as many as three mortgage loans in the time it now takes us to originate just one loan. Increasing the cost of making a loan does not create economic growth. It leads to fewer consumers getting help. While my credit union continues to provide mortgage loans, there are other credit unions in Indiana and elsewhere that are not as fortunate because they have had to stop their mortgage lending completely because of the new regulatory burden. This does not make sense: why would Congress support a regulatory regime that makes it harder for lenders with histories of safe and affordable lending to serve their members? Why would Congress allow this regulatory regime to continue and potentially have a similar effect on other critical lifeline services provided by credit unions, like small dollar lending?

My testimony presents commonsense proposals that will help responsible financial institutions, like credit unions and small banks, continue to serve their members and communities so they can grow and thrive; regulatory changes that can be tailored to address the problem institutions in this country without punishing solid ones; and proactive steps that can be taken with credit unions' regulator, the National Credit Union Administration (NCUA), to help foster the continued safety and soundness of the credit union system.

I believe it is my obligation, as a credit union representative invited to testify, to be honest with you, provide you with my advice based on years of experience in this industry, and tell you when ideas—even well intentioned ones—may not be workable. I truly believe that when credit unions and their members thrive, so does this country. It is through the prosperity of these individual financial institutions that we will prosper economically as a Nation.

The Roadmap for Strengthening Credit Unions and Our Members

My primary goal as CEO of INOVA Federal Credit Union is to run my credit union successfully so we can best provide products and services for our members. That is what my volunteer, unpaid board of directors, consisting of members elected by fellow members, expects of me. It is what I expect of myself. Congress should enact legislation that allows credit unions to more effectively serve their members and help promote economic growth, starting with correcting a disparity in the treatment of certain residential loans made by credit unions and eliminating the credit union member business lending cap.

Under current law, when a bank makes a loan for the purchase of a 1–4 unit, non-owner-occupied residential property, the loan is classified as a residential real estate loan. That is appropriate because these are generally loans to individuals or households with regular jobs with modest real estate investments on the side. In fact, many of these loans can be sold to Fannie Mae and Freddie Mac as residential home loans. However, when a credit union makes the same loan, it is required to be classified as a business loan and is therefore subject to the statutory member business lending cap. This makes no sense, and Congress should fix it.

Correcting this disparity would provide economic growth in many ways. It would enable credit unions to provide additional credit to borrowers seeking to purchase residential units, and help stimulate investment in affordable rental real estate and employment in the construction trades. Further, changing the statutory classification of these loans would free up as much as $4 billion in business lending cap space, allowing credit unions to more fully serve their small business members. Serving these members, who want to contribute to our country's economy, should be the primary goal of all of us here today.

Further, eliminating the statutory cap on credit union member business lending would foster economic growth. As the Committee knows well, there is no safety and soundness rationale to the member business lending cap, and there is no nexus between the business lending cap and the credit union tax status. The only reason for the cap is to keep credit unions from serving small businesses to a greater degree. Perpetuating this policy robs America's small businesses of further access to safe and affordable credit. Eliminating the credit union business lending cap would free up significant additional capital for small businesses and help advance economic activity and job growth in areas served by business lending credit unions. We estimate that eliminating the cap on credit union member business lending would provide nearly $5 billion in new small business lending and help to create more than 54,000 jobs for Americans in the first year alone.

Macro-Level Changes to Improve the Regulatory Landscape

My credit union and our members experienced the financial crisis like all Americans did, perhaps even more so. Oftentimes, we felt helpless because we didn't cause the turmoil that took place. For this reason, we welcomed policies to address the problem actors. Yet, new regulations from the CFPB have not protected credit union members as we expected, nor have they prevented too-big-to-fail banks from getting bigger and absorbing more market share.

Since the beginning of the crisis, credit unions have been subject to more than 200 regulatory changes from over a dozen Federal agencies. These new rules total nearly 8,000 Federal Register pages, and counting. The constant stream of new regulations from the CFPB particularly has led to credit union resources being diverted from serving members and to tough choices to limit or eliminate certain products and services.

Furthermore, disparity in the cost impact of regulatory burden has accelerated the consolidation of the credit union system (and the banking sector), robbing consumers of financial institution choices. While the number of credit unions has been declining since 1970, the attrition rate has accelerated since 2010, after the recession and the creation of the CFPB. Indeed, 2014 and 2015 were among the top 5 years in terms of attrition rates since 1970, at 4.2 percent and 4.1 percent. Attrition rates at smaller credit unions have been especially high. In both 2014 and 2015, the attrition rate at credit unions with less than $25 million in assets (half of all credit unions are of this size) has exceeded 6 percent. There is an indisputable connection between both the dramatically higher regulatory costs incurred by small credit unions and the increases in those costs since 2010, and their higher attrition rates.

Earlier this year, CUNA surveyed credit union executives to measure the impact of these rules on credit union members.[2] The findings indicate:

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[2] Haller, Jon; Ledin, Paul; and Malla, Bandana, Credit Union National Association Impact of CFPB Rules Survey, available at *https://www.cuna.org/uploadedFiles/CUNA/Legisla-*

- Over half (55 percent) of credit unions that have offered international remittances sometime during the past 5 years have either cut back (27 percent) or stopped offering them (28 percent), primarily due to burden from CFPB regulations.
- More than 4 in 10 credit unions (44 percent) that have offered mortgages sometime during the past 5 years have either eliminated certain mortgage products and services (33 percent) or stopped offering them (11 percent), primarily due to burden from CFPB regulations. Credit unions with assets of less than $100 million are the asset group most apt to have dropped their mortgage program altogether.
- Truth-in-Lending Act and Real Estate Settlement Procedures Act Integrated Disclosure (TRID) rules are far and away (80 percent) the single rule most negatively impacting credit unions that have offered mortgages. This is followed by the Qualified Mortgage rules (43 percent), Mortgage Servicing (30 percent), and new Home Mortgage Disclosure Act rules (19 percent). TRID rules serve as the most troublesome rule for all asset groups. (Notably, many credit unions have not yet turned their full attention to the new requirements in the new HMDA rules so this impact is likely understated).
- One in four credit unions (23 percent) that currently offer Home Equity Lines of Credit (HELOCs) indicate they plan to either curtail their HELOC offerings or stop offering them in response to the new HMDA rules.
- The clear majority of credit unions (93 percent) that either currently offer payday/small-dollar loans or are considering offering them indicate they are reconsidering their programs if there are increased regulations: (33 percent) will likely no longer consider introducing these loans, (43 percent) will review the impact and then decide whether to continue/discontinue the currently existing offering, and (17 percent) will likely discontinue the currently existing loan product (without an impact review) if there are increased regulations.

These results show consumers are losing options from credit unions, and the smallest credit unions are being hit the hardest. Common-sense reforms must be enacted to better protect credit unions from the anti-competitive rules generated by this rigged regulatory regime that rewards the largest financial institutions and nonbank lenders that caused the financial crisis. There are ways that Congress can make the CFPB more effective and adaptable to our economic landscape.

1. A Five-Person Commission for the CFPB

As presently structured, the CFPB is an anomaly in the Federal Government—its authority is vested in a single person, removable by the President only for cause, and absent the appropriate levels of Congressional oversight. Credit unions and our members benefit from policymaking that includes more voices and different expertise. This is how my credit union is run—with a Board consisting of members from the community that can offer different perspectives and views. This is how all other Federal financial regulatory agencies are run-with bipartisan boards made up of members with diverse views.

Director Cordray believes he has done more than enough to accommodate credit unions in rulemakings despite the substantial evidence they have been harmed by one-size-fits all rules.[3] Under the current structure, it is possible to ignore significant input from other regulators and Congress about issues such as exempting credit unions from certain rules, because ultimately, the Director answers to no one, not even consumers themselves.

A single director structure leaves consumers vulnerable to market uncertainty and drastic swings in policy due to the political environment. This uncertainty and the frequent changes in rules and policy can be problematic for credit unions, forcing membership resources to be diverted to appease the most recent perspective the CFPB director has.

Consumer protection is not about politics; it is about creating the best environment to enable financial health and safety—a mission the credit union movement has adhered to for many decades with bipartisan support. The best way to remove

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tive_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/FINAL%20Report%20Summary%20only%20Impact%20of%20CFPB%20Survey%20Analysis.pdf (February 2017).

[3] See e.g., Letter from Director Richard Cordray to Congressman and Congress Stivers, available at *https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/April%202016%20Response%20to%20Schiff-Stivers%20CFPB%20Letter.pdf* (April 13, 2016).

politics from this equation is through a multi-member commission. Perhaps the best indication that this is the best solution is the fact it is a proposal that both Democrats,[4] and Republicans[5] have supported, only to walk away from it when it was politically convenient to do so. Credit union members and other consumers would benefit from a multi-member Commission that returns fairness and certainty to the rulemaking process. We urge you to put consumers ahead of politics and change the structure of the CFPB.

2. Enhance CFPB's Exemption Authority

Congress provided the CFPB with the authority to exempt any class of covered institutions from any of its rulemakings under Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and we were pleased it did so. However, the CFPB has resisted using this exemption authority to fully exempt credit unions from any of its rulemakings. Moreover, while under present law the CFPB is required to consult with the prudential regulators primarily responsible for ensuring safety and soundness, it is not engaging with the NCUA in a meaningful way during the rulemaking process. This is evidenced by the NCUA's recent objection to the CFPB's proposed rule for small dollar lending[6] and a letter sent to the CFPB last month outlining concerns with other CFPB rules.[7] This unwillingness to consider input from the NCUA early in the rulemaking process has resulted in proposals, final regulations, and guidance that are conflicting, confusing, and do not take into consideration the concerns of credit unions' prudential regulator.

Furthermore, the CFPB's unwillingness to adequately exercise its exemption authority has resulted in credit unions reducing the availability of, or eliminating entirely, safe and affordable financial products from the market. Nowhere is this seen more clearly than in the impact of the Bureau's first major rulemaking on remittances. More than half of the credit unions that offered remittances prior to the rule have either stopped offering this service to their members or have significantly reduced offering the service to stay below the low exemption threshold. Indeed, CFPB Director Richard Cordray himself noted at a recent hearing in the House Financial Services Committee that 96 percent of international remittances now run through large banks or nonbank providers, the very abusers from whom this rule was designed to protect consumers.[8] When a 'consumer protection' rule drives out safe providers and forces consumers into the hands of abusers, this is not consumer protection.

Because such one-size-fits-all CFPB rulemakings have harmed credit union members, the NCUA recently urged the CFPB to use its Section 1022 (b)(3)(A) exemption authority "whenever possible" given the credit union community's long history of serving their members and protecting consumers. The NCUA further stated, "Use of this permitted, yet underutilized, statutory authority is appropriate to address compliance costs and the unintended consequences of limiting access to affordable financial services for many millions of middle class credit union members through the enactment of needless regulatory burden."

In addition to the NCUA, 399 Members of Congress urged the CFPB to properly use its authority to exempt credit unions from regulations that were never intended to apply to them, and to ensure that regulations do not have the unintended consequences of limiting services or increasing cost for credit union members.[9]

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[4] Department of Treasury, "Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation." Available at *https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf.* 2009, p. 58.

[5] H.R. 1266 (114th Congress).

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

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

[8] CFPB Director Richard Cordray in response to a question by Representative Nydia Velazquez (D–NY) at a hearing entitled, "Semi-Annual Report of the Bureau of Consumer Financial Protection." (April 5, 2017).

[9] Letter from 329 U.S. Members of the House of Representatives to CFPB Director Richard Cordray, available at *http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-andTestimony/Letters/2016/Stivers-Schiff-Letter-w-signatures/* (Mar. 14, 2016); Letter from 70 U.S. Senators to CFPB Director Richard Cordray, available at *http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and-Testimony/Letters/2016/160718-Letter-to-CFPB-on-Tailoring-Regulations/* (July 2016).

Further, the Small Business Administration Office of Advocacy additionally urged the CFPB to exempt credit unions from the CFPB's proposed small dollar loan rule.[10] It specifically outlined the economic impact of not doing so stating, "The CFPB's proposed rule may force legitimate businesses to cease operation. Imposing such a regulation will not alleviate a consumer's financial situation. The consumer will still need to pay his/her bills and other expenses. Imposing these strict regulations may deprive consumers of a means of addressing their financial situation."

Despite these loud and powerful voices encouraging the CFPB to exercise its Congressionally bestowed exemption authority, the CFPB has refused to listen. Therefore, we believe even further clarity about Congress' intent is prudent.

Congress conveyed the exemption authority for a reason: to make sure that the rules promulgated by the Bureau took into consideration the impact on small institutions, like credit unions and small banks. Congress understood then and we hope it understands now that a one-size-fits-all structure produces anti-competitive rules that disadvantage small providers, but rules which are tailored to the size and risk-profile of the institution allow them to continue to provide safe and affordable services to their members and customers. Consumers benefit when credit unions and other good actors spend fewer resources complying with rules meant to address other's bad behavior.

Sadly, consumers are paying the price for this anti-competitive rulemaking regime. In 2014, the impact of regulatory burden on credit unions and their members was $7.2 billion. This represented a 40 percent increase in compliance costs from 2010. Since 2014, significant new rulemakings have taken effect which will have undoubtedly increased the cost credit unions and their members are paying to comply with rules designed for abusers even more.

By more explicitly directing the CFPB to provide meaningful exemptions for institutions with a history of providing safe and affordable financial services, these institutions—credit unions and small banks—can take resources they intend to apply to superfluous compliance and invest them instead in their local communities. We urge Congress to enact legislation that exempts credit unions and small banks from all Bureau rulemakings unless, on an individual rulemaking basis, the Bureau demonstrates that a pattern of abuse exists that justifies application of a Bureau rule, and the Bureau receives the concurrence of the credit union and/or bank prudential regulators.

3. Reexamine the CFPB's UDAAP Authority

The CFPB's Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority gives it the power to engage in nearly any policymaking desired, even in the absence of actual harm to consumers. For instance, in its proposed Payday and Small Dollar Loan rule, the CFPB is attempting to include consumer-friendly, credit union small dollar loan programs using this UDAAP authority.[11] The proposed rule imposes new, and extremely complex, requirements on credit unions despite little to no data suggesting these products have any pattern of harm to consumers. To the contrary, consumers have stated that credit union small dollar loans are often their safest and best option for credit.[12] My credit union has provided small dollar loans to our members for years to help them buy groceries, pay for health care, and pay the rent when they are short for the month.

Even the NCUA was concerned with the CFPB's overreaching proposal, and it sent its own comment letter urging the Bureau to exempt aspects of credit union lending from the rule.[13] The NCUA recently reiterated these concerns in a follow-up letter to the CFPB, specifically addressing its use of UDAAP authority.[14] The NCUA has also stated that the CFPB should provide clarity to credit unions with respect to UDAAP. Specifically, the agency expressed that "uncertainty regarding supervisory expectations can limit the ability of credit unions to provide the services

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[10] Small Business Administration Office of Advocacy Letter to CFPB in response to the CFPB's proposed rule for Payday, Small Dollar, and High Cost Loans, available at *https://www.sba.gov/advocacy/10–07–2016-payday-vehicle-title-and-certain-high-cost-installment-loans (Oct. 7, 2016).*

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

[12] Peace, Elizabeth. "Consumers Prefer Credit Unions to Payday Lenders," *Credit Union Times,* available at: *http://www.cutimes.com/2015/07/28/consumers-prefer-credit-unions-to-payday-lenders* (July 28, 2015).

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

[14] Supra note 9, NCUA Letter to CFPB.

sought by their members." The NCUA also expressed that there is no precedent for understanding the abusive prong of UDAAP, which can be broad.

When credit unions are operating without due process and do not have a clear picture of the rules they are operating under, we stop innovating and limit our products and services. The result is detrimental to our members and our communities. More clarity is needed about the CFPB's use of UDAAP authority, as this would be in the best interest of credit unions and their members.

Specific Changes to Strengthen Consumer Regulations

The 2008 financial crisis taught us that it is important to address the actions of financial services providers who are harming consumers. While the goal of the CFPB is to protect consumers, there are ways CFPB regulations could be better tailored to address the problem actors in the industry without impeding the ability of credit unions and other community financial institutions from continuing to operate and serve consumers.

In the past several years, since the creation of the CFPB, credit unions' ability to provide top quality and consumer-friendly financial products and services has been significantly impeded by a regulatory scheme which has favored the large banks and nonbank financial services providers that can afford to absorb regulatory and compliance changes. CUNA's recent Regulatory Burden Study found that in 2014, regulatory burden on credit unions caused $6.1 billion in regulatory costs, and an additional $1.1 billion in lost revenue. Even more alarming, these figures do not include the CFPB's recent regulatory additions to the Home Mortgage Disclosure Act (HMDA) and Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) requirements, which we believe have caused the greatest increase in compliance cost but have yet to be precisely measured. CUNA is in the process of updating the study to consider the impact of recently implemented regulations.

The CFPB regularly cites modest thresholds and accommodations it has provided in some mortgage rules and the remittances rule as proof it is considering the impact its rules have on credit unions and their members. And, the exemptions the CFPB provided for small creditors in the qualified mortgage/ability-to-repay underwriting rules were helpful to credit unions. Regrettably, the CFPB's efforts have not been sufficient and have not fully taken into consideration the size, complexity, structure, or mission of all credit unions. Below are regulatory changes that could be made to keep credit unions like mine operating and thriving in these markets. This nuanced policymaking can foster economic growth for credit unions and their members.

1. Home Mortgage Disclosure Act (HMDA)

The CFPB has acknowledged that credit unions maintained sound credit practices through the economic crises and did not engage in the practices that led to the crash of the housing market. Nonetheless, the HMDA rule penalizes credit unions where there has been no evidence of wrongful conduct. This makes little sense given credit unions' field of membership requirements.

The CFPB should modify the 2015 HMDA final rule to provide meaningful exemptions that will provide relief to credit unions. It will be difficult for credit unions to effectively participate in the mortgage lending market if they are forced out because of rules not tailored to their size or structure. While the 2015 HMDA final rule included exemption thresholds of 25 closed-end mortgages—2 per month—and 100 open-end mortgages (HELOCs)—2 per week—from HMDA reporting, this can hardly be described as tailoring the rule to minimize the impact on small entities given that prior to the rule, credit unions were not required to report HMDA data on HELOCs. The new HMDA reporting requirements are particularly troublesome since many credit unions process HELOCs on a consumer platform and mortgages on a different lending platform, a point that credit union leaders repeatedly raised with Bureau staff during the rulemaking process. The CFPB further added to credit unions' regulatory burden by drastically increasing the number of data points they must report to a level well beyond the data points required by the Dodd-Frank Act.

CUNA's recent survey of credit unions showed that nearly one in four (23 percent) that currently offer HELOCs plans to either curtail their offerings or stop offering them completely in response to the new HMDA rules. We believe this is a conservative estimate since many credit unions have not fully turned their attention to implementing the new HMDA rules, given the other regulatory changes that have had their focus the past few years.

While the NCUA stated recently that there are several areas where relief is warranted for credit unions, it specifically identified HMDA as problematic. It urged the CFPB to significantly increase its exemption thresholds. Additionally, the NCUA expressed concerns that the CFPB is requiring the reporting of 14 additional data points beyond what was explicitly required in the Dodd-Frank Act. The NCUA stated, "the recording and submission of the additional data fields create a significant burden on credit unions," and it further urged the CFPB to exempt credit unions from this reporting requirement. The NCUA also points out the harm such arbitrary requirements could cause for consumers, stating, "While the Bureau may consider such additional data points as value added for economic modeling or other purposes, please consider the distinct economic burden places on the credit union community by this exercise."

Credit unions have provided an abundance of data to the CFPB showing that the thresholds for HMDA compliance do not provide enough regulatory relief. Congress should, therefore, encourage the CFPB to provide an exemption from reporting on HELOCs and a dramatic increase in the loan volume exemption threshold for closed-end mortgage loans. These changes would allow credit unions to continue to operate in the mortgage lending market and allow consumers to have more and safer choices. A more robust and competitive mortgage market with many participants benefits consumers most.

In addition, Congress should require the CFPB to make modifications to the rule so the required data points are limited to the enumerated data points in the Dodd-Frank Act. The Dodd-Frank Act enumerated data points are sufficient for purposes of identifying discriminatory practices and implementing the purpose of the rule.

Finally, Congress should require the CFPB to study the ramifications on privacy and the potential for identity theft before collecting any additional data points or making them public. The final rule also calls for the use of a "balancing test" by the CFPB yet does not otherwise indicate which fields will be made public. The CFPB should make modifications to the rule to clarify which fields will be made public and allow for notice and comment on the actual public data points.

2. Mortgage Origination Rules

In CUNA's recent survey of credit unions, 43 percent cited the CFPB's QM/ATR rule as most negatively impacting the ability to serve members with mortgage products. While the CFPB provided a "small creditor" exemption to certain provisions of this rule, it did not provide full relief for credit unions who in some instances were forced to change their product offerings. All credit unions, not just the very smallest, have a different operating structure than banks and for-profit lenders, and the regulatory changes implemented by the CFPB must reflect this difference. Modifications in these new underwriting rules for all credit unions would be appropriate to ensure they can continue to effectively serve their members.

Furthermore, credit unions agree that borrowers should have appropriate disclosures when buying a home, but the sweeping substantive changes made by the new TRID rules in addition to the Ability-to-Repay (ATR) underwriting requirements increase the regulatory burden on credit unions and create arbitrary barriers to homeownership. The CFPB should recognize credit unions are not predatory lenders but good faith partners for their members seeking to buy a home. Credit unions would support the following changes to the TRID framework, which would help us continue to operate in the current market.

First, origination waiting periods are harmful to consumers and lenders by delaying closings often not to the benefit of the consumer. We would support modifications to the rules to allow waiting periods to be waived. Congress should urge the CFPB to remove the required 3-day waiting period prior to closings. This waiting period is disruptive to borrowers and credit unions alike, and can result in credit union home buyers losing opportunities to other potential buyers, such as investors paying cash.

Second, credit unions would support a regulatory change that would allow a safe-harbor from TRID enforcement until it issues clear guidance and clarifies the technical and prescriptive TRID requirements. The rule should be modified to be principal-based instead of prescriptive.

Third, Congress should urge the CFPB to provide a definition for "residual income" in the TILA Regulation Z ATR requirements. The lack of a clear definition forces significant documentation requirements and creates unnecessary litigation and liability risk. This risk adversely affects consumers with less than meticulous credit records.

Fourth, the CFPB should make modifications to TILA regulations to allow for an ability to cure violations prior to the right to proceed with litigation.

Fifth, credit unions would support removal of the 2021 sunset for QM loans that are eligible for sale to the Government-Sponsored Enterprises (GSEs) to prevent market disruptions. The current exemption allows lenders to exceed the general requirement that QM loans have a debt-to-income ratio of 43 percent, an onerous standard. The exemption for GSEs assists in maintaining a functioning mortgage market.

In addition, credit unions would support revision of the loan originator compensation rules to narrow the overbroad definition of "loan originator." The definition, as currently written, is unclear and could potentially require registration of all employees of a credit union. Credit unions would also support clarification of assignee liability under the lending rules/statutes. This lack of clarity has the unintended consequence of causing the secondary market to reject loans because of possible technical, non-impactful errors. This is, in large part, due to the unclear interpretation of TILA/RESPA rules for which credit unions have requested additional guidance from the CFPB.

Finally, credit unions would strongly support increases to the tolerances for appraisal fees. The zero-tolerance requirement has caused problems and delays for credit unions and consumers.

3. Mortgage Servicing Regulations

The CFPB stated it has tailored its servicing rules by making certain exemptions for small servicers that service 5,000 or fewer mortgage loans. However, significant requirements under the servicing rules are excluded from the exemption and must be followed by large and small servicers alike. Small servicers remain subject to requirements related to successors-in-interest, force-placed insurance and in certain circumstances, early intervention requirements for borrowers in bankruptcy. CUNA continues to hear the most concerns about CFPB rules from the smaller credit unions whom the CFPB claims to have helped most through its thresholds.

Congress should urge the CFPB to provide a more complete exemption from these requirements for credit unions. First, the CFPB should change the language of the force-placed hazard insurance notice to include reference to a policy that provides insufficient coverage. Second, the CFPB should expand the small servicer exemption to fully exclude application of Regulation Z provisions to successors in interest, specifically provisions relating to disclosure requirements regarding post-consummation events, prohibited acts or practices and certain requirements for credit secured by a dwelling, mortgage transfer disclosures, and periodic statements for residential mortgage loans.

4. Remittances

The CFPB regularly cites the exemption to entities that provide fewer than 100 remittances annually as an example of regulatory relief to small entities. However, this exemption threshold—of just two transactions a week—is a prime example of one that has not provided significant relief to credit unions, as evidenced by the fact that half of credit unions offering remittances prior to the implementation of this rule have exited the market or reduced offerings. For credit unions to come back into, or continue to, participate in this market, the CFPB should re-propose this rule with an increased exemption threshold of at least 1,000. This would allow more credit unions to be exempt from the rule, providing consumers with more options.

5. Fair Debt Collection Practice Act (FDCPA)

When Congress enacted the FDCPA and for decades since, it recognized that including credit unions in a statute addressing abusive debt collection practices is unnecessary because credit unions are highly regulated and supervised, and have longstanding relationships with their members. Since the enactment of the FDCPA, no subsequent law, including the Dodd-Frank Act, has changed this directive. As such, the CFPB should withdraw debt collection bulletins that attempt to use its UDAAP authority to place new requirements on creditors despite no statutory changes in the FDCPA or Federal Credit Union Act (FCUA). It is unclear what force of law CFPB bulletins have, and the lack of transparency surrounding them outside of the rulemaking process creates unclear requirements and due process concerns. The CPFB should also withdraw its bulletin concerning service providers. Again, a bulletin issued outside of the rulemaking process creates confusion and unclear guidance.

The CFPB issued a fair lending guidance bulletin unsupported by research or data. This guidance bulletin was also not issued through the normal course of the Administrative Procedures Act or the public rulemaking process. We are concerned with actions taken by the CFPB that circumvent the rulemaking process and rob us and our members of the opportunity to provide input. We, therefore, support the withdrawal of the CFPB's indirect lending guidance since it lacks transparency and has caused confusion about the CFPB's jurisdiction and interest in this market. Policymaking in this area should be open to the public and responsive to comments.

6. Payday and Small Dollar Loans

In the proposed payday and small dollar loan rule, the CFPB is attempting to sweep consumer-friendly credit union small dollar loan products and services into the rule using its UDAAP authority. It, unfortunately, proposes new and complex requirements on credit unions despite little to no data suggesting these products have any pattern of harm to consumers. To the contrary, consumers have stated that credit union small dollar loans are often their safest and best option for credit. Accordingly, Congress should urge the CFPB to exempt credit unions entirely from its proposed payday and small dollar loan rulemaking.

7. Voluntary Products

Federal credit unions are subject to the FCUA and TILA's Regulation Z, which are significantly altered by the CFPB's proposed new "All-in APR" calculation. Currently, Federal credit unions typically view their loans under the TILA Regulation Z definition of cost of credit to determine what fees are finance charges, which does not include application fees, insurance, or other ancillary products within the cost of credit. Therefore, Congress should urge the CFPB to clearly delineate that ancillary products that are not required as part of the credit are not fees for the payment for the credit granted, and the fees are not finance charges for purposes of Regulation Z. This will ensure that credit unions are not impeded from offering consumers the safest and most affordable insurance and other voluntary product options.

8. Arbitration

Credit unions are democratic organizations owned and controlled by their members. It is difficult to imagine a case in which class action litigation against a credit union would be the best course of action for credit union members, since it would put them in a position of having to sue themselves as owners. Accordingly, Congress should urge the CFPB to exempt credit unions from new arbitration requirements because of their unique member ownership structure in which class action litigation would lead to member harm.

9. Small Business Lending

Section 1071 of the Dodd-Frank Act amends the Equal Credit Opportunity Act to require financial institutions to compile, maintain, and submit to the CFPB certain data on credit applications by women-owned, minority-owned, and small businesses. This is one of the last remaining required rulemakings in the Dodd-Frank Act. Credit unions' unique and distinct memberships, as well as the statutory restrictions on credit union business lending and existing regulatory framework, would not coincide with the CFPB's plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. Therefore, Congress should exempt credit unions from the Section 1071 requirements. Regulatory burden likely to be associated with this rule, particularly for small credit unions, would harm the ability of small business owners to obtain credit from their credit union.

10. Access to Financial Records

Per the CFPB, greater access to consumer data by data aggregation companies benefits consumers because it allows companies to innovate as they develop tools and services for consumers, such as personal financial management tools, credit decisions, bill payment, and fraud protection. Credit unions agree that some of the tools and services that rely on data aggregation are useful to consumers. However, the benefits of such practices are certainly not without serious risks. Accordingly, Congress should direct the CFPB to proceed carefully in the context of third-party access to consumer data. Credit unions are concerned with the very real threats to financial account providers, such as potential liability, and the potential harm to consumers. Such harm could result from unauthorized account access or authorized access by unscrupulous third-party aggregators.

Enabling Consumers To Achieve the Dream of Home Ownership

Housing is one of the largest sectors of the American economy and a key component of economic growth in many communities across the country. Many credit unions offer mortgages to satisfy member demand, and credit unions represent an increasingly significant source of mortgage credit nationally. In 2016, more than two-thirds of credit unions were active in the first mortgage arena, collectively originating over $143 billion worth of these loans—an amount equal to 7.5 percent of the total market. By comparison, in 1996 only 43 percent of credit unions were active and they originated a total of less than $20 billion in first mortgages. Moreover, credit unions are increasingly active participants in the secondary market. Whereas in 1996 only about 16 percent of mortgage lending credit unions sold loans into the secondary market, by 2016, nearly 30 percent of mortgage lending credit unions sold $56 billion into the secondary market, or 40 percent of total first mortgages originated.

Credit unions that elect to sell mortgages into the secondary market do so for a variety of reasons, but predominantly it is a tool to help them manage long-term interest rate risk. Particularly today, with long-term interest rates at or near historic lows, access to a highly liquid secondary market with relatively low transaction costs is vital for the health of credit union mortgage lending. Credit unions, therefore, have a deep interest in the structure of the housing finance system going forward, and support the creation of an efficient, effective, and fair secondary market with equal access for lenders of all sizes, which adheres to the following principles below.

1. Neutral Third Party

There must be a neutral third party in the secondary market, with its sole role as a conduit to the secondary market. This entity must be independent of any firm that has any other role or business relationship in the mortgage origination and securitization process, to ensure that no market participant or class of participants enjoys an unfair advantage in the system.

2. Equal Access

The secondary market must be open to lenders of all sizes on an equitable basis. Credit unions understands that the users (lenders, borrowers, etc.) of a secondary market will be required to pay for the use of such market through fees, appropriate risk premiums, and other means. However, guarantee fees or other fees/premiums should not have any relationship to lender volume. Additionally, I caution strongly against regimes that require lenders to retain significant amounts of risk beyond that represented by actuarially appropriate guarantee fees, as these risk retention arrangements may have a disproportionately negative impact on small lenders that are less able to manage such risk, and could therefore result in less consumer choice.

3. Strong Oversight and Supervision

The entities providing secondary market services must be subject to appropriate regulatory and supervisory oversight to ensure safety and soundness by ensuring accountability, effective corporate governance, and preventing future fraud. These entities should also be subject to strong capital requirements and have flexibility to operate well and develop new programs in response to marketplace demands.

4. Durability

Any new system must ensure mortgage loans will continue to be made to qualified borrowers even in troubled economic times. Without the backstop of an explicit federally insured or guaranteed component of any revised system, credit unions will be concerned that private capital could quickly dry up during difficult economic times, as it did during the financial crisis, effectively halting mortgage lending altogether.

5. Financial Education

Credit unions have a noble history of offering a wide variety of financial counseling and other educational services to their members. Any new housing finance system should emphasize consumer education and counseling to ensure that borrowers receive appropriate mortgage loans.

6. Predictable and Affordable Payments

Any new system must include consumer access to a variety of products that provide for predictable, affordable mortgage payments to qualified borrowers. Traditionally, this has been through fixed-rate mortgages (such as the 30-year fixed rate mortgage), but other products that may be more appropriately tailored to a borrower's specific circumstances, such as certain standardized adjustable rate mortgages, should also be available.

7. Loan Limits

Our Nation's housing market is diverse, with wide variation geographically and between rural and urban communities. Any new housing finance system should apply reasonable conforming loan limits that take into consideration local real estate prices in higher cost areas.

8. Affordable Housing

The important role of Government support for affordable housing (defined as housing for lower-income borrowers but not necessarily high risk borrowers, historically provided through Fair Housing Act programs) should be a function separate from the responsibilities of the secondary market entities. The requirements for a program to stimulate the supply of credit to lower-income borrowers are not the same as those for the more general mortgage market. Credit unions believe a connection between these two goals could be accomplished by either appropriately pricing guarantee fees to minimize the chance of taxpayer expense, and/or adding a small supplement to guarantee fees, the proceeds of which could be used by some other Federal agency in a more targeted fashion in furtherance of affordable housing goals.

9. Mortgage Servicing

To ensure a completely integrated mortgage experience for member-borrowers, credit unions should continue to be afforded the opportunity to retain or sell the right to service their members' mortgages, at the sole discretion of the credit union, regardless of whether that member's loan is held in portfolio or sold into the secondary market. To lose control over this servicing relationship would be detrimental not only to a large majority of credit union member-borrowers, but could also result in fewer mortgage choices available to credit unions and their members, with higher interest rates and fees alike. Moreover, to the extent national mortgage servicing standards are developed, such servicing standards should be applied uniformly and not result in the imposition of any additional or new regulatory burdens upon credit unions.

10. Reasonable and Orderly Transition

Whatever the outcome of the debate over the housing finance system in this country, the transition from the current system to any potential new housing finance system must be reasonable and orderly to prevent significant disruption to the housing market which would harm homeowners, potential home buyers, the credit unions who serve them, the Nation's housing market, and economic growth.

Providing Credit Unions with the Tools for Success

Credit unions have a proven track record of being the responsible service providers and lenders in this country. Credit unions representatives, such as myself, believe there should be efforts made to remove barriers and provide more capabilities so we can continue to serve our members. We encourage Congress to use its oversight authority to monitor and encourage our prudential regulator, the NCUA, to continue with regulatory relief efforts all of which will help foster economic growth in local communities. As I have stated earlier in this testimony, it is the growth and health of local communities, like the ones my credit union serves, that contribute to the overall economic health of this country. Any effort to reduce the regulatory burden on credit unions will result in investment in their members through better rates on savings and loans, stronger capital positions, and the development of alternative financial products and delivery systems. We recommend Congress, through its oversight, monitor and encourage the NCUA to provide regulatory relief for credit unions on the following issues.

1. Appropriately Tailoring Rules for Credit Unions

Credit unions are member-owned not-for-profit cooperatives which inherently focus their purpose and existence on the benefit of their members. Our unique structure demands that the rules governing operations are tailored to maximize the benefit to our member owners. As such, we urge Congress to encourage the NCUA to not mimic Federal prudential banking regulators' rules designed for large banks owned by stockholders that bear little, if any, resemblance to a credit union. Rules should be properly tailored to recognize and account for the unique cooperative structure of credit unions.

2. Examination Flexibility

NCUA has adopted and is implementing an Examination Flexibility Initiative. Credit unions applaud the NCUA for these efforts which, if structured properly, will provide efficiencies and reduce costs to the agency, and reduce the examination burden on credit unions. This reduced regulatory burden will allow credit unions to focus their efforts and resources on their members. We urge Congress to monitor the progress of this effort and ensure that the technology upgrades and restructuring of the examination process and call report system ultimately result in budget efficiencies and reduced regulatory burden. As a further enhancement to these efforts, we urge Congress to encourage the NCUA to adopt the extended examination cycle for low-risk credit unions to those with $1 billion or more in assets. Currently, the extended examination cycle for low-risk credit unions is only available for those under $1 billion in assets.

3. Minimizing the Negative Impact of Accounting Standards on Credit Impairment on Credit Union Lending

Congress should ensure the NCUA works with credit unions to minimize the harmful effects the Financial Accounting Standards Board's (FASB) current expected credit loss (CECL) standard will undoubtedly have on their ability to lend to their members. The CECL standard will require credit unions and other financial institutions to forecast potential credit impairment using forward-looking information, as opposed to the current process of using historical data.

Application of CECL will have two impacts on credit unions: it will make the calculation of loan loss allowance accounts more complicated and costly, and it will require credit unions to hold more in those allowance accounts for any given loan portfolio. The NCUA has acknowledged that CECL will adversely affect credit unions' net worth ratios for any fixed level of credit risk exposure.

In the final standard, the FASB recognized that a one-size-fits-all approach is inappropriate in the context of determining credit losses. Specifically, the final standard contains language not included in the proposal that provides additional flexibility, stating there is no one methodology that entities must use in applying CECL. Further, the FASB stated its intent is that each institution applies the method appropriate for its portfolio based on the knowledge of its business and processes. Since the FASB is simply the accounting standard setter, compliance with CECL will be assessed by the NCUA and the other Federal financial regulators through the examination process.

Credit unions are required under the FCUA to follow U.S. generally accepted accounting principles (GAAP). However, the NCUA has significant latitude on how it applies these standards in the examination context. While application of CECL will in no way change economic reality, as noted above, it will result in lower apparent capital ratios at credit unions (and banks). Therefore, credit unions have repeatedly urged the NCUA to instruct examiners to make the appropriate adjustments in assessments of capital adequacy to minimize the negative impact on credit unions. To illustrate this, assume under the CECL approach a credit union's net worth ratio falls by 50 basis points. In such an instance, an examiner who otherwise might have suggested, for example, a 9 percent net worth ratio should now be satisfied with 8.5 percent which would provide the same level of loss absorption capacity as the previous 9 percent.

This scenario makes clear that the NCUA can adjust its processes in a way that minimizes the negative effect on credit unions' net worth ratios, which would likely translate directly into a decrease in consumer and business lending. Not only does the NCUA have the authority to reduce such harm, it can do so relatively easily and at no risk to the National Credit Union Share Insurance Fund (NCUSIF). Therefore, we urge Congress to work with the NCUA to ensure the agency takes appropriate steps to minimize effects of CECL that will have a real-life impact on credit union lending to their consumer- and business-members.

Further, while the standard's effective date is still several years away, the NCUA is scheduled to begin examining credit unions next year for CECL preparedness. Application of CECL will require credit unions to compile and analyze loan data at a level of granularity beyond what is currently the common practice. Thus, it is crucial that the NCUA provide credit unions with detailed guidance as soon as possible to educate them on the specific data they will be required to use for CECL. While the NCUA has stated its intention to release such guidance, credit unions are unable to proceed with preparation until they can study the compliance aid. Recognizing its importance, we ask Congress to encourage the NCUA to finalize and release this guidance as soon as possible.

4. Leverage Requirement

Under the FCUA, credit unions are subject to statutory capital requirements. For prompt corrective action purposes, a credit union must maintain a leverage ratio of 7 percent to be considered well-capitalized. This level is 2 percentage points higher than bank capital requirements. When the credit union requirement was set by Congress, credit unions were not subject to a Basel-style risk-based capital requirement. The new risk-based capital rule promulgated by the NCUA does follow a Basel approach. Therefore, a higher statutory leverage requirement for credit unions is no longer necessary. Lowering the leverage requirement, supported by the new risk-based requirement, would provide regulatory relief for many credit unions and will allow credit unions to invest more in their members, fostering economic growth.

5. Corporate Stabilization Fund/NCUSIF

The NCUA is currently considering the process for winding down the Corporate Credit Union Resolution Program put in place during the height of the financial crises for five corporate credit unions conserved by the NCUA. The performance of the Corporate Stabilization Fund has improved dramatically as the economy and housing markets have recovered and the NCUA has obtained settlements from several of the investment banks that sold legacy assets to the corporate credit unions. Thus, credit unions have overpaid the projected final costs of the resolution and should receive refunds in the form of partial rebates of assessments and partial capitalreplenishmenttomembersofsomeofthecorporatecreditunions.The assessment rebates will require a merger of the corporate stabilization fund and the NCUSIF. To accomplish the merger, NCUA will likely need to temporarily increase the normal operating level of the NCUSIF above 1.3 percent of insured shares. We urge Congress to monitor this transition ensuring that the increase in the normal operating level is not larger than necessary, that NCUA returns the normal operating level to 1.3 percent as soon as possible, and that credit unions receive rebates in a timely manner.

6. Elimination of the Loan Maturity Limit

Congress should consider lifting the loan maturity limit contained in 12 U.S.C. §1757(5) which limits maturities to 15 years. While the NCUA has limited authority to make exceptions to the 15-year limit (and it has chosen to do so), the statutory restriction still operates as an antiquated limit to some credit union lending, particularly Recreational Vehicle (RV), education, and other loans. Elimination of the loan maturity limit would allow for additional lending in these markets, which will foster economic development.

We Must Not Move One Step Forward, Two Steps Back

While credit unions support the changes offered in this testimony, there are other policy positions that have been considered that would not be in our best interest or the best interest of our members.

For example, credit unions are opposed to legislative changes to allow Federal savings associations (S&Ls) to operate with the duties and responsibilities of national banks unless similar legislation enhancing the flexibility of the credit union charter are provided. This opposition is a matter of fairness and frankly, in the interest of good and consistent public policy. We are also opposed to legislative changes to eliminate a statutory cap on commercial lending for S&Ls, without eliminating credit unions' commercial lending cap.

While S&Ls were chartered for the specific purpose of mortgage lending, credit unions have been offering business purpose loans to their members for over 100 years. Since the beginning of the financial crisis, business loans have been the fastest growing loan type at credit unions; during this same period, commercial lending by S&Ls has decreased more than 17 percent. We disagree that either cap on business lending should exist in the first place. There are few more provident uses of credit than to start, maintain, or expand a business, and America's small businesses need more options to foster economic growth in this country. Credit unions have a long and rich history of serving their small business members well, but many credit unions that serve these members are staring the business lending cap straight in the face.

Credit unions also do not support any legislative change that would subject the NCUA, credit unions' prudential regulator, to the appropriations process. The money that funds the NCUA comes from credit unions, like mine, and their members, not the taxpayers in general. Maintaining a separate, independent Federal regulator and insurer is critically important to the credit union system, and the structural and mission-driven differences between credit unions and banks necessitate such a regulatory scheme. Furthermore, credit unions are concerned that subjecting NCUA to the appropriations process could blur the independence of the agency and the credit union system, something we have fought hard to preserve. Credit unions and their members remain willing to pay for their own regulator provided there is sufficient transparency with respect to the agency's budget and the overhead transfer rate. Overall, with all the positive changes that could be made to help my credit union better serve consumers, this change would be a solution in search of a problem.

In addition, while credit unions support changes to the CFPB to make it a better, more focused agency, we do not support a legislative change that would remove the agency's authority to promulgate rules for and supervise the payday lending market, vehicle title loans, or other similar loans. The CFPB should be focusing on the lending activities of nonbank lenders rather than duplicating the supervision of highly regulated and examined financial institutions. While we have significant concerns with the CFPB's proposed rule on small dollar loans, consumers could benefit from a regulatory approach that balances the need for access to credit with addressing consumer harms and predatory behavior. Our concern with the CFPB's small dollar rulemaking is that it would impede and discourage credit unions from offering member-friendly small dollar credit to consumers, depriving them of access to a safe and affordable alternative to entities with well-established histories of abuse. We encourage Congress to take a more measured approach to this issue that provides more protection to consumers, without unnecessarily limiting safe and affordable options in this market.

Furthermore, credit unions do not support legislative changes that would give banks with a leverage ratio more than 10 percent an exemption from "any Federal law, rule or regulation providing limitations on mergers, consolidations, or acquisitions of assets or control, to the extent such limitations relate to capital or liquidity standards or concentration of deposits or assets, so long as the banking organization, after such proposed merger, consolidation, or acquisition, would maintain a quarterly leverage ratio of at least 10 percent." Such a policy would provide very well capitalized banks an exemption from the 10 percent domestic deposit cap. Congress must consider the systemic risk this type of exemption would present, even if applied only to very well capitalized banks, as it could easily enable the very large banks to get substantially larger, increasing risk to the banking system and reducing consumer choice in the banking sector. As we have learned the hard way, policies that empower too-big-to-fail banks do not contribute to the economic growth of our country.

Finally, credit unions would not support legislative changes to repeal the Chevron deference doctrine of administrative law that gives Federal agencies deference on their interpretations of statutes. The implications of such a policy change would prevent our Federal regulators from doing the very job they were created to do. Credit unions need a regulator that understands their industry and their individual operations. The specialized expertise of independent agencies, when they are run by a bipartisan multi-member board, is critical to providing the regulated industry with policies to allow growth and prosperity. Federal agencies need the leeway to make decisions for their regulated entities within the confines of their statutory authority. There are alternative ways to monitor the policymaking of independent agencies, such as insuring the agencies are run by diverse group of decisionmakers. Repealing the Chevron deference doctrine would not be the solution to agency overreach.

Conclusion

Thank you again for the opportunity to testify and be a part of this process. I take my role in the credit union movement, and as part of the economic environment, seriously. I believe we have an opportunity for success and greater economic growth if we make the right choices. And, these choices must not only benefit ourselves and our neighbors, but all Americans. Thank you for consideration of my views.

PREPARED STATEMENT OF JOHN BISSELL

President and CEO, Greylock Federal Credit Union

June 8, 2017

Thank you for the honor of joining you today to share the experiences of Greylock Federal, where we serve more than 75,000 families and small businesses in rural Berkshire County. This county contains about 12 percent of our State's land mass, but only about 2 percent of the population. Our region, like so many across the country, is making the painful transition from a manufacturing base that once offered 12,000 GE jobs, to a service economy with close to zero GE jobs. The population in my hometown of Pittsfield has dropped from 58,000 to 40,000, just during the course of my lifetime. Our largest local employer is now our health system.

We have met these challenges head on as a region. While we are relieved to see our local economy recovering, and a brisk pace of hiring in Berkshire County, we can clearly see that not everyone is participating in the rebound. Many residents are caught in the bind of low-wage jobs and unaffordable housing; 45 percent of renters and 37 percent of homeowners live in homes considered "unaffordable." 20 percent of families with children younger than five are in living in poverty, and 34 percent of children are growing up in single-parent households. In addition, mass transit is weak, and according to the U.S. Census Bureau, 92 percent of Berkshire County workers rely on private transportation as their primary means to get to work. For working families living on the edge of financial stability, a failed transmission or a dead battery means an immediate loss of income. Others may be in between jobs and have a great idea for a small business, but do not qualify for traditional bank financing.

Local challenges like these need local economic development solutions. As the only CDFI credit union in the region, and with our strong $1 billion balance sheet, we at Greylock recognize our responsibility to redeploy deposits back into our local economy, help create jobs, boost consumer purchasing power and expand wealth building opportunities. How can we do that? For starters, we have looked to the example of other CDFI credit unions around the country—meaning those with a mission of promoting financial security and community development in lower-income distressed communities—and we were inspired to create our own Community Development department. This team—comprising two full-time employees and seven fully certified counselors—now offers free financial education, credit counseling, and budgeting assistance to every person in our community. Our professionals create new loan and deposit products to help the underserved and collaborate with local nonprofits to improve the financial self-sufficiency of working families. Further, to put more people in our community to work, we are expanding our New Road Auto Loan program for people with credit challenges. When they buy a reliable car, and make on time payments, their credit score goes up and their interest rate goes down. We are also expanding our Safety Net lending so that when a family has an unexpected emergency, they can come to Greylock for help instead of falling in with a predatory lender. Nationally, 16 percent of people take out predatory loans for emergency expenses and 69 percent for reoccurring expenses (e.g., rent), and these payday loans trap consumers into taking out new loans to pay off previous loans because the lump sum payments are unrealistic, worsening consumer's financial distress. We need to keep our members away from these financial predators in the first place. Finally, we are broadening our small business lending and technical assistance to help more people transition to entrepreneurship. All of these taken together should help nearly 3,000 more local families participate in the economic turnaround.

These are some of the ways that we can help grow our local economy. Greylock is far from an exception; in fact we are still building our programs and our product shelf to emulate the best mission-driven CDFI credit unions in the country.

In conclusion, I want to offer my thoughts on the role of regulation. The people I am concerned about in Berkshire County are still hurting, and make no mistake about it, these consumers need protection. The abuses and predatory practices that brought about the Great Recession destroyed 40 percent of American household wealth. Black families lost 50 percent of their household wealth and Latino families lost 67 percent. Having one half to two thirds of your wealth taken from you is far too great a price to pay, ever again. And if we thought the abusive and fraudulent practices exercised by big banks had ended, we received a rude awakening with the Wells Fargo scandal. Consumers need, and deserve, much stronger protection than they had previous to 2010. Credit unions did not create the financial crisis, and I am proud of the role we played in helping consumers and our local economies to recover. We are promoting financial literacy, fostering financial inclusion, and helping to grow small businesses, and we respectfully ask that with each new regulation, you consider the impact on our ability to fulfill our mission, especially among smaller credit unions who lack the resources of Greylock. While I want smarter regulation as much as anybody, I ask that you please, do not allow a repeat of the excesses and predatory practices that precipitated the crisis in the first place.

As you think about the best investments and policy decisions you can make, please keep in mind that 6,000 credit unions across this country are hard at work on these challenges already, and that CDFI credit unions deliver $12 of positive economic impact (in the form of loans to consumers, small businesses and first-time homeowners) for every grant dollar invested. Every dollar you approve for the CDFI fund that is invested through a credit union like mine pays you and the American taxpayer back many times over. Further, CDFI credit unions provide a way for banks to reach underserved communities, by making targeted CRA investments with CDFIs acting as the conduit. Strong community credit unions are a vital force in growing local economies.

I thank you for your kind attention and I am happy to answer any questions you may have.

GEORGETOWN UNIVERSITY LAW CENTER

Adam J. Levitin
Professor of Law

Written Testimony of

Adam J. Levitin
Professor of Law
Georgetown University Law Center

Before the United States Senate
Committee on the Banking, Housing, and Urban Affairs

"Fostering Economic Growth: The Role of Financial Institutions in Local Communities"

June 8, 2017
10:00 am
538 Dirksen Senate Office Building

Witness Background Statement

Adam J. Levitin is a Professor of Law at the Georgetown University Law Center, in Washington, D.C., where he teaches courses in financial regulation, structured finance, contracts, bankruptcy, and commercial law. Among his publications is *Financial Restructuring: Business Bankruptcy in the Modern Commercial World* (Wolters Kluwer 2015).

Professor Levitin has previously served on the Consumer Financial Protection Bureau's Consumer Advisory Board, as the Bruce W. Nichols Visiting Professor of Law at Harvard Law School, as the Robert Zinman Scholar in Residence at the American Bankruptcy Institute, and as Special Counsel to the Congressional Oversight Panel supervising the Troubled Asset Relief Program (TARP).

Before joining the Georgetown faculty, Professor Levitin practiced in the Business Finance & Restructuring Department of Weil, Gotshal & Manges, LLP in New York, and served as law clerk to the Honorable Jane R. Roth on the United States Court of Appeals for the Third Circuit.

Professor Levitin holds a J.D. from Harvard Law School, an M.Phil and an A.M. from Columbia University, and an A.B. from Harvard College. In 2013 he was awarded the American Law Institute's Young Scholar's Medal.

Professor Levitin has not received any federal grants or any compensation in connection with his testimony, and he is not testifying on behalf of any organization. The views expressed in his testimony are solely his own.

Chairman Crapo, Ranking Member Brown, Members of the Committee:

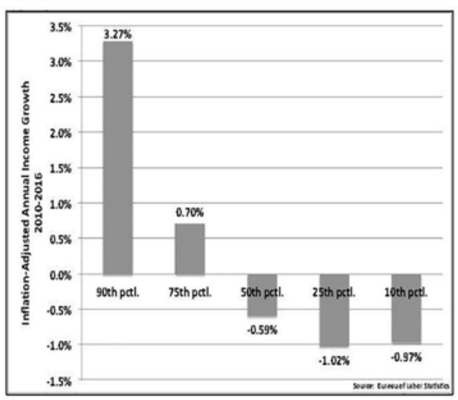
Thank you for inviting me to testify at this hearing. My name is Adam Levitin. I am a Professor of Law at the Georgetown University, where I teach courses in financial regulation and bankruptcy among other topics. I am here today solely in my academic capacity and am not testifying on behalf of any entity.

Since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, the banking sector as a whole, including community banks, has been doing incredibly well. The percentage of profitable community banks at the end of the first quarter of 2017 was the highest it has been in the last twenty years.[1] From the second quarter of 2010 (just before the passage of the Dodd-Frank Act) until the second quarter of 2016, the pre-tax return on assets in the banking sector was 25% for community banks, and 36% for other banks.[2] **Since Dodd-Frank, the cumulative pre-tax return on equity in the banking sector has been 225% for community banks and 320% for mega-banks.**[3]

To put this in perspective, a $100 equity investment in the average community bank in the second quarter of 2010 would have returned $325 by the second quarter of 2016, while a $100 investment in a mega-bank would have returned $420 over the same time, far better than the $185 return that a $100 invested in an S&P 500 index fund would have produced.

Meanwhile, American families are struggling. Median pre-tax income has *declined*. Although the US economy has grown by 9% in real terms since 2010, annual median pre-tax income has not kept up with inflation. **Since 2010, real income has fallen for the typical American family by 0.6%.**[4] (See Figure 1, below.) Families in some states haven't even fared this well. The typical Nevada family, for example, saw a 3% decline in real income.

Figure 1. Inflation-Adjusted Annual Household Income Growth, 2010-2016



To be sure, not all families are doing badly. The real income of the top 10% of American families has continued to grow, with most of the gains going to the top 1% of the population.[5] But the rest of America is being left behind.

<u>The problem, then, is not one of economic growth, but of economic distribution</u>. It is important that economic growth be a tide that lifts all ships, but that hasn't been happening.

Unfortunately, the proposals made by the financial services industry in response to this Committee's request for growth proposals have little to do with growth and have nothing to do with improving the economic condition of American families. Instead, the bank trade groups have proposed a set of deregulations that deregulations will benefit banks and their shareholders, but put American families and the stability of the financial system at risk. In other words, the proposed deregulations are about privatizing gains and socializing losses. The whole point of the Dodd-Frank Act was to try and prevent that problem after the devastating financial crisis in 2008.

Rather than pretending that deregulation is synonymous with growth, we should be having a conversation about how to ensure that growth benefits all Americans. In terms of this Committee's ambit, it means addressing the continued specter of too-big-to-fail, so that we don't end up with privatized gains and socialized losses and harmful spillovers from risky behavior by banks. It means addressing anticompetitive practices, such as credit card swipe fee pricing, which is a $73 billion dollar annual regressive wealth transfer from American consumers to banks. It means facilitating more robust competition among financial institutions for deposits by enhancing account and financial data portability. That means continuing to support the CFPB's strong enforcement of consumer financial protection laws to ensure that consumers get the deals they bargained for and aren't taken advantage of by their banks or discriminated against by lenders. And that means tamping down on excessive speculative activity, such as by maintaining the Volcker Rule and enacting a 21st century Glass-Steagall Act.

I. Consolidation in Community Banking and Credit Unions Is Not Driven by Regulation

Community banks and credit unions play an important role in the American financial system. Community banks are key sources of credit in small business and commercial real estate lending. They tend to pride themselves on more personalized customer service and products, and they are often deeply engaged with the civic fabric of their communities. Credit unions are also important sources of fair, straight-forward consumer financial products because credit unions are mutuals, owned by their members, and like community banks they often offer superior and more personalized customer service. The health of community banks and credit unions is critical for preserving choices for consumers and small businesses in the financial products market place.

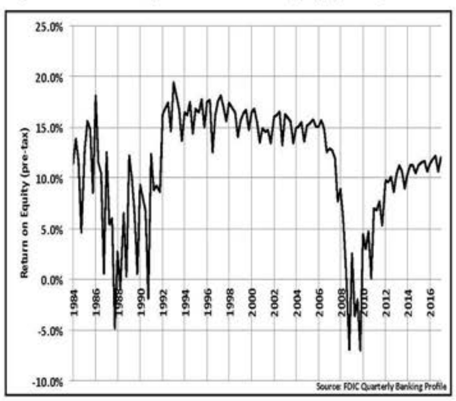
A. Community Banks and Credit Unions Are Thriving

Community banks and credit unions suffered during the financial crisis. They are exposed to macroeconomic trends and are also exposed to larger financial institutions through correspondent and service relationships. But since the Dodd-Frank Act, community banks and credit unions have been doing extremely well as measured by all traditional measures of health of the banking industry. Returns on assets and returns on equity are both up significantly and are now in the range of pre-crisis levels. (See Figures 2 and 3.) These gains have been shared broadly in the community banking industry. The percentage of unprofitable community banks is the lowest it has been since 1997.[6]

The same holds true for credit unions. A higher percentage of credit unions (81%) had a positive return on assets in 2016 than in any year since the Dodd-Frank Act.[7] Almost all of those with negative return on assets are very small credit unions with total assets of under $50 million.[8] Total credit union assets are up 41% and membership is up 18% since 2010, even as the number of credit unions has decreased by 21%.[9] Credit unions are sitting on some $372 billion in surplus funds, indicating more than adequate liquidity.[10]

Figure 2. Community Bank Return on Assets (pre-tax)

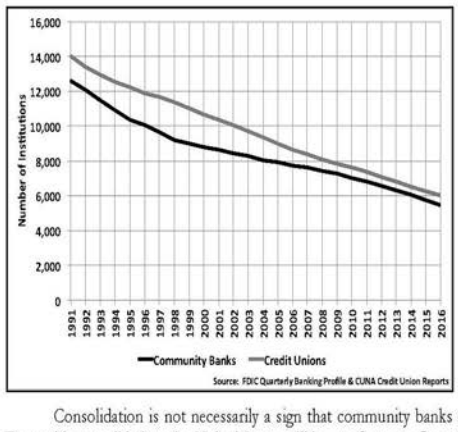
Figure 3. Community Bank Return on Equity (pre-tax)



B. *Consolidation in Community Banking and Credit Unions Is a Long-Term, Steady Trend*

Community banks and credit union trade associations often point to consolidation in their sectors as evidence that their industries are in trouble (for which the solution is invariably regulatory relief of some sort). While there has been substantial consolidation among both community banks and credit unions, it is a long-term trend. As Figure 4, below, shows, the rate of consolidation in terms of number of institutions has been virtually constant for the last quarter century: 248 community banks and 311 credit unions per year. The constant rate of consolidation for the last quarter century is irrefutable evidence that consolidation is not being driven by the Dodd-Frank Act or the CFPB, because the consolidation trend pre-dated both the Dodd-Frank Act and the CFPB and therefore could not be caused by either. There has been no acceleration in the consolidation following the passage of the Dodd-Frank Act or the effective date of the CFPB, or the effective date of any CFPB regulations.

Figure 4. Number of Depositories in United States, 1991-2016[11]



Consolidation is not necessarily a sign that community banks and credit unions are ailing.[12] Even with consolidation, the United States still boasts far more financial institutions per capita than any other developed country. Most of these institutions are very small—community banks and credit unions. The extraordinary number of small financial institutions in the United States is a legacy of historical bank regulation. Interstate branch banking restrictions splintered the United States in 50 retail banking markets (or truly more given that some states have had inter-county branching restrictions), which artificially inflated the number of banks that could be supported, even while limiting the size of those banks.

The causes of consolidation have likely changed over the last quarter century. Many small financial institutions failed during the savings and loan crisis in the early 1990s. Subsequently, the removal of interstate branch banking restrictions in 1994 as well as the Gramm-Leach-Bliley Act of 1999 encouraged bank mergers and the emergence of megabanks that engaged not just in traditional commercial banking activities, but also in investment banking, insurance, and proprietary speculation in commodities, derivatives, and stock markets.

C. Community Banks and Credit Unions Lack the Economies of Scale Necessary to Compete Effectively in Many Product Markets

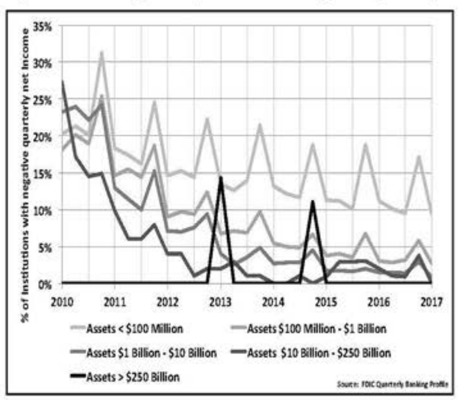
The emergence of megabanks has serious changed the competitive playing field in financial services and left community banks and credit unions at a severe disadvantage because they lack the economies of scale and the implicit too-big-to-fail subsidy of the megabanks. Not surprisingly, consolidation has continued among community banks and credit unions. Community banks continue to fail, be gobbled up by larger banks, or, more rarely, grow out of being community banks.[13] A similar story exists for credit unions, which have failed, merged, or demutualized.

While community banks and credit unions are generally quite healthy financially today, we should expect on-going consolidation in both sectors because of the structural disadvantages that community banks and credit unions face: they lack the economies of scale necessary to be competitive in many product markets. Size matters in consumer finance, which is a business that consists of a large number of relatively small transactions. Many consumer financial markets—mortgages and credit cards in particular—have critical economies of scale, as do customer service (such as call centers), information technology, cybersecurity, and compliance programs. Moreover, Fannie Mae and Freddie Mac will not deal with small mortgage originators because of their perceived counterparty risk.

Increasingly, community banks and credit unions will have trouble competing for deposits as they lose locational advantages to mobile banking platforms and find themselves unable to keep up in the cybersecurity arms race. National fintech charters from the Office of Comptroller of the Currency will exacerbate this problem because federal fintechs will present national competition for lending and deposits in markets in which larger brick-and-mortar banks do not compete.

That leaves small business, commercial real estate, and agriculture lending as spaces in which community banks remain competitive. It is unclear whether that alone will be enough to support many community banks; credit unions are limited in their ability to offer products in all of those spaces. What is clear is this: smaller banks are much more likely to be unprofitable than larger ones. (See Figure 5.)

Figure 5. Percentage of Depositories with Negative Quarterly Net Income



D. Community Banks Often Face Intergenerational Transition Problems that Encourage Mergers

Additionally, many small community banks are family-owned firms and they face a generational transition problem. The bank might be located in a rural district, and the next generation in the controlling family may have moved away to the big city and not be interested in returning to a small town to run the family bank. In such cases, the controlling family has little choice but to sell, typically to another, larger bank. As baby boomers have begun retiring, the generational transition problem has become more salient.

E. Community Banks and Credit Unions Already Receive Significant Regulatory Relief

The point here is that overregulation is ***not*** the problem facing community banks.[14] To the contrary, community banks and credit unions already receive significant relief from consumer finance regulation, their bread-and-butter area of business. The Dodd-Frank Act codifies special solicitude for community banks and credit unions through several provisions:

- Community banks and all but six giant credit unions are exempt from the Durbin Interchange Amendment's debit card fee regulation.[15] This gives community banks and almost all credit unions a significant competitive advantage over megabanks, by allowing them to receive higher interchange fees than the megabanks.
- All financial institutions with less than $10 billion in assets are exempt from examination and enforcement actions by the CFPB.[16] There are only 139 banks and credit unions and affiliates that are subject to CFPB examination and enforcement.[17] Instead, smaller banks and credit unions are examined and subject to enforcement by their regular prudential regulators. This means that community banks and credit unions have to deal with fewer examinations and are not subject to the scrutiny of a dedicated consumer protection agency.
- In addition to the regular notice and comment requirements of the Administrative Procedures Act, the CFPB is required to go through a special rulemaking process under the Small Business Regulatory Enforcement Fairness Act when it promulgates rules that will affect small businesses, including community banks and credit unions.[18] The SBREFA process lets small businesses comment on proposed rules when they are in an early stage, before the "train has left the station."

The CFPB has also codified special provisions for community banks and most credit unions in its regulatory implementations of the Dodd-Frank Act, even though it is not required to do so. The CFPB has built in numerous exceptions for smaller financial institutions to its rules:

- Small creditors (with less than $2 billion in assets) can make mortgage loans at APRs 200 basis points (2%) higher than larger creditors and still qualify for the absolute safe harbor to the Ability to Repay Rule.[19]
- Small creditors (with less than $2 billion in assets) that originate less than 500 mortgage loans per year can qualify for the absolute safe harbor to the Ability to Repay Rule for the loans they retain on portfolio even if those loans have debt-to-income ratios above 43%.[20] If these loans are held in portfolio for three years, they retain their safe harbor even if subsequently sold to another small creditor.[21]
- Small creditors (with less than $2 billion in assets) that operate predominantly in rural and underserved areas are exempt from the requirement of maintaining escrow accounts for high-cost mortgages.[22]
- Small creditors (with less than $2 billion in assets) in rural and underserved areas are exempt from the prohibition on high-cost balloon loans.[23]
- Small creditors in rural and underserved areas were given a two-year transition period to continue making balloon mortgages that qualify for the safe harbor from the ability-to-repay rule.[24]
- Implementation of balloon payment limitations was delayed for two-years for all small creditors (with less than $2 billion in assets) irrespective of whether they operate predominantly in rural or underserved areas.[25]
- Loans made against rural properties are not subject to the same rules regarding appraisals for high-cost mortgage loans.[26]

- Small mortgage servicers are exempted from the Truth in Lending Act requirement of periodic statements.[27]
- Small servicers are exempted from most of the Real Estate Settlement Procedures Act loss mitigation requirements (other than prohibition on commencing foreclosure until 120 days delinquency).[28]
- Entities that handle 100 or fewer remittances per year are exempt from the Remittance Rulemaking under Regulation E under the Electronic Fund Transfers Act.[29]

CFPB has expanded the definition of "rural" creditor and as well as increase the small creditor debt-to-income exemption from 500 loan originations to 2,000 loans sold annually (and unlimited originations).[30]

Beyond this, the CFPB has voluntarily taken actions to ensure that the voices of small institutions are heard in the regulatory process:

- The CFPB has voluntarily created a Community Bank Advisory Board and a Credit Union Advisory Board, in addition to its statutorily required Consumer Advisory Board.
- The CFPB has included representatives of small financial institutions on its Consumer Advisory Board, which has previously been chaired by the chairman of rural community development credit union.

All of this is to say that the CFPB has shown particular solicitude for small financial institutions, attempting to balance their particular concerns and cost structures with the need for uniform consumer protection laws.

F. *The Continued Too-Big-to-Fail Problem Hurts Community Banks and Credit Unions*

The Dodd-Frank Act and the CFPB have put a friendly thumb on the regulatory scale to ease regulatory burdens for community banks and credit unions, but no amount of regulatory relief will offset the structural problems faced by community banks and credit unions. There is really no way to avoid the fact that size matters in consumer finance. If Congress wants to help community banks and credit unions, the best course of action would be to take steps to end the too-big-to-fail problem that poses not just a systemic risk, but also gives too-big-to-fail institutions a competitive advantage over community banks and credit unions because of the perceived implicit guaranty of their liabilities.

Megabanks present a competitive problem for community banks and credit unions because of their economies of scale and implicit government guaranty. But they also present a direct threat to community banks and credit unions. When big banks go down, they take small banks with them. Small banks are often tied into big banks through correspondent banking relationships that can leave small banks exposed to losses when big banks fail, as well as to disruption in business services. Moreover, when there is trouble with too-big-to-fail institutions, markets freeze and the spillover effects can be brutal for smaller financial institutions, even if they have played by the rules.

The credit union industry knows only too well the costs of too-big-to-fail. In 2009 four corporate credit unions, which collectively played a role similar to regional Federal Reserve Banks for the credit union industry, failed. So did the U.S. Central Credit Union, which served as a corporate credit union for the other corporate credit unions, roughly an equivalent role to that played by the Federal Reserve Bank of New York. The failure of these corporate credit unions left the credit union industry desperately short of liquidity because many natural person credit unions had deposited their own funds at the failed corporate credit unions. The corporate credit unions failed because in search of yield they had loaded up their books with private-label mortgage-backed securities that turned out to be of little value. From 2009 up until 2016, the entire credit union industry found itself paying assessments into an industry "stabilization fund" to recapitalize the National Credit Union Share Insurance Program. Natural person credit unions were not too-big-to-fail, but they paid the price for megabanks' misbehavior.

III. Specific Bank Deregulatory Proposals Have No Connection with Economic Growth

A number of banking industry trade associations have responded to this Committee's call for proposals to encourage economic growth with various deregulatory proposals. Many of the proposed deregulations have either no obvious connection to sustainable growth or would result, at best, in growth of a very small magnitude, and the proposed deregulations do nothing to ensure that there will be an equitable division of the gains from growth. This section reviews some of the proposals to show just how risible the connection is between industry's deregulatory ask and economic growth, much less growth that will help American families' bottom lines, rather than simply enrich bank shareholders.

A. Small Business Lending Data

The American Bankers Association (ABA) and the Independent Community Bankers Association (ICBA) have both proposed repealing of section 1071 of the Dodd-Frank Act,[31] which requires the collection of small business lending data in order to facilitate screening for discriminatory lending practices. Without section 1071 data, it is extremely difficult to investigate whether there are disparate impacts in small business lending. Ensuring fair lending to small businesses is critical if economic growth is to be equitably shared among all Americans. Repealing section 1071 is hardly a step toward facilitating equitable growth, and given that section 1071 has yet to be implemented by the CFPB, it is hard to see how a repeal of section 1071 would possibly produce economic growth of any sort.

B. Raising the Exemption Threshold for CFPB Examination and Enforcement Authority

Currently the CFPB has examination and enforcement authority over depositories and credit unions with total assets of $10 billion or more plus their affiliates.[32] At present there are 116 depositories and credit unions that (with their affiliates) are subject to CFBP examination and enforcement. While these are a small fraction of the number of depositories and credit unions in the United States, the collectively have around 80% of total depository and credit union assets.

It is important to understand that the threshold for CFPB examination and enforcement is based on the total assets of the depository alone, not of the consolidated affiliated group of the depository. This is different from the calculation of the threshold for the Durbin Interchange Amendment or stress testing under section 165 of the Dodd-Frank Act, both of which are keyed off of total consolidated assets of affiliated groups.[33] Because the CFPB examination and enforcement threshold is keyed only to the assets of the depository, it is effective a higher threshold than under the Durbin Amendment or for stress testing under section 165 of the Dodd-Frank Act because depositories will always have fewer assets than their consolidated affiliated group.

The National Association of Federal Credit Unions (NAFCU) has suggested a $150 billion threshold for CFPB examination and enforcement authority, a proposal that would affect all of 3 federal credit unions and 3 state credit unions. Other prior proposals have been for a $50 billion threshold for CFPB examination and enforcement authority. Both are terrible ideas and neither threshold has any connection to economic growth.

The NAFCU's $150 billion threshold proposal would leave only 15 depositories subject to CFPB supervision and enforcement. Excluded from CFPB supervision and enforcement under this proposal would be, among others: Santander, the largest subprime auto lender in the country, as well as American Express, BancorpSouth Bank, Citizens Bank, Discover Financial Services, Fifth Third Bank, First National Bank of Omaha, Flagstar Bank, M&T Bank, Navy Federal Credit Union, M&T Bank, Regions Bank, and Synchrony Financial (GE Capital Retail Bank). Every one of these banks has been subject to CFPB enforcement actions resulting in consent orders, with American Express, Discover, Synchrony Financial, and Fifth Third Bank each being the subjects of two separate consent orders. These consent orders have totaled over $792 million in consumer relief and another $102.8 million in fines.

Even under a $50 billion proposed threshold, there would still be only 42 depositories subject to CFPB supervision and enforcement. Still excluded from CPFB supervision and enforcement jurisdiction would be banks like American Express, Citizen's Bank, Barclay's, BancorpSouth Bank, First National Bank of Omaha, Flagstar Bank, and TCF National Bank (against which the CFPB has a pending enforcement action).

If the conceit behind the $50 billion threshold is that banks that are smaller than $50 billion in total assets are somehow "community banks" that are unlikely to engage in misbehavior because of their reputation in and connection to their communities, this is simply not plausible.

Community banks don't have $10 billion in assets, much less $50 billion. American Express Bank, FSB ($49 billion in assets), for example is not a community bank. Neither is e*Trade Bank, with $36 billion in assets. Nor is Sallie Mae Bank, with $18 billion in assets. The $10 billion cutoff is already much higher than any true community bank's assets, but it has the virtue of being used elsewhere in federal regulation (even if through a slightly different calculation), namely in the Durbin Interchange Amendment and the stress testing under section 165 of the Dodd-Frank Act.

For some perspective on how ridiculously high a $50 billion threshold is, it substantially exceeds the total endowment of Harvard University ($35.7 billion), the wealthiest university in the world and is more than the total endowments of the next two wealthiest universities, the University of Texas system and Yale University. $50 billion is also the 2016 valuation of the twenty most valuable teams in the National Football League (which, as its name implies, is not a community football league): Cowboys, Patriots, Giants, 49ers, Redskins, Rams, Jets, Bears, Texans, Eagles, Broncos, Dolphins, Packers, Ravens, Steelers, Seahawks, Vikings, Colts, Falcons, and Raiders.[34]

In terms of flows, $50 billion is roughly the gross domestic product of Croatia ($50.4 billion) or the total 2016 revenue of the entire National Football League, *plus* Major League Baseball, the National Basketball Association, the National Hockey League, Major League Soccer, *and* the top soccer leagues in England, France, Germany, Italy, and Spain (Premier League, Ligue 1, Die Bundesliga, Serie A, and La Liga, respectively). Any institution with assets approaching $50 billion is *not* a small bank or a community bank by any definition.

To be sure, eliminating CFPB supervision from institutions with less than $50 billion or $150 billion in total assets would not leave them without supervision; consumer protection supervision would instead be conducted by institutions' primary prudential regulators. But that point shows that there is no economic growth rationale possible for the proposal. Instead, the whole rationale for the proposal is that prudential regulators are often seen by industry as being less serious about consumer protection supervision and enforcement, a conclusion that finds some support in the scathing report on the OCC's supervision of Wells Fargo issued by the OCC's Office of Enterprise Governance and the Ombudsman.[35] Putting aside questions of regulatory motivation, however, CFPB examiners are specialists in consumer financial protection with greater expertise in these issues than generalist examiners for other banking agencies. There is no good reason to change the threshold for CFPB supervision and enforcement, and such a change has no connection to economic growth.

C. *Structural Reforms to the CFPB*

NAFCU has suggested that transforming the CFPB from a single director to a commission structure will facilitate economic growth. Putting aside the questionable merits of this proposal, which would diffuse accountability and undermine the CFPB's effectiveness, it is hard to see how a commission structure would facilitate growth in any way. This isn't a proposal about economic growth. It's a proposal to hamstring an effective consumer financial protection regulator and nothing more.

D. *Credit Union Exemption from CFPB Rulemakings*

The NAFCU has urged that credit unions be exempted from CFPB rulemakings under section 1022 of the Dodd Frank Act.[36] It's worth noting as an initial matter that only six (!) credit unions, those with total assets of over $10 billion are subject to CFPB supervision and enforcement.[37] For the other 6,000 or so credit unions, it is the rest it is the NCUA or their state regulator that undertakes supervision and enforcement.[38] Thus, for most credit unions, the only interaction with the CFPB is its rulemakings, which generally apply to all entities dealing with particular consumer financial products or services.

There is no reason to exempt credit unions as a class from all CFPB rulemakings. Such a blanked approach is overbroad. While most credit unions are "good actors," not all are all the time, unfortunately. In October 2016, the CFPB entered into a $28 million consent order with Navy Federal Credit Union (the largest credit union in the country) for improper debt collection actions, including falsely threatening legal action and wage garnishment, falsely threatening to contact members' commanding officers about debts, and illegally freezing accounts. While credit unions may be tax-exempt, there is no reason that they should get a free pass from compliance with the laws applicable to other entities that do business in the consumer finance marketplace.

E. *Portfolio Lending*

The ABA and ICBA have both proposed exempting mortgage loans retained in portfolio by depositories from the Dodd-Frank Act's Ability-to-Repay (ATR) requirement[39] such as through the proposed Portfolio Lending and Mortgage Access Act or by deeming such mortgages to qualify for the CFPB's Qualified Mortgage (QM) safe harbor rule[40] to the ATR requirement. The ATR requirement is a centerpiece of the Dodd-Frank Act and requires nothing other than common sense in mortgage lending: lenders should not make loans without first taking reasonable steps to verify borrowers' ability to repay. The consequences of lenders failing to do that were felt all too keenly in the 2008 crisis. While many of the bad mortgage loans that fueled that crisis were securitized, it is important to remember that both Countrywide and Washington Mutual also kept many mortgage loans in portfolio. The same was true with savings and loans in the 1980s and early 1990s. Portfolio lending alone is not a guaranty of prudence.

As an initial matter, lenders' concern about ATR is also massively overblown. The remedy for a violation of the ATR provision is weak: it is only a right to set-off Truth in Lending Act damages—actual damages, statutory damages of between $400 and $4,000, and reasonable attorneys' fees—against the balance owed on the loan in the event of a foreclosure.[41] The QM rule provides a safe harbor for the ATR requirement for certain mortgages, but a non-QM mortgage can still satisfy the ATR requirement. Given that any prudent portfolio lender would already take care to underwrite a loan with sufficient documentation to ensure the borrower's ability to repay, portfolio lenders should already be in compliance with the ATR requirement. Thus, it is not clear what cost savings there would be from a portfolio lending exemption from the ATR requirement.

From a regulatory perspective, however, the proposed portfolio lending exemption from ATR is problematic because it has a huge loophole: it does not prevent lenders from shifting the risk of loans held in portfolio through derivative instruments, just as Fannie Mae and Freddie Mac have been doing with through credit risk transfers using credit-linked notes. Put another way, it's possible through derivatives to create the equivalent of a securitization while still doing portfolio lending. The ATR rule is a critical protection for both consumers and the stability of financial markets and should be loosened only with great caution. The CFPB has authority to exempt portfolio lenders from the ATR requirement, but has not done so; Congress should defer to the agency's expertise on the matter.

Finally, it's hard not to be skeptical of ATR exemption proposals given that the banking industry was complaining about the effects of the ATR requirement years before it was implemented. In 2012, GOP Presidential nominee Mitt Romney accused the QM rule of constraining mortgage lending, despite the fact that the rule did not become effective until some two years later.[42] In other words, the complaints about QM are nothing new and have no relationship to QM's actual effect on mortgage lending. In any event, even if this proposal were to encourage more mortgage lending to some borrowers, increased lending should not be confused with economic growth. It is simply an expansion of consumer debt of questionable sustainability.

F. *Durbin Interchange Amendment*

Both the ABA and the NAFCU have argued for the repeal of the Durbin Interchange Amendment.[43] The Durbin Amendment's price cap on debit card swipe fees applies only to financial institutions with consolidated assets over $10 billion. Smaller financial institutions are not subject to the price cap and in fact charge higher debit card swipe fees. Thus, 99% of banks and credit unions are not subject to the Durbin Amendment's price cap. The Durbin Amendment is thus an important competitive leg-up for smaller financial institutions. Given that only 6 ginormous credit unions and around 115 banks are subject to the Durbin Amendment, it is frankly perplexing that trade associations like the ABA and the NAFCU are advocating for a position that is detrimental to most of the thousands of institutions they claim to represent.

Indeed, a serious economic growth proposal would be to extend the Durbin Amendment to the credit card swipe fees or other reforms to bring competitive market pressures to bear on credit card swipe fee pricing. Credit card swipe fees represent a $73 billion annual regressive transfer from consumers to banks.[44] Only a small fraction of this is rebated back those consumers with rewards cards.

In competitive retail markets, such cost-savings should be passed on to consumers in the form of lower prices or better service, meaning more employees. Indeed, one study of the Durbin Amendment's impact is that it resulted in $5.8 billion in direct consumer savings in its first year and merchant savings of $2.6 billion.[45] Together these savings are estimated to have led to an increase in economic activity and hiring, producing 37,000 new jobs.[46] Given that credit card swipe fees are significantly higher than debit card swipe fees, one would expect substantially greater job creation from extending the Durbin Amendment to credit cards or otherwise reforming the credit card swipe fee market to make it more competitive. This would be true bottom-up growth, not a doubling-down on disproven trickle-down theories.

G. Reciprocal Brokered Deposits

Several trade associations support a loosening of the statutory restrictions on reciprocal brokered deposits, such as in S.3373 (sponsored by Senators Warner and Moran). Among the deregulatory proposals, this is one of the more reasonable ones, but a loosening on reciprocal brokered deposit regulations should be accompanied by supervision of deposit brokers as if they were bank service companies or financial market utilities.

Financial institutions attract deposits not just from their direct customers, but also from other banks through deposit brokers. Banks will place funds at other banks through deposit brokers as a way to enable their customers to functionally avoid the FDIC's insurance limit of $250,000 per depositor per institution per ownership category.[47] Large deposits that exceed the FDIC insurance limit are split up and farmed out to other banks through deposit brokers using a trust relationship as to circumvent the FDIC insurance limits.

Brokered deposits have long been a source of regulatory concern because they can function as "hot money" that chases yield and encourages unsustainable lending, while also being flighty when signs of trouble emerge. There is substantial evidence to support this concern.[48] In particular, there is a correlation between use of brokered deposits and bank failures.

Federal Deposit Insurance Act limits the acceptance of brokered deposits by depositories that are not well capitalized.[49] Some brokered deposits, however, are "reciprocal brokered deposits," meaning that if a bank were to accept a brokered deposit of $250,000 it would also place a brokered deposit of $250,000, either with the bank that gave it the deposit or with another bank in a multilateral brokered deposit network. The point is that the total deposits at the bank do not change, but they are broken down differently for FDIC insurance limit purposes enabling more deposits to qualify for insurance. There is far less data on reciprocal brokered deposits, but that data does not indicate the "hot money" concerns that exist with brokered deposits generally.

That said, reciprocal brokered deposits are not without risks. The firms that broker such reciprocal deposits are potentially a source of risk. If such firms should fail or even simply have operational problems (such as from a hacking), they could expose depository institutions to risk. Thus, any exception to the Federal Deposit Insurance Act's provisions on brokered deposits for reciprocal brokered deposits should be accompanied by a supervision regime for deposit brokers as bank service companies or financial market utilities.

CONCLUSION

Deregulation is not equivalent to growth, and unsustainable growth may be more harmful than no growth at all, particularly to the most vulnerable in society who are the least shielded from a volatile economy.[50] Even as American families are struggling, the banking industry is doing the best it has in years. In such circumstances it takes a certain brazenness to push deregulatory proposals that have nothing to do with fostering economic growth or equitable distribution of growth, only about improving banks' bottom line.

Community banks and credit unions are a critical part of the economy, but it is important not to put the cart before the horse. The profitability of community banks and credit unions should not be a goal in and of itself. Instead, the goal should be to ensure the provision of fair and transparent financial services to American families and businesses.

This Committee should reject deregulatory proposals that would benefit bank shareholders at the expense of American families in terms of consumer protection or the stability of the financial system and should instead purpose policies that ensure fair, competitive consumer finance markets and prevent too-big-to-fail firms from privatizing gains and socializing losses.

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[1] FDIC Quarterly Banking Profile (1 minus Percent of Institutions Reporting Negative Quarterly Net Income: Community Banks).

[2] FDIC Quarterly Banking Profile (sum of pre-tax quarterly return on assets from Q2:2010 to Q2:2016).

[3] FDIC Quarterly Banking Profile (sum of pre-tax quarterly return on equity from Q2:2010 to Q2:2016).

[4] Bureau of Labor Statistics, Occupational Employment Statistics (annual median wage, May 2016 divided by annual median wage, May 2010); Bureau of Labor Statistics, Consumer Price Index (indicating that $100 in May 2016 was worth $90.82 in May 2010). Thus, nominal income has increased by 9%, but inflation-adjusted income has fallen by 0.5%.

[5] Bureau of Labor Statistics do not offer a breakdown beyond the top 10%, but the Bureau of Labor Statistics numbers can be complemented with IRS data that allows for a finer grain breakdown. The IRS data only goes through 2014, but shows a 17% increase in real income for the top 1% from 2010-2014. *See* IRS, Statistics on Income, Individual Income Tax Returns Excluding Dependents.

[6] FDIC Quarterly Banking Profile (1 minus Percent of Institutions Reporting Negative Quarterly Net Income: Community Banks).

[7] CUNA, U.S. Credit Union Profile, Year End 2016, Table 1.

[8] *Id.* Table 2.

[9] *Id.*

[10] *Id.*

[11] The slope for the community bank line is -248 per year with an r^2 of 96%, while the slope for credit unions is -311 per year with an r^2 of 99%, indicating that there is nearly a perfectly steady rate of consolidation through the period for both community banks and credit unions.

[12] Likewise, the lack of de novo chartering in the last few years is not necessarily a sign of problems in the banking industry, so much as a reflection that it is cheaper to buy an existing charter than to obtain a new one.

[13] While community banks' share of total banking system assets is shrinking, their total size is actually growing. This is consistent with a more optimistic view that community banks are reasonably healthy, but that large banks continue to enjoy economies of scale and too-big-to-fail benefits.

[14] If you are wondering why, if this is true, you are hearing so much about regulation from banking lobbyists, consider what a governmental affairs expert might have to propose in terms of regulatory changes to address economies of scale and generational transition problems. Every problem looks like a nail to a man who earns his living with a hammer.

[15] 15 U.S.C. § 1693o-2(a)(6).

[16] 12 U.S.C. §§ 5515, 5516(d).

[17] CFPB, Consumer Financial Protection Bureau by the Numbers, July 15, 2015, *at* http://files.consumerfinance.gov/f/201507_cfpb_factsheet-by-the-numbers.pdf.

[18] 5 U.S.C. §§ 603(d), 609(d)(2).

[19] 12 C.F.R. § 1026.43(b)(4), (e)(5).

[20] 12 C.F.R. § 1026.43(e)(5)(i); 1026.35(b)(2)(iii)(B)-(C).

[21] 12 C.F.R. § 1026.43(e)(5)(ii)(A).

[22] 12 C.F.R. § 1026.35(b)(2)(iii).

[23] 12 C.F.R. § 1026.43(e)(6).

[24] 12 C.F.R. § 1026.43(f)(1)(vi).

[25] 12 C.F.R. § 1026.43(e)(6).

[26] 12 C.F.R. § 1026.35(b)(4)(vii)(H).

[27] 12 C.F.R. § 1026.41(e)(4).

[28] 12 C.F.R. § 1024.41(j); 12 C.F.R. § 1026.41(e)(4).

[29] 12 C.F.R. § 1005.30(f)(2).

[30] 80 FED. REG. 59944 (Oct. 2, 2015).

[31] 12 U.S.C. § 1691c-2.

[32] 12 U.S.C. §§ 5515-16.

[33] 12 U.S.C. § 5365(a)(1), (i)(2)(A); 15 U.S.C. § 1693o-2.

[34] Forbes, 2016 NFL Valuations, *at* https://www.forbes.com/nfl-valuations/#43a58a8712ce.

[35] https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-wells-fargo-supervision-lessons-learned-41917.pdf.

[36] 12 U.S.C. § 5512(b)(3).

[37] 12 U.S.C. § 5515(b)-(c).

[38] 12 U.S.C. § 5516(c)-(d).

[39] 12 U.S.C. § 1639c.

[40] 12 C.F.R. § 1026.43.

[41] 15 U.S.C. § 1640(k). *See also* Adam J. Levitin, *How Risky Is It to Make a Non-QM Mortgage and Is QM Going to Hold Back Access to Credit,* Creditslips.org, Dec. 17, 2013, *at* http://www.creditslips.org/creditslips/2013/12/how-risky-is-it-to-make-a-non-qm-mortgage-and-is-qm-going-to-hold-back-access-to-credit-.html; Ben Lane, Urban Institute: Qualified Mortgage impact overblown, HOUSING WIRE, Aug. 21, 2014, *at* http://www.housingwire.com/articles/31125-urban-institute-qm-impact-is-overblown. In theory there is also the ability to bring stand-alone action for a violation of the ATR requirement for the first three years of the loan, but it is unlikely that such suits will ever be brought outside of the foreclosure context.

[42] Adam J. Levitin, *Is QM What's Holding Back the Housing Market,* CREDITSLIPS.ORG, Oct. 4, 2012, *at* http://www.creditslips.org/creditslips/2012/10/is-qm-whats-holding-back-the-housing-market.html.

[43] 15 U.S.C. § 1693o-2.

[44] *See* NILSON REPORT, # 1109 (May 2017) at 1, 7.

[45] Robert J. Shapiro, *The Costs and Benefits of Half a Loaf: The Economic Effects of Recent Regulation of Debit Card Interchange Fees*, October 1, 2013, *at* http://bit.ly/1McU0NS, at 2.

[46] *Id.*

[47] Broker-dealer sweep accounts are also placed with banks using deposit brokers.

[48] FIDC, Study on Core Deposits and Brokered Deposits, July 8, 2011, *at* https://www.fdic.gov/regulations/reform/coredeposit-study.pdf at 38-39.

[49] 12 U.S.C. § 1831f; 12 C.F.R. § 337.6.

[50] *See* JACOB HACKER, THE GREAT RISK SHIFT (2006).

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BROWN FROM DOROTHY A. SAVARESE

Q.1. Senator Crapo asked Mr. Bergl and Mr. Grooms about the impact of Dodd-Frank mortgage rules on each of their financial institutions. Does your bank or credit union qualify for the QM–ATR "small creditor," "rural area," or any other exemption? How does this exemption help your financial institution?

A.1. Although our Bank, with its focus on local markets and its straightforward business model, is considered a "community bank" under most definitions, it does not qualify for the small bank exception because of our size and the number of residential mortgage loans we close each year. Because of the unique nature of our market and our community commitment, we do make certain loans that meet the ATR standard but do not meet the qualified loan definition. We have very narrow guidelines for which loans we will make under these circumstances, out of concern for potential right of private action which may arise at a later time if someone were to challenge the loan. We keep these loans in our portfolio. We believe the QM–ATR "small creditor" or "rural area" exception would, if it were available to us, help us better meet local needs. From our Bank's perspective, the following are our recommendations:

First, ATR should remain in place as it requires responsible loan documentation and allows for mortgage product development.

Second, QM should be revised to allow for responsible access to mortgage credit that it currently inhibits. One of the most critical items to address is the expiration of the GSE/QM patch. If nothing is done to address this, some industry estimates indicate at least 25–30 percent of mortgage credit originated could disappear. This would also have a significant impact in restricting CRA/LMI loans which currently fall under the patch and are purchased by the HFA's. Assuming a bank has chosen not to take on the additional risk of nonQM loans: the maximum 43 percent debt ratio is far too arbitrary and does not allow any other credit factors or loan structures to be taken into consideration. A simple change in a monthly escrow payment can cause a last minute change in the ratio to greater than 43 percent (e.g., 43.1) which can cause a loan to be declined, or cause a price increase to the consumer for the additional risk.

Moreover, Appendix Q is far too rigid in its specific income and debt documentation requirements creating additional documentation hardships in extending responsible mortgage credit to self-employed borrowers, borrowers who work seasonal jobs, and those that are dependent on part-time and overtime work. The burden of documenting social security, disability and child and alimony support unnecessarily inhibits the use of these critical types of income.

Our recommendation, therefore, would be to maintain ATR safeguards to assure that "no asset and no income" loans do not reoccur in the market. Broadening the specific nonflexible QM rules to allow for community bank underwriter discretion will help provide much needed mortgage credit and increase market competition for consumers.

Another one of the problems with the QM–ATR rule, which became clear early on, is that it would restrict or even eliminate some popular and essential loan products. Certain balloon mortgages, for example, remain a useful tool for serving creditworthy customers who rely upon seasonal income, such as farm workers. As originally constructed, the ATR rules would have made it impossible to offer balloon loans. To their credit, CFPB recognized this problem and the need for these products, and provided exceptions under the small creditor and rural categories. However, CFPB is constrained by the statutory language of Dodd-Frank and cannot expand the exemptions beyond their current scope absent legislative changes, and the rules applicable to gain the exemption are complex and convoluted. The end result is that credit is constrained because many smaller banks find it too complex to determine the applicability of the exemption and fear the resulting liability if they get they fail to meet the demands of the rules. For example, customers of small banks found a 3-year balloon product very helpful, but these are not allowed under even the revised rules. ABA believes the solution to this problem is to expand the QM definition to include all loans originated and held in portfolio and to further clarify and simplify the QM rules applicable to all other mortgages. These changes will reduce the compliance complexity and the risks of liability which are inhibiting lenders from offering mortgages.

Q.2. What is your institution doing specifically to help bring the unbanked or underbanked in your communities into the financial system?

A.2. The banking industry shares the goal of bringing unbanked and underbanked people into mainstream banking. Indeed, the FDIC's latest "FDIC National Survey of Unbanked and Underbanked Households (2015) found that 93 percent of households have a bank account (up from 92.7 percent in 2013) and 27 percent of those without a bank account use a prepaid account, a more simple, manageable bank account option. Thus, almost 95 percent of households use some type of bank account that allows them to deposit money in a safe place and make payments to a wide variety of recipients.

The FDIC, at its 2017 Economic Inclusion Summit on April 26, 2017, and the bi-annual meetings of its Advisory Committee on Economic Inclusion (COME–IN), highlighted some bank efforts to reach the unbanked and underbanked.

Some regulatory actions have also hurt banks' ability to offer credit products to underbanked populations. For example, the OCC and FDIC's guidance on "Deposit Advance" products, which allow customers to take small, short-term loans through their checking account, eliminated them as an option for small dollar loans as a practical matter. In addition, the Bureau of Consumer Financial Protection's proposal that, in effect, would impose interest rate caps on certain loans (e.g., loans that are not a mortgage, credit card, or purchase money loan such as a car loan) have inhibited banks from developing small-dollar loans products and threaten to prohibit "accommodation" small dollar loans that banks offer to their customers. Finally, the Credit Card Accountability Responsibility and Disclosure Act of 2009 has resulted in credit cards being less available to subprime borrowers who have no, limited, or poor credit histories.

Cape Cod Five Cents Savings Bank's Community Commitment utilizes five methodologies to address the needs of its communities, including bringing the unbanked and underbanked into the system. These are: (1) community banking, (2) responsible business practices, (3) financial education, (4) corporate leadership and volunteerism, and (5) philanthropy. (1) Community Banking: the Bank was an early adopter of the Pew disclosures, continues to provide a free checking account, and a basic savings account. (2) The Bank's marketing and social media tools are utilized to reach out to and engage the unbanked and underbanked through effective representation of diversity and inclusion. (3) Financial Education: the Bank has broad based financial education outreach, reaching thousands of individuals each year. These include providing financial education to inmates who are about to be released from the local correctional facility; working with a local battered women's shelter to provide financial education to residents; providing the Credit For Life program to several thousand high school seniors in its market area; and offering and participating in first-time home buyer workshops. Also, Bank representatives provided a presentation at an FDIC regional Economic Inclusion forum and have participated in others. In addition, Bank representatives have participated in statewide organizational efforts on financial education. (4) Through its corporate leadership and volunteerism, the Bank leads and provides the manpower for many public/private efforts in the community to bring the unbanked and underbanked into the mainstream. (5) Through the Bank and its Foundation, the Cape Cod Five donates over a million dollars per year to nonprofits in the community, including those focused on partnering with and assisting the unbanked and underbanked. The Bank also was one of five sponsors of a Massachusetts Bankers Association statewide program on financial education focused on school age children.

Q.3. As discussed at the hearing, new HMDA data will be collected starting in January 2018. What do you spend annually on HMDA compliance, has that changed since before the crisis, and what additional costs are you incurring to come into compliance with the new requirements? Do you believe there is value in collecting this data? How much of this data do you already collect under the ordinary course of underwriting or making disclosures to mortgage borrowers?

A.3. On an annual basis, Cape Cod Five incurs approximately $225,000 in costs related to the collection, verification and reporting of HMDA data. These costs are up at least 35 percent since the financial crisis. We anticipate that these costs will increase as a result of the new requirements, with 25 additional data fields and the modification of 20 existing fields, requiring more staff time and system enhancements in order to comply. The additional cost associated with the new requirements is still to be determined. Using the CFPB's estimates, we would calculate that the additional costs associated with the new and modified fields could be $119,000 or 53 percent.

The cost of HMDA compliance is significant. For example, a 2012 ABA survey found that the median time spent collecting, verifying, and reporting HMDA data was 1.47 hours per Loan Application Record (LAR), or $32.34 per LAR entry when calculated in terms of salary costs. Even the Bureau's Regulatory Flexibility Act (RFA) analysis estimates additional annual operational expenses of $120,600,000 to which the Bureau adds $899,000 for institutions that will be required to report HMDA data quarterly. Further, the Bureau estimates that the expanded data collection will increase the cost of each closed-end mortgage application by $23 and the cost of each open-end line of credit application by over $41 for "representative low complexity institutions." Overall, the Bureau estimates the lenders will incur costs in four areas: data collection, reporting and resubmission, compliance and internal audits, and HMDA-related exams. Although it is not simple to distill the cost estimates from the Bureau's analysis, one figure is telling: the Bureau, which is likely to use conservative estimates when determining the impact of rule, estimates that the annualized, one-time additional cost that the new rule will impose on the industry to be between $177 million and $326.6 million.

The ABA believes that the value of collecting the additional information is doubtful as it pertains to the underlying purposes of HMDA. Fundamentally, all the new data provides information on the mortgage markets, but all the extra data is unnecessary for fair lending analysis or allocation of Government funds to support housing. It is unlikely to encourage greater access to mortgage credit as the added costs would decrease the demand for mortgages.

Much of the data collected for the purposes of HMDA are just for the reporting and not instrumental in the process of assessing the risk for determining whether to fund the loan. Any additional reporting elements add costs and complexity to the mortgage process and it is ultimately the borrower that bears the cost and extra time to close a loan.

Q.4. Can you please detail how your bank ensures compliance with the Volcker rule and how much that has cost your bank since the rule became effective on April 1, 2014?

A.4. Like all other banks subject to the Volcker rule, we first spent substantial time inventorying all of our activities to determine which, if any, implicated the prohibitions of the Volcker rule. One of the difficulties we faced in doing that was the approach taken by the five Volcker agencies to prohibit everything, and carve out a few permissible activities: this meant we had to review all of our activities rather than focus on those that were intended to be captured by the Volcker rule. Based on that inventory, we had to develop, then train and implement, compliance processes and policies regarding activities permissible under the Volcker rule to ensure we do not stray into impermissible activities. We also had to develop, then train and implement, compliance processes and policies regarding any new service or product we offered to ensure we do not stray into impermissible activities. Our bank is not subject to the most rigorous compliance or metrics measuring regime, and we expect those banks that are have had to develop additional processes and policies to ensure compliance face much higher costs and monitoring burden. We have not compiled the cost in man hours as implementation and other costs cut across many new regulations and changes in existing ones. It is the mix of activities at any particular bank that drives the burden of Volcker rule compliance and therefore our experience may not reflect the struggles other banks may have related to Volcker implementation or compliance with other regulations.

At the hearing Mr. Bissell talked about the impact of the opioid crisis on the communities he serves in Western Massachusetts. Can you please tell me about the impact the opioid epidemic is having on the economies in your communities?

The opioid crisis impacts every community and Cape Cod is not immune from its devastating impact on families and the community. Bankers, like all citizens, are concerned about these trends and believe working to correct this trend is in the best interest of our economic health regardless of the community. I'm passionate about helping those with any addictions and it is one reason that I serve on the Board of Gosnold on Cape Cod which has provided addiction treatment services for 45 years.

Additionally, a significant portion of the Bank's charitable efforts, through the five ways listed in Question 2 above, have been directed to addressing the opioid crisis, in terms of supporting organizations and agencies undertaking education, prevention, intervention and treatment, which of course means those funds can't go into housing or other areas of economic development as they would if there was no opioid crisis. The Bank expects the opioid crisis to continue to require resources for the foreseeable future.

Q.5. The Treasury report on financial regulation released on June 12, 2017, suggests making many changes to the regulation of the Nation's largest banks. Will relief for the largest banks help your banks and credit unions?

A.5. Taken as a whole, the Treasury report does hold promise to help banks of all sizes. The U.S. banking industry is comprised of institutions of all sizes, which serve a myriad of customers including consumers, small business, farmers and large corporations. This integrated, ecosystem of banks has developed because customers and customer needs are so diverse. There is a need for each kind and size of bank. Inefficient and overly burdensome regulation prevents all banks from serving their customers' needs and, by extension, promote economic growth. Sensible regulatory relief for any size bank permits it to better serve its customers, often including other banks, making a stronger banking system overall.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SASSE FROM DOROTHY A. SAVARESE

Q.1. Our financial system has become increasingly consolidated, as community banks and credit unions either close their doors or merge with larger institutions. What services can these smaller institutions provide that larger institutions cannot provide?

A.1. All banks work hard to meet the needs of their communities, whether rural, urban, or even global. Community banks, in particular, are often the center of the economic activity in their community. The bankers are leaders in the community and support almost every nonprofit organization in the area. Bankers volunteer thousands of hours each year to community service and serve on local hospitals, colleges, and business boards. Community banks are also significant lenders to small businesses, which drives much of our Nation's job and economic growth. In fact, community banks make almost half of the small loans (less than $1 million) to businesses and the agricultural community. When a small bank disappears—which has been happening at an alarming rate since Dodd-Frank was enacted—the community losses a great deal. In many cases, the community bank is one of a few options for financial services which leaves the community less well off with fewer choices.

Q.2. Multiple anecdotes from constituents make it clear that there are several Nebraska counties where consumers cannot get a mortgage, due to CFPB regulations such as TRID and the QM rule. What would the best way be to address this problem?

A.2. While it is impossible to address the specific reasons that your constituents may cite for the inability to get a mortgage without further details, we can confirm that both TRID and QM rules promulgated by the CFPB have increased compliance and liability costs for all banks, and have had a particularly onerous impact in some rural areas where the cost of compliance, the complexity of the rules and the potential liability costs have caused banks to severely reduce or even curtail their mortgage lending. TRID rules in particular are extremely convoluted and costly to comply with, and can subject lenders to costly and unfair liabilities based upon the actions of others (such as title companies) which are difficult or impossible to control. ABA has proposed a number of changes to TRID including changes to tolerances and providing an opportunity to correct closing disclosures.

Similarly, QM rules have restricted the Qualified Mortgage designation to a limited scope of loans which do not necessarily include otherwise safe, sound and popular loan products that could be used to serve customers. Although CFPB has made efforts to expand the "small creditor" QM exception, many areas still do not meet the Bureau's definitions and the requirements are too convoluted to implement. The result is that some borrowers in rural areas are able to be offered mortgages under the exemption while others are not. ABA believes the solution to this problem is to expand the QM definition to include all loans originated and held in portfolio and to further clarify and simplify the QM rules applicable to all other mortgages. These changes will reduce the compliance complexity and the risks of liability which may be inhibiting lenders from offering mortgages.

ABA detailed our proposals on TRID and QM in a recent white paper to the Treasury Department in response to the President's

Executive order on reducing regulatory burden, which we would be happy to share with you.

Q.3. What are concrete examples of the CFPB's refusal to tailor regulations to match the unique profile of community banks and credit unions?

A.3. There are several, but here are two examples that jump to mind:

HMDA

ABA recommended adopting a threshold for smaller institutions with a lower volume of loans be exempt from the detailed data collection and reporting requirements of the Home Mortgage Disclosure Act (HMDA). We made a reasoned recommendation of 25 loans per month or 300 loans annually as an appropriate threshold. That threshold would not have compromised the integrity of the overall data but would have greatly benefited lenders in rural and agricultural communities. Even excluding lenders with 250 mortgage loans or less annually would still have captured 95 percent of loans, based on the Bureau's data.

Remittances

Similarly, ABA recommended a threshold be adopted for the requirements pertaining to remittances, particularly since smaller institutions with a low volume often only offer these as an accommodation to serve their customers such that compliance costs would cause them to discontinue services. The Bureau is currently analyzing the impact of the rule, but the concern raised by ABA was that this would particularly impact consumers in rural areas without ready access to remittances services. ABA initially recommended a threshold of 300 remittances per year as a logical threshold. Initially, the Bureau only provided that the requirement only applied to senders who offered the service in the normal course of business but then had to come back later and define that as 100 remittances per year.

Q.4. Which financial regulatory agencies, if any, have effectively tailored financial regulations to community banks and credit unions? If so, how have they done so?

A.4. There have been few specific efforts to tailor regulations. We have seen some tailoring in the following cases:

Call Reports

Through the FFIEC, the Federal banking agencies have begun a welcome process to revise and improve the call report. This has included revisions that streamline how banks report complex activities—such as derivatives, trading, or credit card lending—that enables banks that are not in those lines of business to avoid entire schedules of the call report. Bipartisan legislation enacted in recent years has also enabled the Federal Reserve to let more banks take advantage of the Small Bank Holding Company Policy Statement and has enabled all three banking agencies to expand the number of community banks eligible for the 18 month examination cycle. To their credit, the agencies acted swiftly to make these newly authorized changes a reality.

CRA

One of the successful applications of thresholds for compliance was in the revisions to the Community Reinvestment Act (CRA) regulations adopted in 1995. Initially, banks were separated into small institutions and large institutions, with the former evaluated on loan performance and larger institutions evaluated on a three-part test of investments, loans, and services. In 2005, the banking agencies added a community development assessment for intermediate small institutions to further refine the assessment for banks on their CRA performance.

Bank Secrecy Act BSA/Customer Identification Program (CIP) Performance

Since 1986, banks have been evaluated on their anti-money laundering performance using a risk-based approach. That approach considers the products and services the bank offers, the customers it serves and the geographies and markets where the bank is located and where it offers its services. This helps to tailor supervision based on the bank. It has been most successfully applied in CIP analysis where the risk-based approach was used to provide banks with flexibility in their compliance efforts. The requirement is that a bank collect certain information about the customer and then verify the identity of the customer but individual banks are permitted a great deal of flexibility in how that goal is achieved.

Q.5. How could Congress best ensure that CFPB regulations are properly tailored for community banks and credit unions? For example, some have called to exempt either smaller or less risky financial institutions from CFPB regulations altogether.

A.5. Congress should require the Bureau to take seriously its obligation to conduct a Small Business Regulatory Enforcement Fairness Act (SBREFA) review of any proposal so that community bank concerns are identified early in the process and less burdensome alternatives are identified, considered, and where appropriate adopted. In practice, the SBREFA review process has been little more than a check-the-box exercise for the Bureau. A 2016 GAO report found that only 18 out of 57 SBREFA panel participants said the process was a good opportunity to be heard and a mere 7 participants were satisfied with the final rule.

Q.6. My understanding is that only two banks have actually opened since the passage of Dodd-Frank. Why? What potential impacts does this have for our financial system?

A.6. It's true that there has been shockingly few new banks since Dodd-Frank. New entrants into any industry are a sign of growth potential and economic opportunity. New banks help fill gaps in the provision of banking services, increases competition, and ultimately strengthen the community banking sector. Consumers and businesses have more choices of competitive products and services which translates into greater economic activity and growth in local communities.

The lack of de novo activity is concerning to our industry and sadly reflects the same forces that are driving consolidation—excessive and complex regulations that are not tailored to the risks of specific institutions. This—not the local economic conditions—is often the tipping point that drives small banks to merge with banks typically many times larger and is a barrier to entry for new banks.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BROWN FROM STEVE GROOMS

Q.1. Senator Crapo asked Mr. Bergl and Mr. Grooms about the impact of Dodd-Frank mortgage rules on each of their financial institutions. Does your bank or credit union qualify for the QM–ATR "small creditor," "rural area," or any other exemption? How does this exemption help your financial institution?

A.1. Yes, we qualify both as a small credit union and as a rural area credit union. In identifying what these designations mean to us is not as clear as we would like it to be. There tends to be some confusion on what we can and can't do in complying with the regulation and ensuring we qualify for the "Safe Harbor" associated with Qualified Mortgages and Ability to Repay rules, in addition there is confusion on what constitutes staying in compliance with the Higher-Priced Mortgage rule that stipulates additional requirements if one of our loans falls into this category. The risks of noncompliance are great so we are very conservative in our approach to compliance and interpretation to the rules the CFPB has set.

Q.2. What is your institution doing specifically to help bring the unbanked or underbanked in your communities into the financial system?

A.2. We serve a general area of underserved communities in North Central Montana, including the city or town of Browning Montana, which is on the Blackfeet Indian reservation. In serving individuals that live on a separate sovereign nation, this creates unique challenges and difficulties when trying to work through "a separate legal system" in resolving delinquent loans and negative saving and checking accounts and other member issues. That said, as we serve our communities including the Browning area, we have held different educational seminars associated with getting more individuals to understand the benefits of the banking system, how checking and savings accounts work and understanding how best to use financial institutions, including credit unions to meet day to day personal financial needs. The products and services offered at our credit union meet the needs of those of modest means and those that live in an underserved area. We will continue to look for ways to help all members and individuals we serve to assist in meeting needs in a convenient, low cost and friendly approach to banking needs.

It is worth noting that the secondary market investors set the requirements on the loans they are looking to invest in relative to mortgage loans sold on the secondary market. As a lender that serves rural Montana/America, we hold loans in house that we may not sell on the secondary market, and in doing so, we serve those that would not otherwise be able to find financing on a first mortgages through the secondary marketplace. As regulations increase it makes it more difficult to exercise judgment on loans that are on the border or fall outside established guidelines from increased regulation.

Finally, as I outline in my written testimony, Congress could help more credit unions help underbanked communities by enacting legislation that would allow all credit unions to add underserved areas to their fields of membership—legislation NCUA Chairman Mark McWatters has also endorsed.

Q.3.a. As discussed at the hearing, new HMDA data will be collected starting in January 2018. What do you spend annually on HMDA compliance, has that changed since before the crisis, and what additional costs are you incurring to come into compliance with the new requirements?

A.3.a. HMDA requirements have changed significantly since the financial crisis began, including more personnel time needed to collect and complete the reports and the need to purchase third-party software used to assist with identifying data and compliance with RESPA, TILA, and TRID, including HMDA reporting. Beginning in January 2018 there will be more data points required and more time associated with collecting, organizing and reporting the data required. We are now spending an additional $25,000 a year to collect this information and anticipate increased hard costs going forward and twice the time and costs needed to track and record 48 Data points of information in the future. We currently average one half hour on each mortgage loan we originate and fund, last year we funded 107 mortgage loans, with the new requirements we double the size of our spreadsheet and the time needed to complete the spread sheet. This information is not in our system so it is necessary to collect the information manually, which has the possibly of human error associated with the collection and recording of these data points. As the number of loans increase so does the time and cost of data collection increase and the requirements of compliance continues to be burdensome.

Q.3.b. Do you believe there is value in collecting this data?

A.3.b. We are not sure of the value associated with the data collected, it does appear more personal data is being required, some of which may be very specific to a person's financial strength and may be more than that person would want to share, like debt ratio, credit score, loan to value, . . . etc.

Some of the information requested is information we cannot know or take into consideration when underwriting a loan, or even ask such as a person's age, ethnic background, or gender to name but a few. These new Data points appear to go too far, enough is enough, from our perspective we don't need more data points to collect.

Q.3.c. How much of this data do you already collect under the ordinary course of underwriting or making disclosures to mortgage borrowers?

A.3.c. We currently collect 25 Data points and manually input that information into a spreadsheet. This takes us roughly 5 hours per month. We have most information somewhere in the file, we need to collect it and it takes time. By doubling the number of Data points we gather we anticipate doubling the time we need to spend collecting and recording the data required.

Q.4. At the hearing Mr. Bissell talked about the impact of the opioid crisis on the communities he serves in Western Massachusetts. Can you please tell me about the impact the opioid epidemic is having on the economies in your communities?

A.4. I have not been able to identify any local data for our City-County Health Department or County Commissioners, but with what I hear in the news we are not immune from the Opioid epidemic sweeping the country. We have our fair share of problems that impact families and businesses both socially as well as economically in our community of Great Falls, Montana as a result of the Opioid problem in America today.

Q.5. The Treasury report on financial regulation released on June 12, 2017, suggests making many changes to the regulation of the Nation's largest banks. Will relief for the largest banks help your banks and credit unions?

A.5. The U.S. Department of Treasury Report "A Financial System that Creates Economic Opportunities: Banks and Credit Unions" contains a number of recommendations that would provide regulatory relief for credit unions that NAFCU supports. As I outline in my written testimony under the basic tenets of a healthy and appropriate regulatory environment for credit unions, NAFCU does not believe that bad actors or unregulated entities should escape regulatory oversight. We would urge the Committee to provide relief to credit unions while ensuring those who deserve greater oversight are subject to it.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SASSE FROM STEVE GROOMS

Q.1. Our financial system has become increasingly consolidated, as community banks and credit unions either close their doors or merge with larger institutions. What services can these smaller institutions provide that larger institutions cannot provide?

A.1. The impact of growing compliance burdens is evident as the overall number of credit unions continues to decline. Since the second quarter of 2010, we have lost over 1,500 federally insured credit unions—over 20 percent of the industry. The overwhelming majority (96 percent) 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, this trend has accelerated since the passage of the Dodd-Frank Act. Many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over. Regardless of size—credit unions are member owned and exist solely for the purpose of providing financial services to their members unlike banks who aim to make a profit for a limited number of shareholders. Credit unions know their members and, by being in their communities and having a common bond, can tailor their services to meet the unique needs of their members. If relief is not provided and this consolidation trend continues, the large banks will only continue to get larger and the small financial institutions like credit unions will disappear.

Q.2. Multiple anecdotes from constituents make it clear that there are several Nebraska counties where consumers cannot get a mortgage, due to CFPB regulations such as TRID and the QM rule. What would the best way be to address this problem?

A.2. NAFCU has many concerns with both CFPB rules and the overall impact they will have on credit unions ability to provide needed loans and services to their members. First and foremost, NAFCU believes that credit unions should be exempt from the CFPB with rulemaking returned to NCUA for this issue. This would allow NCUA to better tailor a rule that allows credit unions to continue to serve the credit needs of their members.

The CFPB should also be required to better tailor its rules to address the concerns of community lenders. When the CFPB issued its Qualified Mortgage Rule, NAFCU proposed revising the definition of a qualified mortgage in a number of ways to reduce the enormous negative impact the rule will undoubtedly have on credit unions and their members, in particular the debt-to-income (DTI) threshold (43 percent of the total loan) and the inclusion of affiliate fees in the calculation of points and fees.

In regards to the final TRID Rule released last week, NAFCU has urged the CFPB to make adjustments to the rule such as allowing a revised closing disclosure to reset tolerances under the same circumstances that the current rule permits credit unions to issue a revised loan estimate; incorporating informal guidance into the rule; clarifying that recording fees and transfer taxes may be charged in connection with housing assistance lending transactions without losing eligibility for the existing partial exemption; extending the rule's coverage to include all cooperative units rather than just transactions secured by real property; and clarifying how a creditor may provide separate disclosure forms to the consumer and the seller.

My written testimony also outlines the tenets NAFCU believes are necessary for credit unions to thrive.

Q.3. What are concrete examples of the CFPB's refusal to tailor regulations to match the unique profile of community banks and credit unions?

A.3. NAFCU supports measures that would require the CFPB to better tailor its regulations. Despite credit unions being smaller and less risky than mega-banks, they have too often found themselves subject to burdensome new CFPB regulations designed for big banks, and this has a negative impact on their ability to serve their members and foster economic development.

A prime example is CFPB's Remittance Rule. Congress enacted legislation in 2006 that would allow credit unions to offer remittances to anyone in their field of membership, regardless of membership status. Congress wanted to make it easier for those who may be unbanked to come into a regulated depository institution and get services. The CFPB's remittance rule and its unworkable 100 remittance safe harbor have, instead, driven many credit unions out of the remittance business due to the burdens it places on the institution. The CFPB could have recognized the work of

Congress in 2006 and exempted credit unions as an industry from this rule, but chose not to.

Another example is the new HMDA data collection requirements. NCUA Chairman Mark McWatters recently asked the CFPB to exempt credit unions from many of the new requirements due to the burdens they would place on credit unions.

Q.4. Which financial regulatory agencies, if any, have effectively tailored financial regulations to community banks and credit unions? If so, how have they done so?

A.4. NAFCU believes that the National Credit Union Administration is best situated with the knowledge and expertise to regulate credit unions due to their unique nature. As not-for-profit member-owned cooperatives, credit unions are unique in the financial services marketplace and need to have regulators that understand their business model and operations. NCUA has a long track record of success in regulating credit unions and creating a regulatory environment that allows credit unions to meet the needs of their members.

Q.5. How could Congress best ensure that CFPB regulations are properly tailored for community banks and credit unions? For example, some have called to exempt either smaller or less risky financial institutions from CFPB regulations altogether.

A.5. NAFCU has long believed that, given their unique nature, all credit unions should be exempt from CFPB rulemaking and examination authority, with NCUA once again given authority to write all rules for credit unions, tailoring new proposals to meet the special nature of the credit union industry. With that being said other steps Congress could take that would better tailor the CFPB's regulations would be to provide greater clarity to CFPB's Section 1022 exemption authority, hold the CFPB accountable for the cost and compliance burden estimates, and passing the bills outlined in my written statement.

Q.6. My understanding is that only two banks have actually opened since the passage of Dodd-Frank. Why? What potential impacts does this have for our financial system?

A.6. Since the financial crisis and the passage of Dodd-Frank, the number of new credit unions seeking charters has decreased by nearly 70 percent per year, with an average of 7.7 new charters annually in the 10 years before Dodd-Frank and only 2.3 annually since the passage of Dodd-Frank. The relentless rising cost of compliance deters many would-be de novo credit unions. Additionally, the initial capital infusion and cash outlays are often too great for many communities and associations, and there is practically no return on investment. Starting a new credit union is essentially an altruistic endeavor, as there is no ultimate financial incentive for those who are successful. Furthermore, the complex chartering process may seem relatively easy and straightforward when compared to what a de novo credit union will face once it is chartered and operating. The industry has seen a significant decline in the pace of de novo credit unions post Dodd-Frank enactment which just helps to exacerbate the declining overall number of credit unions.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BROWN FROM DALLAS BERGL

Q.1. Senator Crapo asked Mr. Bergl and Mr. Grooms about the impact of Dodd-Frank mortgage rules on each of their financial institutions. Does your bank or credit union qualify for the QM–ATR "small creditor," "rural area," or any other exemption? How does this exemption help your financial institution?

A.1. The CFPB continues to cite the expanded qualified mortgage (QM) safe harbor for small creditors and small creditor exemption for those operating in rural and underserved areas as proof that it has helped credit unions continue to serve members. While there was some consideration for the smallest financial institutions, the expanded exemption for smaller creditors was provided after the ATR/QM rule was finalized, which created compliance burdens that were preventable. In any event the exemptions are so narrowly tailored that they are statistically meaningless in the overall mortgage volume.

Some changes were also mandated by Congress in the Helping Expand Lending Practices in Rural Communities Act at the end of 2015. This is the type of action we would hope the CFPB would take on its own accord in the future.

Furthermore, in a recent survey of CUNA members, 43 percent cited the QM rule as most negatively impacting the ability to serve members with mortgage products. Therefore, these exemptions, while a step in the right direction, did not provide full relief for many credit unions, who in some instances were forced to change their product offerings and/or discontinue mortgage lending entirely. All credit unions, not just the very smallest, have a different operating structure than banks and for-profit lenders, and the regulatory changes implemented by the CFPB must reflect this difference. Modifications in the ATR/QM rule for all credit unions would be appropriate to ensure they can continue to effectively serve their members.

Q.2. What is your institution doing specifically to help bring the unbanked or underbanked in your communities into the financial system?

A.2. Credit unions, by their nature, are member-owned, cooperative financial institutions that invest in their communities and seek to offer safe and affordable products that are more suitable than others in the marketplace for consumers of modest means. For example, our credit union operates a small dollar loan program designed to keep members out of the reach of unscrupulous lenders. We also have done significant financial education and other financial outreach programs in the community. Unfortunately, we have had to direct resources away from this type of outreach due to the increase in regulatory burden that has emerged since the crisis.

Q.3. As discussed at the hearing, new HMDA data will be collected starting in January 2018. What do you spend annually on HMDA compliance, has that changed since before the crisis, and what additional costs are you incurring to come into compliance with the new requirements? Do you believe there is value in collecting this data? How much of this data do you already collect under the ordinary course of underwriting or making disclosures to mortgage borrowers?

A.3. First, it's too soon to know the full annual cost of HMDA compliance until the rule has been fully implemented. However, we believe the data currently collected is more than sufficient to establish potential discrimination. We therefore believe the additional data the CFPB seeks to collect will be of no value in reducing discrimination and of limited value to the Bureau or other stakeholders. Second, while some of this information may be collected or available in the course of underwriting, this fact does not take into consideration the costs associated with new reporting requirements, as each additional data point to be reported requires separate system development, education and training, quality control and auditing.

Q.4. At the hearing, Mr. Bissell talked about the impact of the opioid crisis on the communities he serves in Western Massachusetts. Can you please tell me about the impact the opioid epidemic is having on the economies in your communities?

A.4. Elkhart is not immune to the impacts of drug abuse in our community. I do not feel informed enough on this topic to share more than my personal concern that addiction seems to be spreading and my feeling that legalization of gateway drugs in some States may ultimately cause this and other problems to worsen.

Q.5. The Treasury report on financial regulation released on June 12, 2017, suggests making many changes to the regulation of the Nation's largest banks. Will relief for the largest banks help your banks and credit unions?

A.5. It's become clear since the crisis that one-size-fits all regulations designed to curb abusive and destabilizing practices at the largest financial institutions are inappropriate and harmful to smaller community-based financial institutions. All regulations should therefore be appropriately tailored for the complexity and size of an institution. Those changes proposed by the Treasury report that would help large financial institutions become larger should indeed be subject to careful scrutiny. However, there are a number of changes included in the Treasury report that would in fact help America's credit unions. Among these:

National Credit Union Administration

- **Recalibration of NCUA Regulations:** NCUA regulations related to credit union capital and stress testing should be recalibrated:
  - **RBC:** Revise Risk Based Capital to apply to $10 billion and over or eliminate requirements for those with 10 percent net worth;
  - **Stress Testing:** Stress testing threshold raised from $10 billion to $50 billion;
  - **Supplemental Capital:** Allow credit unions to rely on appropriately designed supplemental capital to meet a portion of their Risk Based Capital requirements
- **CECL:** Revisiting CECL requirements;

- **Streamline De Novo Applications:** Recommends streamlining the application process for de novo credit unions to encourage new charters;
- **Call Reports:** Recommends call reports be simplified and streamlined
- **Exam Thresholds:** Exam thresholds for extended exam cycle (18-month) should be raised over the current $1 billion level or eliminated;
- **Statutory Capital:** Codify that the statutory rate to be well capitalized is set by Congress at 7 percent and not a level higher than that set by a bureaucrat:
- **Data Collection:** Recommends better coordination and rationalization of examination and data collection procedures to promote accountability and clarity;
- **Agricultural and Rural Credit Unions:** Regulators should tailor and give special consideration for agricultural and rural financial institutions;
- **Board Duties:** Recommends revisions for Boards of Directors to appropriately tailor duties recognizing the distinction between management and boards to restore the balance between regulators, Boards and management;
- **Cost-Benefit Analysis:** Increased use of Cost-Benefit Analysis.

Consumer Financial Protection Bureau

Structural Reforms

- Make the CFPB Director removable “at-will” instead of “for cause”
- Funding through the appropriations process
- Subject to OMB apportionment
- Civil Penalty Fund restructured

Increased Regulatory Certainty

- CFPB should issue rules or guidance subject to public notice and comment procedures before bringing enforcement actions in areas in which clear guidance is lacking or the CFPB’s position departs from the historical interpretation of the law.
- The CFPB should adopt regulations that more clearly delineate its interpretation of the UDAAP standard. The agency should seek monetary sanctions only in cases in which a regulated party had reasonable notice—by virtue of a CFPB regulation, judicial precedent, or FTC precedent—that its conduct was unlawful. The CFPB could implement this reform administratively through issuance of a regulation limiting the application of monetary sanctions to cases that satisfy this notice standard.
- The CFPB should make the requirements for CFPB no-action relief less onerous.

Enforcement

- The CFPB should bring enforcement actions in Federal district court rather than use administrative proceedings.
- The CID process should be reformed to ensure subjects of an investigation receive the benefit of existing statutory protections, backed by judicial review.

Regulatory Review

- The CFPB should promulgate a regulation committing it to regularly reviewing all regulations that it administers to identify outdated or otherwise unnecessary regulatory requirements imposed on regulated entities.

Complaint Database

- The CFPB's Consumer Complaint Database should be reformed to make the underlying data available only to Federal and State agencies, and not to the general public.

Supervisory Authority

- Congress should repeal the CFPB's supervisory authority. The responsibility to supervise banks should be entrusted to the prudential regulators. Supervision of nonbanks should be returned to State regulators.

Mortgage Issues

- Adjust and Clarify the ATR Rule and eliminate the "QM Patch": The CFPB should engage in a review of the ATR/QM rule and work to align QM requirements with GSE eligibility requirements, ultimately phasing out the QM Patch and subjecting all market participants to the same transparent set of requirements. These requirements should make ample accommodation for compensating factors that should allow a loan to be a QM loan even if one particular criterion is deemed to fall outside the bounds of the existing framework, such as when a borrower has a high DTI ratio with compensating factors.
- Modify Appendix Q of the ATR Rule: Appendix Q should be simplified and the CFPB should make much clearer, binding guidance for use and application. The CFPB should review Appendix Q standards for determining borrower debt and income levels to mitigate overly prescriptive and rigid requirements. Review of these requirements should be particularly sensitive to considerations for self-employed and nontraditional borrowers.
- Revise the Points and Fees Cap for QM Loans: The CFPB should increase the $103,000 loan threshold for application of the 3 percent points and fees cap, which would encourage additional lending in the form of smaller balance loans. The CFPB should scale points and fees caps in both dollar and percentage terms for loans that fall below the adjusted loan amount threshold for application of the 3 percent points and fees cap.
- Increase the Threshold for Making Small Creditor QM Loans: Raising the total asset threshold for making Small Creditor QM loans from the current $2 billion to a higher asset thresh-

old of between $5 and $10 billion is recommended to accommodate loans made and retained by small depository institutions. In order to maintain a level playing field across institution types, an alternative approach to this recommendation would be to undertake a rulemaking to amend the QM rule and related processes for all lenders regardless of type.

- Clarify and Modify TRID: The CFPB could resolve uncertainty regarding what constitutes a TRID violation through notice and comment rulemaking and/or through the publication of more robust and detailed FAQs in the Federal Register. The CFPB should allow a more streamlined waiver for the mandatory waiting periods, in consultation with all market participants, including both lenders and realtors. The CFPB should allow creditors to cure errors in a loan file within a reasonable period after closing.
- Improve Flexibility and Accountability of Loan Originator Compensation Rule: The CFPB should improve flexibility and accountability of the Loan Originator Compensation Rule, particularly in those instances where an error is discovered post-closing, in order to facilitate post-closing corrections of non-material errors. The CFPB should establish clear ex ante standards through notice and comment rulemaking, which will clarify its enforcement priorities with respect to the Loan Originator Compensation Rule.
- Delay Implementation of HMDA Reporting Requirements: The CFPB should delay the 2018 implementation of the new HMDA requirements until borrower privacy is adequately addressed and the industry is better positioned to implement the new requirements. The new requirements should be examined for utility and cost burden, particularly on smaller lending institutions. Consideration should be given to moving responsibility for HMDA back to bank regulators, discontinuing public use, and revising regulatory applications.
- Place a Moratorium on Additional Mortgage Servicing Rules: The CFPB should place a moratorium on additional rulemaking in mortgage servicing while the industry updates its operations to comply with the existing regulations and transitions from HAMP to alternative loss mitigation options. In addition, the CFPB should work with prudential regulators and State regulators to improve alignment where possible in both regulation and examinations.

Small Business Lending

- Repeal the provisions of Section 1071 of the Dodd-Frank Act pertaining to small businesses to ensure that the intended benefits of Section 1071 do not inadvertently reduce the ability of small businesses to access credit at a reasonable cost.
- Simplify, adjust, or change certain financial regulations for financial institutions serving small businesses.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SASSE FROM DALLAS BERGL

Q.1. Our financial system has become increasingly consolidated, as community banks and credit unions either close their doors or merge with larger institutions. What services can these smaller institutions provide that larger institutions cannot provide?

A.1. As locally owned cooperative financial institutions, credit unions are well positioned to offer products and services that are tailored to their particular community's needs. However, the rapid increase in regulatory burden exerts economic pressures that are driving credit unions to merge and consolidate.

Nearly every day I receive a communication from one of our members requesting special attention to their loan or account relationship. Many times I make exceptions to our general policies to accommodate their personal situation. It think it is fair to say that it is unlikely the CEOs of Bank of America or Wells Fargo see this type of activity as any part of their role.

During the great financial crisis, numerous small business owners in our community came to INOVA FCU because their "to big to fail" bank pulled their operating line of credit just as their business was looking to use the loan for the first time as an operating life line. They were all told that Elkhart was no longer a community that the bank was interested in investing in. Today we are the only small business lender still headquartered in our city, however the big banks have all returned to take advantage of the good economic climate we are currently enjoying.

Q.2. Multiple anecdotes from constituents make it clear that there are several Nebraska counties where consumers cannot get a mortgage, due to CFPB regulations such as TRID and the QM rule. What would the best way be to address this problem?

A.2. Unfortunately, credit unions' ability to provide their top quality and consumer-friendly financial products and services has been significantly impeded in the last several years by a regulatory scheme, which has favored the large banks and nonbank financial services providers that can afford to absorb regulatory and compliance changes. Outlined below is some of the feedback my credit union friends have given me about certain areas where the CFPB has provided modifications:

- **Ability To Repay/Qualified Mortgage (ATR/QM):** The CFPB continues to cite the expanded qualified mortgage (QM) safe harbor for small creditors and small creditor exemption for those operating in rural and underserved areas as proof that it has helped credit unions continue to serve members. While there was some consideration for the smallest financial institutions, the expanded exemption for smaller creditors was provided after the ATR/QM rule was finalized, which created compliance burdens that were preventable. Some changes were also mandated by Congress in the Helping Expand Lending Practices in Rural Communities Act at the end of 2015. This is the type of action we would hope the CFPB would take on its own accord in the future.
- **Mortgage Servicing:** The CFPB argues that it has tailored its servicing rules by making certain exemptions for small

servicers that service 5,000 or fewer mortgage loans. However, the reality is that significant requirements under these rules are excluded from the exemption and must be followed by large and small servicers alike. Small servicers remain subject to requirements related to successors-in-interest, force-placed insurance and, in certain circumstances, early intervention requirements for borrowers in bankruptcy. Indeed, in a recent survey of CUNA members, 30 percent of credit unions specifically cited the Mortgage Servicing rule as having negatively impacted their ability to serve members. Credit unions with assets of less than $100 million are the asset group most apt to have dropped their mortgage program altogether.

- **Home Mortgage Disclosure Act (HMDA):** While the 2015 HMDA final rule included exemption thresholds of 25 closed-end mortgages and 100 open-end mortgages (Home Equity Lines of Credit or HELOCs) from HMDA reporting, this can hardly be described as tailoring the rule to minimize the impact on small entities given that prior to the rule, credit unions were not required to report HMDA data on HELOCs. The new HMDA reporting requirements are particularly troublesome since many credit unions process HELOCs on a consumer platform and mortgages on a different lending platform, a point that credit union leaders repeatedly raised with Bureau staff during the rulemaking process. The CFPB further added to credit unions' regulatory burden by drastically increasing the number of data points they must report to a level well beyond the data points required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. CUNA continues to urge the CFPB to provide an exemption from reporting on HELOCs, or at a minimum, a dramatic increase in the loan volume exemption thresholds. These changes would provide meaningful relief to credit unions. We also continue to strongly encourage the Bureau to reduce the number of required data points and to disclose which data points it intends to make public.

Q.3. What are concrete examples of the CFPB's refusal to tailor regulations to match the unique profile of community banks and credit unions?

A.3. First it is important to note that credit unions were assured by the very lawmakers that created the CFPB that we would be provided an exemption from their rulemaking and oversight because credit unions were the "good guys" and did not contribute to the economic crisis.

The CFPB regularly cites the exemption to entities that provide fewer than 100 remittances annually as an example of providing relief to small entities. However, of all its attempts to provide relief to small entities, this exemption threshold is probably the clearest example that the CFPB is simply not listening. We have continually pointed out to the CFPB that the international remittance transfer final rule has crippled credit union participation in this market with over half (55 percent) of credit unions that have offered international remittances sometime during the past 5 years having either cut back or eliminating the service. Credit unions have told CUNA and the CFPB countless times that this rule has made it more expensive for members to remit payment and has drawn consumers away from using credit unions and into the arms of the abusers for which the rule was designed. No one should be satisfied with consumer protection rules that have this impact on consumers.

The 2015 HMDA final rule, discussed above, is another example of a rule in which credit unions should be treated differently because of their field of membership restrictions and the absence of a discriminatory lending history.

Finally, while the CFPB's proposed rule to regulate small-dollar loans purportedly exempts the Payday Alternative Loan (PAL) program administered by the NCUA, in reality their rule does not offer a clean exemption, and will impose additional restrictions on credit unions' ability to offer these safe alternative products to their members.

Q.4. Which financial regulatory agencies, if any, have effectively tailored financial regulations to community banks and credit unions? If so, how have they done so?

A.4. The NCUA's Member Business Lending rule is an example of a regulator tailoring a financial regulation to credit unions. They accomplished this by moving from a prescriptive rule to a principle-based rule, which could serve as a model for other regulators in their approach.

Q.5. How could Congress best ensure that CFPB regulations are properly tailored for community banks and credit unions? For example, some have called to exempt either smaller or less risky financial institutions from CFPB regulations altogether.

A.5. First and foremost, credit unions should be exempt from all CFPB regulations unless the Bureau demonstrates a pattern of harm or abuse on the part of credit unions, and the Bureau obtains the concurrence of credit unions' prudential regulator, the National Credit Union Administration. As I mentioned earlier, Congress specifically granted the CFPB the authority to exempt credit unions because of our structure. Additionally, Congress could help ensure CFPB regulations are properly tailored by changing the leadership structure at the Bureau from a single director to a bipartisan commission, or by exercising additional oversight of the Bureau through the appropriations process.

Q.6. My understanding is that only two banks have actually opened since the passage of Dodd-Frank. Why? What potential impacts does this have for our financial system?

A.6. The barriers to chartering new credit unions are not insignificant, and include higher capital requirements and significantly increased regulatory burden. The impact of lack of access to sound financial services is well documented; however, in the case of credit unions, one way to achieve greater penetration and reach would be simply to loosen restrictions on field of membership, thereby permitting already existing credit unions to serve more individuals and communities.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BROWN FROM JOHN BISSELL

Q.1. Senator Crapo asked Mr. Bergl and Mr. Grooms about the impact of Dodd-Frank mortgage rules on each of their financial institutions. Does your bank or credit union qualify for the QM–ATR "small creditor," "rural area," or any other exemption? How does this exemption help your financial institution?

A.1. Greylock Federal Credit Union is exempt from the ATR/QM provisions since we are a Community Development Financial Institution (CDFI). This exemption helps our credit union by allowing us to make mortgages to members who would otherwise not qualify under the ATR/QM safe harbor provisions, namely the maximum debt-to-income (DTI) ratio of 43 percent. This additional underwriting flexibility allows us to better serve all prospective borrowers in our marketplace. Prior to obtaining the CDFI exemption, we had adjusted our loan policy to meet the ATR/QM DTI requirement; however, this led directly to a reduction in overall mortgage lending, particularly to those who were otherwise credit-qualified. Empowering financial institutions to make risk-based lending decisions based on the unique characteristics within their market areas allows for increased access to credit, especially to first-time home buyers and other underserved or unbanked segments of the population. Unfortunately, many financial institutions who do not have an exemption to this rule have either limited, or in some cases even eliminated, certain credit offerings.

Q.2. What is your institution doing specifically to help bring the unbanked or underbanked in your communities into the financial system?

A.2. In 2016, Greylock Federal Credit Union created a dedicated community development department. This department is tasked with community outreach and education and is staffed by 2 full-time employees. These skilled and experienced employees are highly engaged within the communities we serve and also possess multi-lingual skills. In short, this department was created to connect with, assist and educate those who are unbanked, underbanked or generally underserved. By partnering with community organizations, we are able to connect directly with those in most need of banking and/or credit related information and services.

In addition to the creation of our Community Development department, we also offer free financial education courses, available to all who live within the communities we serve. We currently have a total of 9 Certified Credit Union Financial Counselors (CCUFCs) on staff and hope to add 2–3 additional CCUFCs by year end. We have partnered with GreenPath Financial Wellness to offer credit counseling and debt management services to our members. We have even identified 15 employees who speak a total of 10 different languages who are available to assist members who may not be proficient in English. Our organization has taken a holistic approach and is focused on providing the tools and education necessary to bring as many unbanked or underbanked individuals into the financial system as possible.

Q.3. As discussed at the hearing, new HMDA data will be collected starting in January 2018. What do you spend annually on HMDA compliance, has that changed since before the crisis, and what additional costs are you incurring to come into compliance with the new requirements?

A.3. Based on our current loan volume, we spend approximately $100,000–$150,000 on HMDA compliance annually, including the cost of technology and human resources. The cost of HMDA compliance has remained relatively unchanged with only nominal increases since before the crisis as the reporting requirements really did not change during this timeframe. We would like to point out that the accurate collection and reporting of this data involves individual mortgage loan originators, commercial loan officers, loan underwriting, processing and servicing staff, information technology staff, credit analysts, training and compliance staff. It is not simply one person or group that is impacted by changes to this regulation.

We do anticipate an increase in HMDA compliance costs related to the new collection requirements starting in 2018. These costs will be difficult to calculate in advance of full implementation, but we estimate the increase may be as much as 30 percent–40 percent. Our technology costs are anticipated to increase as our vendor has invested time and resources to ensure their financial institution clients will be able to meet the updated reporting criteria and those costs will be passed on to us. The time our employees spend on HMDA compliance is anticipated to increase significantly. While the technology that we use will help us in our quest to collect and report accurate data, the volume of information collected will increase so significantly—from 26 unique fields per loan today to a total of 110 unique fields per loan beginning in January 2018—that we will need to dedicate additional time and resources to verify the data collected is accurate and verifiable for audit, examination and reporting purposes. In addition, we do not have an automated solution that will assist us in assimilating this data for our commercial loans that are HMDA reportable. This means that for each commercial HMDA reportable loan we originate all data fields will have to be calculated and entered manually, thereby at least doubling, if not tripling the time spent on HMDA compliance in this area of our operations.

It is important to remember that the vast majority of financial institutions depend heavily on their technology vendors to meet regulatory compliance requirements as we do not have the financial or technological capacity to create these systems in-house. Therefore, any time there is a substantive regulatory change, we are at the mercy of one or more of our vendors. With the recent pace of regulatory change we have witnessed over the past 7 years, this has proved to be a challenge.

Q.4. Do you believe there is value in collecting this data? How much of this data do you already collect under the ordinary course of underwriting or making disclosures to mortgage borrowers?

A.4. While there may be value to regulatory agencies or the Federal Government, given the time and financial resources our credit union spends collecting, verifying and reporting HMDA data, there is very little reciprocal value to our organization. However, management and our board of directors does utilize the HMDA data to conduct a fair lending analysis of or mortgage loan data to ensure we do not see any potential violations or areas of concern. Beyond that, there is little to no additional value to our organization or our members as illustrated by the fact that we have not once had a member request our public HMDA data.

With respect to the changes in HMDA data collection, as noted above, we are currently collecting 26 unique pieces of data per loan as compared to the 110 data points that will be required beginning in 2018, or approximately 24 percent. This would mean that roughly 76 percent of the data collected going forward would be new. However, when looking at the totality of the data collected by category (as opposed to unique fields), there are 33 new categories of information to be collected, 11 categories of information that will be modified from their current state, while only 10 categories of information will remain unchanged. This means that the majority, or roughly 61 percent of the data has never been collected before, 20 percent of the information collected will be different than what we've been collecting and only 19 percent of the data collected is unchanged. In conclusion on this topic, regardless of the math used, less than one-quarter of the information to be collected beginning in 2018 is already being collected and reported.

What has gotten less attention in comparison to the HMDA rule change, but is also critical, is the fact that the Uniform Residential Loan Application (URLA), used by the majority of financial institutions who originate mortgage loans, will also be changing January 1, 2018. While this new application will aid in collecting some of the newly required data for HMDA reporting purposes, this represents another unique technological challenge with respect to financial institutions and their vendors as well as a new training requirement for mortgage loan originators. It will also negatively impact consumers as there will be even more information requested of them when they apply for a mortgage loan that provides little to no additional value with respect to a financial institution's ability to make a lending decision.

Greylock Federal Credit Union is sincerely concerned with the significant increase in the amount of information that will be collected beginning in 2018, how our members' information will be protected when made available to the public and the heightened potential for regulatory scrutiny based on the new and expanded data fields.

Q.5. The Treasury report on financial regulation released on June 12, 2017, suggests making many changes to the regulation of the Nation's largest banks. Will relief for the largest banks help your banks and credit unions?

A.5. There are a significant number of suggestions and recommendations made in the referenced Treasury report. Generally speaking, "relief" for the largest banks in the United States would have little to no effect on Greylock Federal Credit Union's operations. However, depending on what form the "relief" came in, there may be benefits to our credit union. To the extent that the relief could have benefits for Greylock and other community institutions, we are very supportive of a tailored approach to regulatory reform. Conversely, we would be hesitant to see relief for the largest banks that may promote future risk-taking activities or regressive actions that may threaten the safety of our financial system as a whole.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SASSE FROM JOHN BISSELL

Q.1. Our financial system has become increasingly consolidated, as community banks and credit unions either close their doors or merge with larger institutions. What services can these smaller institutions provide that larger institutions cannot provide?

A.1. We believe credit unions provide high quality service for our member-owners by knowing them personally and the community they live in. Credit unions on the whole tend to be smaller which allows them the flexibility to adapt more quickly and truly tailor products and services to meet the needs of its unique members rather than have a one-size-fits-all mindset. We feel that we are also able to make meaningful and sustainable community investments, both financial and from a human resource standpoint. We encourage our employees to volunteer within the community and allow flexible work schedules to accommodate their engagement. As noted in our response to Ranking Member Brown, we have an active Community Development department whose sole focus is engaging with our community and partnering with local agencies and businesses to ensure basic financial and educational needs are being met. This becomes particularly important in times when local, State and Federal aid decreases or is eliminated altogether.

Q.2. Multiple anecdotes from constituents make it clear that there are several Nebraska counties where consumers cannot get a mortgage, due to CFPB regulations such as TRID and the QM rule. What would the best way be to address this problem?

A.2. Not knowing the unique challenges in Nebraska, I can only say that mortgage lending growth at smaller financial institutions has been a challenge, particularly in recent years. Providing additional opportunities for exemption from certain regulatory requirements is one possible way to address this issue. For example, a CDFI financial institution is exempt from the ATR/QM requirements thus allowing for expanded lending capabilities. Greylock's share of the local mortgage market has actually increased in the past 5 years from 19 percent to 24 percent. Whenever possible, Greylock Federal Credit Union will provide its employees and expertise to other credit unions in order to help them navigate certain regulatory requirements. Unfortunately, this is not always a sustainable or practical business model depending on the unique characteristics of individual States, markets, or the financial institutions themselves.

Q.3. What are concrete examples of the CFPB's refusal to tailor regulations to match the unique profile of community banks and credit unions?

A.3. I am not aware of the CFPB specifically "refusing" to tailor regulations to match the profile of community banks or credit unions. However, I do believe that many of the regulatory requirements that have stemmed from the passage of Dodd-Frank have had a proportionally larger negative impact on smaller community banks and credit unions. Larger institutions generally have more capital, technological resources and personnel capacity to be able to interpret, understand, and implement regulatory requirements, while smaller institutions are forced to try to comply utilizing already scarce resources. This often leads to the need for additional technologies to compensate for the lack in human resources. However, technology is expensive, contracting with new vendors can be cumbersome and no technology will work as intended without commensurate human resources. In addition to considering consumers, businesses and the general well being of the financial system as a whole, we respectfully request that the impact to the institutions themselves be more closely considered. Otherwise, there will inevitably be unintended consequences that negatively impact those whom the regulation is intended to protect.

Q.4. Which financial regulatory agencies, if any, have effectively tailored financial regulations to community banks and credit unions? If so, how have they done so?

A.4. We believe the NCUA has done the best job over the years to tailor regulations appropriately to fit the size and complexity of the credit unions under its jurisdiction. They truly take a risk-based approach to examinations and have both the financial system and the credit union's members at the heart of their work. The recently amended MBL Rule is a good example of this. In addition, the NCUA has created many "exemptions" and other carve-outs for smaller, less complex, and often very well capitalized institutions. The NCUA also continues to review and refine its regulations and expectations on an ongoing basis. The punitive nature with which other prudential regulators approach regulatory compliance ultimately adversely impacts consumers as these banking institutions are fearful of fines or more severe regulatory action. Therefore, more time is spent trying to be compliant rather than helping serve their customers, create innovative products and services or engage with their communities.

Q.5. How could Congress best ensure that CFPB regulations are properly tailored for community banks and credit unions? For example, some have called to exempt either smaller or less risky financial institutions from CFPB regulations altogether.

A.5. Certainly asset size is one unit of measure. Other measures could include key financial metrics like regulatory capital, return on assets, delinquency, and CAMEL ratings. Additionally, perhaps the community mission and impact of an institution could be considered in tailoring regulation, as is the case with the flexibility afforded to CDFIs.

Q.6. My understanding is that only two banks have actually opened since the passage of Dodd-Frank. Why? What potential impacts does this have for our financial system?

A.6. Personally, I feel that the financial crisis itself had more to do with the number of new financial institutions opening than Dodd-Frank. Other factors might include regulatory burdens, the low interest rate environment, fair lending concerns, UDAAP fears, the abundance of alternative investment options, the number of existing financial institutions and financial technology companies already operating in the banking space or even population and demographic shifts. But, record low margins are likely the biggest factor holding back the formation of new institutions. This is simply not an opportune time for investors to seek returns by opening a de novo bank.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR TOOMEY FROM JOHN BISSELL

Q.1. Professor Levitin's testimony cited a study of the economic effects of regulations imposed by the Federal Reserve Board on interchange fees charged for debit card transactions: *The Costs and Benefits of Half a Loaf: The Economic Effects of Recent Regulation of Debit Card Interchange* by Robert J. Shapiro.

- Please comment on the study and provide any analysis that will help this Committee evaluate the study and its claims.

A.1. My initial response is that the report is outdated and should be updated to include the significant negative impact that merchant data breaches have had on consumer debit card transactions. Fraud losses due to merchant data breaches at my credit union since 2013 have exceeded $500,000 and continue to rise. It appears that merchants have profited from the reduced interchange rates while not demonstrably passing those savings on to consumers. Many of the merchants have hidden behind the Visa and MasterCard rules allowing them to escape liability for costly data breaches.

Q.2. Additionally, Professor Levitin's testimony described credit card swipe fee pricing as a "$73 billion annual regressive wealth transfer from American consumers to banks."

- Do you agree with Professor Levitin's analysis?

A.2. Mr. John Bissell: Our credit union does not charge our members to use their debit card. We bear all the costs for the transactions including fraud losses. The revenue we receive from debit card interchange offsets costs to maintain this valuable electronic method. We disagree with the notion that Debit Card swipe fees are regressive.

Q.3. Please comment, from the point of view of credit unions that participate in electronic payments networks, as to the role of consumers in these systems and what benefits, if any, they accrue?

A.3. Consumers benefit by having a convenient and free method of payment across multiple merchant platforms, online, and over the phone. Consumers can track their balances almost immediately and don't have to rely on checks and cash as standard payment methods. Consumers are also protected from fraud and immediate provisional credit is provided for disputed transactions. Technology is also available to the consumer that allows them to be in control of their transactions using mobile smart phones and other transactions verification features. A number of mobile wallet applications are also available that extend the use of their debit cards to smart phone payment options.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BROWN FROM ADAM J. LEVITIN

Q.1. During the hearing, consolidation of banks and credit unions was discussed. In addition to fewer banks, we are also seeing fewer branches especially in low-income areas. That said, CDFI banks and credit unions continue to serve low-income areas. Why do you believe banks are closing branches?

A.1. My assumption is that banks are closing branches in low-income areas because they are not sufficiently profitable. There are high fixed costs in operating a branch—purchase or rental or real estate, modification of the property to be suitable to serving as a bank branch, utilities, equipment, salaries, monthly account statement mailings, etc. In order to recoup such costs a bank needs to have a sufficient number of accounts generating a sufficient margin. Low-income consumers tend to have low balances in their bank accounts, such that the net interest margin on those accounts will be too small to generate the revenue necessary to cover the branch's fixed costs. Overdraft and NSF fees may produce additional revenue, but come with the risk of uncollectible negative balances. Additionally, the opportunities to cross-sell low-income consumers are larger loan products—home mortgages, car loans, and retirement products—tend to be more limited than with wealthier consumers, so it can be difficult for bank branches in low-income communities to generate enough income to cover the branch's expenses and generate enough of a profit margin to please the banks' shareholders. CDFIs and credit unions do not face the same type of shareholder pressure for returns as stock corporation banks, which might explain why they are willing to continue to serve low-income communities.

Q.2. What do you think about the Treasury report on financial regulation released on June 12, 2017?

A.2. I don't think very much of the Trump Treasury Report on Financial Regulation. The Report is a sloppy and highly partisan document that relied heavily on input from industry and from attorneys representing industry. It is not a basis for a serious consideration of improvements to the financial regulatory system, but a regurgitated industry wish list.

To give but one example, the Report spends more pages on the CFPB (including its mortgage regulations) than on any other issue. The Report parrots a long-standing industry talking point that the CFPB's power to proscribe "abusive" acts and practices is problematic because the term "abusive" is novel and undefined and that this creates uncertainty that is chilling economic growth. This is simply false, and if the authors of the Treasury Report had taken time to do some research rather than just repeating industry talking points, they would have recognized this.

First, the term "abusive" is defined by statute 12 U.S.C. § 5531. The statutory definition is quite detailed, unlike the term "deceptive," which is undefined in the statute. Second, there are now 6 years of CFPB enforcement activity to understand how the agency has used this power and what it means. Unfortunately, it seems that no one at Treasury bothered to look through any of the CFPB's enforcement actions to see how the agency has actually used its power to prosecute "abusive" acts and practices. An examination of those cases makes clear two things.

First the CFPB has been very sparing in alleging that acts and practices are "abusive". The CFPB has brought around 185 enforcement actions to date. Only 22 of these (less than 12 percent of all enforcement actions) have included counts alleging "abusive" acts and practices. In all but one instance in these 22 cases, the very same behavior alleged to be "abusive" was also alleged to be "unfair" and/or "deceptive." Unfair and deceptive are not new standards. They have been around in the FTC Act since 1935. While these standards weren't applied to banks for half a century (Regulation AA was from 1985), no institution, bank or nonbank, should be wholly surprised at what might be alleged to be unfair or deceptive. And indeed, when the CFPB has brought unfairness charges, they have generally been in situations in which there is no consumer benefit whatsoever from the practice (e.g., Wells Fargo's creation of false accounts). What this means is that the CFPB has not actually been surprising anyone when it has alleged "abusive" acts and practices because to date, the "abusive" power has been little more than a belt to go with the suspenders of "unfair and deceptive".

Second, the behaviors alleged to be abusive are almost all in the context of pre-existing customer relationships, such as Citizens Bank's "we keep the change" policy of resolving discrepancies in recorded deposit amounts in its favor. In other words, "abusive" is getting applied to function as a publicly enforceable duty of good faith and fair dealing, an implied term in all contracts.

All of this suggests that contrary to the Trump Treasury's handwaving, there's really no crisis of uncertainty about what is "abusive". The Trump Treasury Report's assertion that "Without meaningful standards that provide fair notice, many consumer financial firms are reluctant to innovate or offer new financial products or services," is utterly unsupported. The types of behavior that the CFPB has targeted are not behaviors that any reasonable person would think are OK, such as collecting debts that are unenforceable under State law or requiring servicemembers to litigate debt collection suits in a distant and inconvenient forum with which they have no connection, resulting, of course, in default judgments. The CFPB has not brought actions involving "grey" behaviors, only those that are "black and white" matters. That's why the Report cannot cite any actual examples of legitimate business behavior getting improperly tagged as "abusive."

Obviously there are far more issues in the Trump Treasury Report, but this sort of lazy and uncritical adoption of industry talking points as Treasury's policy positions is typical of the Report.

RESPONSE TO WRITTEN QUESTION OF SENATOR REED FROM ADAM J. LEVITIN

Q.1. Can you please expand on why the Orderly Liquidation Authority of the Wall Street Reform and Consumer Protection Act is so important to the safety and soundness of our economy?

A.1. The failure of a large financial institution can have a domino effect throughout the financial sector and ultimately into the real economy. Orderly Liquidation Authority (OLA) provides the legal authority for the FDIC and the Federal Reserve Board to take over failing financial institutions and manage their resolution so as to mitigate the effects of the failure and thereby protect the economy as a whole. While the FDIC has separate authority to resolve failed depository institutions, OLA provides authority for dealing with nondepositories as well, including affiliates of depositories.

Absent OLA Federal bankruptcy courts provide the only formal resolution mechanism for failed nondepository financial institutions. As a bankruptcy professor and former bankruptcy lawyer, I think the world of U.S. bankruptcy courts; they do an outstanding job dealing with failed nonfinancial firms. But they are not equipped to deal with financial institutions, because they cannot respond fast enough, cannot ensure that firms have enough liquidity during resolution, and lack sufficient international coordination mechanisms.

By way of analogy, a financial crisis at a large financial institution is like a fire in a nuclear plant. If it's not handled properly, it can cause a meltdown and result in a catastrophe that reaches far beyond the nuclear plant itself. In such a situation, you don't want to send in the local fire department, as brave as they are. You need firefighters with special training and with special equipment. That's what OLA provides. Legislation like the Financial Institutions Bankruptcy Act of 2017 (H.R. 1667) or the CHOICE Act (H.R. 10) both mistakenly insist on resolving large financial institutions in bankruptcy, while failing to ensure that there will be the financing necessary for the resolution. That's equivalent to calling in the local volunteer fire brigade to deal with the nuclear plant fire while also taking away the hoses and engines. This is a recipe for disaster. What's more, a provision in these bills, would exculpate financial institution executives for actions taken "in connection with the bankruptcy filing". That's potentially a get-out-of-jail-free provision for financial arsonists. A regulatory, rather than judicial resolution process ensures that failed financial institutions can be resolved with utmost speed and minimum economic disruption and uncertainty, while preserving political accountability, as the regulators are themselves answerable to Congress and ultimately the Administration is answerable to the American people.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SASSE FROM ADAM J. LEVITIN

Q.1. Our financial system has become increasingly consolidated, as community banks and credit unions either close their doors or merge with larger institutions. What services can these smaller institutions provide that larger institutions cannot provide?

A.1. Community banks and credit unions play an important role in local economies, particularly in the areas of small business lending and construction lending. These are areas where local knowledge is critical for underwriting loans, and small, local financial institutions have a comparative advantage in this regard. While community banks and credit unions face a serious competitive disadvantage in more commoditized consumer financial product markets, such as mortgages, deposits, credit cards, and car loans, they are often able to offer more personalized customer service and customized lending products precisely because, unlike their larger competitors, they are not built to take advantage of economies of scale.

Q.2. Multiple anecdotes from constituents make it clear that there are several Nebraska counties where consumers cannot get a mortgage, due to CFPB regulations such as TRID and the QM rule. What would the best way be to address this problem?

A.2. While I do not doubt that Nebraskans in rural counties may face difficulty obtaining mortgage financing, the problem is not TRID or the QM rule. TRID, the TILA–RESPA Integrated Disclosure, is simply a disclosure rule, requiring lenders to disclose the terms of mortgage loans in a standardized form both a week prior to closing and at closing. There are undoubtedly some transition costs for lenders to get up to speed on what is required by TRID, but TRID was required by Congress after unhappiness with the Federal Reserve Board and Federal Trade Commission's attempt at TILA–RESPA integration. 12 U.S.C. § 5532(f). Transition costs for the TRID are the result of Congress's decision, not the CFPB's. In any case, however, the idea that the additional compliance costs from learning to use the TRID disclosures are making mortgage lending impossible is not plausible—the transition costs are minimal, even for a small institution.

Likewise, the QM or Qualified Mortgage Rule, is a safe harbor from a statutory requirement that mortgage loans be made only to consumers who have demonstrated an ability to repay the loan according to its original terms. The CFPB was required by statute to promulgate the QM safe harbor. 15 U.S.C. § 1639c(b). The safe harbor is hardly causing lenders not to lend; to the contrary, it enables loans by creating certainty for lenders about regulatory interpretation of the statute.

Finally, I note that 12 U.S.C. § 5512(b)(2)(A) requires the CFPB to consider the potential reduction in access by consumers to consumer financial products or services from any rulemaking as well as the impact on smaller depositories and credit unions and the impact on consumers in rural areas. The CFPB has done this in its rulemakings, and to the extent regulated institutions or their trade associations believe that the CFPB has failed to do so, they are free to challenge the rulemaking under the Administrative Procedures Act. No challenge has been brought against either the TRID or the QM rulemaking on this basis, however.

Q.3. What are concrete examples of the CFPB's refusal to tailor regulations to match the unique profile of community banks and credit unions?

A.3. I am not aware of any such examples. To the contrary, the CFPB has included numerous exceptions for small institutions in its rulemakings, as I detailed in my written testimony. I am sure that there are some institutions that would have liked these exceptions to be broader—what institution would not like less regulatory requirements. The CFPB has been quite reasonable in balancing general consumer protection concerns with the particular situation of small financial institutions (generally defined as those with less than $2 billion of total assets or undertaking activities on a very small scale). Indeed, the CFBP is required to do so by 12 U.S.C. § 5512(b)(2)(A), at least to the extent that it can do so while still complying with 12 U.S.C. § 5511(b)(4), which requires that the CFPB enforce Federal consumer financial law "consistently, without regard to the status of a person as a depository institution, in order to promote fair competition".

I note that there is a legislative proposal (S. 1310—the Home Mortgage Disclosure Adjustment Act) sponsored by several members of this Committee to exempt small institutions from the new Home Mortgage Disclosure Act (HMDA) data collection requirements. This proposal is a mistake.

The new HMDA requirements are almost all for data collection that banks are already required to collect for the TILA–RESPA integrated disclosure or would have in the loan underwriting file as a matter of normal practice.[1] The additional compliance costs for the new HMDA regulations are going to be quite small; the CFPB's estimate per the Paperwork Reduction Act is that the compliance costs for truly small banks will be between 143 and 173 hours of time annually for all HMDA compliance, meaning that the additional costs from the new regulation are less. A reasonable estimate of costs would be $10,000 or less. This should not be make-or-break money to a financial institution of any size, and exempting small institutions from HMDA reporting will seriously impair the HMDA data in some communities and even in some entire (rural) States in which large financial institutions do not have much of a presence. The effect will be to leave consumers in those States more vulnerable to discriminatory lending.

Q.4. Which financial regulatory agencies, if any, have effectively tailored financial regulations to community banks and credit unions? If so, how have they done so?

A.4. I believe the CFPB has already done so with some success regarding small mortgage lenders and small mortgage servicers, as detailed in my written testimony. The CFPB might not have given the banks everything they wanted, but its duty is to balance out consumer protection benefits with the goal of reducing unnecessary regulatory burdens for small institutions. As noted above, I do not know of specific examples where it has acted unreasonably in this regard.

Q.5. How could Congress best ensure that CFPB regulations are properly tailored for community banks and credit unions? For example, some have called to exempt either smaller or less risky financial institutions from CFPB regulations altogether.

A.5. The best thing would be to do nothing. The CFPB is already required by statute to consider smaller financial institutions concerns in its rulemakings, 12 U.S.C. § 5511(b)(4), and it has done exactly this. If Congress wanted to be more precise, it could amend 12 U.S.C. § 5511(b)(4) to specifically require consideration of institutions with $2 billion total assets or less. A blanket exemption, however, would be misguided. Consumers should have the same level of protections irrespective of whether they deal with a com-

[1] Adam J. Levitin, *The New HMDA Regs Require Banks to Collect Lots of Data . . . That They Already Have, Creditslips.org,* June 15, 2017, at *http://www.creditslips.org/creditslips/2017/06/new-hmda-regs-require-banks-to-collect-data-they-already-have.html.*

munity bank or a megabank. A consumer shouldn't have to check on whether a particular bank is subject to CFPB regulation. While reputational concerns probably exercise a stronger check on community banks, there are many rural communities in which there aren't real choices for financial services. In such situations, one cannot rely on reputational factors and market forces (e.g., "Make it right or I'll take my business elsewhere") to be a check on for-profit institutions' behavior.

Q.6. My understanding is that only two banks have actually opened since the passage of Dodd-Frank. Why? What potential impacts does this have for our financial system?

A.6. There are numerous factors behind the lack of de novo chartering. I've detailed these factors in a submission to the House Financial Services Committee that was entered into the record for a March 21, 2017, hearing on de novo chartering. The short answer, however, is that we're not seeing de novo charters because they are not an attractive investment, whether relative to existing charters or as an absolute matter. It may simply be cheaper to buy an existing charter than obtain a new one. Moreover, the banking business may not be especially attractive to new entrants in general. New banks tend to be smaller banks, and small banks face serious competitive disadvantages because they lack economies of scale and geographic diversification in their business markets. Add on to this that an investment in a bank requires large amounts of locked-in capital and an environment with compressed interest spreads, and there may simply be limited interest in obtaining banking charters.

There is no evidence, however, that increased regulatory burdens are resulting in investors shying away from obtaining bank charters. Given that banks' returns on equity and returns on assets are extremely healthy as an industry, it is hard to see regulation as the explaining factor, such that deregulatory proposals would spur bank chartering. Indeed, radical deregulatory proposals, such as the CHOICE Act (H.R. 10), are likely chilling the interest in investment in banking charters because they create an unprecedented degree of political risk for any investment in a bank. Investors like predictable regulatory environments; predictable regulation facilitates business planning. It's hard to run a business in an environment in which regulation flips on and off they way a child plays with a light switch. Whatever bank investors may think of Dodd-Frank as a whole or any particular provision thereof, few, if any of them want to operate in a world of violently see-sawing regulation and deregulation.

The lack of de novo chartering is not itself an inherent cause for concern. The number of banks in the United States is still very much a product of historical regulatory restrictions on interstate branch banking. By carving the United States up into 50 separate retail banking markets (or truly more given that some States had inter-county branching restrictions), bank regulation artificially inflated the number of banks in the country. I do not profess to know what the "right" number of banks is, but the decline in the number of banks can be seen as reflecting an adjustment toward a free market equilibrium following the repeal of branch banking restrictions, and viewed nationwide, it can hardly be said that there is a shortage of banking services.

Less important than the total number of banks or the number of de novo charters is the distribution of banking services. The supply of banking services is not distributed equally throughout the Nation. Some communities are saturated with banking services, while other communities, both urban and rural, lack adequate (or even any) banking services. This is the real problem; lack of de novo chartering only matters to the extent that it is impeding adequate provision of banking services to underserved communities. An increase in de novo charters is no guaranty that there will be any change in service to underserved rural and urban communities; there is no guaranty that the demand would be for charters to operating in underserved communities. Indeed, it is quite possible that new charters would merely saturate already well-served markets, resulting in cannibalistic competition that erodes safety-and-soundness for all institutions in those markets.

Rather than focus on the question of lack of de novo chartering, a better line of inquiry would be on what can be done to encourage financial institutions to serve all communities. A first step in this direction would be an updating of the Community Reinvestment Act to better reflect the realities of the banking market, as well as steps to level the playing field between banks (which are subject to the Community Reinvestment Act) and nonbanks (which are not), in keeping with the spirit of 12 U.S.C. § 5511(b)(4) (referenced above). A banking charter is a privilege, and such privileges can be conditioned on responsibilities, including the duty to serve rural communities, etc. The Community Reinvestment Act presents a potential vehicle for conditioning such privileges on duties to serve, similar to free rural delivery of the post and rural broadband mandates.

I recognize how politically divisive the Community Reinvestment Act is, but the CRA is increasingly out-of-date, such that there is increasingly little for anyone to like in the CRA, and it offers a potential tool for ensuring that rural and poor urban communities can access financial services on par with the rest of the Nation.