

**Testimony of Mike Calhoun**  
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Before the House Committee on Oversight and Government Reform  
Subcommittee on TARP, Financial Services and  
Bailouts of Public and Private Programs

**Hearing: “Credit Crunch: Is the CFPB Restricting Consumer Access to Credit?”**

July 24, 2012

Good Morning Chairman McHenry, Ranking Member Quigley, and Members of the Subcommittee. Thank you for inviting me to testify at today’s hearing to discuss the Consumer Financial Protection Bureau (CFPB) and access to credit.

I am President of the Center for Responsible Lending (CRL), a nonprofit, nonpartisan 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, primarily through financing safe, affordable home loans and small business loans. In total, Self-Help has provided over \$6 billion of financing to almost 70,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

- **Lack of regulation led to the foreclosure crisis that has destabilized the housing market and mortgage lending:** Federal regulators could have stepped in to curb abusive lending practices in the years leading up to the foreclosure crisis, but this failed to happen. Instead, the private label securitization system bypassed government oversight by bundling an increasing number of subprime and Alt-A mortgages into mortgage-backed securities, and the widespread failure of these mortgages precipitated the still ongoing foreclosure crisis.
- **Dodd-Frank, and the creation of the CFPB, are important reforms to prevent a future housing crisis:** Creation of a consumer protection agency that consolidates the consumer protection responsibilities of the independent banking regulators, along with reforms to the mortgage market and CFPB supervision of larger nonbank participants, are critical reforms that will help prevent a future housing and foreclosure crisis.
- **Dodd-Frank implementation can level the playing field without restricting access to affordable credit:** The consumer protection reforms included in Dodd-Frank will be good for both consumers and the safety and soundness of our consumer finance system. In particular, the Ability to Repay and Qualified Mortgage provisions in the Dodd-Frank Wall Street Reform and Consumer

Protection Act can ensure broad access to credit, help the vast majority of creditworthy borrowers access safe and affordable mortgages, and prevent the kinds of dangerous lending that led to the current foreclosure crisis.

### **1. Lack of regulation led to the foreclosure crisis that has destabilized the housing market and mortgage lending.**

In the years leading up to the still ongoing foreclosure crisis, abusive lending practices went largely unregulated. The private market created a securitization system to package designed-to-fail mortgages into private label mortgage-backed securities, and Federal regulators largely turned a blind eye to these practices. Now, millions of families have lost their homes to foreclosure. Furthermore, the housing market is still struggling to recover, and lenders have responded by restricting access to credit by tightening underwriting standards.

In reviewing the CFPB's role and ongoing mortgage market reforms required by Dodd-Frank, it would be short-sighted to forget that lack of regulatory oversight was an undeniable cause of the housing crisis. Creating a single agency with the mandate of protecting consumer interests and instituting reforms to the mortgage market are common sense responses to this hard-hitting crisis. Reversing course and weakening the CFPB or undoing mortgage lending reforms would be a costly step backward that would pave the road toward another housing-related crisis.

#### **A. Scope of the crisis**

The value of preventing a future crisis is obvious when considering how harmful the current crisis has been for millions of families. In 2006, which pre-dated the worst of the foreclosure crisis, CRL released a report estimating that abusive and predatory lending would lead to approximately 2.2 million foreclosures among subprime mortgages.<sup>1</sup> At the time, our report was denounced by the mortgage industry as absurdly pessimistic.

As we all now know, the system was loaded with much more risk than CRL originally reported. According to a more recent CRL analysis, from early 2007 through the end of 2011, approximately 10.9 million homes had started the foreclosure process.<sup>2</sup> A separate CRL research report titled *Lost Ground* found that, for mortgages originated during the height of the housing bubble (2004-2008), 2.7 million homeowners had already lost their

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<sup>1</sup> See Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Costs to Homeowners*, (December 2006) (available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosure-paper-report-2-17.pdf>).

<sup>2</sup> CRL calculation based on MBA National Delinquency Survey from 2007q1 through 2011q4, scaled to reflect market coverage. As per MBA's claims, we assume 85% market coverage for 2007a1-2010q2 and 88% coverage for 2010q3 and after.

homes to foreclosure by February 2011 and another 3.6 million homeowners were delinquent or in the foreclosure process.<sup>3</sup>

The crisis has also pushed housing values low enough where millions of homeowners are now underwater on their mortgages – in other words, they owe more on their mortgage than the home is worth. For the first quarter of 2012, CoreLogic estimates that 11.4 million homeowners were underwater on their mortgage.<sup>4</sup> All told, homeowners have lost \$7 trillion in home equity as a result of the housing crisis.<sup>5</sup>

Communities across the country have faced hardship from abusive lending and foreclosures, but this crisis has harmed African-American and Latino households at a staggeringly disproportionate rate. For example, the Pew Research Center found that from 2005-2009 the median wealth of Hispanic households dropped by 66% and that of African-American households fell by 53%, while that of white households went down by 16%.<sup>6</sup> This report concluded that “[p]lummeling house values were the principal cause of the recent erosion in household wealth among all groups.”<sup>7</sup> CRL’s research also shows that African-American and Hispanic families have borne a disproportionate share of the harm from the foreclosure crisis. Although the majority of foreclosures have affected white borrowers, *Lost Ground* confirms that African-American and Latino borrowers have faced a disproportionate number of foreclosures and delinquencies than white borrowers within every income range.<sup>8</sup> These disproportionate outcomes are not surprising given that CRL’s research also shows that African-American and Latino borrowers were much more likely to receive mortgages with harmful features. For example, African-American and Latino borrowers with FICO scores above 660 were *three times* as likely to have a higher interest rate mortgage than white borrowers in the same credit range.<sup>9</sup>

### **B. Abusive lending practices thrived in private label mortgage-backed securities market with scant regulation**

These hardships and economic costs were preventable, yet Federal regulators sat on the sidelines during the years leading up to the foreclosure crisis. As bad lending was beginning to infect the banking system, CRL warned in 2004 that “[a]busive practices may well be profitable in the short term, but are ticking time bombs waiting to explode

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<sup>3</sup> See Debbie Gruenstein Bocian, Wei Li, and Roberto G. Quercia, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*, (November 2011) (available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf>).

<sup>4</sup> See CoreLogic, *CoreLogic Reports Negative Equity Decreases in First Quarter of 2012*, (July 12, 2012) available at [http://www.corelogic.com/about-us/researchtrends/asset\\_upload\\_file912\\_15196.pdf](http://www.corelogic.com/about-us/researchtrends/asset_upload_file912_15196.pdf).

<sup>5</sup> See Nick Timiraos and Ruth Simon, *Borrowers Face Big Delays in Refinancing Mortgages*, *The Wall Street Journal* (May 9, 2012).

<sup>6</sup> See Paul Taylor, Rakesh Kochhar, Richard Fry, Gabriel Velasco, and Seth Motel, *Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics*, Pew Research Center at 1 (July 26, 2011) (available at [http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report\\_7-26-11\\_FINAL.pdf](http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf)).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Supra* note 3, at 19-20.

<sup>9</sup> *Id.* at 21.

the safety and soundness of national banks in the years ahead.”<sup>10</sup> Instead of reigning in the abusive and predatory lending taking place throughout the private market, regulators failed to act.

This regulatory vacuum allowed the private market to engage in its experiment in widespread mortgage lending without governmental oversight. Subprime abuses first developed in the nonbank sector with large subprime lenders, which had no federal regulator to mind the store. The same was true with mortgage brokers and servicers. A race to the bottom ensued, where bank practices progressively deteriorated as banks struggled to compete. This experiment resulted in a dominant private label securitization (PLS) machine that churned out securities filled with designed-to-fail subprime and Alt-A mortgages.

The mortgages that moved through the PLS system had harmful features that made borrowers much more likely to default. CRL’s *Lost Ground* 2011 report shows that for mortgages originated between 2004 and 2008, loans originated by a mortgage broker, containing hybrid or option adjustable rate mortgages (ARMs), having prepayment penalties, and featuring high interest rates (i.e., subprime loans) were all significantly more likely to be seriously delinquent or foreclosed upon than a 30-year fixed-rate mortgage without a prepayment penalty.<sup>11</sup>

These increased foreclosure rates are not surprising. The increasing prevalence of mortgage brokers led many homeowners to pay increased interest rates and fees as a result of yield spread premiums (YSPs), which provided kick-backs to brokers for steering borrowers into mortgages with higher interest rates than the borrowers qualified for.<sup>12</sup> Products like 2/28s where starter interest rates reset after the first two years built in payment shock when increased interest rates led to higher monthly payments. Additionally, loans that allowed temporary interest-only payments or negative amortization where the principal balance actually increased during the loan often resulted in payment shock for borrowers who were not prepared for their monthly payment amounts to increase..Mortgages with no escrow accounts also left many homeowners unprepared for tax and insurance bills. Additionally, many borrowers facing payment shocks also faced prepayment penalties when trying to exit into a new mortgage or to sell the property.

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<sup>10</sup> See Testimony of Martin Eakes, Chief Executive Officer, Center for Responsible Lending, Before the Senate Banking Committee, at 31 (April 7, 2004) (available at [http://www.responsiblelending.org/mortgage-lending/policy-legislation/congress/20040407\\_testimony\\_eakes\\_preemption.pdf](http://www.responsiblelending.org/mortgage-lending/policy-legislation/congress/20040407_testimony_eakes_preemption.pdf)).

<sup>11</sup> *Supra* note 3, at 4.

<sup>12</sup> CRL released a study in 2008 showing that brokered loans, when compared to direct lender loans, cost subprime borrowers additional interest payments ranging from \$17,000 to \$43,000 per \$100,000 borrowed over the scheduled life of the loan. Even over a fairly typical four-year loan term of an average-sized loan, the subprime consumer paid over \$5,000 more for brokered loans. See Keith Ernst, Debbie Bocian & Wei Li, *Steered Wrong: Brokers, Borrowers, and Subprime Loans*, at 3, 15 (April 8, 2008) (available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf>).

On top of these harmful mortgage features, underwriting practices deteriorated during this subprime and Alt-A lending spree. First, the practice of failing to document a borrower's income and assets in so-called low-doc or no-doc loans was prevalent in the subprime and Alt-A market. For example, low-doc loans comprised 52 percent of Alt-A originations in April 2004 and rose to 78 percent at the end of 2006.<sup>13</sup> By 2006, no-doc or low-doc loans made up 27% of all mortgages.<sup>14</sup> Second, many lenders failed to determine whether a borrower had an actual ability to repay their mortgage. Proper underwriting is particularly important for mortgages with resetting interest rates or negative amortization or interest-only payments (or all of the above) to ensure that borrowers can afford the larger monthly payments when they kick in down the road. However, for many mortgage originators, this straightforward underwriting never happened.

Market participants readily admit that they were motivated by the increased fees offered by Wall Street firms in return for riskier loans. After filing for bankruptcy, the CEO of one mortgage lender explained it this way to the *New York Times*, "The market is paying me to do a no-income-verification loan more than it is paying me to do the full documentation loans... What would you do?"<sup>15</sup> Beginning in 2000, subprime lender New Century implemented a plan that "concentrated on 'originating loans with characteristics for which 'whole loan buyers' [i.e., Wall Street firms] will pay a high premium,'" and increased its sale of loans from \$3.1 billion in 2000 to \$20.8 billion in 2003.<sup>16</sup>

These unsustainable mortgages helped expand the housing bubble and primed the financial system for the 2008 financial crisis. Leading up to the foreclosure crisis there was a substantial and rapid increase in the volume and share of non-prime mortgage originations. As the chart below illustrates, the growth in the PLS market was heavily driven by subprime loans, which increased from \$17.6 billion to \$464 billion between 1995 and 2005, and Alt-A loans, which though virtually non-existent in 1995, reached \$333.6 billion by 2005.

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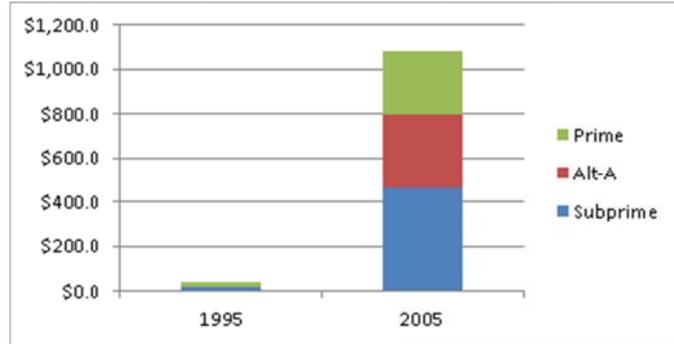
<sup>13</sup> Rajdeep Sengupta, *Alt-A: The Forgotten Segment of the Mortgage Market*, Federal Reserve Bank of St. Louis Review, January/February 2010, 92(1), pp. 55-71 at 60 (available at <http://research.stlouisfed.org/publications/review/10/01/Sengupta.pdf>).

<sup>14</sup> See Financial Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* at 165 (Jan. 2011) [hereinafter *FCIC Report*], available at [http://fcic-static.law.stanford.edu/cdn\\_media/fcic-reports/fcic\\_final\\_report\\_full.pdf](http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

<sup>15</sup> Vikas Bajaj & Christine Haughney, "Tremors at the Door: More People with Weak Credit Are Defaulting on Mortgages," *New York Times* (Jan. 26, 2007), (available at <http://www.nytimes.com/2007/01/26/business/26mortgage.html>).

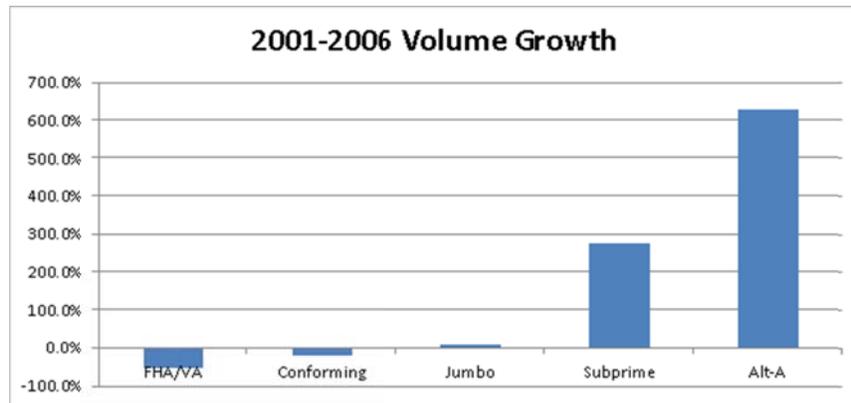
<sup>16</sup> *FCIC Report* at 89 (citing *In re: New Century TRS Holdings, Chapter 11*, Case No. 07-10416 (KJC) (Bankr. D.Del. February 29, 2008) (Final Report of Michael J. Missal, Bankruptcy Court Examiner at 42)).

## Non-Agency Issuance of Mortgage Backed Securities (in \$billions)

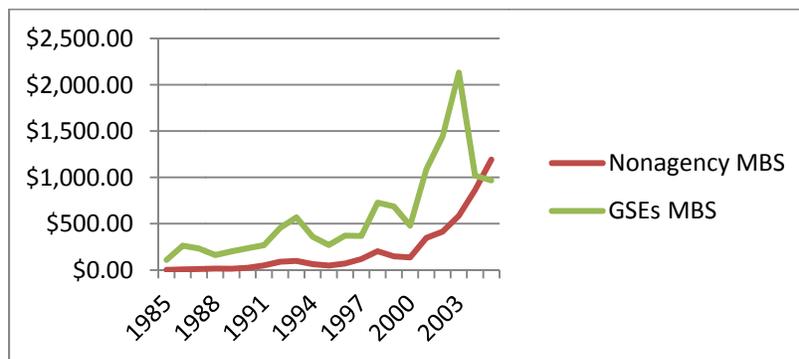


Source: CRL calculations based on data from [http://www.fdic.gov/bank/analytical/regional/ro20063q/na/2006\\_fall01\\_chart02.html](http://www.fdic.gov/bank/analytical/regional/ro20063q/na/2006_fall01_chart02.html)

Additionally, as the subprime and Alt-A markets rapidly grew in size from 2001-2006, the volume of conforming (i.e., loans purchased by Fannie Mae or Freddie Mac) and government-backed mortgages actually decreased.



Source: CRL calculations of data from Inside Mortgage Finance's 2008 Mortgage Market Statistical Annual, Volume 1.



Source: CRL calculations based on data from [http://www.fdic.gov/bank/analytical/regional/ro20063q/na/2006\\_fall01\\_chart02.html](http://www.fdic.gov/bank/analytical/regional/ro20063q/na/2006_fall01_chart02.html)

The subprime and Alt-A originations bundled into PLS failed at much greater rates than GSE-backed mortgages – even the ill-advised GSE Alt-A mortgages that have caused their greatest losses. While the GSEs generally required strict underwriting (until they followed the private market in to the no-doc fray by purchasing Alt-A loans), and used standardized forms, documents and financial models to provide stability and liquidity in the market, subprime and Alt-A originators, backed by private securitizations, did not have such standards or homogeneity. And, private label securitization was responsible for 42% of all serious delinquencies in 2009, despite accounting for only 13% of all outstanding loans. In contrast, Fannie Mae and Freddie Mac, which had a combined share of 57% of loans outstanding, accounted for only 22% of serious delinquencies.<sup>17</sup>

As these failures demonstrate, the Federal regulatory system did not rise to the challenge of preventing abuses in the mortgage market. Not only did individual regulators ignore risky lending by their institutions, but the system as a whole also lacked the tools to survey the marketplace and target growing practices harming consumers. Instead of protecting consumers and bank safety and soundness, lax regulation led to a foreclosure crisis that has harmed homeowners, taxpayers and the economy.

## **2. Dodd-Frank, and the creation of the CFPB, are important reforms to prevent a future housing crisis.**

It was in the context of these massive federal regulatory and private market failures that Congress enacted Dodd-Frank, which included the creation of an independent CFPB. By establishing the CFPB, Congress wisely consolidated the consumer protection functions of the federal prudential regulators into an independent agency with a mission to protect borrowers from abusive financial practices. These consolidated consumer protection responsibilities include rule-writing authority as well as supervision and enforcement authority. The CFPB's supervisory authority extends to depositories with more than \$10 billion in assets, payday lenders, mortgage-related companies, private student lenders, and other large non-bank entities.

Dodd-Frank also includes basic reforms to ensure that the mortgage market remains focused on sound underwriting and sustainable lending, and the law charges the CFPB with implementing many of these reforms. As a result of these reforms, loan originators such as mortgage brokers can no longer receive more compensation for putting borrowers in higher rate loans than they qualify for – compensation cannot vary according to the terms and conditions of the loan (except for principal balance). Prepayment penalties that lock borrowers into bad loans are significantly restricted. No-doc lending is prohibited. Escrows of taxes and insurance are required for higher interest rate loans (except for rural community banks). Up-front fees are limited to 5 percent or the loan becomes a disfavored HOEPA loan (though interest rates can rise to 6.5 percent over conventional

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<sup>17</sup> James B. Lockhart, *FHFA's First Anniversary and Challenges Ahead*, Speech before the National Press Club (July 30, 2009) (available online at <http://www.fhfa.gov/webfiles/14715/FHFA1stAnnSpeechandPPT73009.pdf> ).

rates without the loan hitting these limits). Loans must be underwritten to the fully indexed rate.

One of the mortgage market reforms in Dodd-Frank is a straightforward and good one. Title XIV requires lenders to make a reasonable and good faith determination on whether the borrower has an ability to repay the offered mortgage. Said a different way, this section requires lenders to do the basic underwriting that so often failed to happen in the years leading up to the crisis. In making its determination on whether the borrower has an ability to make the monthly payments, this section requires the lender to look at a fully amortizing payment schedule.

It's important to highlight a few of the things that the Ability-to-Repay section does not require lenders to do. First, they need not predict the future, and need only determine whether at the time the loan is consummated the borrower has an ability to repay and make the monthly payments. Second, they are not mandated to offer loans once an ability to repay determination has been completed. The Ability-to-Repay requirement does not prevent lenders from also – and separately – considering whether borrowers have a willingness or propensity to repay a mortgage. In other words, the ability to repay factor is just one part of a lender's underwriting decision-making process.

Dodd-Frank also establishes a category of mortgages called Qualified Mortgages (QM), which is a default standard that lenders can use to demonstrate that the borrower has an ability to repay the mortgage. This designation has benefits for lenders and borrowers. For lenders, it makes it significantly easier to demonstrate compliance with their ability-to-repay determination and substantially reduces the risk of investor buy-back claims and borrower litigation. Reduced exposure to buy-back claims is a substantial lender benefit that should not be underestimated. For borrowers, the QM category means they can avoid a list of risky mortgage features that are either prohibited or restricted, including interest only loans, loans with negative amortization, and balloon payment loans. Additionally, lenders must underwrite all ARMs by looking at the maximum interest rate that could apply during the first five years of the mortgage and fully amortize the remaining payments. The allowable points and fees that lenders can charge on QM loans are also limited to 3 percent.

In addition to these mortgage lending reforms, Dodd-Frank also corrects the regulatory failure of ignoring risks to consumers in the nonbanking sector. This is addressed in the CFPB's authority to supervise so-called "larger participants" in the nonbank sector who offer financial products and services to consumers. Dodd-Frank provides the CFPB with rulemaking authority to define "larger participants," requires the CFPB to consult with the Federal Trade Commission prior to finalizing these rulemakings, and to issue the first of these rulemakings within one-year of the transfer date. This reform will provide businesses with incentives to prioritize consumer protection and will ensure that Federal regulators are able to prevent harmful practices.

### **3. Dodd-Frank implementation can level the playing field without restricting access to affordable credit.**

The consumer protections included in Dodd-Frank reforms will result in a healthier financial system where prices are transparent and lenders play by the same rules. This is not only better for consumers, but it also benefits those businesses operating fairly by creating a level playing field.

Other regulatory reforms – such as the CARD Act and state predatory lending laws – demonstrate that reforms benefiting consumers do not result in restricted access to credit. In assessing the CARD Act, which became law in 2009 and creates more transparent and standardized credit card pricing, CRL analysis shows that access to credit through credit cards remained stable once accounting for the economic downturn.<sup>18</sup> Furthermore, this research shows that the new rules did not cause prices to go up, and that pricing, in fact, became more transparent. Following implementation of the CARD Act in 2010, CRL research found that stated credit card rates now more accurately reflect actual rates, providing consumers with a much better picture of their true costs.<sup>19</sup> In addition, CRL research has shown that cracking down on unfair and deceptive practices benefits financial institutions and the financial system – companies that engaged in credit card practices now outlawed by the CARD Act had greater losses during the downturn than those companies avoiding these practices.<sup>20</sup>

Additionally, state anti-predatory lending laws also have not led to restricted access to credit. State anti-predatory lending laws have the aim of reducing the number of harmful loans with abusive terms, and CRL's research in 2006 shows that borrowers still had access to subprime mortgages in states with these laws on the books.<sup>21</sup> At the same time, many states with these laws were successful in reducing the number of predatory loans with harmful terms, and borrowers did not pay significantly higher interest rates in these states. In fact, eight states with anti-predatory lending laws had subprime interest rates that were statistically equivalent to the rates in other states, and 19 states had lower interest rates.<sup>22</sup>

Similar to these two examples, the CFPB's rulemaking on the Ability-to-Repay and Qualified Mortgage provisions in Dodd-Frank do not need to restrict access to credit. These provisions can be implemented so that homeowners have broad access to 30-year, fixed-rate (or long-term ARM fully-amortizing) loans with limited fees instead of

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<sup>18</sup> Joshua M. Frank, *Credit Card Clarity: CARD Act Reform Works*, (February 16, 2011) (available at <http://www.responsiblelending.org/credit-cards/research-analysis/FinalCRL-CARD-Clarity-Report2-16-11.pdf>).

<sup>19</sup> *Id.*

<sup>20</sup> Joshua M. Frank, *Predatory Credit Card Lending: Unsafe, Unsound for Consumers and Companies* (May 2012) (available at <http://www.responsiblelending.org/credit-cards/research-analysis/Unsafe-Unsound-Report-May-2012.pdf>).

<sup>21</sup> See Wei Li and Keith Ernst, *The Best Value in the Subprime Market: State Predatory Lending Reforms*, (February 23, 2006) available at [http://www.responsiblelending.org/mortgage-lending/research-analysis/rr010-State\\_Effects-0206.pdf](http://www.responsiblelending.org/mortgage-lending/research-analysis/rr010-State_Effects-0206.pdf).

<sup>22</sup> *Id.*

products with high fees and deceptive terms that borrowers cannot afford. Additionally, there is significant consensus on the principles the CFPB should follow in completing this rulemaking.

Earlier this year, CRL submitted joint recommendations – along with The Clearing House Association<sup>23</sup>, which is owned by banks comprising a significant share of the mortgage market, the Consumer Federation of America, and The Leadership Conference on Civil and Human Rights – to the CFPB on designing this rulemaking. As reflected in these joint recommendations, there are three aspects to how CRL believes that Qualified Mortgage should be defined:

- **Qualified Mortgage should be broadly defined:** We recommend a broad definition that protects against shrinking the conventional market further, and allows room for the conventional market to appropriately expand beyond current tightened lending standards.
- **Qualified Mortgage should include the use of clear, bright line standards:** The Qualified Mortgage definition should also use clear, bright line standards instead of guiding principles that provide less clarity about whether an individual mortgage should count as a Qualified Mortgage. Bright line standards will provide easy-to-understand rules of the game so everyone will know if a loan is a QM or not. This is good for both lenders and borrowers.
- **Rebuttable presumption standard, not a lender safe harbor:** A broad Qualified Mortgage definition using clear, bright line standards should also have a rebuttable presumption and not a safe harbor. Putting in place a rebuttable presumption hurdle for borrower litigation gives lenders a considerable litigation advantage but allows a borrower to bring a case when there is a rare, starkly unaffordable QM loan and strong evidence available.

In addition to using these inter-related recommendations for the QM rulemaking, CRL also supports using the same standards in defining the Qualified Residential Mortgage (QRM) definition. In other words, the same definition should apply for both QM and QRM. The QRM statute says that it can be no broader than QM, but it does not need to be narrower either. This provision in Dodd-Frank requires originators to hold on to a percentage of the risk for mortgages they originate unless those mortgages meet the QRM definition, and this is a joint rulemaking undertaken by agencies that does not include the CFPB. Using the same definitions in defining both QM and QRM will make compliance easier for lenders, will not restrict access to affordable credit and will prevent the re-creation of the dual credit market that existed in the years leading up the foreclosure crisis. Most importantly, we do not believe that there should be a government-mandated

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<sup>23</sup> The Clearing House Owner Banks are: Banco Santander, Bank of America, The Bank of New York Mellon, BB&T, Capital One, Citibank, Comerica, Deutsche Bank, HSBC, JPMorgan Chase, KeyBank, PNC, RBS Citizens, UBS, U.S. Bank, Union Bank, and Wells Fargo.

downpayment requirement as part of the QRM definition.<sup>24</sup>

The CFPB's supervisory authority for larger participants in the nonbank sector will also ensure that consumers have affordable and improved access to credit. Last week, under its "largest participants" authority, the CFPB finalized a rule that allows it to supervise the largest credit reporting agencies that track credit histories and impact a substantial number of lending decisions. Specifically, this final rule will result in the CFPB supervision of credit reporting agencies that exceed \$7 million in revenue per year. The positive impact this can have on consumer access to credit is obvious, since these entities have never been supervised at the Federal level, notwithstanding their importance to millions of Americans every day.

Additionally, the CFPB's recent enforcement settlement with Capital One shows the benefits of having a consolidated consumer protection entity pro-actively looking out for consumer interests. This settlement pertained to the CFPB's investigation of Capital One's marketing to consumers for credit card-related products. As part of the settlement, Capital One agreed to pay \$25 million toward the CFPB's Civil Penalty Fund and approximately \$140 million to about 2 million customers.

Thank you for the opportunity to testify today, and I look forward to answering your questions.

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<sup>24</sup> See Roberto G. Quercia, UNC Center for Community Capital, Lei Ding, Wayne State University, Carolina Reid, Center for Responsible Lending, *Balancing Risk and Access: Underwriting Standards for Qualified Residential Mortgages* (March 5, 2012) (available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/Underwriting-Standards-for-Qualified-Residential-Mortgages.pdf>).