Good afternoon. I'm Brad Miller. I served for a decade as a member of the House and left at the beginning of the year. I am now of counsel to the law firm of Grais & Ellsworth LLP and a Senior Fellow at the Center for American Progress. The views I express today are my own, although generally consistent with the views of CAP. I certainly am not representing a client. I am advised by House ethics that my testimony today does not constitute prohibited lobbying within my one-year cooling off period.

The consolidation of the banking industry has largely reduced the role of community banks to a niche in the economy, but it is an important niche. According to the FDIC, the number of federally insured banks fell from 17,901 in 1984 to 7,357 in 2011. During the same period, bank assets held by community banks declined from 38 percent to 14 percent. Most of the growth in bigger banks has been in American cities, while community banks still hold a majority of deposits in rural and small town America. In one out of five rural and "micropolitan" counties, the only physical banking offices are those of community banks. Community banks are locally owned and controlled, they gather deposits locally, and they make lending decisions locally. As of 2011, 46 percent of the banking industry's small loans to farms and businesses were by community banks. According to the GAO, about 20 percent of community bank lending is small business lending, as opposed to about five percent for bigger banks.

Any given community bank is small enough to fail, and no community bank is going to get into trouble by going "long in belly tranches" or trying to "monetize volatility" in a "synthetic credit portfolio," whatever that means. In the past, however, a lot of small institutions have gotten into about the same kind of trouble for about the same reason at about the same time, with severe economic consequences. The problem wasn't too big to fail, but too many to fail. There were 9,000 bank failures in the nineteen-thirties, the Great Depression. And in the Savings and Loan crisis in the 1980s, almost a quarter of all thrifts failed, 747 out of 3,234. Even with the concentration in banking we now have, a similar extinction event for community banks would do great economic damage, especially for small businesses and in small town and rural America.

Congress and regulators should recognize real differences between community banks and too-big-to-fail institutions; avoid needless compliance costs; and because compliance costs are largely a fixed cost rather than a variable cost, avoid giving large institutions an unfair competitive advantage. Allowing examination of smaller banks for CFPB compliance by existing safety-and-soundness regulators, rather than having two disruptive examinations, is a sensible recognition of the difference between community banks and bigger banks. I got some grief at the time from some of my usual allies on financial reform for leading that compromise, but I thought at the time and still think that different compliance examination rules made sense.

Similarly, the CFPB created a sensible, limited exemption from the "qualified mortgage" or "QM" rule for portfolio mortgages by community banks and credit unions with less than $2 billion in assets that make fewer than 500 first-lien mortgages a year. If a community bank assumes all of the risk of default, then there will be strong incentive to decide correctly if the borrower has the ability to repay without a debt-to-income requirement.

The Dodd-Frank Act was the most significant set of financial reforms since the New Deal. Many of the provisions are aimed at large, complex, systemically important financial institutions, and will not affect community banks at all. Other provisions will affect community banks. A GAO study last fall concluded that some provisions will help community banks, such as the supervision by the CFPB of certain nonbank lenders that competed unfairly with responsible community banks in the past, and changes to the calculation of deposit insurance premiums. Other provisions will inevitably result in some compliance costs for community banks, the GAO found, but how much will depend on the implementing regulations. Regulators should certainly make sensible exceptions, like the CFPB's exception from the QM rule for some portfolio mortgages by community banks. The regulators should also recognize, however, than a patchwork of different rules for different lenders will inevitably be confusing to consumers, and is contrary to the intent that some rules should apply to all lenders.

Other provisions should apply equally to community banks. Community bank lending may be more "relationship lending" than lending by bigger banks, but no one walks into a community bank with a legal pad or a lap top and says "I need a loan. Do you want to be the party of the first part, or do you want me to be." Community bank lending may be more tailored to the borrower, but no one's lending is that tailored. All lenders use standard forms, and no lender's standard forms should include predatory, equity-stripping provisions like what we saw in the last decade. Community banks were generally not guilty of some of the worst abuses of the last decade, and community banks remain more constrained by reputational concerns than are the biggest banks. But community bankers are not incapable of bad conduct. In the movie "It's A Wonderful Life," George Bailey was a community banker, but so was Mr. Potter.

There is litigation pending now against a New York community bank for mortgages the banks made to homeowners with lots of equity but problem credit. The mortgages had an interest rate that adjusted to almost ten percent. If a homeowner was late with a payment, the rate went to 18 percent and stayed at 18 percent until the homeowner got completely caught up. Since an interest rate of 18 percent almost doubled the monthly payment, many homeowners found it hard to catch up. Almost have of the 5,000 homeowners who got the mortgages are losing their home.

The consolidation in the banking industry was not the result of onerous regulation of community banks, but of the deregulation of big banks by submissive politicians and regulators. More of the consolidation was the result of bigger banks buying smaller banks after interstate banking restrictions were relaxed than was the result of small bank failures.

Much of the advantage community banks have had in the past is their knowledge of local laws. The largest banks have succeeded in excusing themselves from many local or states laws they find inconvenient. Legislation introduced last week would exempt mortgages even from the requirements of state land title laws.

There are several ways Congress could help community banks compete with the biggest banks. For instance, Congress could limit ATM charges that are unrelated to the cost of transactions. Fees for using an ATM that is not your bank's own may be four or five dollars, which is pretty stiff if you just need

$40.00 in cash. ATM fees are unjustifiably profitable, and are a barrier for community banks in competing for customers. There's a Bank of America cash machine just two blocks from here on Pennsylvania Avenue. Good luck with finding one for Prosperity Bank.

Most important, Congress should end the implicit subsidy for borrowing by too-big-to-fail banks. The ICBA has joined the chorus calling for ending too-big-to-fail because of the unfair competitive advantage too-big-to-fail banks have over community banks. Congress should pay attention.

Thank you for this opportunity to testify.

Center for American Progress

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Expertise: *Housing finance, foreclosure prevention, predatory lending, consumer financial protection, financial regulation, congressional oversight, separation of powers*

Brad Miller is a Senior Fellow at American Progress and counsel to the law firm of Grais & Ellsworth LLP. He served for a decade in the U.S. House of Representatives and eight years in the North Carolina legislature.

As a member of the House Financial Services Committee, Brad led efforts to enact financial reform legislation, including legislation to prohibit predatory mortgage lending and create the Consumer Financial Protection Bureau, or CFPB. He worked with reform advocates to build a coalition of support, including the creation of Americans for Financial Reform, which is composed of labor unions, civil rights organizations, consumer organizations, and other progressive advocacy groups. He led efforts to address the foreclosure crisis and reform the private mortgage securitization market.

As chairman of the Investigations and Oversight Subcommittee of the House Science Committee, Brad led investigations into contamination by formaldehyde fumes of trailers that the Federal Emergency Management Agency provided families displaced by Hurricane Katrina; contamination of drinking water at Camp Lejeune, North Carolina, by various chemicals over a 30-year period; delays and cost overruns for polar-orbiting weather satellites; and delay and obstruction of assessments of public health effects of chemical exposure under the Environmental Protection Agency's Integrated Risk Information System, or IRIS. He worked with the House Democratic leadership to develop the legal strategy to enforce subpoenas issued to the Bush administration concerning the firing of U.S. Attorneys. He introduced legislation to require that the Department of Justice provide Congress with opinions of the Office of Legal Counsel, and to allow Congress to require a special prosecutor for criminal contempt of Congress charges against executive branch officials.

Brad received his bachelor's degree from the University of North Carolina at Chapel Hill, a master's degree from the London School of Economics, and a law degree from Columbia University. He served as law clerk to Judge J. Dickson Phillips Jr. of the U.S. Fourth Circuit Court of Appeals.

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

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1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2010. Include the source and amount of each grant or contract.

No.

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

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