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Regulatory Relief for Community Banks and Credit Unions

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Good morning Chairman Shelby, Ranking Member Brown, and Members of the Senate Committee on Banking, Housing, and Urban Affairs. Thank you for allowing me the opportunity to testify on regulatory relief for community banks and credit unions and the need to ensure that all financial institutions, regardless of their size, are subjected to responsible regulatory oversight that maintains consumer financial protections.

I am the President of the Center for Responsible Lending (CRL), a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution. For thirty years, Self-Help has focused on creating asset building opportunities for low-income, rural, women-headed, and minority families. In total, Self-Help has provided $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. As the General Counsel of Self-Help for 20 years, I can personally attest to the fact that responsible regulations and regulatory oversight are critical to the success of a small lender.

I. Differences Exist for Community Banks and Credit Unions.

Community lenders and credit unions, and the financial services they provide, are both important and distinctive. We appreciate that small lenders and credit unions frequently use a different business model to provide financial services to consumers, one that usually involves 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 lending. Also, unlike their larger bank counterparts, smaller 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.[1]

Given the differences in business practices, business scale, and company resources, CRL supports a regulatory framework and oversight structure that appropriately recognizes and accommodates the unique nature of community banks and credit unions. It is important that regulators understand how small lending institutions work and take those factors into account when regulating. One-size regulation does not always fit all. Community banks and credit unions must be able to continue successfully conducting business in America's communities.

II. Financial Regulations are Important.

Yet, it is important to remember why regulations, especially financial regulations, are essential to preserving the financial health of American consumers and the health of this nation's economy. Responsible financial regulations 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 have lost

[1] 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; John Buhrmaster, 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;

their homes through foreclosure.[2] And, according to the Federal Deposit Insurance Corporation, more than 500 banks shuttered their doors; most of those institutions were community banks.[3] 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.[4] In addition, the national economy was undermined and plunged into a severe recession. People lost their jobs, small businesses went under, and many Americans—from small entrepreneurs to families—struggled to make ends meet while being unable to obtain the credit and capital they needed from financial institutions in order to sustain their position or expand their asset base.

The negative nature of these consequences make it clear to CRL that proactive, responsible financial regulations—like those being enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[5]—are needed to protect consumers, small businesses, taxpayers, and the nation's economy. 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 institution like Synovus, community bank lenders like Georgia Bank & Trust and First National Bank of Scotia, or credit unions like SRP Federal Credit Union and CRL's affiliate, Self-Help. All financial institutions, including community banks and credit unions, benefit from the underlying purposes of financial regulation: protecting consumers, ensuring the safety and soundness of institutions, protecting community financial institutions from unfair competition, and defending the nation's financial market from systemic risk. The question is

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[2] 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.
[3] Federal Deposit Insurance Corporation, *Failed Bank List*, *accessed at* https://www.fdic.gov/bank/individual/failed/banklist.html
[4] John Carney, "The Size of the Bank Bailout: $29 Trillion," *CNBC*, December 14, 2011, accessed at http://www.cnbc.com/id/45674390#.
[5] Public Law 111-203 (2010).

whether there are different, more efficient ways to effectively ensure that these objectives are being met when regulating community banks and credit unions.

III. Relief for Community Financial Institutions Should Be Targeted to Those Institutions.

During the 113th Congress, a number of bills and other industry proposals were introduced under the banner of providing regulatory relief to community banks that, in reality, would have primarily or solely benefited regional, mid-size institutions. These bills and proposals included provisions to:

- Amend the Consumer Financial Protection Act, a component of Dodd-Frank, to raise the examination threshold that brings an insured depository institution or insured credit union within CFPB's supervisory purview from assets of $10 billion or more to assets of $50 billion or more;[6]
- Increase the threshold size of an insured depository institution or insured credit union that is subject to the Consumer Financial Protection Act's reporting requirements from assets of $10 billion or more to $50 billion or more;[7]
- Exempt creditors with under $50 billion in assets from the escrow account requirement for first lien, higher-priced mortgages held in portfolio as required by the Dodd-Frank Act; and[8]
- Exempt institutions with less than $50 billion in assets from the Volcker Rule's compliance requirements if they are not involved in any activities under the law and even remove their obligation to analyze their trading and investments to ensure that their activity is exempt.[9]

The reality is that, in terms of asset size, geographic base, and company resources, institutions with assets between $10 to $50 billion look very different than a traditional community bank. CRL's analysis shows that while community banks have on average less than 54 employees, the institutions that stand to benefit from these proposals have an average of more

[6] Consumer Financial Protection Bureau Examination and Reporting Threshold Act of 2014, S. 2732, 113th Cong. (2014)
[7] Consumer Financial Protection Bureau Examination and Reporting Threshold Act of 2014, S. 2732, 113th Cong. (2014)
[8] Community Lending Enhancement and Regulatory Relief Act of 2013, H.R. 1750, 113th Cong. (2014)
[9] Independent Community Bankers of America, *ICBA Policy Resolutions for 2014*.

than 2,500 employees. Compliance costs related to staffing resources can hardly be viewed as parallel.

Moreover, while the business model of community banking is predicated on strong community relationships in a concentrated geographic market, many of the institutions that stand to benefit from these provisions have nationwide markets. These institutions are large players with familiar names, like Morgan Stanley Private Bank, American Express Bank, GE Capital Bank, and E*Trade Bank. Many people would be surprised to hear these institutions called community banks. They would also be surprised to learn that American Express Bank is considered as somehow having the same business model and compliance cost challenges as First National Bank of Scotia, an institution with 10 banking branches located in a single state and operating with fewer than 200 employees.

Asset size alone may not accurately define a community bank. Yet, organizations as diverse as the FDIC,[10] American Enterprise Institute,[11] and CRL agree that a business model focused on relationship-based lending, geographically concentrated business market, and limited business resources are important supplementing factors that complete the definition. The FDIC's recently updated analysis of its 2012 Community Banking Study notes that, using these factors, 94% of all community banks have assets under $10 billion and 90% of those institutions have assets under $1 billion.[12] Moreover, 80 percent of credit unions have less than $100 million in assets.[13] Therefore, so-called community bank provisions that provide exemptions for the 72 institutions holding between $10 to $50 billion in assets do little to help the more than 6,000 community banks that provide credit and capital across this country.

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[10] Federal Deposit Insurance Corporation, *Community Banking Study*
[11] American Enterprise Institute, *The Impact of Dodd-Frank on Community Banks*
[12] Federal Deposit Insurance Corporation, *FDIC Quarterly 2014, Volume 8, Number 2*
[13] Larry Fazio, National Credit Union Administration, Hearing before the Senate Committee on Banking, Housing, and Urban Affairs, *Examining the State of Small Depository Institutions*, 113th Cong. 2d sess, 2014.

IV. Substantive Rollbacks of Dodd-Frank are not Community Bank Regulatory Relief.

A number of community bank regulatory relief proposals focus on making substantive changes to the mortgage protections put in place by Dodd-Frank. For example, proposals like those to remove the escrow requirement for institutions with less than $50 billion in assets threaten to erase important consumer protections for millions.[14] Under the CFPB's implemented regulations for Dodd-Frank, escrows are required only on higher priced mortgages—and even this requirement only applies for the first years of the loan to ensure that the loan is sustainable. Escrow accounts protect consumers by ensuring that they have funds for reoccurring homeownership-related expenses, such as property taxes and insurance premiums, thereby reducing the likelihood of default.

Another proposal, to exclude appraisal requirements for loans under $250,000 is so broad in scope that it would allow nondepository lenders to benefit along with all banks and credit unions.[15] These very nonbank lenders were key players in the financial crisis and are already subject to less oversight because of their nondepository status. The appraisal exemption for $250,000 loans is also overly broad because it would apply to nearly half of all homes in the United States. In 2014, the median sales price for existing homes in the U.S. was only $209,500. It is important for everyone to remember that mortgage appraisal fraud was a key driver of the housing bubble and subsequent bust.[16]

Nearly 9 out of 10 mortgages in the United States are made by noncommunity bank lenders.[17] 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

[14] Community Lending Enhancement and Regulatory Relief Act of 2013, H.R. 1750, 113th Cong. (2014)
[15] Community Lending Enhancement and Regulatory Relief Act of 2013, H.R. 1750, 113th Cong. (2014)
[16] Federal Bureau of Investigation, *2010 Mortgage Fraud Report*
[17] Federal Deposit Insurance Corporation, *Statistics on Depository Institutions*.

of another foreclosure crisis. Rollbacks should not be included in community bank regulatory relief legislation.

V. Regulators are moving in the right direction by making efforts to reduce regulatory burdens for small lenders.

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 affiliate assets towards the current $2 billion small lender 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.[18] 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.

VI. Conclusion

Community banks and credit unions play an important and essential role in this nation's financial market. Therefore, CRL understands the need for appropriate regulatory flexibility for small depositories. We oppose, however, any effort to use regulatory relief for community banks and credit unions as a vehicle for non deposit-taking lenders, 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

[18] Public Law 104-208 (1996), codified at 12 USC §3311.

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 Committee, community banks and credit unions, their associations, and regulators, to ensure that all of these objectives are satisfied through laws and responsible regulations. Thank you for the opportunity to testify today, and I look forward to answering your questions.