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Thank you for having me here today. I appreciate Kim Gardner for extending the invitation and have known her for a number of years.

If I could, before I get into some comments from a national standpoint, let me give you a little flavor for our philosophy in Tennessee so you know a bit more about me.

In 2011, Tennessee Governor Bill Haslam asked every state agency to engage in a top to bottom review of our departments. He asked us to confirm whether our missions were still relevant. Our mission is to ensure safety and soundness, including consumer protection, while being mindful of economic development.

Not only do we see our mission as remaining relevant, but we see it as essential to the well-being of Tennessee as we attempt to put financial institutions in a position to serve citizens and the broader economy. One of the ways we seek to support financial institutions is by being as efficient and focused as possible from a regulatory standpoint. I will give you an example of that through a new program later in my remarks.

We seek a full partnership with our federal counterparts. That means to be fully engaged in this partnership, but not to yield our obligation and responsibility to put forward Tennessee's philosophy of regulatory balance.

If we yield any of our traditional supervisory roles, then I believe the state also yields some of its ability to control its economic future. At least to the extent of the regulation of financial institutions.

THE UNBANKED AND UNDERBANKED

State regulators recognize the importance of a diverse financial services industry, composed of depository and non-depository financial service providers alike. For those consumers that either cannot gain access to bank services, or simply don't want to, alternative financial services providers play a valuable role in our local, state, and national economies.

State regulators support making financial services and products available for unbanked and underbanked consumers. Access to financial services and credit helps individuals establish a credit record, save for the future, or prepare for unexpected expenditures.

Despite these benefits, many people, particularly low-to-moderate income households, do not access mainstream financial products such as bank accounts and low-cost loans. Other households have access to a bank account, but nevertheless rely on non-bank financial services providers. According to the *2011 FDIC National Survey of Unbanked and Underbanked Households*, more than one in four households (28.3%) are either unbanked or underbanked, conducting some or all of their financial transactions outside of the mainstream banking system.

- 8.2% of U.S. households are unbanked.
    - This represents 1 in 12 households, or nearly 10 million in total. Approximately 17 million adults (7.3% of all adults) and 9 million children under age 15 (13.6% of all children) live in unbanked households.
- 20.1% of U.S. households are underbanked.
    - This represents 1 in 5 households, or 24 million in total. Approximately 51 million adults (21.7% of all adults) and 16.6 million children (25.1% of all children) live in underbanked households.

According to the *2011 FDIC National Survey of Unbanked and Underbanked Households*, approximately 25% of all U.S. households have used alternative financial services in the last year.

Transaction products, such as non-bank money orders, non-bank check cashing, and non-bank remittances, are considerably more widely used than credit products like payday loans, pawn shops, rent-to-own stores, and refund anticipation loans. While the majority of unbanked households (60.7%) have no plans to open a bank account in the future, use of alternative financial services is positively correlated with the likelihood of opening a bank account in the future.

STATE SUPERVISION OF NON-DEPOSITORY FINANCIAL SERVICES PROVIDERS

Of course, we have all heard the unfortunate incidents of bad actors and even predatory lenders operating in this space. As the primary regulators of non-depository financial services providers, it is important to know what states are doing to enhance supervision and protect consumers.

Licensure and Expansion of NMLS

A key ingredient of state supervisory efforts is the licensing of non-depository providers. States have regulated non-depositories for decades and virtually all states require licensing of most non-depositories. The licensing of a non-depository typically requires the submission of personal background information of directors or officers, financial statements, surety bonds, and company policies. The value to licensing is credentialing. Something stands behind the granting of a license, very much unlike registration.

Non-depository regulation is rapidly coalescing around the Nationwide Mortgage Licensing System & Registry (NMLS or the System) as a mechanism to enhance information flow, credentialing, and efficiency, all while respecting sovereign authority.

As such, CSBS has expanded the use of NMLS to accommodate state use of the System for non-mortgage, non-depository financial services industries, including sales finance companies, money transmitters, check cashers, debt collectors, and payday lenders.

Since April 2012, 14 state agencies in Idaho, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, Vermont, Washington, and my home state of Tennessee have begun transitioning non-mortgage license authorities onto NMLS. In addition, at least 15 more agencies are expected to do so in 2013.

Examination

Once licensed, supervision transfers to examination oversight where state regulators trust, but verify, that the licensee is in full compliance with consumer protection requirements, and in some cases, safety and soundness requirements.

The majority of states conduct periodic on-site examinations of non-depositories. State non-depository examination standards and objectives often share certain similarities with bank examinations, including a review of financial strength, operational controls, transaction volume, recordkeeping and reporting requirements, as well as Bank Secrecy Act and Anti-Money Laundering compliance. Non-depository exams also cover licensing requirements and compliance with state and federal consumer protection law.

Let me briefly mention a project that we are working on in Tennessee to risk focus our exam approach. For some time, we have included elements of risk in deciding what companies to focus on but have fundamentally tried to essentially examine the industry on a regular basis. We are now working on a program whereby we will make judgments based on a variety of factors as to what companies present a high level of risk to the people of Tennessee.

Based on the profile, we can focus where the risk appears to be and work with those companies on the issues they present. They will likely see us more often if they present more risk. At the same time, if there are companies that present very little risk, then we can push out their exam frequency accordingly.

We see this as common sense by putting resources where they are most needed.

The factors that we would consider would be the type and frequency of complaints. How did the last exam look? Are there repeat violations? Is there consumer harm? What kind of turnover do we see in the company? What type of training does the company provide? Are there systemic issues in the organization? These are some of the issues that we will consider in coming to our judgments.

We think it will be a win/win for all concerned. For the consumer, we will focus on where we think the risk is and that will help well-managed companies as well if we can deal with those companies that cause the most concern and allow well-managed companies to more easily serve the people of Tennessee. So that is something we are working on in Tennessee.

In addition to regulation and supervision of business practices, requirements on the front-end of consumer transactions are used to increase transparency for consumers. Through disclosure requirements, consumers are made aware of the service and product being provided.

It is important to stress that consumers conducting transactions with state-authorized providers are afforded both federal and state consumer protections, and that many state regulators are charged with not only examining and enforcing state requirements, but all federal requirements, as well. This authority is unique to the state system of supervision and is not duplicated on the federal side. Despite the fact that most consumer protections exist within state law and regulation, no federal regulatory agency has the authority or responsibility to examine or enforce under these statutes.

It may also be tempting for some to think that state supervision means inferior oversight. State non-depository supervision agencies employ approximately 700 field examiners dedicated to the examination of non-depositories. These compliance examiners perform more than 17,000 examinations each year for mortgage providers, check cashers, payday lenders and money transmitters, or approximately 1,400 examinations each month.

<u>Coordination and the CFPB</u>

States have long utilized our proximity to the entities we supervise to identify emerging trends and take action when necessary. Because of our close proximity to those entities we regulate and the local nature of most non-depository services, state regulators are most often best positioned to identify emerging threats and are able to move quickly in response.

However, moving forward, there must be continued coordination and consultation between federal and state regulators to best understand how local, state, and national economies are affected by regulations and legislation.

This state-federal partnership, known as "cooperative federalism," leverages the strengths and resources of both state and federal regulators. For instance, state regulators are often able to identify emerging trends and threats in the financial services market, and experiment with regulatory and legislative solutions to these threats at the state level. If the threat or trend expands to the national level, the federal regulators are best poised to implement solutions on a national scale.

This cooperative federalism has resulted in strong and cooperative relationships among state and federal regulators. Cooperative federalism is well-established on the bank side, as state regulators work regularly with regulators from the FDIC, the Federal Reserve, and the OCC. On the non-depository side, state regulators have a new federal partner, the Consumer Financial Protection Bureau.

The CFPB has primary federal examination and enforcement authority for certain non-depository financial services providers. The Dodd-Frank Act explicitly mandated that mortgage providers, payday lenders, and private student loan providers of any size would be subject to CFPB oversight. To date, the CFPB has extended its oversight to credit reporting agencies and initiated the rule-writing process to extend their oversight to debt collectors. The examination process for mortgage lenders, payday lenders, private student loan providers, and credit reporting agencies is already underway.

Whether it involves a bank or a non-bank financial services provider, if the entity in question is state-chartered or state-licensed, the CFPB is required to coordinate and collaborate with state regulators. I can tell you first hand that the CFPB is coordinating with us and I believe this effort will continue to evolve.

I understand there is a great deal of trepidation and concern among financial services providers regarding the CFPB. The unknown always creates anxiety, and certainly regulatory and economic uncertainty has many in the industry on edge.

Instead of retreating or attacking, I believe it is important for state regulators and the industry to engage with the CFPB. I am comforted by my interaction with senior CFPB officials. The CFPB is making efforts to coordinate with state regulators as required by Dodd-Frank. In fact, the very first MOU signed by the CFPB was with the Conference of State Bank Supervisors, of which I am Chairman. Senior CFPB officials have indicated their goal is to create a fair and reasonable examiner culture at the CFPB, not a "gotcha" culture. I have been assured CFPB examiners are focusing on addressing and putting a stop to severe consumer harm, not minuscule clerical errors.

The CFPB was created by Congress in response to the most recent financial crisis. For the past several years, Congress has been very active in trying to close gaps in supervision, prevent consumer abuse, and reign in those institutions deemed "too big to fail," all in an effort to prevent a future catastrophic financial collapse. Only time will tell us which of these reforms worked as intended. Undoubtedly, changes to the law will be needed as unintended consequences become clearer.

IN CONGRESS

While changes to Dodd Frank do not appear politically ripe at the moment, Congress is attempting to address other issues in financial services, including regulatory oversight, housing finance, and access to credit. Focusing on the issue most important to this audience, certain legislative initiatives to increase access to financial services and products may have unintended negative consequences.

For instance, last Congress CSBS opposed H.R. 6139, the Consumer Credit Access, Innovation, and Modernization Act. The bill would have authorized the OCC to grant charters to non-bank consumer credit companies, including companies that offer check cashing services and short-term, small-dollar loans. The bill would grant such companies the same level of preemption available to national banks and would broadly preempt state law in these areas, including state licensing laws. While couched in justifications based on reaching underserved borrowers, the bill is driven by some in the industry.

CSBS opposed this bill for several reasons.

Of greatest concern, H.R. 6139 circumvents state authority.

Congress and the Courts have taken the view that federal preemption of state law is the exception, not the rule, and that preemption is only warranted in very limited situations. However, by creating a federal charter and preempting state licensing and consumer protection laws, H.R. 6139 would undermine states' authority to license and regulate a variety of non-bank financial services providers. Further, it would eliminate our ability to protect citizens and affect local credit markets. The types of businesses covered by H.R. 6139 have long-standing foundations in state law.

The citizens of the individual states, through their legislatures and other elected officials, have determined the contours of the financial services companies operating within their borders, the state regulatory regimes overseeing such businesses, and the consumer protection standards such companies must meet.

The state laws that apply to payday lenders, check cashers, and the other non-bank entities reflect policy decisions by the states about the benefits and costs of such products. These state laws are designed to limit the pitfalls of such financial products, while ensuring these products are available when and where needed. Those of you in this room have demonstrated an appreciation for and commitment to local supervision that is responsive to your business model and your important role in providing needed financial services to those in your communities.

The circumvention of state authority is particularly troubling because the bill encourages companies to offer financial products with no local accountability and encourages mass distribution through the Internet. Currently, some institutions operating online consider themselves beyond state lines, and therefore not subject to local consumer protections.

Yet the transactions and the potential for consumer harm remain very real. A long-distance loan without local protections is not good for the consumer.

A number of states are working to deal with internet payday lending. For example, Tennessee has a relatively new law that requires online operators to be licensed in Tennessee and some companies have complied and have become licensed.

However, many have not. Not only do those unlicensed operators hurt Tennessee citizens to the extent they engage in activities that go beyond the parameters of fair operations as established by the Tennessee General Assembly, but these unlicensed operators also gain unfair advantage over legitimate companies who are trying to comply with governing authority.

This is a concern with many of my colleagues and we are working together to address this problem.

Unfortunately, H.R. 6139 seeks to provide a blanket endorsement of Internet-based lending while avoiding comprehensive state-federal regulation.

Which brings me to another major concern: legislation like H.R. 6139 runs counter to the goal of state-federal regulatory collaboration.

The bill would fundamentally undo the existing state-federal partnership and would remove local accountability, federalizing industries that have been largely within the jurisdiction of state regulators. The use of the Internet in delivering consumer financial products is one area where I see particular benefit in having a federal partner in the CFPB to address national issues in a manner that complements state oversight. The Constitution established a federalist system to balance local and national priorities, and only a balanced state-federal regulatory regime can appropriately address a consumer's safety and access to credit.

And finally, a proposal like H.R. 6139 distorts the market.

State regulators have a deep appreciation for the importance of diversity in the financial services industry. Our granular and practical perspectives on the financial credit markets in our states have led to a view that one size does *not* fit all when it comes to delivering financial services. States regulate a very diverse set of entities, ranging from $100 billion-plus banks serving national markets to locally based "mom and pop" businesses offering consumer financial services.

But this bill could undermine this diversity by stratifying the industry and creating a regulatory regime that serves the interest of larger participants in this market to the disadvantage of smaller companies.

And to demonstrate how cooperative federalism can work, the OCC also opposes this bill!

We expect Congress to continue to work on payday lending issues, particularly internet payday lending. For example, Senator Merkley (D-OR) recently reintroduced his SAFE Lending Act. Merkley's bill seeks a solution to the problems presented by current gaps in Internet payday regulation, by ensuring that Internet payday lenders are subject to state and other applicable financial consumer protection laws.

My fellow state regulators and I support the bill, as it not only preserves state authority, but it also leverages CFPB authority to enhance state oversight and enforcement in this area, further strengthening state-federal collaboration.

## CONCLUSION

We all desire to help underserved consumers gain access to products and services. However, this desire should not be used as a cover to allow certain providers the opportunity to avoid compliance with laws that they believe run counter to their own profitability.

State financial regulators have done much to improve and enhance non-depository regulation to better protect the consumer and to strengthen the financial services market. Key to serving these goals is ensuring that the market is diverse and supports a variety of business models. Neither consumers nor the broader financial market are served by policies that bifurcate industries and that tilt the marketplace in favor of only certain types or sizes of institutions.

Today's non-depositories are local in touch and national in scale, so state and federal regulators must work together to ensure effective and consistent supervision. The evolution of state regulation has shown that uniform infrastructure and federal policy can support – not supplant – local governance and oversight. Combined state-federal regulatory regimes that include clear and appropriately calibrated incentives can promote consistent and comprehensive regulation without losing the benefits of states' "on the ground" perspective.

As such, legislation must not supplant state sovereignty in this area lightly. With virtually no product limits included in current proposed legislation, it is hard to envision self-imposed provider controls creating a more affordable or safe environment for the underserved.

The challenge for policymakers—and for the regulators who implement those policies—is to create a regulatory framework that ensures industry professionalism, industry and regulatory accountability, and the proper alignment of incentives but that also avoids unnecessary regulatory inefficiencies and burdens. For state regulators, policies and approaches that encourage regulatory collaboration and coordination and that support regulatory innovation have been vital to striking this balance.

I call on all of us in this room to work together to help produce a system where fair services are provided by companies that can operate in an efficient regulatory system.