Written Testimony of Richard Cordray

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Before the House Oversight and Government Reform Subcommittee on

TARP, Financial Services, and Bailouts of Public and Private Programs

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Chairman McHenry, Ranking Member Quigley, and Members of the Subcommittee: thank you for inviting me here today to talk about the importance of credit availability. We are always happy to talk with Congress about the work we are doing at the Consumer Financial Protection Bureau. Today is our 23rd appearance testifying before the Congress.

The Bureau understands the importance of the availability of credit to consumers. Credit is the lifeblood of a modern economy. Mortgages allow people to buy a home and spread the payments over many years. Student loans give people with talent and ambition access to a higher education. Credit cards give consumers immediate and convenient access to money when they need it. These products can help people achieve their dreams.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Bureau to use its authority to achieve two broad purposes, among others. First, we are to ensure that all consumers have access to markets for consumer financial products and services. Second, we are to ensure that these markets are fair, transparent, and competitive.

Helping consumers in their financial lives and preserving their access to credit are critical parts of our mission to protect consumers. They are both important goals, and we do not pursue one at the expense of the other.

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Concern for credit availability is foremost in our mind as we undertake the task Congress gave us to develop rules to implement statutory reforms in the residential mortgage market. We are mindful of the fact that many consumers today are shut out of that market.

And let us remember how we got here. Fueled by expanding mortgage lending, consumer credit was growing by more than 10 percent year-over-year on average leading up to 2008.[1]

This growth of credit availability brought an illusion of gain, and a reality of deep losses. The largest financial crisis since the Great Depression cut deeply into Americans' wealth and access to credit. It devastated the private mortgage market and caused investors to flee lending markets more broadly. Without proper safeguards, transparency, and oversight, credit markets caused great damage to the economy and individual Americans.

Consumer credit markets are improving. Most consumer lending markets have recently shown some signs of growth. Credit card originations are growing at a modest pace. We are seeing growth in auto lending and private student lending has stabilized after a rapid decline. But

[1] FRBNY Quarterly Report on Household Debt and Credit, May 2012

mortgage lending standards are still quite tight, and it appears that many creditworthy borrowers cannot buy homes.

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While these challenges arose long before the Bureau was created, it is now our role to put in place common-sense rules of the road to help set the stage for the return of a stable, fair, and transparent private mortgage market.

Over the next six months, we will be proposing and finalizing sound rules, most of them required by Congress, to address each stage of the mortgage process, from application to origination to servicing to termination. Clear rules of the road will support responsible decision-making and rebuild consumer and investor confidence in the system.

Some Americans may fear homeownership because of the devastation they have seen, stemming, in part, from bad lending practices. We believe that consumers will have more confidence after more robust rules are in place. And we are keenly aware that potential investors are waiting to see the precise shape our rules take. That is why we are working to put in place rules by the deadlines that Congress set. We are committed to helping provide the mortgage market with the clarity it is seeking.

We just released our proposal to improve disclosures and help consumers better understand mortgage terms, so that they can make more informed decisions. The disclosures are aimed at helping consumers shop and save. The proposal lays out our preliminary assessment that better disclosure will not impose unnecessary burdens on lenders or undermine credit availability. In fact, maintaining two separate federal mortgage disclosures has added burdens and complexities that have likely raised the cost of credit unnecessarily. We expect that integrating and simplifying these disclosures may reduce the long-term cost of originating mortgages, and these savings may be passed on to consumers, thereby making credit more affordable.

Other rules we will propose soon are intended to ensure basic fairness in mortgage servicing. For example, servicers will have to consider and respond to borrowers' allegations of error, and contact troubled borrowers early with information about their options.

Later this year, we will finalize rules to implement a new statutory requirement that, before providing a mortgage loan, lenders must make a good faith and reasonable determination that borrowers actually have the ability to repay the loan. Lenders will have to verify and document repayment ability.

In implementing this statute, we are seeking to fulfill its purpose of ensuring that consumers are not sold mortgages they cannot afford. And we want equally for consumers who can afford to repay loans to be able to find those loans in the market. We will seek to define those loans known as "qualified mortgages" carefully so that as the market stabilizes, every segment of the market is competitive and has the benefit of sufficient investor appetite to ensure liquidity. And critically, we expect lenders to continue making prudent, profitable loans in non-traditional segments – like loans to self-employed borrowers. We will strive to craft a sensible rule that works for the market throughout the credit cycle, a rule that is attentive to just how fragile and risk-averse the market is right now.

We recognize that implementing an array of mortgage reforms is challenging for industry. We will seek to coordinate these rules to minimize any unnecessary burdens. For example, we will decide effective dates by taking into account the relationships among these rules.

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In each of these rulemakings, we explicitly consider the potential effect of a rule on access to credit. The Dodd-Frank Act specifically requires us to do that.

The rulemakings we are engaged in now are primarily to implement statutory directives. Some of these statutes grant the Bureau discretionary authority within the area Congress directed us to regulate. For example, the statute grants us authority to define the phrase "qualified mortgage." As we consider potential alternative approaches to exercising our discretionary authority, we consider the benefits and costs of these alternatives for consumers and providers, including whether what kinds of effects different alternatives would have on access to consumer financial products and services.

Before we propose a rule, a team of attorneys, economists, and market experts evaluates alternatives in terms of their potential consequences for consumers, providers, and the market. This team conducts quantitative and qualitative research. They obtain and analyze data to the extent data become available to us within statutory deadlines. They also review relevant studies. They consult extensively with industry experts, consumer advocates, other regulators, and stakeholders from small and large firms, banks and non-banks. Industry veterans on our staff help us understand how the market really works and how a rule might affect consumers and providers.

Small-business review panels help us gather input from small providers in particular, such as community banks and credit unions. The Bureau has held three such panels with the Small Business Administration Chief Counsel for Advocacy and the Office of Management and Budget. In each case, the panel spent several hours with small providers discussing potential impacts of a rule and obtained extensive input. These panels are helping the Bureau to identify areas of particular concern to small providers and potential alternatives and mitigation measures that may provide opportunities to achieve statutory objectives with less cost to small providers and their customers.

Staff uses this quantitative and qualitative research to recommend how the Bureau should exercise the constrained discretion that Congress has left to us. Then we make decisions about major contours of the proposed rule, taking into account its potential effects on providers and consumers in light of the input they have provided to us.

The Bureau's proposals explain how we have considered these effects. The proposal contains a preliminary economic analysis of the impact of the rule on providers and consumers. The Bureau also asks the public to identify additional data and provide feedback on our reasoning. The transparency of this process is evident in our recent proposals to reform federal mortgage disclosures and expand protections for high-cost loans. These proposals contain very detailed analyses of benefits and costs.

The Bureau has another opportunity before finalizing the rule to consider ways to achieve statutory objectives at less cost to consumers and providers. To develop a final rule, we consider the comments on the proposed rule and the preliminary economic analysis. Staff also evaluates any additional data they have obtained. Staff reevaluates the proposal in light of new information and recommends any changes to the proposal that are warranted in light of the new information. An economist conducts a final regulatory analysis, taking into account any significant new information that surfaces in the public comments.

Our work on the "ability to pay" mortgage rule illustrates how seriously we take our obligation to consider effects on credit availability. The public comment file reflects many meetings we have been holding with financial institutions, trade associations, consumer groups, and community groups. We plan further consultations with small providers. We have also secured a major data set of mortgage loans, and we are pursuing additional data.

We recently reopened the comment period to be as transparent as we can about the data we are using and to see if there are more data that lenders or others will share with us. With these additional efforts, we hope to muster the best available evidence to help us decide how to implement the statute in a manner that will both prevent unaffordable loans and preserve credit access.

Credit availability is also a consideration in our ongoing efforts to streamline the body of regulations we inherited. We are examining the ability-to-pay rule of the CARD Act to determine whether the rule properly balances repayment ability with credit access for spouses who are not currently employed. We will apply this same consideration to other rules, where relevant, as we proceed with our streamlining efforts.

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Mr. Chairman, thank you for the opportunity to testify on this important topic. I look forward to continuing to work with you and the Committee, and I will be happy to take your questions.

About Richard Cordray

Richard Cordray serves as the first Director of the Consumer Financial Protection Bureau. He previously led the Bureau's Enforcement Division.

Prior to joining the Bureau, Mr. Cordray served on the front lines of consumer protection as Ohio's Attorney General. Mr. Cordray recovered more than $2 billion for Ohio's retirees, investors, and business owners and took major steps to help protect its consumers from fraudulent foreclosures and financial predators. In 2010, his office responded to a record number of consumer complaints, but Mr. Cordray went further and opened that process for the first time to small businesses and non-profit organizations to ensure protections for even more Ohioans. To recognize his work on behalf of consumers as Attorney General, the Better Business Bureau presented Mr. Cordray with an award for promoting an ethical marketplace.

Mr. Cordray also served as Ohio Treasurer and Franklin County Treasurer, two elected positions in which he led state and county banking, investment, debt, and financing activities. As Ohio Treasurer, he resurrected a defunct economic development program that provides low-interest loan assistance to small businesses to create jobs, re-launched the original concept as GrowNOW, and pumped hundreds of millions of dollars into access for credit to small businesses. Mr. Cordray simultaneously created a Bankers Advisory Council to share ideas about the program with community bankers across Ohio.

Earlier in his career, Mr. Cordray was an adjunct professor at the Ohio State University College of Law, served as a State Representative for the 33rd Ohio House District, was the first Solicitor General in Ohio's history, and was a sole practitioner and Of Counsel to Kirkland & Ellis. Mr. Cordray has argued seven cases before the United States Supreme Court, including by special appointment of both the Clinton and Bush Justice Departments. He is a graduate of Michigan State University, Oxford University, and the University of Chicago Law School. Mr. Cordray was Editor-in-Chief of the University of Chicago Law Review and later clerked for U.S. Supreme Court Justices Byron White and Anthony Kennedy.

Mr. Cordray lives in Grove City, Ohio with his wife Peggy – a Professor at Capital University Law School in Columbus – and twin children Danny and Holly.