



Credit Union National Association

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July 17, 2013

The Honorable Jeb Hensarling, Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hensarling:

On behalf of the Credit Union National Association (CUNA), I am writing to submit for the record our thoughts on the discussion draft entitled: "Protecting American Taxpayers and Homeowner (PATH) Act of 2013." CUNA is the largest credit union advocacy organization in the United States, representing America's state and federally chartered credit unions and their 96 million members. We appreciate the opportunity you afforded us to discuss our interests and concerns with respect to housing finance reform in general and this legislation in particular, as it was being developed. We also appreciate the thoughtful consideration you have given to our concerns which have been reflected in many of the provisions of this legislation.

The PATH Act seeks to minimize government involvement in the secondary market, limit taxpayer liability, foster innovation and allow for more private sector capital in the marketplace. Additionally, your bill strives to provide equal access to all financial institutions regardless of asset size. The bill provides a new framework for a housing finance system, and, in so doing, provides for many provisions that credit unions appreciate. Our letter today highlights the many positive aspects of your legislation, some initial comments to consider in Committee discussions, and some reservations we have about the legislation. It should be noted at the outset that we continue to study the legislation, and these preliminary views remain subject to a more careful consideration of these difficult policy questions.

Credit Unions Strongly Support Relief from the Enormous and Complex Regulatory Burdens of the Dodd-Frank Act's Mortgage Related Provisions and Rules

The legislation includes many regulatory relief provisions for credit unions, including changes to recently finalized rules by the Consumer Financial Protection Bureau (CFPB). In particular, CUNA strongly supports Section 406, which would delay the mandatory implementation of all Dodd-Frank mortgage rules for an additional year. As the Committee is well aware, the new mortgage rules impose many thousands of pages of



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regulatory burden on credit unions and other community-based financial institutions that did not cause the mortgage crisis and have, throughout history, employed the strong underwriting principles the rules are designed to require.

The compliance obligations imposed by the mortgage rules are simply overwhelming to many credit unions, especially America's smallest credit unions, and the tight timeframe for compliance puts the availability of mortgage credit—and thus America's nascent housing recovery—at risk. Another year would ensure that mortgage credit remains available to millions of credit union members while credit unions all over the country continue to understand how to implement the most sweeping regulatory changes to mortgage lending in U.S. history, and would be welcome relief to credit unions.

Section 409 exempts any residential mortgage held on the balance sheet of the originating creditor from the Home Mortgage Disclosure Act, eliminates the requirement to set up an escrow account for higher-priced mortgage loans held in portfolio, and relieves credit union portfolio loans of many of the requirements of the Dodd-Frank Act that would be very burdensome and costly to implement. This importantly includes the ability-to-repay and Qualified Mortgage or "QM" requirements. These changes would provide extraordinary relief for credit unions. Historically, credit unions have been portfolio lenders, holding 60-75% of the mortgages they write on the books in most years prior to the financial crisis. The incentives of portfolio lenders are different from those that sell into the secondary market, given that the lender bears the entire risk of default. Portfolio lenders have strong incentives to pay close attention to the borrower's ability to repay, and credit unions, given that their members are also their owners, have especially strong incentives to employ sound underwriting practices. We appreciate that the PATH Act recognizes that portfolio lending should not be treated the same for purposes of designing a regulatory framework for a housing finance system.

Section 409 is especially powerful when read together with Section 410, which repeals three sections of the Dodd-Frank Act, including the defense to foreclosure provision. The litigation risk created by the defense to foreclosure provision has caused many credit unions to worry that prudential examiners will severely restrict the ability of credit unions to keep non-QM loans that do not enjoy the QM rule's safe harbor in their portfolio after the rule goes into effect. This would make QM the effective requirement for safety and soundness and risk mitigation purposes. Together, sections 409 and 410 do a great deal to alleviate the very real concern of credit unions that they will not be able to offer mortgages to their members who do not meet all of the QM standards but who nevertheless have the ability to repay a mortgage loan. These changes will also help facilitate the kind of creative products that are possible through portfolio lending that individualize the process of getting a mortgage based on the individual circumstances of each member.

CUNA also supports the sections of the PATH Act that incorporate Congressman Huizenga's legislation, H.R. 1077, the "Consumer Mortgage Choice Act." CUNA supports H.R. 1077, and appreciates that this needed legislation is included in the PATH Act. In particular, one area of

the CFPB's ability-to-repay rule that is of concern to CUNA is the definition of points and fees, which includes affiliate title charges. H.R. 1077 excludes from the definition "all title charges, regardless of whether they are charged by an affiliated company, provided they are bona fide and reasonable." Defining points and fees in this way will maintain a competitive marketplace, prevent over-pricing or limited choice in low-moderate income areas, and allow consumers to enjoy the existing benefit of working through one entity for their new mortgage or refinance. A statutory revision would make this definition clearer and stronger than the CFPB's amended rule.

In addition, H.R. 1077, and the PATH Act, both address the inclusion of loan level price adjustments, an upfront fee that Fannie Mae and Freddie Mac charge to offset loan-specific risk factors such as the loan-to-value ratio or a borrower's credit score, in the definition of points and fees under the CFPB's ability-to-repay rule. This fee works much like a guarantee fee and does not constitute revenue to the loan originator. It is especially important for moderate-income consumers to obtain affordable mortgages and including this adjustment fee in the definition of points and fees impairs the availability of credit for some of our members. Credit unions appreciate that the PATH Act excludes this fee from the calculation of points and fees under the rule.

CUNA also welcomes many other provisions of Title IV of the PATH Act, including Section 407, which would repeal credit risk retention requirements and the requirement for rulemaking for "Qualified Residential Mortgages." In addition, CUNA supports Section 411, which permits a 40-year mortgage to be considered a Qualified Mortgage, and allows the consumer to waive the requirement that mortgage disclosures be provided to the consumer 3 business days before closing. We also support Section 412, which includes needed provisions to reform the examination process for financial institutions.

We look forward to working with the Committee to develop additional ways to remove barriers to the investment of private capital in the mortgage marketplace and allow credit unions to provide efficient, fair lending to their 96 million members and continue America's housing recovery.

Credit Unions Appreciate Provisions Ensuring Equal, Open Access to Secondary Market

Although credit unions traditionally are portfolio lenders, the secondary market has become increasingly important to credit unions. Over the past several years, as credit unions have learned to operate in the low interest rate environment of the post-financial crisis world, credit unions have been increasing sales of mortgages into the secondary market as a way to manage interest rate risk and shield themselves from hazard. In the first quarter of 2013, a record 58% of mortgages originated by credit unions were sold to the secondary market, up from the historic average of 25%-40%.

The creation of an efficient, effective, and fair secondary market with equal access for lenders of all sizes is a critical component of any housing finance reform effort and a primary focus of credit unions. Very simply, as evidenced by the historic performance of credit union loans before, during and after the recession, we believe that credit union mortgages are more valuable

to investors than those of banks due to much lower net charge-off rates.¹ CUNA very strongly believes credit unions should be able to sell one loan at a time and not be discriminated against in the marketplace merely because the volume of loans an individual institution can annually sell may be smaller.

CUNA appreciates the Committee's sensitivity to this issue, and notes the provisions designed to help credit unions in the marketplace. For example, the bill allows all QM and non-QM loans of any size to be eligible for securitization through the Platform. The bill seeks to prevent discrimination against eligible loan originators, aggregators, or qualified issuers, including in fees based on the size, composition, business line, or loan volume of an originator. CUNA is also supportive of the Federal Home Loan Bank system and thinks that it is a positive step FHLBs are authorized as aggregators, and generally believes that the FHLB model is something that could be useful for Congress to consider in any new housing finance system. As you are aware, some credit unions find it difficult to become members of a FHLB; in fact, privately insured credit unions are not permitted by law to become members of a FHLB. As this legislation moves through the House we would appreciate that more thought be given as to how credit unions can more easily gain membership to the FHLB system, including the addition of language permitting privately insured credit unions to join a FHLB.

Preliminary Credit Union Concerns with the Legislation

Credit unions strongly believe that any new system of housing finance must include consumer access to products that provide predictable and affordable mortgage payments to all qualified borrowers. Traditionally, this has been delivered through fixed-rate loans; such as the 30-year fixed-rate mortgage. CUNA has serious concerns that the PATH Act may not provide credit union members with a sustainable secondary market that can provide the necessary liquidity and structure which will ensure the continuation of long term fixed rate mortgage products. This is of particular concern for credit unions because more than 83% of credit union mortgages issued since 2008 have been fixed-rate mortgages; this signifies particularly strong member demand for a fixed-rate mortgage product. Moreover, due to the inherent risk of keeping long term products in portfolio and the significant price increase associated with these loans due to a privatized market, many credit unions may opt not to provide long term fixed rate mortgage products,

¹ Prior to the Great Recession, annual net charge-off rates on residential mortgage loans at both banks and credit unions were negligible, less than 0.1%. However, as the recession took hold, losses mounted. At credit unions, the highest annual loss rate on residential mortgages was 0.4%, based on NCUA data. At commercial banks, the similarly calculated loss rate exceeded 1% of loans for three years, reaching as high as 1.58% in 2009, based on FDIC data.

leaving only the largest of banks to offer long term fixed rate loans which inevitably serves to only further increase the size of the largest financial institutions that have been deemed, too big to fail.

In addition, there are several reservations we have regarding the PATH Act's model that we call to the committee's attention which may not lead to the most efficient market and/or may have difficulty working in practice. We question how an independent, non-governmental, not-for-profit entity which would seem to function as a regulator with authority to set mortgage-related standards could be adequately supervised by FHFA. It is also unclear how the standards that the new entity would set would actually be enforced. Credit unions appreciate the understanding that a transition period is necessary, but worry that a five-year transition period may be too short a time to ensure that the housing market continues to function efficiently as we move to the new system of housing finance.

In addition, credit unions are concerned about requirements for the GSEs to purchase only QM loans during the five-year transition period. This requirement makes it virtually impossible for a viable secondary market to exist for non-QM loans during this period. If the secondary market will not accept non-QM loans, credit unions may not write them, especially if this environment of historically low-rates continues. In addition to interest rate risk, credit unions are concerned that our prudential regulator will not look favorably on non-QM loans being held in portfolio. To the extent that happens, credit unions will not be able to meet the mortgage lending needs of a segment of their membership. CUNA encourages the Committee to consider other approaches to managing the secondary market during the transition period.

Although credit unions are exempt from the Basel requirements, NCUA is currently considering its own risk-based capital requirements.² In order to ensure the continued availability of mortgage credit for credit unions, the PATH Act's delay of the Basel requirements should be met with a similar delay in NCUA's efforts to risk-weight capital standards for the credit union system.

CUNA also has governance concerns in connection with the bill. Section 311 of the PATH Act establishes a Board of Directors for the utility that includes two representatives from larger institutions and two from smaller ones. Credit unions would appreciate statutory language that establishes that one of these directors should come from credit unions. In addition, during the transition period, Section 283 establishes an advisory board with representatives of the mortgage finance industry. CUNA hopes the Committee would consider establishing that some of these representatives come from NCUA or the credit union system.

² See, e.g., *Remarks of NCUA Board Chairman Debbie Matz at the 46th Annual Conference of the National Association of Federal Credit Unions, July 12, 2013, available at <http://www.ncua.gov/News/Pages/SP20130712MatzNAFCU.aspx>.*

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Conclusion

CUNA recognizes that establishing a new system of housing finance requires the balancing of an extraordinarily complex series of policy choices, and appreciates your leadership and the leadership of others on the Committee in tackling these difficult questions. America's credit unions remain supportive of reforming the GSEs and increasing private capital in the mortgage marketplace in ways that allow consumers to borrow at affordable rates with payments that keep housing attainable to 96 million credit union members. We look forward to continuing to work with the Committee on these issues going forward.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Cheney", with a long, sweeping horizontal line extending to the right.

Bill Cheney
President & CEO