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Subcommittee on Financial Institutions and Consumer Credit

# Examining Regulatory Burdens on Non-Depository Financial Institutions

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Good afternoon Chairman Neugebauer, Ranking Member Clay, and Members of the House Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit. Thank you for allowing me to testify about the regulatory burdens on non-depository financial institutions and the need to ensure that all financial institutions, both depository and non-depository alike, are subjected to responsible regulatory oversight that maintains sensible consumer protections.

I am the Vice President of Government Affairs and Senior Counsel at the Center for Responsible Lending (CRL). CRL is a nonprofit, non-partisan research and policy organization dedicated to eliminating abusive financial practices, while protecting homeownership and family wealth. As an affiliate of Self-Help, a nonprofit community development financial institution, CRL's research and policy positions are informed by the business reality and experiences of a community lender. For thirty years, Self-Help has built a small, community-based financial services institution that focuses on creating asset-building opportunities for low- and moderate-income, rural, women-headed, and minority families. In total, Self-Help has provided more than $6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits and currently serves more than 80,000 mostly low-income families through 30 retail, credit-union branches in North Carolina, California, and Illinois. The business success of Self-Help reassures CRL's confidence in the fact that responsible regulations and regulatory oversight are core to all consumer lending.

In the invitation to testify, the Subcommittee on Consumer Credit and Financial Institutions requested that witness testimony "provide an overview of the current regulatory climate and how it affects the ability of community financial institutions to provide financial services or products to consumers." Accordingly, this written testimony proceeds in five parts. **Part 1** of the testimony will provide an overview of the importance of financial regulations and the current role that they play in protecting consumers, taxpayers, and the nation's economy as whole. In the remaining portions of the testimony, CRL focuses on discussing and providing specific policy recommendations on the regulatory environments for non-depository financial institutions that provide four types of consumer products and services:

**Part II** focuses on non-depository institutions that provide mortgage loans;

**Part III** focuses on the regulation of title insurance for mortgaged properties;

**Part IV** focuses on payday and car-title loan products; and

**Part V** focuses on the regulation of indirect automobile lenders.

Our conclusion is that important distinctions in the business models and practices of non-depository institutions in each one of these product sectors ultimately justifies increased federal regulatory oversight of consumer protections.

## I. Recent history and the current market environment proves that financial regulations are critical.

As we engage in a national conversation about the regulatory burdens facing the financial services sector, it is important for policymakers to remember why financial regulations are essential to preserving the health of this nation's economy. Done correctly, responsible financial regulations are a good thing. They protect consumers from abusive and harmful financial products, ensure the safety and soundness of financial institutions, and prevent systemic risk from threatening to undermine the nation's financial market as a whole.

Recent history has already shown us the consequences of under regulation in the financial market. In the wake of the financial crisis, 5.5 million American consumers lost their homes through foreclosure; unfortunately, that number continues to grow.[1] And, according to the Federal Deposit Insurance Corporation, more than 500 banks shuttered their doors, with most of those institutions being community banks.[2] The failure to have a responsible regulatory environment also resulted in taxpayers paying $7 trillion to bail out financial institutions through loans and, according to some reports, an additional $22 trillion through the federal government's purchase of assets.[3] In addition, the national economy was undermined and plunged into a severe recession. To put it bluntly, people lost their jobs, small businesses went under, and many Americans—from small entrepreneurs to families—struggled to make ends meet while being unable to obtain the credit and capital they needed from financial institutions in order to sustain their position or expand their asset base.

The negative nature of these consequences makes one thing clear:

> ***Proactive, responsible financial regulations—like those being enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[4]—are both necessary and key to protecting consumers, small businesses, taxpayers, and the nation's economy overall.***

And it is equally clear that oversight is necessary for every actor in the financial market, whether they are as large as J.P. Morgan Chase, a mid-size regional institution, a community bank lender or credit union like CRL's affiliate, Self-Help, or a non-depository lender like Freedom Mortgage, Advance America, and First American Title Insurance Company. All financial institutions—including non-depositories—benefit from the underlying purposes of financial regulation: protecting consumers, ensuring the safety and soundness of these institutions,

[1] Corelogic, "CoreLogic Reports 41,000 Completed Foreclosures in November 2014," (January 14, 2015) *accessed at* http://investor.corelogic.com/mobile.view?c=118425&v=203&d=1&id=2007499.
[2] Federal Deposit Insurance Corporation, *Failed Bank List*, *accessed at* https://www.fdic.gov/bank/individual/failed/banklist.html
[3] John Carney, "The Size of the Bank Bailout: $29 Trillion," *CNBC*, December 14, 2011, accessed at http://www.cnbc.com/id/45674390#.
[4] Public Law 111-203 (2010).

preventing unfair competition, and defending the nation's financial market from systemic risk. The question is whether there are different, more effective ways to ensure that these objectives are being met when regulating non-depositories.

For a myriad of reasons, discussed in further detail below, the business models and market realities of non-depository institutions are very different than their community-based, depository counterparts. These differences justify increased federal regulatory scrutiny of non-depository business practices in providing consumer financial products and services.

## II. Recommendations concerning the regulatory environment for non-depository mortgage lenders.

A recent opinion editorial in American Banker asserted that Congress's regulatory relief efforts were ignoring "the regulatory burden on small and mid-size, community-based, non-depository mortgage lenders."[5] Yet, that same editorial overlooks some very important distinctions between the mortgage business models of depository and non-depository lenders.

Community-based depository lenders and credit unions, and the financial services that they provide, are both important and distinctive. CRL appreciates that small, depository lenders and credit unions frequently use a business model to provide financial services to consumers that often involve smaller transactions and is based on the institution having much closer ties to both the borrowers and communities that they serve. The result is a tailored lending and underwriting process that can produce more successful mortgage lending and has a track record that demonstrates that success. Also, unlike their larger bank counterparts, smaller depository

[5] *See* Paulina McGrath, "*Little Relief for Nonbank Mortgage Lenders*," American Banker (April 13, 2015).

financial institutions are less likely to participate in capital market transactions. Previous testimony from industry organizations, like the American Bankers Association and the Independent Community Bankers of America, has shown that community banks oversee a much smaller percentage of the nation's financial assets—on average less than $1 billion at each institution—and operate with far fewer employees, with industry estimates ranging from staff averages of 40 to 54.[6]

In contrast, non-depository mortgage lenders are rarely community based. Rather than using a lending model that depends on a long-standing business relationship with a consumer and actual ties to the community that they live in, non-depository mortgage lenders often engage in a single interaction with a consumer that lives in a community where the non-depository lender has no brick and mortar presence. For example, Freedom Mortgage—one of the most visible non-depository providers of FHA, VA, and USDA guaranteed mortgage loans—is licensed to operate in all 50 states, but it serves consumers on a national basis while maintaining a physical presence in just 8 locations: New Jersey, California, Arizona, Minnesota, Illinois, Indiana, Delaware, and Florida.[7] Most community bank lenders would take exception to the claim that Freedom Mortgage's New Jersey-based office was engaging in community-based lending in Texas just by making a single mortgage loan to a consumer located in Houston. In considering regulatory relief for community-based, financial institutions, we must ensure that the institutions we provide that relief to are legitimately community-based. There is little evidence that non-depository mortgage lenders satisfy that requirement.

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[6] Mr. Jeff Plagge, American Bankers Association, Hearing before the Senate Committee on Banking, Housing, and Urban Affairs, *Examining the State of Small Depository Institutions*, 113th Cong. 2d sess, 2014; Mr. Jeff Plagge, Independent Community Bankers of America, Hearing before the Senate Committee on Banking, Housing, and Urban Affairs, *Examining the State of Small Depository Institutions*, 113th Cong. 2d sess, 2014;

[7] *See* https://www.freedommortgage.com (last accessed on April 13, 2015).

There are also other distinctions that suggest that the regulatory environment for non-depository mortgage lenders should differ from the environment for small, community-based, depository lenders. For example, while community bank staff averages range from 40 to 54 employees, the Community Mortgage Lenders of America notes that the average independent mortgage banker can have staff up to 250 employees.[8] Those numbers suggest that the compliance burden is less for non-depository lenders.

Moreover, a key component of the rationale for providing regulatory relief to community-based, depository mortgage lenders rests on the recognition that these lenders do not engage in significant capital market transactions and often retain mortgage loans in their portfolios. In contrast, non-depository mortgage lenders "do not have a loan portfolio and have no access to bank deposits to fund their operations and no access to the Federal Reserve window for liquidity."[9] Thus, their business model depends upon originating to sell mortgage loans in the capital market.

Proponents of regulatory relief for non-depository mortgage lenders suggest that the personal guarantees of independent mortgage lenders and "the fact that their own net worth is almost always tied up in their company," should be enough to mitigate against the fact that their originate-to-sell business model means that they have little or no risk if the loans they originate perform poorly.[10] But experience casts doubt on the strength of this assertion.

A report by the Center for Public Integrity found that, just five years after housing market's crash, top executives from the 25 largest and most problematic lenders were back in

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[8] *See* Paulina McGrath, "*Little Relief for Nonbank Mortgage Lenders*," American Banker (April 13, 2015).
[9] *Id.*
[10] *Id.*

business as non-depository mortgage lenders. 14 of those executives were the founders or CEOs of companies that previously failed due to risky, predatory lending.[11]

Given the differences in business practices, company resources, and track records, CRL supports a regulatory framework and oversight structure that appropriately recognizes and accommodates the unique nature of community bank and credit union mortgage lenders, while employing an approach toward non-depository mortgage lenders that recognizes that they are, in fact, different. Because their business model is more closely aligned with the practices of larger, depository institutions, non-depository mortgage lenders should be subjected to the same level of scrutiny as other financial institutions that employ an originate-to-sell model.

Nearly 9 out of 10 mortgages in the United States are made by noncommunity bank lenders.[12] Substantive rollbacks of Dodd-Frank's mortgage provisions with broad applicability undermine Dodd-Frank's goal of protecting consumers as a whole and preventing the recurrence of another foreclosure crisis. Rollbacks should not be included in community bank regulatory relief legislation. Moreover, it is important that regulators understand how non-depository mortgage institutions work and take those factors into account when regulating. During the crisis, non-bank mortgage lenders were responsible for some of the most problematic and predatory mortgage products that were issued to consumers and then sold to investors on the secondary market.[13] CRL believes that loosening consumer protection requirements for these institutions in the name of regulatory relief could invite the return of unsustainable mortgage lending.

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[11] Daniel Wagner, "*Subprime lending execs back in business five years after crash*," Center for Public Integrity, September 11, 2013 (accessed at http://www.publicintegrity.org/2013/09/11/13327/subprime-lending-execs-back-business-five-years-after-crash on April 11, 2015).

[12] Federal Deposit Insurance Corporation, *Statistics on Depository Institutions.*

[13] *See* Robert Kolb, *Lessons from the Financial Crisis: Causes, Consequences, and Our Economic Future*, at 563 (John Wiley & Sons 2010).

Instead, the focus should be on what will help traditional community banks and credit unions, while protecting consumers, the institutions, and the nation's economy as a whole. Thankfully, the Consumer Financial Protection Bureau, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and National Credit Union Administration have been mindful of the differences between larger institutions and smaller lenders and are working to tailor rules implementing Dodd-Frank accordingly.

The CFPB, in particular, has developed a successful track record in taking the lead to adopt and consider regulations that are balanced for financial institutions and accommodate smaller lenders. For example, the CFPB recently requested comment on whether to increase the 500 first-lien mortgage cap under QM's small-creditor definition. CRL expressed support for a reasonable increase of the 500 loan cap, limiting any potential increase to rural banks or for loans held in portfolio. The CFPB's proposal quadruples the limit, expanding the loan origination cap for small lenders from 500 first-lien mortgages to 2,000. This 2,000 limit is exclusive of loans held in portfolio by both the creditor and its affiliates.

The CFPB has also proposed to only include first-lien mortgage originations of small lender and its affiliate assets towards the current $2 billion asset cap. And, to accommodate concerns that the definition of a "rural and underserved" area is too narrow, the CFPB has proposed expanding the definition of rural areas by including census blocks as defined by the Census Bureau. Finally, the CFPB is also proposing to allow grace and qualifying periods for small creditors to adjust to current and proposed standards. While we may not always agree on all specifications, we have and continue to support the CFPB's ongoing efforts to reasonably explore how mortgage rules can further accommodate small lenders and lending in designated rural and underserved areas.

In addition to the CFPB's activity with mortgage rules, financial regulators are working with industry, consumer groups, and other stakeholders to review their regulatory framework, as required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996.[14] Under the existing law, the agencies must eliminate any unnecessary regulations and are required to report their actions to Congress next year.

Finally, regulators have reported that technical assistance and ombudsman programs have been extremely effective vehicles for providing regulatory assistance to community banks and credit unions. The effectiveness of these programs, however, depends upon adequate funding. CRL recommends that any regulatory relief legislation include increased funding for regulators' technical assistance and ombudsman activities.

## III. Recommendations on the regulation of title insurance for mortgaged properties.

The Consumer Financial Protection's correctly decided to include affiliated title insurance fees within the cap on points and fees in the qualified mortgage definition component of the ability-to-repay rule. Proposals to exempt affiliated title insurance from the Qualified Mortgage points and fees limit are costly and unnecessary for borrowers. We are concerned that, if passed, these proposals will continue to foster an anti-competitive business market in an industry where prices have already proven to be severely inflated.

Title insurance companies are exempt from federal anti-trust laws.[15] The result has been a market where consumers exercise little choice, while paying costs that bear little relation to the actual loss claims that the industry actually experiences. In 2007, a GAO report concluded that borrowers "have little or no influence over the price of title insurance but have little choice but to

[14] Public Law 104-208 (1996), codified at 12 USC §3311.
[15] *See* McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (2014).

purchase it." As a result, the fees are grossly inflated. Recent studies have found that 70 cents of every premium dollar for title insurance goes to commissions, whereas 5 cents to 11 cents goes to paying claims.[16]

Anti-competitive practices put companies at a significant disadvantage if they market directly to consumers and can offer lower rates. One such company, Entitle Direct, has roughly .1% of the market, despite the fact that their fees are often 35% less than the competition. One expert explained that the challenge is, "the limited price competition in title insurance markets and the strength of the institutional arrangements between title insurers and those able to steer title business — lenders, developers, realtors, and builders.".[17]

Excluding affiliated title insurance costs from the points and fees cap is especially inappropriate given the limited state or alternative federal oversight of the title insurance industry. A 2010 study from the National Association of Insurance Commissioners regarding state regulation of title insurance reports that half of all states either do not regulate title insurance rates or allow insurers to set their rates and essentially notify the regulators.[18] Only a handful of states adequately review rates to prevent price gouging, while nearly half have "file and use" or "use and file rules."[19] In these states, insurer rate schedules automatically go into effect after a specified number of days unless the regulator intervenes. In many of these

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[16] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, TITLE INSURANCE: ACTIONS NEEDED TO IMPROVE OVERSIGHT OF THE TITLE INDUSTRY AND BETTER PROTECT CONSUMERS 53 (2007), *available at* http://www.gao.gov/new.items/d07401.pdf.
[17] Lisa Prevost, Saving on Title Insurance, New York Times (March 14, 2013), *available at* http://www.nytimes.com/2013/03/17/realestate/saving-money-on-title-insurance.html?_r=0.
[18] NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS TITLE TASK FORCE, SURVEY OF STATE INSURANCE LAWS REGARDING TITLE DATA AND TITLE MATTERS 8 (2010) *available at* http://www.naic.org/documents/committees_c_title_tf_survey_state_laws.pdf.
[19] *Id.*

instances, the regulator is not required to respond and, in practice, they rarely do. The remaining states only require that the rates be "reasonable," or they fail to regulate title insurance at all.[20]

While the federal Real Estate Settlement Procedures Act (RESPA) prohibits paying kickbacks to third-party title agents, the law does <u>not</u> prohibit payments to affiliated title firms. This omission in the law incentivizes a title agency to be affiliated so that it can collect additional payment without violating RESPA.[21] By including affiliated title costs in the points and fees cap, the CFPB's rulemaking simply levels the playing field between affiliated and unaffiliated title insurance in a way that encourages more competition in the market with more choices and better pricing for consumers.

## IV. Recommendations on the regulatory environment for non-depository providers of payday and car-title loan products.

The history of the regulation of payday lending takes us to the states. Payday loans were legalized only in relatively recent years and only in some states, as the result of payday lenders' pushing for an exception to a state's interest rate limit. The payday lending industry promoted the loan's 300- or 400% annual interest, along with direct access to borrowers' checking accounts or car title, on the premise that the loan was for an emergency, once-in-a-blue-moon situation, and was just a two-week or one-month loan. The data, as we'll look at in a minute, show conclusively that this is not how these loans have operated. As a result, the recent trend has been more states closing these exceptions. Today about a third of states don't permit high-cost payday lending.

So with that context, we turn to the data, which show that the fundamental model for these loans is anything but "once in a blue moon." It really is a debt trap. The Bureau's data show

[20] Joyce D. Palomar, Title Insurance Law: Chapter 18 State Regulation of Title Insurance, 2 Title Ins. Law § 18:17-22 (2014-2015ed.)
[21] 12 U.S.C. 2607(c)(4), as amended.

75% of all payday loans are from borrowers with more than 10 loans per year, with those loans churned on a nearly continual basis. CRL's published research shows that the average payday borrower is in these purportedly two-week or one-month loans for seven months of the year, with the loan being flipped over and over.

This churn evidences the borrower's lack of ability to repay. Since the lender holds the borrower's check or ACH access, and the loan is due on the borrower's payday, most loans are collected. However, the borrower does not have enough money left for necessities like food and housing, and is forced into another loan.

Car title loans operate the same way, with huge harm to borrowers because they often lose their car – undercutting a borrower's ability to get to work and earn an income. Installment loans with direct access to the borrower's account also often operate in this same way, with built in flipping.

Lenders' determining the borrower's ability to repay without re-borrowing is an essential principle of responsible lending. It is practiced and required in other contexts, like mortgage lending. It is especially important for payday loans since the normal incentive to underwrite is flipped on its head: again, these lenders hold direct access to the borrower's checking account, first-in line, so they will usually be repaid, and loan churning —which happens when the borrower cannot afford the loan—produces much of the lenders' revenue.

The Consumer Financial Protection Bureau's proposal notes it is considering providing "options" lenders can choose in lieu of determining ability to repay, for both short-term and longer-term loans. This approach would violate this fundamental, essential ability-to-repay principle and undercut the effectiveness of reform of this lending. Exemptions from determining ability-to-repay for what are some of the riskiest financial products available—and again, illegal in many states— are totally inappropriate. No loan with these features should ever be exempted from responsible underwriting. And indeed in the mortgage context, the Bureau recognized that a safe harbor was inappropriate for subprime mortgages; it should likewise refuse to sanction a lack of underwriting for these high-risk loans.

In conclusion, the financial prospects of millions of families have been derailed by abusive consumer loans, and effective reform of this market is essential. CRL supports the CFPB's efforts to bring much needed oversight and regulation to the payday and car-title loan industries.

## V. Recommendations on the regulation of indirect automobile lenders.

Automobiles are the most common nonfinancial assets held by American households.[22] For most individuals, car ownership is not a luxury, but a prerequisite to opportunity. Cars not only provide transportation, but also options for where to work and live, and how we interact with our community. As a result, both the affordability and sustainability of auto financing are central concerns for American families.

When a car buyer finances a car through a car dealer, he or she signs a contract with the dealer for the car purchase and loan. In the vast majority of cases, the dealer seeks to quickly sell that contract to a third party, such as a bank or finance company. The potential purchasers of the loan receive the consumer's financial information to help them determine pricing for the loan and to set parameters for the other terms and conditions of the loan. The dealer collects bids from

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[22] Federal Reserve Board, *Changes in U.S. Family Finances from 2004-2007: Evidence from the Survey of Consumer Finances*, Feb 2009. Approximately 87.0% of families in the U.S. owned at least one vehicle in 2007.

many interested financial institutions, who outline the terms and conditions they will accept, including the interest rate.

What most car buyers don't know is that the financial institution purchasing the loan provides the dealer discretion to manipulate the interest rate for compensation. For example, a bank may be willing to buy the contract as long as the interest rate is at least 4 percent, but will permit the dealer to add up to 2.5% to the rate and charge the consumer 6.5 percent interest. The dealer receives some or all the difference between the interest rates as compensation.

The Center for Responsible Lending estimates that for consumers who financed cars through a dealer in 2009, buyers will pay $25.8 billion in interest over the lives of their loans solely attributable to this markup.[23] In 2009, for example, CRL's data indicates that the average markup was nearly 2.5 percent, hiking costs for each loan by hundreds of dollars.[24] While we believe dealers should be compensated for the work they do in financing cars, they shouldn't have arbitrary discretion to levy a hidden charge for financing that costs some buyers far more than others.

The markup system persists in spite of a history of legal violations dating back to the late 1990s. Again and again, lawsuits and investigations have found pricing discrimination. Not only do car buyers of color receive interest rate markups more frequently, they also consistently get higher markups than white borrowers with similar income and credit profiles.

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[23] Delvin Davis and Joshua M. Frank, *"UNDER THE HOOD: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses,"* at 2, Center for Responsible Lending (April 19, 2011).
[24] *Id.*

Most recently, the Consumer Financial Protection Bureau and the Department of Justice announced a settlement with Ally Financial alleging discriminatory markup practices.[25] The CFPB and DOJ found that the average African-American car buyer who received an Ally loan through the dealer paid more than $300 in additional interest over the course of the loan than white borrowers with similar qualifications. While agreeing to pay $98 million to settle these claims, Ally has also said that it plans to continue granting dealers the discretion to manipulate interest rates for compensation.

The National Automobile Dealers Association recently proposed a voluntary plan for its dealers. Under this plan, rather than increase the interest rate on a case-by-case basis, dealers would mark up every interest rate. But here's the catch: Dealers would still be free to lower rates if they so choose, citing exceptions that would provide virtually unfettered discretion. This means that certain groups of consumers could still find themselves paying unjustifiably higher interest rates.

Dealers justify markups by noting that consumers can negotiate the interest rate on their loan just like on the price of the car. The problem is this: Negotiating the interest rate doesn't always result in better pricing, particularly for certain groups.

A Center for Responsible Lending report shows that even though borrowers of color reported negotiating their interest rates at the same or higher rates than white borrowers, those groups still paid higher interest rates.[26] The data also showed that borrowers of color were more

[25] *CFPB and DOJ Order Ally to Pay $80 Million to Consumers Harmed by Discriminatory Auto Loan Pricing*, accessed at http://www.consumerfinance.gov/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing/ (last accessed on April 13, 2015).

[26] Delvin Davis, "*Non-Negotiable: Negotiation Doesn't Help African Americans and Latinos on Dealer-Financed Car Loans*," Center for Responsible Lending, January 2014, accessed at http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/CRL-Auto-Non-Neg-Report.pdf (last accessed April 13, 2015).

likely to be told information leading them to believe that further negotiation would be fruitless. When the dealer leads a consumer to believe that the interest rate is the best that dealer can find--even though that may not be true --the consumer stops negotiating.

Ultimately, the financial institutions that purchase auto loan contracts have the power to stop abusive markup practices, but, as with the dealers, they don't seem to be rushing to change. Recently, Wells Fargo also announced that it will continue to allow dealers to mark up interest rates for compensation.

The Center for Responsible Lending believes that this particular form of compensation, with its' long history of unfairness, should be eliminated. Dealers already get compensated in ways other than marking up the interest rate. For instance, dealers receive a flat fee for every loan made under zero-percent and other low-interest rate promotions that manufacturers may offer. Under a system without dealer pricing discretion, dealers will still get compensated for their work, but with less incentive to sell consumers on the highest interest rate possible.

In 2013, the Consumer Financial Protection Bureau issued a bulletin reminding indirect auto lenders of their compliance responsibilities under the Equal Credit Opportunity Act.[27] That law makes it illegal for a creditor to discriminate in any aspect of a credit transaction on prohibited bases, including race, color, religion, national origin, sex, marital status, and age. The bulletin was meant to clarify the CFPB's authority to pursue auto lenders whose policies can, at times, be used to harm consumers through unlawful discrimination.

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[27] *See* CFPB Bulletin 2013-02, "*Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*", March 21, 2013, accessed at http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf (last accessed April 14, 2015).

The CFPB noted that lender policies that provide dealers with this type of "mark-up" discretion increase the risk of pricing disparities among consumers based on race, national origin, and potentially other prohibited classes. To ensure compliance with fair lending regulations, the CFPB recommended that indirect lenders:

- Impose dealer markup controls or revise dealer markup policies;
- Monitor and address the effects of markup policies as part of a robust fair lending compliance program; and
- Eliminate dealer discretion to markup buy rates, while fairly compensating dealers using a different mechanism that does not result in discrimination, such as flat fees per transaction.[28]

The CFPB noted that it "will continue to closely review the operations of both depository and non-depository indirect auto lenders, utilizing all appropriate regulatory tools to assess whether supervisory, enforcement, or other actions may be necessary to ensure that the market for auto lending provides fair, equitable, and nondiscriminatory access to credit for consumers."[29]

We applaud the Consumer Protection Bureau and the Department of Justice for their vigilance and action on the abuses that dealer interest-rate markups cause. CRL believes that both agencies recent actions are a step in the right direction. Ultimately, the only way to effectively eliminate abuse is to end this practice.

[28] *Id.* at 5.
[29] *Id.*

## VI. Conclusion

Community banks and credit unions play an important and essential role in this nation's financial market. There is a need for appropriate regulatory flexibility for small depositories. Congress and regulators must avoid any effort to use regulatory relief for community banks and credit unions as a vehicle for non deposit-taking lenders, mid-size and large financial institutions to avoid having the regulatory scrutiny and oversight that proved lacking in the build up to the financial crisis.

The need for regulatory flexibility must be balanced against the importance of consumer safeguards, an institution's safety and soundness, and the security of America's financial system as a whole. Federal financial regulators, like the CFPB, must be allowed to both protect the American people and ensure access to a broad, sustainable financial market.

I look forward to continuing to work with this Subcommittee, community banks and credit unions, non-depository lenders, their associations, and regulators, to ensure that all of these objectives are satisfied through law and responsible regulations. Thank you for the opportunity to testify today and I look forward to answering your questions.