CBA | CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

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TESTIMONY OF

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BEFORE THE UNITED STATES

HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERISIGHT & GOVERNMENT REFORM

SUBCOMMITTEE ON

TARP & FINANCIAL SERVICES

"CREDIT CRUNCH: IS THE CFPB RESTRICTING CONSUMER ACCESS TO CREDIT?"

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The Voice of the Retail Banking Industry

Chairman McHenry, Ranking Member Quigley and members of the Subcommittee, thank you for the opportunity to appear before the Subcommittee to discuss the Consumer Financial Protection Bureau ("CFPB" or "Bureau"). My name is Steve Zeisel, and I am Executive Vice President and General Counsel of the Consumer Bankers Association ("CBA")[1].

CBA is the trade association for today's leaders in retail banking – banking services geared towards consumers and small business. Founded in 1919, CBA provides leadership, education and federal representation on retail banking issues on behalf of its member companies. Our corporate members include the nation's largest financial institutions and regional banks, collectively holding two-thirds of the industry's assets.

As the trade association for retail banks of all sizes, we are clearly focused on the CFPB and how it will regulate the retail products and services our members provide to consumers and small businesses. As the CFPB is a powerful new regulator for retail banking, we recognize the importance to our members of developing and maintaining an ongoing dialogue and relationship with the Bureau. CBA has been pleased with the

[1] The Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation on retail banking issues. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the industry's total assets.

Bureau's accessibility in its first year. We have met with them on numerous occasions, and we have found them to be open to a dialogue on issues of importance to our membership.

On a positive note, the CFPB's first year has been focused on simplifying disclosures for a number of financial products (e.g., mortgages, credit cards, student lending). The agency's "Know Before You Owe" campaign, which was designed to help consumers make informed decisions, is something we can all support. We have always supported the general concept of simplifying the RESPA-TILA disclosures, which has been the subject of interest by both Congress and the regulators for years before the CFPB came into existence.

The Bureau has also begun to supervise nonbank financial institutions. Though the process is still in its very early stages, we believe that a level playing field for regulatory supervision is good for consumers, businesses and the financial services industry.

It is important that, as the Bureau embarks on its mission, the potential for regulation and enforcement action from this new and untested regulatory agency with vast powers not act as a brake on the development of creative products and services that could be beneficial to consumers and businesses. How the agency will behave and what they will expect from regulated institutions are still being assessed, and financial institutions are watching the CFPB's every move. As we observe the CFPB's development during

this transitional period, banks are appropriately cautious in developing new products and offering new services. It is critical for consumers, small businesses and financial institutions of all sizes, for the CFPB to act in a clear and thoughtful manner. The Bureau must always recognize the potential impact its actions can have on access to credit for consumers, and how over-burdensome regulations will only increase compliance costs and stifle product innovation. The consequences of rushed or ill-prepared rules can produce negative consequences for consumers and small businesses and the financial institutions who are working hard to meet their financial needs.

One particular area of industry and consumer concern is the “ability-to-pay,” or Qualified Mortgage (“QM”) proposal. This may be the most important rule the CFPB issues in its first 18 months, given the significant impact it will have on consumers’ ability to access mortgage credit.

The CFPB needs to address two critical and related issues to ensure this rule will successfully implement the Dodd-Frank requirements. The first is to define a QM loan as broadly as possible with objective standards. Without a broad QM standard, a large portion of borrowers will not qualify for QM loans. They either will not be able to obtain loans or will only be able to obtain them at much higher costs, as lenders will either choose not to make such loans or will impose higher costs as a result of the liability and other risks they will face when making non-QM loans. Vague, subjective standards will

also add legal uncertainty and costs for lenders. They will limit borrowers' access to credit, as lenders will only make loans well within the QM standard and not loans which may be close to the margins. Providing a broad and objective QM standard will be critical to ensure that the highly anticipated recovery in the housing market will be sustainable for years to come.

For similar reasons, the CFPB needs to provide a "safe harbor" in which any litigation or enforcement challenges would only focus on whether the QM standards are met. This is far preferable to the "rebuttable presumption" alternative that the CFPB is also currently considering. With the latter, compliance could be challenged by facts and circumstances that are beyond and unrelated to the QM requirements. A "safe harbor" standard will result in lower risks for lenders, which will allow them to provide safe and affordable loans to a larger group of qualified borrowers.

Over the past year, the Bureau appeared likely to release its QM rule by late spring 2012. Thankfully the CFPB listened to a broad coalition of industry and consumer groups, as well as a strong bi-partisan voice from Capitol Hill, and is taking a deeper look before issuing the final QM rule. At a hearing in the Financial Institutions Subcommittee of the House Financial Services Committee last week, the CFPB's

Deputy Director Raj Date said “we’re going to take the time to get it right”[2] when talking about the QM rule.

CBA is encouraging the CFPB to issue a common-sense regulation which strikes the right balance. If the Bureau misses the mark, consumers could see a significant reduction in the availability of mortgage credit, resulting in a very small window of available products.

The CFPB has devoted a significant amount of time and resources over the last year on its RESPA-TILA initiative to combine certain mortgage disclosures, resulting in the proposal the Bureau issued earlier this month. CBA applauds these efforts to simplify disclosures for consumers, but we are concerned the CFPB has proposed other significant changes to the REPSA-TILA rules that, at best, are not directly related to the new disclosure forms and not specifically required under the Dodd-Frank Act.

Because of the numerous other mortgage rules the CFPB will need to issue to implement the Title 14 provisions of the Dodd-Frank Act, our hope was that this RESPA-TILA proposal would have limited its focus on the new forms and not addressed these other substantive changes at this time. Lenders will already have a huge task

[2] Testimony of CFPB Deputy Director Raj Date on July 19, 2012 before the House Financial Services Subcommittee Financial Institutions and Consumer Credit: http://financialservices.house.gov/UploadedFiles/HHRG-112-BA15-WState-RDate-20120719.pdf

ahead of them as they struggle to comply with all of new rules that have and will be issued under the Dodd-Frank Act. These seemingly unnecessary changes being proposed at this time include a change in the tolerance levels for certain settlement charges, and a change in the definition of "application" which affects the ability of lenders to provide disclosures. We will be carefully reviewing these and all other proposed changes and sharing our comments with the CFPB.

The CFPB's mortgage-related rules and proposals are just one area of concern. The CFPB's final rule on remittances, also known as international funds transfers, will have a significant impact on availability of valuable products and services for consumers. The problem is the implementation of these new restrictions and disclosure requirements for "open networks," commonly employed by banks when transferring funds. Specifically, the final rules require remittance-transfer providers to disclose, prior to the transfer of funds, exchange rates, foreign taxes, and fees charged by non-affiliated entities. Such disclosures are only feasible for remittance transfer providers that use closed networks (e.g. money transmitters such as Western Union) and control the transaction from start to finish. Banks that provide remittance services primarily use open networks for consumer-initiated international funds transfers. While open networks enable consumers to send funds account to account nearly worldwide, they do not enable banks access to the exact exchange rate, third party fees, and foreign taxes required by the CFPB's final rule.

The final remittance rule will have profound effect on the marketplace that could not have been intended by Congress. Institutions may exit the business entirely, since they will be unable to comply with the new requirements. This is to the detriment of those whom this rule was meant to help, namely consumers who need or want to provide financial help for their relatives in other countries. Although we support improved disclosures for all financial services, we believe these issues need to be addressed and that the upcoming February 2013 effective date of this rule needs to be delayed in order to incorporate the necessary changes. We also urge the CFPB to study the impact of the final rule in order to determine its ultimate effect on consumers.

While the CFPB issuance of new regulations has been minimal in this first year as the agency has been growing, it has sent signals to the marketplace of a number of areas it intends to explore, and is already collecting comments about various products. One particular area is prepaid cards.

We strongly support transparency and consumer protections for consumers who use prepaid cards. This is a product that has seen tremendous innovation and development in recent years. It currently serves the needs of roughly 60 million Americans, including many who would not otherwise have access to mainstream financial products.

Prepaid products are readily accessible at a wide variety of locations and can be easily reloaded by the consumer. They have proved to be an attractive, safe and convenient

method of conducting financial transactions at retail locations or on-line, and have opened the door to financial inclusion to many who were previously underbanked. While we support a level playing field to ensure that consumers receive the same protections that are comparable to users of payroll cards, the regulation needs to be tailored to the product and the needs of the consumers who use it. It is important that the regulations adopted by the CFPB not increase cost and decrease availability, without commensurate protections for consumers. For example, periodic statements would be neither beneficial to consumers nor appropriate to the product, as consumers can obtain the information in real time on request, on the Internet or by toll-free number, as they do for payroll cards. The necessity to issue statements would hamper the development of this innovative product, which can provide alternatives to traditional banking services that may be more appropriate and desired by certain consumers. We are providing the CFPB with a detailed comment letter spelling out this and other concerns, to ensure that any regulation of this vibrant product protects consumers with a minimal impact on its availability and cost to consumers.

Student Lending is another area the CFPB has been active, and it recently issued a joint report to Congress with the Department of Education on this market. We were pleased to see the study acknowledge and highlight a number of important and significant changes in the private student loan market since 2008 including improved underwriting, enhanced disclosure for private loans and school certification. Despite

some of the positive items in the report, we think it is important to highlight for this subcommittee two concerns we have with the report to Congress.

First, as part of this study of the student loan market, the CFPB and the Department of Education did not examine the approximately 93% of today's student loan market which now consists of loans made by the federal government. In our view, any study that leaves out 93% of any market is far from complete and cannot provide consumers with an accurate picture.

Second, and more troubling, is the report's recommendation for Congress to "determine whether changes are needed to the treatment of private student loans in bankruptcy proceedings." The main reason given is private loans offer "less flexibility compared to federal loans," yet this lack of flexibility is due in major part to regulatory constraints imposed by prudential regulators. The logical recommendation by the CFPB should rather be to find ways to give private lenders the tools necessary to provide additional flexibility which could help borrowers in certain circumstances. The CFPB should focus first on helping struggling consumers find a workable solution short of bankruptcy, since bankruptcy makes it more difficult and expensive to obtain credit in the future, and has other long-lasting negative consequences.

In addition to issuing new rules, the CFPB also has supervision and enforcement authority over banks and nonbanks. CBA is supportive of the introduction of a level

playing field through the examinations and supervision of nonbanks. While we have yet to see the impact of these changes, if done correctly, it could prove beneficial for consumers and banks alike. At the same time, the supervision of banks by the CFPB has been difficult in some instances. Banks are dealing with a start-up agency, with a new Supervisory Manual and often inexperienced examiners. They are, in some cases, just learning about the banks they are supervising, while they are trying to establish a heightened level of scrutiny.

It has also been widely reported the CFPB's examiners have been accompanied at times by the Bureau's enforcement attorneys, whose presence can chill the open dialogue necessary for effective supervision. We trust the Bureau will rethink this approach as it streamlines the examination process and its teams gain a better understanding of the banking industry.

Uncertainty can be a major speed bump or roadblock for innovation. The unprecedented authority given to the CFPB by the Dodd-Frank Act is most clearly manifest in the authority to regulate and enforce unfair, deceptive and abusive practices (UDAAP). This principle, particularly the relatively untested concept of "abusive" practices leaves a lot of room for speculation about how, and in what circumstances, the Bureau will use it. As this subcommittee is aware, this issue has garnered a lot of attention by the uncertainty it has created. This in combination with other issues

outlined in our testimony cast a shadow on the ability to create new and innovative products and services that are beneficial to consumers.

In closing, a number of questions remain about this new agency. Much of its first year has been focused on hiring staff and tackling a handful of requirements. The coming year will tell us a lot about the Bureau as the rubber meets the road on the ever critical QM rule and several other items which will impact consumers, small businesses and the financial services community for better or worse.

We appreciate the CFPB's mission of protecting consumers as they shop for and use financial products and services. In addition, we believe the Bureau has the responsibility to ensure the cumulative effect of all the new rules it will issue in the coming years will not adversely impact the availability of credit to qualified borrowers, especially at this time as our country struggles to recover from its current economic state. In fact, 1022(b)(2)(A)(i) of the Dodd-Frank Act requires the Bureau to consider "the potential benefits and costs to consumers… including the potential reduction of access by consumers to financial products or services," as it exercises its rulemaking authority.

It is important the Bureau continues to keep the dialogue open with all market participants. This will ensure it has the information necessary to understand how

theoretical rules and regulations will impact consumers once applied in a real world environment. It is important the Bureau takes the right approach as it moves forward and provides enough time to implement any required changes and to coordinate the timing of such changes with other rules. The more certainty the Bureau can give to the financial services community, the better it can innovate and provide the products and services consumers need to meet their financial needs and get this country on the road to recovery.

We would like to thank the Committee for its continued oversight of this new agency. We appreciate the opportunity to share our views, and I look forward to answering any questions you may have.

Steven I. Zeisel
Executive Vice President and General Counsel
Consumer Bankers Association

Steven I. Zeisel is Executive Vice President and General Counsel of the Consumer Bankers Association, where he has been employed since 1991. His practice covers a wide range of legal and regulatory issues associated with areas of consumer financial services. Most recently, he has been actively involved in a range of Consumer Financial Protection Bureau issues, including fair lending, UDAAP, credit cards, retail deposit accounts, and RESPA-TILA reform. He is an author and frequent speaker on issues related to consumer credit regulation, Fair Lending, CRA and Truth in Lending.

Steve was previously Senior Attorney with the Division of Consumer and Community Affairs of the Federal Reserve Board in Washington, DC, where he focused on consumer credit and deposit regulation and the simplification of Truth in Lending's Regulation Z. From 1985-1991, Steve was retail counsel for Equitable Bank, Baltimore, Maryland, and later Maryland National Bank.

Steve is a founding member of the American College of Consumer Financial Services Lawyers. He is also a member of the American Bar Association's Committee on Consumer Financial Services.

Steve received his B.S. from Carleton College, Northfield, Minnesota. He received his J.D. with honors from the University of Maryland School of Law. He is a member of the Maryland Bar.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Steven I. Zeisel

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1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

None

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2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Testifying on behalf of the Consumer Bankers Association. I am Executive Vice President and General Counsel.

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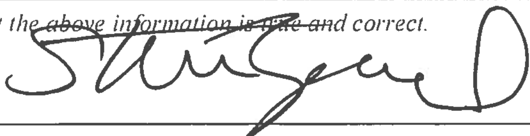
3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.

Signature: 

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