Testimony of

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before the

U.S. House of Representatives Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations

Hearing on

Regulatory Overload: The Effects of Federal Regulations on Small Firms

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Chairman Steve Chabot, Ranking Member Nydia Velazquez, and members of the committee, my name is Spencer Hafen. I am the President and Chief Executive Officer of Nevada Bank & Trust Co., located in the rural Nevada City of Caliente. I would like to thank you for affording me the opportunity to appear before you to share some information about the effects of federal regulations on small businesses, particular the regulatory effect on small community banks. I may be the voice of one small community bank, but my words can be echoed by hundreds of small institutions across this great country. My hope is to aide in finding regulatory relief that will help all small banks and businesses, regardless of geographic location.

I would like to take a moment and tell you a little about my bank. Nevada Bank and Trust Co. was formed in 1978 by a group of small business owners in Caliente, Nevada. Caliente is located about 150 north and east of Las Vegas along U.S. Highway No. 93. The closest financial institution at that time was located in Pioche, Nevada, about 30 miles north. In order to help solve their own banking problems and to provide financial services in Caliente, this group of individuals formed Nevada Bank and Trust Co. The vision of this group of business owners was not limited to providing banking services locally, but to expand and provide banking services to each small community on U.S. Highway No. 93 throughout Nevada. As the Bank began to grow, it soon expanded to have branches in Alamo, Caliente, Carlin, Ely, Elko, Mesquite, Pioche, Spring Creek, and Wendover. The vision or dream of the founding business men had come to fruition. However, as time went by, the Bank began to feel the effects of regulatory burden and began closing branches that were not profitable. Today Nevada Bank & Trust Co. has four (4) branches located in Caliente, Ely, Elko and Mesquite. We also have a Loan Center located in Elko. As of October 31, the Bank's assets are $112 million, we employ 37 employees, 26 full time and 10 part-time. Nevada Bank & Trust Co. is a privately owned institution, and we have successfully served the needs of our citizens for almost 40 years. Our focus is on our customers living in the rural communities of the State of Nevada. We strive to provide the best financial services available to the rural areas in which we live. I have come to see that the services we provide are often hindered by the excessive regulations placed on small financial institutions. I do realize that many of the regulations placed on the financial industry as a whole are targeted for larger institutions, and may even come with a caveat that small banks are exempt for such regulations. However, I have also come to the realization that there are many unintended consequences to many of the regulations that have restricted our ability to provide certain financial services.

The financial strength of individuals, communities, states, and this nation are only as strong as the financial institutions. Each has a direct impact on job creation, economic growth and prosperity. The credit cycle that financial institutions facilitate is simply put: customer's deposits provide funding to make loans. The loans allow customers of all kinds, consumers and commercial, to invest in their communities and beyond. The profits generated by these investments flow back into banks as deposits, and the cycle repeats. As this cycle continues the consumer and commercial customers grow, they expand their purchasing power, they hire additional employees, and they improve their quality of life.

I understand that a credit cycle cannot exist in a vacuum. Regulation shapes the way financial institutions do business. Regulation is needed to some degree; however, the changes in regulation by the passing of laws, court cases and legal settlements, directly affect the cost of providing banking products and services to our customers. The ability to provide certain services has not been easy with the increase in regulatory burden. I have had to stop providing services because of the overreaching hand of regulation and policy. I feel it is in the best interest of citizens and business' for Congress to take necessary steps to provide some form of regulatory relief on small banks and small business'. When I stop providing services because of the burdens of regulation, my bank is not the only entity impacted, the customer, consumers and business owners are impacted.

I continue to urge the Committee and Congress to work together to pass legislation to provide regulatory relief to small business', including small financial institutions.

In would now like to address specific items we are dealing with as a small bank, namely:

- Unnecessary Regulatory Burdens
  - Mortgage Regulation
  - Uniform Overdraft Requirements
  - Non-Depository Money Service Industry
- The Cost of Compliance
- Recommendations

Unnecessary Regulatory Burdens

Regulation when done correctly ensures the safety and soundness of the overall banking system. When not done incorrectly, it may constrict a financial institution's ability to provide credit, and facilitate in job growth and economic expansion. The argument may be made that many of the regulations currently being imposed on the financial industry do not apply to smaller institutions. However, the constant looming threat of law suits and civil money penalties keep many at bay, translating into services be dropped to avoid any type of scrutiny from regulators. The role of community banks serving the communities in which they do business is diminishing with the addition of new regulations. The Dodd-Frank Act alone has changed federal financial regulators with writing and enforcing 398 new rules, resulting in at least 22, 534 pages of proposed and final regulations, please keep in mind the act is only two-thirds implemented. Larger institutions have the financial means to spread the expense for regulation implementation across diverse channels. Small institutions do not have that luxury. We are doing all we can to keep the doors open and provide a service to the community. As mentioned previously, I am not alone; every small financial institution feels the same pain.

Mortgage Regulation

Nevada Bank & Trust Co. in the past has had a home mortgage loan service. With the recent release of additional regulations, particularly the TILA-RESPA Integrated Disclosure (TRID) Rule, we have made the decision to stop providing this service. This decision did not come easy; my Board of Directors are concerned with the impact on the community and our customers. The new rule is intended to make the disclosure process easier, which it may, combining multiple disclosures into one, the burden comes with compliance. In order to comply with this new regulation I would have to hire additional staff to monitor the rule. In our small bank, we never made enough money off of what little fees we could charge, to justify the program we had. Simply put, it never paid for itself. Now, with the additional rule, and the need to hire additional staff, we simply chose to stop offering home mortgage loans.

An interesting point I would like to make pertains to what I will refer to as an "out of the box mortgage". In rural Nevada as a bank we would make mortgage loans to customers that had been rejected by other institutions because their loan just didn't fit into "the box". If a customer's credit score just wasn't perfect, or the appraisal had comparisons that were too far away are a couple of examples. A large institution would not understand the local, rural, situation, and reject the loan application. We understand our customers; we have dealings with them beyond the brick and mortar of the bank, and could work with them in getting a mortgage. Now these customers will have to turn to unregulated sources to obtain a mortgage. And as I have mentioned previously, regulation is needed, just not to the point it becomes a burden. At the end of the day the people that the rule was created to protect are potentially being damaged because banks just like us can no longer offer home mortgage loans.

Uniform Overdraft Requirements

The Consumer Financial Protection Bureau ("CFPB") is actively inquiring into overdraft procedures to determine how those practices are impacting consumers. Nevada Bank & Trust Co. does not have an Automated Overdraft Payment Program. We have an "Ad Hoc" overdraft program, which is defined as a program where return items are paid on a case-by-case basis. We have taken a proactive stance and have chosen to apply the February 2012 guidance where feasible. If a customer overdraws his/her account on six (6) or more occasions where a fee is charged in a rolling twelve month period, we will undertake meaningful and effective follow-up action using the "enhanced periodic statement approach". We have also chosen to have a $100.00 maximum daily overdraft charge in place and will not charge an overdraft fee for transactions that overdraw an account by $10.00 or less. We feel this is an adequate program, one that helps our customers if and when they have an overdraft occur.

Recently while meeting with the CFPB in Washington the discussion turned to the overdraft program. The conversation was somewhat disturbing on multiple levels, but one concern I have, is the idea that banks are responsible for any and all mistakes made by a consumer. I have no problem with our overdraft program, it works. Consumers are treated fairly and with equality. If a Uniform Overdraft Program were required, we would have no chose but to close customer's accounts after the proper procedures have been followed to assist the consumer in maintaining his/her accounts. Should this occur, once again the harm would only come to the consumer. If a consumer cannot bank with a financial institution because of poor performance in maintaining his/her account they are forced into the nonregulated cash service industry. This is a perfect example of the unintended consequences of a uniform overdraft law.

Non-Depository Money Services Industry

In the State of Nevada the number of financial institutions has decreased from 28 banks in 2004 to 13 in 2015. These are state chartered institutions. In the same time period, non-depository establishments have increased from 582 to 1037. These non-depositories, money service companies offer products such as "payday loans" and "title loans" without the burden of regulation. The ads can be seen where I can "get money in minutes". As a small banker in Nevada I have to deal with the impact of these types of companies on both the federal and state level. The CFPB is currently reviewing the practices of non-depository money service companies, which may provide a solution to the problem these companies create. Currently they can take advantage of the underbanked, leaving many in a desolate situation. On a state level, financial institutions are regulated and are required to pay an annual assessment, non-depository money service companies are not. In this case fair and equitable regulation must be enforced. Our goal of financial institutions is to provide sound and equitable financial services to our customers, and as a small financial institution we do all we can with the regulatory burden placed upon us.

The Cost of Compliance

In the wake of increased regulation comes an increase in compliance cost. Currently Nevada Bank & Trust Co. spends over $150,000 annually on compliance related expenses, which does not include salary expenses for personnel. This expense is for compliance education, audits, and assessments. We have two (2) full time employees where 75 percent of their time is spent on compliance related matters.

Ultimately our customers are the ones who feel the true cost of this burden. They feel it in more expensive financial services and fewer options. For example, 58 percent of banks have held off or canceled the launch of new products – designed to meet consumer demand – due to expected increases in regulatory costs or risks. Additionally, 44 percent of banks have been forced to reduce existing consumer products or services due to compliance or regulatory burden. At the end of the day, this translates into fewer services for the consumer.

Recommendations

A number of bills have been introduced in the House and Senate that would provide significant relief from many of the concerns noted above. I would strongly recommend considering those bills that have regulatory relief to the small business and particularly the small community bank.

Conclusion

As a small community banker, I understand the need for regulation. There is a place for it to maintain a safe and sound financial industry. However, the overburden of regulation only hinders the progress of small banks and small business. The effects are felt by the consumer when financial institutions have to cut back on the services offered. At the end of the day the unintended consequences place a burden on the very people the regulation is intended to protect.

Thank you for your time, I look forward to your questions.