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Before the U.S. House Committee on Financial Services'

Subcommittee on Financial Institutions and Consumer Credit

Examining Legislative Proposals to Provide Targeted Regulatory Relief to Community Financial Institutions.

July 12th, 2017

Good afternoon Chairman Luetkemeyer, 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 today about legislative proposals regarding regulatory relief for community financial institutions, and the need to ensure that all financial institutions are subjected to responsible, reasonable regulatory oversight that maintains sensible consumer protections.

I am the Director of Federal Advocacy at 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 over $6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits and currently serves more than 80,000 mostly low and moderate income families through 30 retail credit union branches in North Carolina, California, and Illinois.

This important hearing addresses the health of our banks in the context of the regulatory structure created in the wake of the Great Recession. A regulatory framework that corrected systemic gaps and sought to prevent future market failures, while providing essential protections to consumers and the overall economy. Fortunately, today consumer lending is strong, and bank profitability is at record levels. We are still emerging from the catastrophic effects of the Great Recession of 2008, and have implemented essential protections that ensure such a financial crisis does not happen again, and that consumer financial markets are strong, stable and competitive. In setting and implementing these protections, regulators have utilized a two-tier approach, with numerous measures intended to decrease compliance costs for smaller financial institutions. This approach should be continued and expanded. In addition, there are reforms that have broad support and that would benefit all banks, without harming consumers. However, dismantling essential reforms, such as the mortgage ability to repay standard, or reducing the effectiveness of the Consumer Financial Protection Bureau (CFPB) would harm consumers, banks and the overall economy.

Unfortunately, many of the legislative proposals before the committee today do not build on the success of recent reforms and would, in the name of helping small banks, harm consumers while helping very large financial institutions. In particular, the CLEARR Act is far too extreme and is not the way to provide the kind of targeted regulatory relief that community banks are asking for. The CLEARR Act:

- Weakens regulators' ability to prevent discriminatory lending;
- Hamstrings regulators' ability to protect consumers;
- Does not help small banks, as most exemptions would apply to very large banks, including bad actors; and
- Makes the mortgage market more susceptible to abuses.

I. History shows that responsible regulations are necessary for a healthy national market and economy.

The Great Recession of 2008 has already shown us the consequences of the absence of basic protections and oversight in the financial market. In the years leading up to the financial crisis, mortgage lenders were driven by profits and collecting fees to offer mortgages with the lowest monthly payment and the least amount of underwriting. Lenders first started offering mortgages that had lower payments that never reduced the principal balance of the loan. These loans were followed by loans that had "teaser rates" where the monthly payments were even lower for the first several years, but then increased dramatically. Finally, lenders pushed loans that had startling low payments, a few thousand dollars a month for a half million-dollar loan, but the loan balance actually *increased* by more than five percent every year. In addition to these mortgage practices, lenders competed with each other by reducing underwriting requirements, streamlining the underwriting, and pushing no documentation or "no-doc" loans without any verification of income in order to collect exorbitant profits. It was very difficult for responsible lenders to compete in this environment, and in order to maintain their businesses and some market share, they were forced to join this race to the bottom.

The result is all too well known. In the wake of the financial crisis, 7.8 million American consumers lost their homes through foreclosure.[1] The failure to have a responsible and effective 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.[2] According to the Federal Deposit Insurance Corporation (FDIC), more than 500 banks shuttered their doors and most of those institutions were community banks.[3] 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 to sustain their position or expand their asset base.

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[1] CORELOGIC, CORELOGIC REPORTS, UNITED STATES RESIDENTIAL FORECLOSURE CRISIS, TEN YEARS LATER 3, *available at* http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-10-year.pdf.
[2] John Carney, The Size of the Bank Bailout: $29 Trillion, *CNBC*, (December 14, 2011), *available at* http://www.cnbc.com/id/45674390#.
[3] FEDERAL DEPOSIT INSURANCE CORPORATION, FAILED BANK LIST, *available at* https://www.fdic.gov/bank/individual/failed/ banklist.html.

These dynamics and consequences are why the protections of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[4] are needed to protect consumers, small businesses, taxpayers, and the nation's economy. 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.

II. Financial regulations are not slowing economic growth or preventing lending.

Financial institutions, including small banks, are continuing to recover from the worst financial downturn since the Great Depression. Mortgage lending in particular continues to steadily improve. Small banks are playing an important and growing role in the recovery. Contrary to theories that the Dodd-Frank Act has stifled growth, the financial sector has had record profits. In 2016 U.S. financial institutions had total annual profits of $171.3 billion, the highest level since 2013.[5] While this profit level is slightly lower than the profit level in the peak of the false housing boom in the years immediately prior to the financial crisis (2004-2006), it remains higher than inflation-adjusted financial sector profits for any other time period since World War II.

Community bank profitability has also rebounded strongly and meets pre-recession levels. In 2010, less than 78 percent of community banks were profitable. By the end of 2015, over 95 percent of community banks were profitable.[6] A FDIC report from the 2016 third

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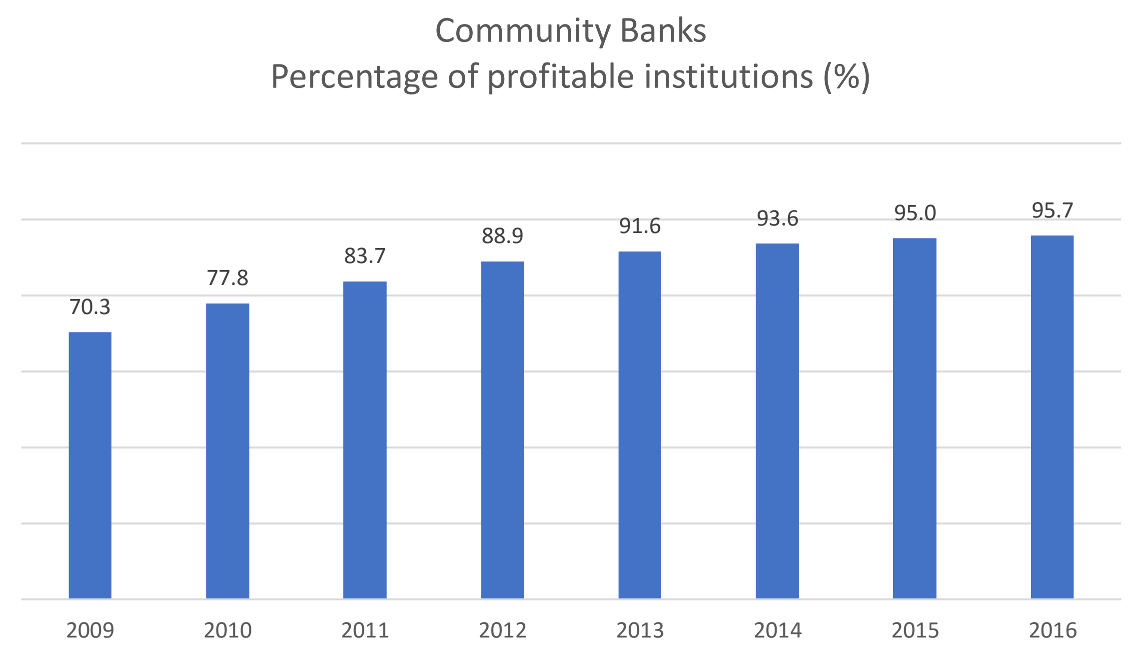
[4] Public Law 111-203 (2010).
[5] Wall Street Journal, U.S. Banking Industry Annual Profit Hit Record in 2016 (Feb 28, 2017), *available at*: https://www.wsj.com/articles/u-s-banking-industry-annual-profit-hit-record-in-2016-1488295836.
[6] FEDERAL DEPOSIT INSURANCE CORPORATION, CORE PROFITABILITY OF COMMUNITY BANKS 1985-2015 1 (2016), *available at* https://www.fdic.gov/bank/analytical/quarterly/2016_vol10_4/article1.pdf.

quarter notes that the percentage of unprofitable community banks sunk to 4.6 percent, which is the "lowest percentage since the third quarter of 1997."[7] Full year earnings were up 9.7 percent in 2015, which is a higher figure than the overall increase of 7.5 percent for all banks.[8]



Federal Deposit Insurance Corporation. Quarterly Banking Profile, Community Bank Performance Section, Table 1-B (2015, 2016), retrieved from: https://www.fdic.gov/bank/analytical/qbp/qbpmenu.html, March 23, 2017.

Credit unions have also continued to grow while recovering from the financial crisis. Credit union membership has been steadily growing in recent years. In 2016, credit unions added 4.7 million new members, which amounted to "the biggest annual increase in credit union history and four times the pace set a decade earlier."[9] Operating costs for credit unions have also fallen

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[7] FEDERAL DEPOSIT INSURANCE CORPORATION, QUARTERLY BANKING PROFILE: THIRD QUARTER 2016 I, *available at* https://www.fdic.gov/bank/analytical/quarterly/2016_vol10_4/fdic_v10n4_3q16_quarterly.pdf.

[8] Id.

[9] CUNA MUTUAL GROUP, CREDIT UNION TRENDS REPORT (2017), *available at* https://www.cunamutual.com/resource-library/publications/credit-union-trends-report.

in the period since Dodd-Frank was passed and were down to 3.1 percent in 2016 from a high of 3.59 percent in 2008.[10]

While the number of small lenders, including community banks and credit unions has decreased over the years, this cannot be reasonably attributed to Dodd-Frank or CFPB regulations. The number of community banks has declined every single year since 1984.[11] FDIC research concludes that community bank profitability since 2008 has overwhelmingly been driven by macroeconomic conditions, not regulations.[12] The FDIC study first takes a wide look at regulations that include Dodd-Frank, but also Basel III capital standards. The study states that "regulation is just one among many noneconomic factors that may contribute to structural change in community bank profitability," but conclude that 80 percent of variation in profitability is due to macroeconomic factors, and the other 20 percent includes not just changing regulations, but also "the rise of nonbank lending, competition from larger banks, and changes in loan portfolios and other business practices."[13]

Smaller lenders play an important role in extending access to credit, and it is noteworthy that lending has also rebounded from the depths of the crisis. After falling from June 2008 to November 2010, outstanding consumer loans have steadily increased at $3.7 trillion in December 2016, which well exceeds pre-crisis levels.[14] Small banks have posted increases in commercial lending in all but one quarter compared to levels at the time of passage of Dodd-Frank in 2010.[15]

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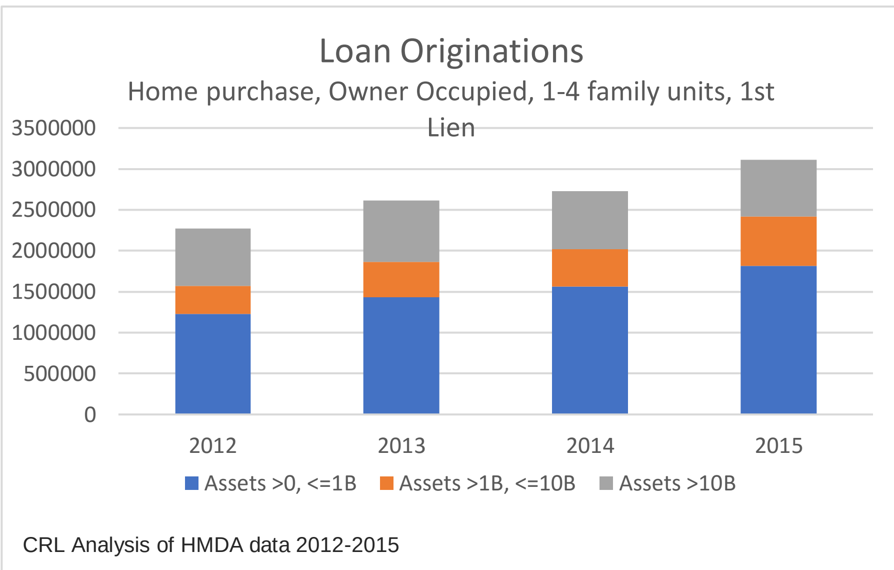
[10] NATIONAL CREDIT UNION ADMINISTRATION, NCUA CHART PACK (2016), *available at* https://www.ncua.gov/analysis/Pages/industry/fact-sheets.aspx.
[11] FEDERAL DEPOSIT INSURANCE CORPORATION, COMMUNITY BANKING STUDY 1 (2012), *available at* https://www.fdic.gov/regulations/resources/cbi/report/cbi-full.pdf.
[12] FDIC, Core Profitability of Community Banks *supra* note 6.
[13] Id at 42.
[14] FEDERAL RESERVE, TOTAL CONSUMER CREDIT OWNED AND SECURITIZED, OUTSTANDING *available at* https://fred.stlouisfed.org/series/TOTALSL.
[15] FEDERAL RESERVE, TOTAL VALUE OF LOANS FOR ALL COMMERCIAL AND INDUSTRY LOANS, SMALL DOMESTIC BANKS *available at* https://fred.stlouisfed.org.

Furthermore, the FDIC's quarterly community bank performance data for the fourth quarter of 2016 shows that community banks hold 43 percent of all small loans to businesses and that they increased lending by $6.4 Billion (2.2 percent) compared to 2015, twice the rate of other banks.[16]

Finally, mortgage lending has also steadily recovered since the crisis. Community banks and small lenders play an important and growing role in the mortgage market in particular. In 2015, mortgage lenders originated 850,085 more loans[17] than they did in 2012, a 37 percent increase. Loans originated by smaller lenders with assets under $1 billion saw the biggest increase during this period (48 percent) while the largest institutions with assets over $10 billion saw a 1 percent decline. Credit unions alone originated $41.7 billion in first-lien mortgage loans in the third quarter of 2016, an increase of 22 percent over the same period in the previous year.[18]



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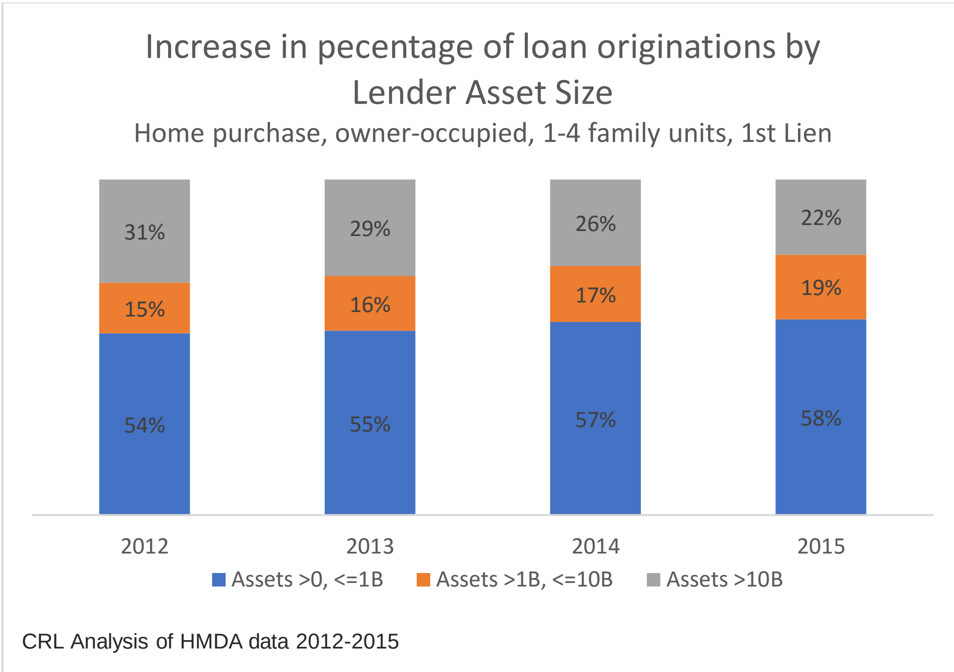
[16] FEDERAL DEPOSIT INSURANCE CORPORATION, QUARTERLY BANKING PROFILE, COMMUNITY BANK PERFORMANCE, FOURTH QUARTER (2016), *available at* https://www.fdic.gov/bank/analytical/qbp/2016dec/qbpcb.html.

[17] Sarah Wolff, CRL Analysis of HMDA Data 2012-2015. Loan analysis limited to: home purchase, owner-occupied, 1-4 family units, 1st lien loans, *available at* http://www.responsiblelending.org/media/new-hmda-data-shows-mortgage-market-continues-exclude-consumers-color-and-low-wealth-families.

[18] CUNA MUTUAL GROUP, CREDIT UNION TRENDS REPORT (2016), *available at* https://www.cunamutual.com/resource-library/publications/credit-union-trends-report.

Small lenders also saw their market share in mortgage lending increase over this time period. The market share of the smallest lenders with assets under $1 billion increased from 54 percent in 2012 to 58 percent in 2015. In contrast, the market share of the largest lenders with assets over $10 billion, decreased from 31 percent in 2012 to 22 percent in 2015.[19]



III. <u>The CLEARR Act is far too expansive in weakening consumer protections and helping large banks.</u>

In this context of recovering and growing profitability and strength of smaller lenders, we must ensure that legisalitve reform seeking regulatory releif is targeted to smaller lenders, and is based on a sound and accurate assesment of the impact of regulations on econimc growth. CRL is opposed to any legislative reform that exposes consumers and the economy to the increased risk of pre-recession behaviors, or disproportionately benefits the largest financial instutions at the expense of other lenders. Responsible and sensible lending has promoted growth, ensured

[19] CRL Analysis *supra* note 17.

stability, and protected consumers and the market from the reckless beahvior of pre-recession practices.

H.R. 2133, the "Community Lending Enhancement and Regulatory Relief Act of 2017" (CLEARR Act) introduced by Representative Luetkemeyer does not provide targeted regulatory relief for consumers and small banks and simultaneously puts consumers at risk. The CLEARR Act is far too expansive in weakening consumer protections in the name of helping community banks and would ultimately benefit large banks while weakening important protections for consumers and the economy. The provisions of the CLEARR Act would grant exemptions and free passes for almost all financial institutions, including large banks. The bill exempts large lenders from escrow requirements mandated by the Truth in Lending Act (TILA), amplifying the risk of these loans. The CLEARR Act also expands the Qualified Mortgage safe harbor for loans held in portfolio by any institutions including some of the biggest banks in the world. The bill also targets the CFPB, and attempts to weaken its power and authority to fight for the American consumer. By raising the threshold for the agency's supervisory authority over depository institutions from $10 billion to $50 billion, the CFPB ability to police the financial marketplace is scaled back. Additionally, the bill strips the CFPB of its UDAAP authority to pursue institutions that engage in "abusive" practices, the very same authority the CFPB used to take action against Wells Fargo in its recent account scandal. The bill would also roll back significant data reporting requirements that provide a key tool to fight discrimination in the financial marketplace, by repealing section 1071 of the Dodd-Frank Act, which mandates collection of small business and minority-owned business loan data under the Equal Credit Opportunity Act.

1. *The CLEARR Act weakens regulators ability to prevent discriminatory lending*

Some of the most concerning provisions in the CLEARR Act are those which would weaken the ability of regulators to address lending discrimination. Provisions 7, 8 and 9 all specifically limit the effectiveness of financial regulators to understand and address troubling ongoing discrimination.

Section 7: Amend the Equal Credit Opportunity Act and the Fair Housing Act to require federal agencies to determine whether a financial institution intentionally discriminated as grounds for fair lending enforcement.

This section amends ECOA and the Fair Housing Act by prohibiting creditors from *intentionally* discriminating against any applicant for credit based on certain characteristics as defined by statute. This would abolish *disparate impact* discrimination claims based on violations of ECOA and the Fair Housing Act, and would instead limit claims to the different standard of disparate *treatment*. In order to be liable under the disparate treatment standard intent needs to be proven, while under disparate impact claims of discrimination the harm can be unintentional, but liability can be established by showing an ostensibly neutral policy disproportionally affects members of the protected class. Disparate impact has been a central part of combating racial discrimination for decades, and to summarily disregard disparate impact is indicative of the extreme nature of this bill.

Section 8: Amend the Home Mortgage Disclosure Act of 1975 to from maintenance of mortgage loan records and disclosure requirements depository institutions that have originated—in each of the two preceding calendar years—fewer than 1,000 closed end mortgage loans and fewer than 2,000 open-end mortgage loans.

This section of the CLEARR Act proposes to vastly increase the number of banks and nonbanks that would be exempted from having to report new data on their mortgage lending under the Home Mortgage Disclosure Act (HMDA). Current CFPB rules require banks and nonbanks that originate at least 25 closed-end loans or 100 open-end lines of credit in each of the two preceding calendar years to provide data. These thresholds were carefully put in place by the

CFPB to balance the value of reporting and of having uniform standards against the burden reporting places on reporting institutions. This section proposed to raise that threshold significantly: to 1,000 closed-end mortgage loans or 2,000 open-end lines of credit. Such an increase is both harmful and unnecessary.

HMDA data have been used for years to understand the mortgage market and to hold lenders accountable for fair lending. The expanded HMDA data fields help shed important light on aspects of the underwriting process that the public previously has not been able to measure, such as how loan denials vary by race and credit characteristics. These new data could help explain persistent differences in measures like denial rates by race and ethnicity. This provision undermines this important public resource by exempting all but the largest lenders from reporting. The CFPB has estimated that nearly all depository (85%) and nearly half of all nondepository (48%) mortgage lenders would be exempt under a loan threshold half the size proposed by this provision.[20] If this provision were made law, regulators and the public would have far less information about the mortgage market.

This provision, however, also fails to materially reduce the burden on HMDA reports. Lenders already collect most of the data they would need to report under the expanded HMDA rule.[21] Lenders collect data for underwriting, as required on closing documents, the Uniform Residential Loan application, and as required by the GSEs or FHA. Providing this information through HMDA reporting does not require lenders to collect vast amounts of new information, it

[20] Based on 2013 data, the CFPB estimates that updated reporting would be lost for 10 percent of loan records under a 500 closed-end loan volume threshold, and over 5,300 census tracts would lose 20 percent of the updated data about mortgage lending in their communities.
[21] See Adam Levitin, Credit Slips Blog, "New HMDA Regs Require Banks to Collect Lots of Data….That They Already Have".

simply requires them to report important information that they already collect. The bulk of reporting burden is in collecting, maintaining and managing data systems, not in reporting.[22]

Section 9: Amend the Equal Credit Opportunity Act to repeal requirements that financial institutions collect information from small businesses regarding their ownership.

Small business lending provides critical capital to new and growing businesses that create jobs and help people build wealth. Smaller banks play a critical role in expanding access to credit for small businesses and we support efforts to encourage small business lending. However, eliminating new small business data collection efforts will hamper small business lending and we oppose the elimination of the data collection required by Section 1071 of the Dodd-Frank Act. Data collection has not even begun so eliminating the disclosure of small business lending activity, like the long-standing practice of mortgage lending data collection, is premature.

Section 704B of the Equal Credit Opportunity Act amended by Section 1071 of the Dodd-Frank Act requires creditors to disclose business loan applications, type and purpose of financing, loan amount, approval status, location and size of the business and other information necessary to lending products and practices. These data will help prevent discriminatory lending practices and encourage financial institutions of all sizes to serve the small business needs of underserved communities, emerging entrepreneurs and growing businesses that create much needed employment opportunities.[23]

As discussed above, data collected through HMDA has made home mortgage lending data widely available for decades and has improved how lenders and policymakers understand

[22] CFPB, HMDA Final Rule, Federal Register, Vol. 80, No. 208, p. 66282.
[23] 15 U.S. Code § 1691c–2

the mortgage market—bringing much needed transparency to the market and taking an important step toward understanding lending trends and identifying discriminatory lending practices.[24] The requirements of HMDA apply market-wide, to depositories and non-depositories and large and smaller lenders alike and result in an unprecedented view of how and where lenders make mortgage credit available.

Currently, there is only limited information available about small business lending activity and only from a subset of lenders.[25] However, these data suggest that low-wealth communities and communities of color lack the access to credit necessary to create and sustain new small businesses.

A report by Woodstock Institute found that, nationally, businesses in low-income census tracts comprised an average of 9.3 percent of all businesses for the period 2012-2014, but they received only 4.7 percent of reported bank loans under $100,000 and only 4.9 percent of the total dollar amount of those loans. If those businesses had received loans in proportion to their share of businesses overall, they would have received over 687,600 more loans totaling over $8.8 billion more than they actually received between 2012 and 2014.[26] A recent report by the Kauffman Foundation found that African American business owners were nearly twice as likely as white business owners to rely on their credit card to build their business and 59% of African American entrepreneurs did not seek financing because they thought they would be turned down

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[24] See "The Nation's Housing Finance System Remains Closed to African-American, Hispanic, And Low-Income Consumers Despite Stronger National Economic Recovery In 2015." Durham, NC: Center for Responsible Lending, September 2016. http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2015_hmda_policy_brief_2.pdf.

[25] Under the Community Reinvestment Act, some financial institutions disclose small business loans made to businesses with annual revenue of $1 million or less.

[26] "Patterns of Disparity: Small Business Lending in the Buffalo and New Brunswick Regions." Chicago, IL: Woodstock Institute, April 2017. http://www.woodstockinst.org/sites/default/files/attachments/Buffalo%20and%20New%20Brunswick%20Report%20RevisedApr%2019%20Final_DR.pdf.

by a lender.[27] That same report found that minority entrepreneurs were far more likely to report that their profits were negatively impacted by a lack of access to and cost of capital than white entrepreneurs.

Section 9 of HR 2304 would preserve the status quo and roll back years of work to improve access to small business lending. Rather than providing relief for small banks, this proposal takes an extreme approach and eliminates the small business data collection requirement for all lenders, including large banks and non-depository lenders. Data collection is yet to begin, and the CFPB has just started collecting information from all stakeholders involved in the process. In May 2017, the CFPB released a white paper on small business credit and requested comments on what defines a small business, what institutions lend to small businesses and what products are offered. The request also sought information on existing credit options available to small businesses and the privacy implications of the collection and release of small business data.

We believe that these are right questions to ask. We urge the consideration of targeted efforts to expand small business lending that support the significant role of small banks in this market rather than eliminating efforts to prevent discriminatory lending practices and exempting all lenders, including large banks and non-depositories from this critical disclosure requirement.

2. *The CLEARR Act hamstrings regulators ability to protect consumers*

In addition to weakening the ability of regulators to address lending discrimination, provisions of the CLEARR Act weaken protections for all consumers. Section 6 removes the

[27] "Zero Barriers: Three Mega Trends Shaping the Future of Entrepreneurship." Kauffman Foundation, 2017. http://www.kauffman.org/~/media/kauffman_org/resources/2017/state_of_entrepreneurship_address_report_2017.pdf.

CFPB's UDAAP authority, and sections 10 and 11 limit the power of financial regulators to protect consumers.

Section 6: Amend the Consumer Financial Protection Act of 2010 to repeal the authority of the Consumer Financial Protection Bureau (CFPB) to take action to prevent a covered person or service provider from committing or engaging in an abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of one. The bill also prohibits the CFPB from taking any action against a covered person or service provider without first consulting with such person's primary financial regulatory agency. The CFPB must comply with the same rules as govern the Federal Trade Commission (FTC) regarding unfair or deceptive acts or practices in or affecting commerce;

This section strips the CFPB of its enforcement and rulemaking UDAAP authority. This section also prohibits the CFPB from pursuing any enforcement action without first conferring with the "covered person or service provider's primary financial regulatory agency." The section mandates that the CFPB is subject to the same requirements that the Federal Trade Commission ("FTC") is subject to when the CFPB conducts any rulemaking. This would ultimately hamstring the CFPB's ability to promulgate broad and effective rules.

Section 10: prohibit a federal banking agency from formally or informally suggesting, requesting, or ordering a depository institution to terminate either a specific customer account, or group of customer accounts, or otherwise restrict or discourage it from entering into or maintaining a banking relationship with a specific customer or group of customers, unless: (1) the agency has a material reason to do so, and (2) the reason is not based solely on reputation risk;

and

Section 11: Amendments to Civil Penalties under FIRREA: Section 11 would substantially narrow the scope of activity that Department of Justice (DOJ) can issue administrative subpoenas and initiate civil actions against financial institutions under FIRREA. It would also undermine the DOJ's ability to conduct investigations by requiring that administrative subpoenas either be issued pursuant to a court order or personally through the Attorney General or Deputy Attorney General.

Sections 10 and 11 of the CLEARR Act would hamper the government's ability to ensure that some banks are not willfully enabling scammers to defraud the customers. Financial fraud is a large-scale problem that affects millions of Americans. The FBI estimates that mass marketing fraud schemes strip tens of billions of dollars each year from millions of individuals and businesses around the world. MetLife estimates annual losses by elder Americans alone at nearly $3 billion. Banks are well positioned to assist in identifying scammers because they serve as a gateway to payment networks, including ACH and debit card networks. Monitoring the rates of returned transactions through these networks is an effective risk control that banks are well-suited to do. A high rate of returned transactions for a given bank customer, which may be a payment processor with many clients, is a common warning signal of fraudulent activity.

The CLEARR Act takes aim at the DOJ's Operation Chokepoint initiative, the goal of which has been to stop fraudulent schemes perpetrated through the banking system, particularly where they involve third party payment processors. The three cases the DOJ has brought under Operation Chokepoint were not close calls. Four Oaks Bank, CommerceWest Bank, and Plaza Bank all ignored glaring indications that their payment processor customers were scammers, enabling them to illegally remove funds from the accounts of customers at other banks. While average return rates for unauthorized ACH payments are about 0.03%, these banks ignored return rates as high as 50%, 60%, 70%. They willingly enabled fraudulent activity that caused real people real financial harm. Section 10 of the CLEARR Act would make it more burdensome for financial regulators to discourage banks from doing business with customers where there is indication the customers are engaging in fraud. But supervision of a bank's due diligence in detecting fraud is an important role of the banking regulator. Hampering the regulator's ability to perform that role will help scammers and their enabling banks, while harming responsible banks.

Further, Section 11 would significantly narrow the scope of the DOJ's investigative authority to illegal conduct "against" a financial institution or "by" the institution, rather than activity that "affecting" the institution. This would likely eliminate the DOJ's authority to conduct the sort of investigations it has brought under Operation Chokepoint because the bank enabling the scam was not, itself, the scammer or the one scammed. The bill would also impose additional hurdles for the DOJ to be able to issue subpoenas in connection with its investigations of financial fraud. A subpoena is an important fact-finding tool, critical to the DOJ's ability to obtain the information it needs to stop banks from willfully enabling scammers. Again, making it more difficult to obtain information will help scammers and their enabling banks at the expenses of responsible banks and their customers.

3. *The CLEARR Act doesn't help small banks, it mostly exempts large banks some of which are bad actors*

Section 2: Amend the Truth in Lending Act (TILA) to direct the Board of Governors of the Federal Reserve to exempt from certain escrow or impound requirements a loan secured by a first lien on a consumer's principal dwelling if the loan is held by a creditor with assets of $50 billion or less. The Consumer Financial Protection Bureau must also provide either exemptions to or adjustments from the mortgage loan servicing and escrow account administration requirements of the Real Estate Settlement Procedures Act of 1974 for servicers of 30,000 or fewer mortgage loans.

This section increases thresholds of two exemptions provided by the CFPB for small banks concerning escrow accounts for higher-priced mortgage loans and servicing requirements for small mortgage servicers. Under this section, for institutions with less than $50 billion in assets, escrow accounts would no longer mandated for riskier, high-priced loans. Additionally, the exemption from increased notification requirements to borrowers would be increased from 5,000 loans to 50,000 loans. This expansion is a prime example of how the increase of thresholds would significantly benefit larger institutions, and significantly misses the mark in targeting relief for smaller institutions. By removing the escrow requirement for larger financial institutions, the provision increases riskiness in of the loans and the balance sheets that hold them.

Section 3: Amend TILA to exempt from property appraisal requirements a higher-risk mortgage loan of $250,000 or less if it appears on the loan creditor's balance sheet for at least three years.

This section exempts mortgages in the amount of $250,000 or less from the definition of "higher-risk mortgage," and therefore from the appraisal requirements required for such mortgages under TILA, so long as the creditor holds the loan on its balance sheet for at least 3 years. The lack of adequate regulation in the appraisal market was a significant factor causing the housing market crash.[28] In fact, between 2000-2007 a coalition of appraisal organizations produced a petition, signed by 11,000 appraisers that stated lenders were pressuring them to artificially inflate home prices, and would only give business to appraisers that complied.[29] This section also removes penalties under TILA regarding professional misconduct, unethical behavior, or violation of law in mortgage dealings. This roll back of penalties and the increase of thresholds again raises questions as to how this provision would provide relief for smaller lending institutions.

Section 13: Amend the Consumer Financial Protection Act of 2010 to raise the examination threshold that brings an insured depository institution or insured credit union within its supervisory purview from assets of $10 billion or more to assets of $50 billion or more. The bill also increases from assets of $10 billion or less to assets of $50 billion or less the size of an insured depository institution or insured credit union that is subject to the Act's reporting requirements.

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28 Financial Crisis Inquiry Report, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States. Submitted by The Financial Crisis Inquiry Commission Pursuant to Public Law 111-21, January 2011, 17-19 ("Financial Crisis Report")

29 Id. at 18

Provisions that weaken or scale back the authority and power of the CFPB must ultimately answer the question: who benefits from a weakened CFPB? The CFPB, the only agency whose mission is to protect the American consumer, has been effective in policing the financial market place and fighting to protect and expand consumer rights. The data is unambiguous, the CFPB is works.

The CFPB has recovered nearly $12 billion for 29 million consumers who have been harmed by illegal practices of credit card companies, banks, debt collectors, mortgage companies, and others. This relief includes monetary compensation to harmed consumers, principal reductions, canceled debts, and other remedies to address these practices. The CFPB has worked hard to end predatory practices by institutions like ITT Tech (a for-profit college that misled borrowers into high-cost private student loans), Wells Fargo, and car-title and payday lenders.

Under the leadership of Director Cordray, the CFPB has issued and proposed rules that make the market safer for consumers and the general economy. In addition to the mortgage rule and standards addressed above, the CFPB has issued a rule to make prepaid cards safer and fairer for consumers who rely on them. The CFPB has also undertaken enforcement actions that benefit consumers by either shielding them from harm or compensating them for wrong done by illegal financial practices. The CFPB has simplified bank disclosures borrowers receive when taking out a loan, protected military families against illegal foreclosures and abusive student and payday loans, and has guarded seniors from predatory scams. Further, the CFPB has obtained more than a billion dollars in compensation to consumers harmed by misleading credit card add-on products from big banks, and to consumers harmed by the recently uncovered egregious fraudulent acts of Wells Fargo in opening checking accounts without customers' approval. The

CFPB has also provided $160 million in settlements to consumers harmed by discriminatory auto interest rate mark ups where borrowers ended up with higher-cost auto loans when they qualified for more affordable loans. The Consumer Bureau hears directly from Americans harmed by illegal financial practices through its searchable public complaints database, which has helped people resolve disputes and allowed the Bureau to identify patterns in predatory industry practices. The system has recorded more than one million consumer complaints.[30]

Even though the economy is on a stable path to recovery and much has been done with the robust work of the Consumer Bureau, there remain areas of critical concern that must be addressed. The CFPB must be allowed to continue to do its work on behalf of consumers and by substantially exempting virtually all financial institutions, it will not be able to.

4. *The CLEARR Act makes the mortgage market more susceptible to abuses*

Section 15: Amend TILA to create a safe harbor from lawsuit for a depository institution that fails to comply with ability-to-repay requirements with respect to a residential mortgage loan made and held on its balance sheet; and

Section 16: Amend TILA to direct the Federal Housing Finance Agency (FHFA) to promulgate regulations defining qualified mortgage and the types of loans that are qualified mortgages. The FHFA is required to conduct a yearly review of its promulgated standards, and must publish and proposed changes in the Federal Register

The consequences have shown the results of lax regualtion of the mortgage market-- fraud and abuse that deplete the savings of American consumers and destabilize the economy. According to the Financial Crisis Inquiry Commision Report, "collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis."[31] Mortgage regulations were put in place to prevent these practices and abuses. The

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[30] Consumer Financial Protection Bureau, CFPB Complaint Snapshot Spotlights Money Transfer Complaints: Bureau Marks Over One Million Consumer Complaints Handled (2016), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-complaint-snapshot-spotlights-money-transfer-complaints/.

[31] Financial Crisis Report, supra n. 25, at xxiii

expansion of exemptions to larger financial institutions casts doubt upon the notion that these provisions are targeted for smaller financial institutions.

The CFPB's Qualified Mortgage (QM) rule and the Ability-to-Repay standard set out common sense standards to protect the market and consumers from high-risk, unsustainable loans by ensuring borrowers have an ability to repay the loans they receive. Irresponsible mortgage lending that ignored borrowers' ability to repay their loans resulted in a foreclosure tsunami that disproportionately impacted communities of color—eviscerating a generation of wealth building. Further, Wall Street's appetite for risky mortgages encouraged this lax underwriting, and regulatory inaction failed to address the problem. As a result, unaffordable loans toppled the entire market and nearly destroyed the economy.[32]

The reforms of Dodd-Frank, including QM and Ability-to-Repay, have not hurt mortgage lending or access to credit. Instead, these reforms support sustainable homeownership and wealth building opportunities for lower-wealth households. Large lender portfolio exemptions to the QM rule are unnecessary, do not help small lenders, and are dangerous for the economy. Some have suggested that expanding QM to include all loans held in portfolio by lenders of any size, would increase lending. However, this would be dangerous for consumers and the market, and unlikely to meaningfully expand lending. As demonstrated in the housing crisis, holding loans in portfolio alone will not protect borrowers, taxpayers, and the market from the mistakes of the past. In the lead up to the financial crisis, many of the toxic loans, such as negative amortization loans, and "ARMs" underwritten to initial "teaser" rates were held in bank portfolios. Lenders underwrote these loans based upon only this initial, artificially low payment, even though

[32] Testimony of Eric Stein, Center for Responsible Lending, before the US Senate Committee on Banking, Housing, and Urban Affairs, "Turmoil in the US Credit Markets: The Genesis of the Current Economic Crisis," (October 16, 2008) *available at* http://www.banking.senate.gov/public/_cache/files/03d72248-b676-4983-bd3e-0ffec936b509/33A699FF535D59925B69836A6E068FD0.steintestimony101608final.pdf.

dramatically higher payments commenced after a few years. Many lenders did not document the income of the borrowers, instead making "no-doc" loans. Hundreds of billions of dollars of these loans were made, and many were kept on bank portfolios. These portfolio loans soon crashed, helping to trigger the financial crisis, and devastating banks such as Washington Mutual and Wachovia.[33]

Portfolio loans can still be risky for consumers and taxpayers, and automatic QM status for loans held in portfolio should not be extended to larger institutions. Many homeowners have very substantial equity in their homes and a significant number of those have no current home debt. Current information shows that the average loan-to-value for GSE loans is roughly 74 percent with many loans having much lower levels.[34] With these loans, the borrower's equity absorbs the risk of loss rather than the lender. Therefore, the lender is protected even from very risky loan terms. Furthermore, lenders are also already making and holding loans in portfolio. Portfolio loans accounted for 30.9 percent of all originations in 2016, approximating the pre-crisis share of originations for portfolio loans.[35] Expanding QM to all portfolio loans is unlikely to lead to an increase in volume.

This would be a particularly dangerous time to reduce the Ability-to-Repay/QM mortgage protections. As the economy moves through the business cycle and the recovery improves, the important protections recently put in place will provide new value. Real and nominal house prices now exceed pre-crisis trends and at the same time interest rates are expected to rise. As shown in the chart below, the home market is cyclical with home values

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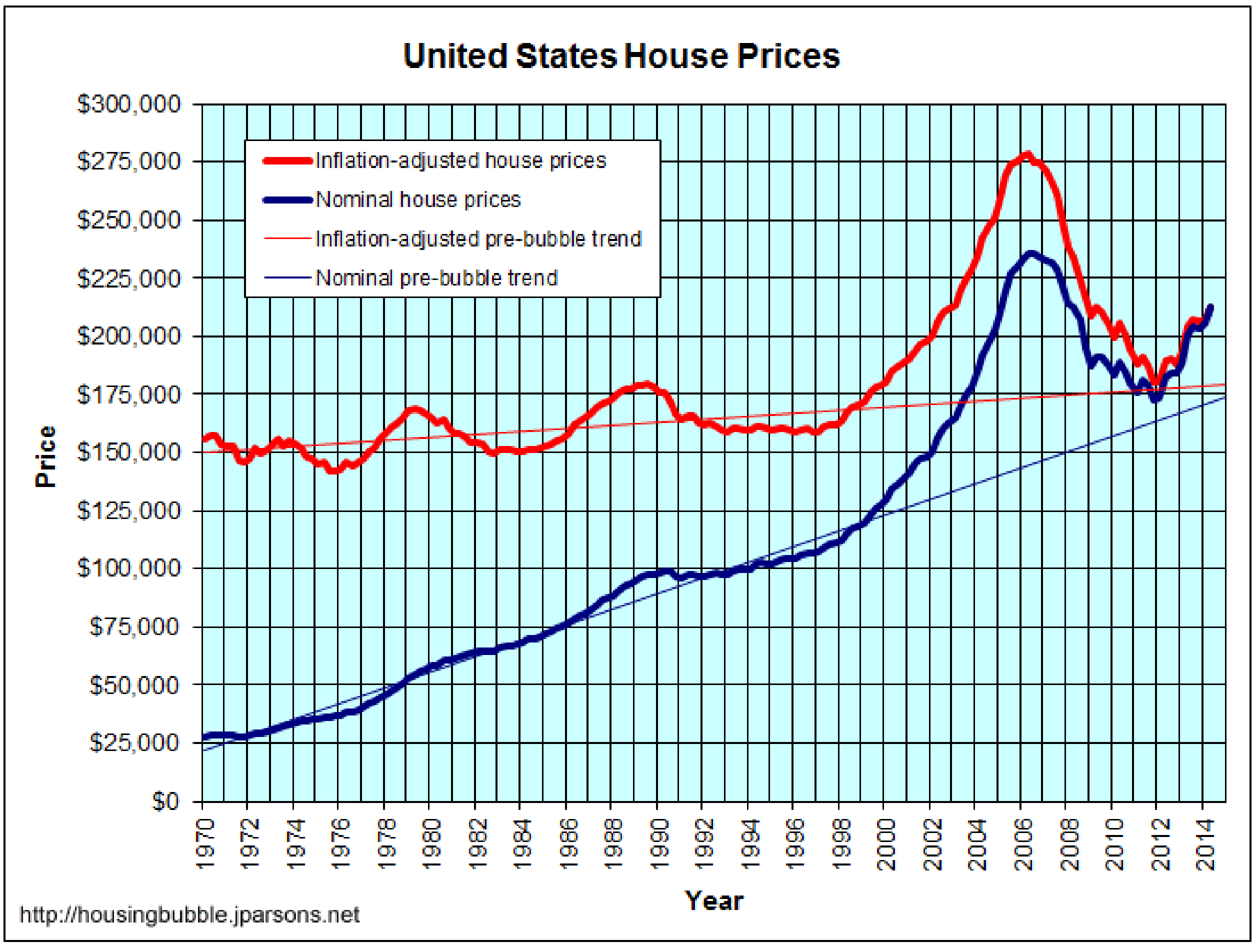
[33] Ben White and Eric Dash, Wachovia, Looking for Help, Turns to Citigroup, New York Times (September 26, 2008), *available at* http://www.nytimes.com/2008/09/27/business/27bank.html?_r=0.

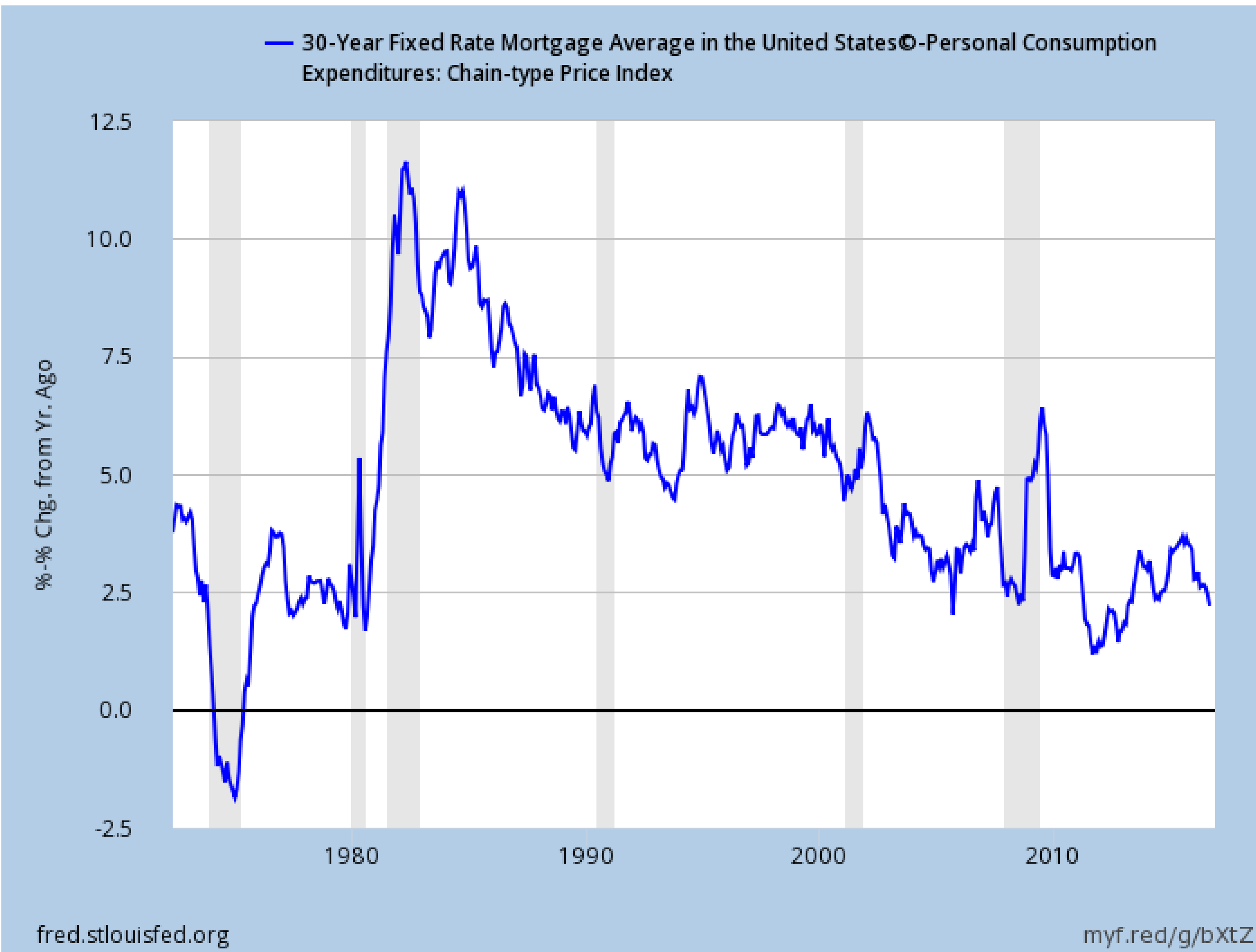
[34] FANNIE MAE 2016 CREDIT SUPPLEMENT 6 (2017), *available at* http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2016/q42016_credit_summary.pdf.

[35] LAURIE GOODMAN ET AL. HOUSING FINANCE AT A GLANCE: A MONTHLY CHARTBOOK, MARCH 2017 (2017), *available at* http://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017/view/full_report.

rising and falling when measured in real inflation adjusted dollars. There were in fact several substantial price run ups in home values and declines prior to the Great Recession. The difference was that in these prior run ups, the bubble was limited because mortgage payments were not artificially reduced by poor mortgage products without borrower ability to repay. This enabled the market to rebalance without a crash. In contrast in the early 2000's housing prices rose rather than being rebalanced. These unsustainable mortgages further artificially inflated home prices and created a housing bubble of unprecedented height and fall.



In the coming years, the market will create pressures for the reintroduction of these unaffordable mortgages. As the following chart shows, we are coming to the end of a decades-long period of declining interest rates, culminating in the current market where there is a negative real interest rate and historically low mortgage rates. A consensus of experts agree that mortgage, and other interest rates will increase in coming years. This will create pressure for lenders to bring back the exotic unaffordable mortgages of the recent past to again artificially reduce monthly mortgage payments. Undercutting regulation that sets the basic expectation that borrowers should have the ability to repay loans, especially loans made by federally insured institutions, would invite a repeat of the recent financial crisis at the cost to the American taxpayer.



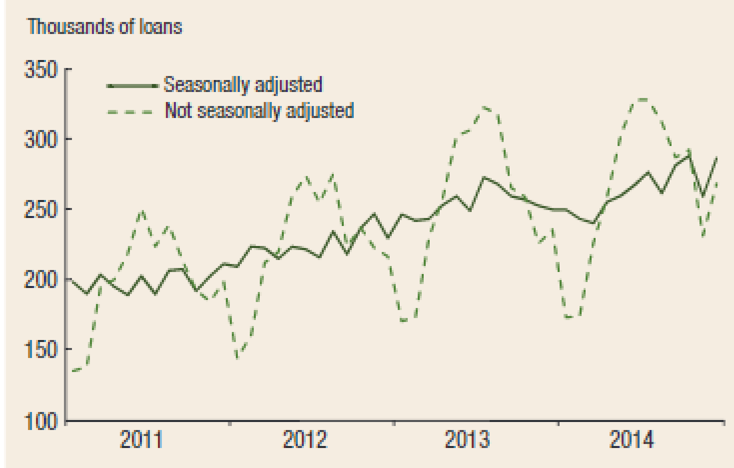
Provisions that grant out right legal immunity are extreme and put consumers at great risk. Granting QM status to portfolio loans held by larger financial actors will allow some to use relaxed standards to harm consumers and strip consumer equity, all while being insulated by QM's legal protections.

The QM rule is designed to facilitate the flow of mortgage credit, as lenders will have the confidence in knowing the suitability of loans for borrowers at the time of origination. The same standards in turn reduce the overall likelihood of borrower default. This certainty has benefitted consumers, lenders, and investors alike, leading to a more sustained housing recovery.

Three years have passed since the QM rule was implemented. Reports, including the Home Mortgage Disclosure Act (HMDA) report, show that QM has not negatively impacted mortgage lending or access to credit. In fact, (post QM) HMDA data is very much consistent with market trends immediately preceding the implementation of the QM rule and Ability-to-Repay standard. The Federal Reserve's seasonally adjusted origination numbers, in the chart below, show a slow overall increase in monthly originations from 2011 through 2015 with no discernable decrease when the rules were fully implemented in January 2014. [36]

[36] FEDERAL RESERVE BULLETIN, THE 2014 HOME MORTGAGE DISCLOSURE ACT DATA (2015), *available at* https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.

Figure 3. Volume of home-purchase originations, 2011–14



Note: The data are monthly. Loans are first-lien home-purchase mortgage originations.

In addition, HMDA data from 2014-15 shows a modest but steady increase in mortgage lending to low and moderate-income borrowers and African-American and Latino borrowers.[37]

Researchers have looked carefully at mortgage lending after the implementation of QM and found no link to a reduction in credit. For example, researchers at the Urban Institute looked at loans that might reasonably have been affected by the QM standards (interest only or prepayment penalty loans, loans with debt-to-income "DTI" over 43 percent, or adjustable rate mortgages or "ARM" loans) and found no decline in these categories associated with QM.[38] Researchers at the Federal Reserve similarly concluded "The HMDA data provide little indication that the new ATR and QM rules significantly curtailed mortgage credit availability."[39] Researchers at the Federal Reserve also looked at both the origination and securitization of

[37] FEDERAL RESERVE BULLETIN, THE 2015 HOME MORTGAGE DISCLOSURE ACT DATA (2016), *available at* https://www.federalreserve.gov/pubs/bulletin/2016/pdf/2015_HMDA.pdf., see also note 21.
[38] Bing Bai, Laurie Goodman, and Ellen Seidman, Has the QM Rule Made It Harder to Get a Mortgage? (2016), *available at* http://www.urban.org/research/publication/has-qm-rule-made-it-harder-get-mortgage.
[39] FEDERAL RESERVE BULLETIN, THE 2014 HOME MORTGAGE DISCLOSURE ACT DATA, *available at* https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.

mortgages post-crisis and find that lender asset size has become a less important factor in explaining this lending activity and conclude "smaller banks have not been, on net, deterred from engaging in the sales and securitizations of mortgages, have become a more important part of the market and have profited from their activities."[40]

The Urban Institute likewise found that QM rules had not adversely affected access to credit. While mortgage originations can and should expand, the Urban Institute attributes continued access problems to overcorrections in the post-crises market that has resulted in constrained lending. This environment is most harmful to lower-wealth households with lower FICO scores and fewer resources for a down payment[41]

Also Provision 8, discussed above, which exempts all but the largest mortgage lenders from expanded HMDA reporting threatens to undermine an important dataset that regulators and the public can use to understand the mortgage market. The expanded data would provide information that would have been helpful in the run up to the crisis, such as the debt-to-income ratio on newly originated mortgages. Such information is helpful to understanding and managing the market.

IV. Other Legislative Proposals

Many of the bills before the committee today take extreme positions and propose legislation that either is tangential to small banking regulatory relief, or benefits larger banks and non-depository institutions. In particular , H.R. ____, (Rep. Hollingsworth), the "Ensuring Quality Unbiased Access to Loans Act of 2017" To be introduced by Representative

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[40] William F. Basset and John C. Driscoll, Post Crisis Residential Mortgage Lending by Community Banks (2015), *available at* https://www.communitybanking.org/documents/Session3_Paper4_Bassett.pdf.
[41] Jim Parrot and Mark Zandi, Opening up the Credit Box 5 (2013), available at http://www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf., see also LAURIE GOODMAN ET AL., TIGHT CREDIT STANDARDS PREVENTED 5.2 MILLION MORTGAGES BETWEEN 2009 AND 2014, *available at* http://www.urban.org/urban-wire/tight-credit-standards-prevented-52-million-mortgages-between-2009-and-2014.

Hollingsworth. This bill would repeal the Office of the Comptroller of the Currency (OCC) ‘‘Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products’’ (78 Fed. Reg. 70624; November 26, 2013), and the Federal Deposit Insurance Corporation (FDIC) ‘‘Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products’’ (78 Fed. Reg. 70552; November 26, 2013). This guidance addressed egregious high-cost payday loans made by banks and put in place important protections; repealing it would re-introduce abuses into the marketplace and cost account holders billions. The damage by the debt traps of payday loans has been well documented. Recognizing the harm to consumers, regulators took action protecting bank customers. In 2013, the Office of the Comptroller of the Currency (OCC), the prudential regulator for several of the banks making payday loans, and the Federal Deposit Insurance Corporation (FDIC) issued guidance advising that, before making one of these loans, banks should determine a customer’s ability to repay it based on the customer’s income and expenses over a six-month period. By repealing these actions, the provision opens the door for high-cost bank installment loans to once again trap customers in unending debt traps.

Many of the other proposal under discussion suffer from similar problems of lacking a real focus on regulatory relief for small financial institutions. Regulations should take into account the different business models of community banks and credit unions and their cost structure. Much has already been done in this regard and further steps can be taken. In addition, there are other broader reforms that can reduce obstacles and uncertainly without jeopardizing consumers or overall markets.

There are several substantial regulatory provisions that acknowledge and accommodate the special role and circumstances of community banks and credit unions. These include:

- Banks under $10 billion in assets that are exempted from the examination authority of the Consumer Financial Protection Bureau;

- Banks under $10 billion in assets that are exempted from the interchange provisions of the Durbin amendment;
- Banks under $10 billion in assets that are exempted from all of the enhanced bank prudential standards in Title I of Dodd-Frank;
- Regulators that have reduced liquidity and capital requirements based on bank size, with community banks exempted form new liquidity requirements and subject to more flexible capital requirements; and
- The CFPB's more flexible standards for small creditors and small rural lenders for numerous mortgage requirements including: QM status for small rural lender portfolio loans; higher interest rate thresholds for small lender QM safe harbor loans; exemptions from escrow and other servicing requirements; and generous standards for small rural bank balloon loans. This approach works and should be continued.

Other broader proposals that likewise enjoy broad support would provide further relief to all lenders. Further clarification of False Claims Act liability for Federal Housing Administration (FHA) loans is needed to reduce unnecessary uncertainty and protect responsible lenders. Another reform is that the interest rate level for QM safe harbor loans could be increased from 150 basis points over average prime offer rate (APOR) to 200 basis points. This would substantially reduce the number of mortgages that are classified as higher cost mortgages and that are excluded from safe harbor status. Finally, a major area of relief could be provided around the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) rules compliance. BSA/AML compliance is a huge regulatory burden, especially for community banks and credit unions. These laws carry out the critical need to prevent our financial institutions from being used by terrorists, drug dealers, and other criminals to facilitate illegal activities. Today, the onerous task of determining the true identity of owners of accounts falls on the financial institution. The American Bankers Association found that this compliance is "the most costly regulatory burden."[42] It further found that this burden was especially costly for smaller banks. The Independent Community Bankers of America (ICBA) and others have asked that

[42] American Banker, BankThink, (2015) *available at* https://www.americanbanker.com/opinion/how-to-lighten-community-banks-aml-compliance-load.

"ownership information should be collected and verified at the time a legal entity is formed by either the Internal Revenue Service or other appropriate federal or state agency, rather than by financial institutions. This would provide uniformity and consistency across the United States."[43] Bipartisan bills have supported this solution, and have been endorsed by the Clearing House Association. This important reform should be enacted.

V. **Conclusion**.

Financial institutions, especially community banks and credit unions, play an important and essential role in this nation's financial market. CRL understands and supports 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 and larger 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, the safety and soundness of financial institutions, 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.

We simply cannot afford another financial crisis. Congress should not roll back the CFPB and consumer protections under Dodd-Frank that have and continue to help millions of people across the country. 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.

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[43] Independent Community Bankers Association, "2017 Plan for Prosperity," *ICBA* (2017), *available at* http://www.icba.org/docs/default-source/icba/advocacy-documents/priorities/icbaplanforprosperity.