



Testimony of

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On behalf of the
Independent Community Bankers of America

Before the

**Congress of the United States
House of Representatives
Committee on Financial Services**

Hearing on

“Perspectives on the Consumer Financial Protection Agency”

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Chairman Frank, Ranking Member Bachus, Members of the Committee, my name is Michael Menzies. I am the President and CEO of Easton Bank and Trust Company in Easton, Maryland and the Chairman of the Independent Community Bankers of America¹. Easton Bank is a state-chartered community bank with \$150 million in assets. I am pleased to represent community bankers and ICBA's 5,000 members at this important hearing on the proposed Consumer Financial Protection Agency (CFPA).

ICBA believes that consumer protection is the cornerstone of our financial system. It is the virtue that defines community banking and allows institutions like mine to stand out in a very crowded field of competitors. The 8,000 community banks in this country operate in the shadow of a relative handful of megabanks, and cannot compete on margins or economies of scale. Were all things equal, it would not be possible for many of ICBA's member banks to have existed for well over a century, as they have. It is consumer protection – manifested as special attention paid to the individualized needs of each customer, better rates and terms for lending products, and the knowledge that with local decision-making comes local accountability – that has made the community banking sector resilient for generations.

During this economic downturn, increasing numbers of consumers have recognized this distinction and have moved their assets to local banks with proven track records of conservative and sensible financial stewardship. Customers are attracted to do business with community banks because they are responsible lenders, with local decision-

¹ The Independent Community Bankers of America, the nation's voice for community banks, represents 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community.

making and a vested interest in their local economies. This is why community banks have not gotten into trouble through the use of exotic lending products that led other large firms into bankruptcy or partial government ownership. This relationship is symbiotic: Instilling confidence in our customers that they will be treated honestly means a community banker is not going to take excessive risks, and will certainly not engage in an abusive practice to drive customers away. It also explains why community bankers never relaxed their lending standards simply to compete with the megabanks and non-bank lenders.

Target the source of the problem

However, where virtues exist, so must vice. As we now know, two distinct classes of firms operate in a way that proved abusive to consumers – one above and one below the radar, yet both managing to avoid adequate regulation: above was the group of over-leveraged, too-big-to-fail firms whose concentration risks have cost American taxpayers over \$7 trillion in economic worth. These firms are, undeniably, under the jurisdiction of myriad federal regulators. However, these regulators have neither the means to resolve a systemically risky financial firm, or the mandate to scrutinize these firms to match the level of danger they and all their disparate parts represent to the broader economy. Below the radar exist far too many non-bank financial institutions, peddling their wares, unencumbered by most forms of government regulation, accountability, or care for the future well-being of those to whom they lent indiscriminately. It is these firms that should be the focus of the CFPA.

Furthermore, to protect consumers, Congress needs to make passing legislation to identify institutions that may pose a systemic risk a first priority this fall. They must

subject these mammoth firms to stronger supervision, capital and liquidity requirements, and better protect the taxpayers by establishing a systemic risk fund paid for by those firms. An important part of the solution to the too-big-to-fail problem is contained in H.R. 2897, the Bank Accountability and Risk Assessment Act, introduced by Representative Luis V. Gutierrez, and ICBA urges the Committee to incorporate this measure into any broader financial regulatory reform proposal it considers in the future.

H.R. 3126, the CFPA Act of 2009, as introduced

As currently drafted, ICBA is very concerned that H.R. 3126 would do more harm than good by unduly burdening our nation's community bankers who did not engage in the deceptive practices targeted by the proposal, yet would be hardest hit by the added regulatory burden imposed by this new agency.

First, we appreciate that the legislation does not transfer enforcement authority over the Community Reinvestment Act (CRA) to the new agency. This is a common-sense step that allows current prudential regulators to maintain their authority over this law. CRA is intended to ensure that banks are providing services to all segments of the community. Similarly, other fair lending statutes, such as the Equal Credit Opportunity Act (ECOA) and Home Mortgage Disclosure Act, should also remain with the current financial regulatory agencies that will be conducting safety and soundness examinations.

For community banks, safety and soundness and consumer protection are not mutually exclusive functions. The legislation creating the CFPA regrettably splits the safety and soundness and consumer protection functions, going so far as to place this new agency as the ultimate arbiter of any dispute between a prudential regulator and itself. While community banks go above and beyond to protect their customers, allowing

consumer protection to trump safety and soundness is a dangerous precedent. Bank regulators have expertise in balancing safe and sound operation with the need to provide consumers information they need to make informed financial decisions and protect them from unfair and harmful practices.

In addition, and contrary to conventional wisdom, the concept of prescribing a “plain vanilla” list of financial products will harm, not help, community banks. That is why we are pleased that the Chairman’s proposed revisions to the bill eliminate this requirement. To be sure, community banks are able to offer consumers simpler products when it is appropriate; but “simplicity” as a doctrine should not be promoted at the expense of all other products or, more importantly, a customer’s needs. The “plain vanilla” mandate contained in the introduced version of H.R. 3126 would create a structure for certain financial products, where some must meet a lesser threshold of acceptance while others must face more scrutiny and require more paperwork. Community banks do not have robust legal and compliance departments to handle this sort of product approval regime: it is, on average, no more than three people. As a consequence, any incentive a CFPA creates – intentionally or otherwise – to offer “plain vanilla” products will amount to a disincentive for community bankers to offer anything *but* those products. In this regard, a level playing field will put small, local bankers at a tremendous competitive disadvantage relative to their larger competitors.

Improvements in discussion draft, but further changes needed

ICBA appreciates that Chairman Frank has begun to address other community bank concerns in the recently released discussion draft. Removal of a “plain vanilla” product mandate or authority is very significant; this deletion must be maintained as this

legislation advances. We are also pleased that the CFPA may no longer apply a “reasonableness” standard in assessing whether an act or practice is unfair. Such vague standards, while not unknown to the banking sector, create uncertainty and invite litigation – two things anathema to community bankers.

That said, there remain significant areas of the proposal to which we object:

- The task of examining a bank for consumer protection compliance should remain with the banking agencies. As discussed previously, ICBA believes the regulatory, enforcement and examination powers shifted to the CFPA would unwisely separate consumer protection from safety and soundness enforcement, when both types of enforcement must co-exist under one agency for efficient financial services regulation. Separating this enforcement among two different agencies would only give each agency half the information it would need to conduct thorough examinations. We believe the CFPA should focus its resources on the not-insubstantial task of setting up an exam system for non-banks, rather than stripping the existing agencies of their consumer compliance examiners. Lax supervision of non-bank lenders was a key contributor to our financial crisis, not the carefully supervised activities of community banks.
- Rulewriting for banks cannot be the sole responsibility of the CFPA, and should be shared jointly between CFPA and the federal banking agencies. If the CFPA is not equally interested in the safety and soundness of the lender, it is likely to promulgate unnecessarily burdensome or contrary rules to those issued by the prudential regulator.

- The Chairman's discussion draft modifies the leadership structure of the proposed CFPA, creating an autonomous director, while establishing an advisory board with virtually no authority. ICBA is strongly concerned with this approach, which lacks any form of substantive checks and balances, and provides no meaningful voice for community bank viewpoints in the decision-making process of the Agency. The advisory board should be vested with real authority over this powerful agency.
- Regarding funding of the CFPA, if the agency is not funded by appropriations, ICBA strongly supports assessments on non-bank financial firms under the CFPA's jurisdiction as a main source of Agency funding. However, we are strongly opposed to the CFPA's authority to assess fees on federally insured depository institutions. Since the Chairman's new draft also draws funds from the Federal Reserve System, it is unnecessary to assess further fees on the community banking sector.
- The numerous reporting requirements in this bill place a disproportionately high burden on community banks without a commensurate benefit to consumers. The cost of these mandates is very high for small institutions that simply do not have the extra resources available to comply. The committee should review the cost and utility of these reporting requirements for community banks and eliminate those that do not appropriately balance costs and benefits.

Conclusion

It was just over a year ago that the collapse of Lehman Brothers helped trigger a credit crisis that crippled the economy. Congress owes it to the American people to

modernize our financial consumer protection regulations of the many non-bank financial firms, and to address the challenges posed by systemically risky and too-big-to-fail institutions.

However, the proposed CFPA highlights a long-standing challenge facing community banks, namely encouraging policymakers to distinguish between large and small financial institutions and not to assume that a one-size-fits-all approach is an appropriate way to legislate or regulate the financial sector. If the current economic crisis has proven anything, it is that there are significant disparities between the way large firms and smaller firms do business, a fact that should be considered before applying a “broad-brush” legislative approach toward protecting consumers.

In recent Congressional testimony, administration officials pointed out the disparity between the existing regulatory regimes for federally insured banks and those for non-bank financial firms. ICBA agrees that the lack of sufficient regulatory oversight of many unregulated firms, particularly those in the mortgage industry, contributed significantly to our financial crisis. However we disagree with a response that, instead of focusing on regulatory gaps and augmenting existing systems, places community banks into an entirely new regime with only vague limits and checks on its powers.

We must end too-big-to-fail and reduce systemic risk in order to protect consumers, local communities, our financial system and the economy from the destabilizing effects that occur when a giant institution runs into trouble. Community banks fund growth, drive new business development, help families buy homes, and finance education. We are not responsible for the current state of our economy but are the victim of others’ bad practices. Yet, we continue to help the people and businesses in our

communities recover from this crisis and find a way back to prosperity. ICBA looks forward to working with this Committee to create a financial system that better protects consumers while not overburdening or restricting the ability of thousands of community bankers from serving their customers' legitimate credit and investment needs.

Thank you, and I look forward to your questions.