April 26, 2014

The Honorable Timothy Johnson
Chairman
U.S. Senate Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

The Honorable Michael Crapo
Ranking Member
U.S. Senate Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

Re: Housing Finance Reform and Taxpayer Protection Act of 2014

Dear Chairman Johnson and Ranking Member Crapo:

The Center for American Progress, Mortgage Finance Working Group, and undersigned organizations and individuals commend you and your staff for your hard work in preparing S. 1217, the Housing Finance Reform and Taxpayer Protection Act of 2014.

A new system must first and foremost meet the housing finance needs of America's families, providing broad liquidity, stability, transparency, access, affordability, and consumer protection. S. 1217 offers a strong purpose statement calling for the new system to serve all regions and all eligible borrowers throughout all economic cycles, and the bill includes numerous provisions to advance these goals. With some critical changes, we believe the S. 1217 framework can potentially create a system to provide sustainable, affordable credit to eligible borrowers in all parts of this great country.

Strong elements of the bill include the following:

- An explicit, priced government backstop to attract investment and support the 30-year, fixed-rate mortgage.
- Substantial first-loss private capital and a mortgage insurance fund to protect taxpayers.
- A market-based incentive fee aimed at increasing credit availability for eligible borrowers in underserved markets.
- Greatly expanded funding for the National Housing Trust Fund and Capital Magnet Fund.
- Creation of a Market Access Fund to support R&D for how to reach more families.
- Multifamily provisions that support the financing of affordable rental housing.
- An advisory council that includes representatives with consumer protection and affordable housing experience.
- Servicing standards that would require loss mitigation and affordable loan modifications.

Nevertheless, before we would be able to support the bill, there are some significant areas where we believe changes are needed to ensure the new system can reliably provide affordable credit to low and moderate income families and traditionally underserved communities.

- **Ensure the new system will provide broad access to affordable credit.** FMIC's purposes and enforcement authorities should extend to ensuring the broad and affordable availability of sustainable mortgage credit, including the 30-year, fixed-rate mortgage. Before the new system is certified, FMIC should be required to determine that bond guarantors are ready to cover all markets.

- **Simplify the market-based incentive to provide access to underserved markets.** To operate effectively, FMIC should set the differential fees at the beginning of each year so that market participants know how to evaluate them. Additionally, because the fee is an untested approach, the Office of Consumer and Market Access should develop metrics to evaluate whether it is meeting its objectives and have the ability to make changes as needed within parameters set by the bill. Finally, market participants should not be permitted to "opt out" of providing credit in underserved markets.

- **Broaden the funding base to provide adequate funding for the Market Access Fund.** Under the current percentage allocations among the three funds, the Market Access Fund receives only ten percent of all funding. Under most estimates of the size of the market, this amount will not enable the Market Access Fund to perform its intended purpose of supporting innovation that can be scaled. We recommend broadening the funding base by including Ginnie Mae securities and for all securities that use the securitization platform, with or without FMIC insurance.

- **Provide pricing transparency and standardization for consumers.** As Fannie and Freddie did, the new system should aim to establish a national mortgage market with largely standard rates. The bill should require FMIC to publish the national average rate and to put in place other measures to promote standardization and price transparency.

- **Uphold the principles of fair housing and fair lending.** It is critical to clarify that all market participants benefiting from the government wrap are subject to the Fair Housing Act and Equal Credit Opportunity Act and to preserve HUD's existing rule-writing and oversight authority for Fair Housing Act issues over secondary market entities. The FMIC structure should have an Office of Fair Lending to ensure that the new system supports these bedrock principles.

- **The FMIC should have authority to provide flexibility for any down payment requirement.** A blanket down payment requirement can unnecessarily and unfairly restrict credit to low wealth borrowers. Studies show that properly underwritten low down payment loans to low-wealth borrowers showed strong performance even through the most recent extreme credit cycle. We recommend requiring the regulators to establish a down payment requirement that includes flexibility such as an exception authority for homebuyers who have completed pre-purchase housing counseling or who are part of pilot programs supported by the Market Access Fund.

- **Do not limit the system to QM loans as defined by the CFPB.** We strongly support the intent to ensure that covered securities are collateralized by safe, responsible and sustainable mortgages. The Ability to Repay standard, which requires loan originators to determine that a borrower can afford to pay back the entire mortgage, applies to the whole market and will apply to the loans in covered securities. The Qualified Mortgage standard was established for different purposes, and therefore needs adjustment to be an appropriate standard for the FMIC. In particular, the FMIC should permit compensating factors to be used in determining loan eligibility instead of incorporating standards such as the bright-line debt-to-income ratio currently in the Qualified Mortgage rule.

- **Facilitate effective loss mitigation by loan servicers.** While the bill provides a number of important protections for servicing transfers, it should also ensure that servicers disclose key facts about the loan upon transfer and align servicer incentives with investor objectives through adjustments to servicer compensation, including prompt repayment of funds servicers advance on behalf of the owners of the mortgage. To facilitate offering the affordable loan modifications required by the bill, the FMIC should require that bond guarantors have the capacity to hold modified loans in portfolio if required. Finally, we recommend stronger provisions enabling FMIC to address servicer misconduct.

- **Do not provide FMIC insurance to purely private capital markets deals.** By their very nature, private structured transactions are likely to cherry-pick only the very highest quality mortgages, are very hard to regulate and monitor, and may not support long-term, fixed rate mortgages or rate locks through the TBA market because individualized transactions will not be fungible. The bill should rely only upon institutional guarantors whose capital can be clearly understood and closely regulated. Because the bill permits bond guarantors to use these types of transactions to help manage their risk, investors will have access to a similar instrument with less risk to the FMIC and taxpayer.

- **Ensure strong equity requirements for guarantors.** As written, the bill appears to allow bond guarantors to lay off all their risk using structured transactions without obtaining prior approval from the FMIC. We think the guarantors should hold significant core capital against some minimum level of risk, and that all guarantors, not just those with more than $10 billion in assets, should be subject to stress tests.

- **Ensure that FMIC and its offices can collect and use data from market participants to further the purposes of the Act and provide adequate public disclosure.** While certain information collected as part of supervisory or examination activities should remain confidential, enough information needs to be available to the Office of Consumer and Market Access and the public to understand how well guarantors are serving different markets, and to ensure that the flex fee is working as designed.

Like you, we believe it is critical that we advance the goal of housing finance reform. The instability of today's housing finance system has led to extremely tight credit, producing the

fewest new mortgage originations in 17 years. Failure to create a stable and liquid secondary mortgage market will have far-reaching implications for the overall economy.

Thank you again for your hard work on a very challenging subject. Please let us know if there is any information we can provide to assist you as the bill moves through the legislative process.

Sincerely,

*an asterisk means the affiliation is listed for identification purposes only

Center for American Progress and Mortgage Finance Working Group

Consumer Action

Consumer Federation of America

Empire Justice Center

Enterprise Community Partners

NAACP

National Association of Neighborhoods

National Consumer Law Center, on behalf of its low-income clients.

National Council of La Raza

National Fair Housing Alliance

National Housing Resource Center

National Housing Trust

Nueva Esperanza, Inc.

Stewards of Affordable Housing for the Future

Michael Berman

Kathleen Engel, Suffolk Law School*

Janneke Ratcliffe, UNC Center for Community Capital*

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Mark Willis, NYU Furman Center for Real Estate and Urban Policy*