

Massachusetts Credit Unions

Creating Cooperative Power

November 2, 2021

The Honorable Brendan Crighton
The Honorable James Murphy
Chairs
Joint Committee on Financial Services
State House
Boston, MA 02133

BY EMAIL ONLY

Dear Chairs Crighton, Murphy and Members of the Committee:

On behalf of the Cooperative Credit Union Association, Inc. (“Association”)¹ and its members, please accept this letter relative to House 1052, *An Act Amending the Banking Laws and Related Statutes*, which was the subject of a public hearing on October 26, 2021. House 1052 is a lengthy, multi-section legislative proposal sponsored by the Massachusetts Bankers Association to address a variety of bank-related provisions. A few provisions have implications for credit unions and their members. It is in this spirit that the Association is pleased to offer comments and support certain sections of the bill which will be addressed in the remainder of this letter.²

Support: Section 7, Uniform Real Property Electronic Record Act

Section 7 of the bill is a new filing and seeks to create a new chapter of the General Laws, Chapter 110I, establishing a Uniform Real Property Electronic Recording Act (“Act”) to be

¹ The Cooperative Credit Union Association, Inc. (“Association”) is the state credit union trade association, serving approximately 160 federally and state-chartered credit unions that are cooperatively owned by 3 million consumers as members. On average, one in three Massachusetts consumers are credit union members. Furthermore, the industry employs over 7,500 full and part-time employees. As not for profit cooperatives, over 2,000 volunteer directors further serve local credit unions who deliver \$310 million in member benefits annually. As of June 2021 call report data, credit union member benefits include higher yield on savings: \$56.5 million; lower fees: \$13.6 million; lower loan rates: \$240.3 million; and savings to nonmembers: \$121.1 million (by impact of credit union presence in the marketplace). CUNA Economics and Statistics.

² The Association notes that versions of this bill have been filed previously in several sessions, and generally sought to update and make technical changes to a number of banking laws. House 2679 was heard by the Committee in the 2019-2020 session and ultimately received a study order, House 5160; House 496 was heard by the Committee in 2017-2018 session and ultimately received a study order, House 4778; Senate 546 was heard by the Committee in the 2015-2016 session and ultimately received a study order, Senate 2318.

promulgated by the Uniform Law Commission.³ Among the provisions of the Act are those which establish that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, be satisfied by an electronic document and signature. Such a document or signature required to be notarized is satisfied if the electronic signature of the person authorized to perform that act is attached to or logically associated with the document or signature, without the requirement that a physical or electronic image of a stamp or seal accompany an electronic signature. Thus, the Act expressly permits the electronic recording of legal instruments such as a mortgage or deed. In addition, the bill sets out the standards a recording office must follow, what it must do to make electronic recording effective, and establishes a Board responsible for setting statewide standards to be implemented in every recording office.

It is without question that Massachusetts credit unions support a more robust and modern system for electronic closings and recording processes. As strong mortgage lenders in the Commonwealth, credit unions seek to serve the homeownership dreams of members with high quality service at every level.⁴ House 1052 will significantly help credit unions meet these needs by modernizing the recording of large volumes of documents into the public record using technology and to pursue digitization of existing property records. The benefits of the Act include the reduction of document turnaround time, an advantage if a document is rejected, a reduced chance of document loss, greater document integrity and less fraud.

Support with Amendment: Section 8, Postponement of and Virtual/Hybrid Annual Meetings

Section 8 of the bill addresses the corporate governance of banks. Specifically, it authorizes a bank to postpone its annual meeting if the Governor has declared a state of emergency. The postponed meeting must be held within sixty (60) days of the termination of the state of emergency, unless the next regularly scheduled annual meeting is to be held within one hundred and fifty (150) days of the termination, in which case the meetings may be combined. The section also addresses member notification, the retention of the existing governing body and policies and procedures, and documentation in minutes of the postponement. Finally, the bill also authorizes a bank to hold its annual or special meeting in a virtual or hybrid manner during a state of emergency, provided that the voting body is able to participate in the meeting telephonically or through other options.

The COVID-19 pandemic and related state of emergency declared in the Commonwealth presented a unique set of challenges for financial institutions, who are held to legitimate and

³ In 2004, Massachusetts enacted the Uniform Electronic Transaction Act, referred to as UETA, which establishes the legal equivalence of electronic records and signatures to traditional paper documents and wet ink signatures.

⁴ Massachusetts is distinguished and ahead of the national level in the percentage of credit unions who offer mortgages. For first mortgages, 77.5% of local credit unions offer them in comparison to 70.9% nationally. Similarly, for home equity loans and second mortgages, 82.8% of local credit unions offer them in comparison to 68.8% nationally. All credit unions in Massachusetts possessing in excess of \$50 million or more offer mortgage loans. The portfolio of first mortgages/total loans made by Massachusetts credit unions is 51%, and for home equity and second mortgages/total loans is 11.8%.

strict governance requirements as determined by statute and their individual bylaws. All of the Commonwealth's credit unions, being member-owned financial cooperatives, with a one member-one vote governance framework, are required to hold an annual meeting of their members to elect directors, vote on bylaw amendments, and address other business as may be applicable.⁵ While the Governor and the Division of Banks acted appropriately to provide credit unions with needed flexibility to postpone their annual meetings and the option to hold virtual or hybrid meetings, this authority was temporary and expired at the termination of the COVID state of emergency.⁶

The Association supports the adoption of permanent authority for credit unions to have additional flexibility in their governance structure with additional options to be used as a board of directors determines is in the best interest of members. Such options include to postpone their annual meetings during a state of emergency, and/or to conduct annual and special meetings in a virtual and/or hybrid format. Such authority is reasonable given the uncertainty of future states of emergency, mirrors the impact of recent Executive Branch Orders, is not automatic or a "one size fits all approach, and has been utilized effectively and prudently by credit unions during the most recent health crisis. The Association is also of the position that the provisions contained in Section 8 for member notification, and the reasonableness standard for attendee remote access and technical assistance, provide appropriate safeguards to ensure that members maintain full access to and participation in the important issue of governance of their credit union.

Support: Section 9, Prohibition on Use of Financial Institution's Name in Advertisements

Section 9 of the bill prohibits the use of a financial institution's, including a credit union's, name in advertisements for products or services without consent. Similar prohibitions against the referencing of a loan, including a particular individual's loan information, in connection with an advertisement are included in the bill. Credit unions strongly support the classification of such actions as a violation of Chapter 93's unfair and deceptive action provisions. The Commonwealth's consumers deserve full clarity and conspicuousness when making financial decisions and considering banking products and services. Massachusetts credit unions have over a one-hundred-year relationship of truthful, fair, and valuable service to their members, and the preservation of their good name is of top priority. As such, the Association strongly supports the provisions of Section 9.

⁵ M.G.L. c. 171, section 11.

⁶ Massachusetts Division of Banks Industry Guidance Regarding Annual Meetings for Massachusetts Chartered Credit Unions, June 12, 2020, available at <https://www.mass.gov/doc/2020-credit-union-annual-meeting-guidance/download>. Federal credit unions were similarly granted the authority to adopt a bylaw amendment to allow for the postponement of annual meetings and the holding of meetings virtually. However, such authority has not been extended beyond 2021. See National Credit Union Administration Letters to Credit Unions 20-FCU-04, *Federal Credit Union Meeting Flexibility During the COVID-19 Pandemic*, November 2020, available at <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/federal-credit-union-meeting-flexibility-during-covid-19-pandemic>.

Support: Section 10, Core Processor Contracts

Section 10 of the bill specifies various unfair and unsafe practices of core processors and language found in their contracts. The bill identifies and renders unenforceable areas in which many credit unions have found oppressive language or omissions in their agreements: fees and reimbursements; indemnification of patent and software infringement claims; termination penalties under certain merger situations; abusive audits; and lengthy terms without technology upgrades. To the degree that these activities can be addressed under the bill, credit unions are in support.

Support: Sections 15 through 18, High-Cost Home Mortgage Loans

Sections 15 through 18 of the bill address the definition and treatment of a “high cost home mortgage loan” to establish that it is a loan that exceeds the limitations set by the Commissioner of Banks, and that this limit must be no less protective than federal Truth-in-Lending provisions. The bill establishes that a creditor may not make a high-cost home mortgage loan without first receiving certification from a counselor in accordance with such federal and state Truth-in-Lending regulations and establishes that a high-cost home mortgage loan may not include the financing of points and fees, without conditions.

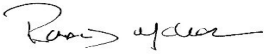
Massachusetts credit unions support the spirit of the bill’s provisions on high-cost mortgage loans. Credit unions are heavily regulated and regularly examined for compliance with state and federal Truth-in-Lending and high-cost mortgage loan provisions by the Division of Banks, the National Credit Union Administration, and rulemaking by the Consumer Financial Protection Bureau, and have a long and proud history of making only appropriately priced and underwritten loans to members. While as a general rule Massachusetts’ laws already go hand-in-hand with federal regulations regarding high-cost mortgage loans, the Association is supportive of more clarity by making the definition and treatment of high-cost mortgage loans in the Commonwealth consistent with federal Truth-in-Lending provisions.

Finally, the Association notes that Sections 1 through 6 of the bill address the deposit of the Commonwealth’s public monies, namely that of counties and municipalities, into banking institutions. In particular, the bill establishes that the kind of banking institution in which a public instrumentality, including a city or town, may deposit money includes any Commonwealth banking institution so long as the funds are redeposited in accounts in one or more banks or savings and loan associations, and the full amount of each such deposit is insured by the Federal Deposit Insurance Corporation. Accordingly, the Association takes this opportunity to remind this Committee that it has filed a separate bill, House 1213, *An Act to Allow Municipalities to Invest in Credit Unions*, to promote choice by state and municipal officials and agencies, including school districts, to deposit funds into credit unions and for credit unions to accept such public funds subject to a statutory limit. As both House 1052 and House 1213 are material and address a commonality of issues, namely the deposit of the Commonwealth’s funds into financial institutions, the Association encourages the Committee to engage in holistic deliberations and address these important issues with an inclusive and rounded approach.

Thank you for your consideration of these views relative to House 1052. The Association remains available to respond to any questions or concerns of the Committee and its staff at your convenience.

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Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald McLean".

Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.