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TO: The Honorable Dereck E. Davis, Chair
Economic Matters Committee

FROM: W. Thomas Lawrie, Assistant Attorney General

RE: House Bill 1196 – Commercial Law – Credit Regulation – Reverse Mortgage Loans Act – Revisions – OPPOSITION

The Consumer Protection Division of the Office of the Attorney General (the "Division") opposes House Bill 1196, sponsored by Delegate Adams, which would significantly amend the Reverse Mortgage Loans Act (RMLA) to allow lenders to offer a broader range of reverse mortgage products in Maryland, but without some important consumer protections. HB 1196 would revise Title 12, Subtitle 12 of the Commercial Law Article, the RMLA, in various ways, primarily by removing the requirement that reverse mortgages made in Maryland comply with the Federal Housing Administration's (FHA's) Home Equity Conversion Mortgage (HECM) program requirements. By eliminating the requirement that reverse mortgages comply with the HECM program, HB 1196 would effectively eliminate various protections for Maryland seniors that were developed by the FHA and incorporated into the HECM program over the years, including those designed to reduce foreclosures, and which are currently incorporated by reference into Maryland's RMLA. As a result, House Bill 1196 would harm Maryland seniors.

The term "reverse mortgage" is commonly understood to apply to a loan product whereby a lender disburses money over a long period to provide regular income to older borrowers, and for which the loan is repaid in a lump sum when the borrower dies or when the property is sold. *Black's Law Dictionary*, 7th Ed. (Abbr.), 2000. The original purpose envisioned for reverse mortgages was to convert home equity into cash that borrowers could use to help meet expenses in retirement. Borrowers could choose between an income stream for everyday expenses, a line of credit for major expenses (such as home repairs and medical expenses), or a combination of the two. It was anticipated that most, though not all, borrowers would use their loans to age in place, living in their current homes for the rest of their lives or at least until they needed skilled care. Upon the borrower's death, or upon leaving the home, the borrower or the estate would sell the home to repay the loan and then receive any remaining home equity. *See* Consumer Financial Protection Bureau (CFPB), *Report to Congress on Reverse Mortgages*, June 2012, at 6, online at https://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf (last visited March 1, 2021).

Yet most of today's reverse mortgage borrowers do not use their loans to convert home equity into an income stream or a line of credit. *Id*. at 6. Borrowers also do not typically live in their current homes until the end of their lives. *Id*. at 7. In its *Report to Congress on Reverse Mortgages*, the CFPB found that reverse mortgages are complex products and difficult for consumers to understand. *Id*. at 8. The CFPB found that lessons learned from the traditional mortgage market do not always serve consumers well in the reverse mortgage market, noting that the rising balance, falling equity nature of reverse mortgages is particularly difficult for consumers to grasp. *Id*. Further, although innovations in reverse mortgage products has created more choices for consumers, they have also increased the complexity of the choices and tradeoffs consumers have to make. *Id*. The CFPB also found that reverse mortgage borrowers are taking out loans at younger ages than in the past, and nearly half of borrowers are under age 70. *Id*. Taking out a reverse mortgage early in retirement, or even before reaching retirement, increases future financial risks to consumers. *Id*. Reverse mortgage borrowers are also withdrawing more of their money upfront than in the past, with the majority taking all or almost all of their available funds upfront at closing. *Id*. Borrowers who withdraw all of their available home equity upfront will have fewer resources to draw upon to pay for everyday and major expenses later in life. Finally, borrowers who take all of their money upfront are also at greater risk of becoming delinquent on paying their property taxes and hazard or flood insurance premiums (collectively, "property charge defaults") and ultimately losing their homes to foreclosure. *Id*. For all of these reasons, reverse mortgages are often considered a loan of last resort.

The Maryland General Assembly created a comprehensive regulatory structure for reverse mortgages, including the adoption of significant consumer protections, when it passed the RMLA, effective October 1, 2010. *See* 2010 Md. Laws, chs. 622 and 623, Section 2. Since the RMLA went into effect, all reverse mortgages originated in Maryland have had to comply with, among other things, the HECM program requirements. Specifically, all lenders originating reverse mortgages in Maryland after October 1, 2010, including lenders offering non-HECM reverse mortgage loans, have had to comply with FHA's regulations and guidance for the HECM program. Md. Code Ann., Com. Law § 12-1204(a).

The regulations and guidance promulgated by the FHA, and incorporated by reference into the RMLA at Com. Law § 12-1204(a), have included a number of protections designed to make the HECM program sustainable and to protect consumers, including, among other things, efforts to reduce foreclosure on HECM loans due to property charge defaults. The protections that are currently embedded in the HECM program, and which would no longer apply to new [non-HECM] private loans if HB 1196 went into effect, include the following:

- Lenders are obligated to require borrowers to set aside HECM proceeds (Life Expectancy Set Aside) to pay property charges if the initial financial assessment demonstrates that the borrower may not have the capacity or willingness to make the payments (particularly important to ensure that the most vulnerable borrowers, those who take the HECM proceeds as a single, up front lump sum, are subject to the most stringent set- aside requirements).

- Lenders are required to send a "Property Charge Delinquency Letter" to consumers that gives the borrower an opportunity to cure the delinquency before the lender sends a "due and payable request" to the FHA.
- Lenders are financially incentivized to engage the consumers early on to cure any property charge defaults prior to ever sending a "due and payable" letter to the FHA.
- Before a lender can foreclose upon a property, it has to send a "due and payable request" to the FHA, with the application having to demonstrate all of the lender's "multiple and earnest attempts" to contact the borrower to cure the default. In turn, this request must be approved by the FHA before the lender can foreclose on the property.
- The program sets limits on fixed-rate full draw loans (full draw loans are often not sustainable solutions for borrowers since they do not provide the borrower with future access to HECM proceeds).
- It provides protections to Eligible Non-Borrowing Spouses from foreclosure after the death of the last borrower.
- It removes incentives for borrowers to obtain higher principal limits by using only the age of the older spouse through quitclaiming the younger spouse from the title.

These are some of the notable measures that were carefully developed and implemented by the FHA over time for the express purpose of reducing foreclosures from property charge defaults in the HECM program and to otherwise protect consumers. They are part of Maryland law only to the extent that they are incorporated by reference through Com. Law § 12-1204(a) of the RMLA; none of these provisions is codified elsewhere in Maryland's mortgage lending laws. At present, both HECM and non-HECM loans are subject to these requirements through the RMLA.[1]

However, House Bill 1196 would allow private lenders to offer non-HECM reverse mortgage loans that would no longer be subject to these HECM program requirements. Although HB 1196 incorporates part of the first provision above – requiring a lender to conduct a financial assessment of the prospective borrower – the bill does not mandate that lenders implement the set-aside requirements flowing from that financial assessment. The other measures are completely absent from HB 1196. Thus, HB 1196 would allow private lenders to offer reverse mortgage loans that contain none of these consumer protections that the FHA has deemed necessary to reduce foreclosures from property charge defaults and to otherwise protect consumers, and which are currently incorporated as part of Maryland law.

[1] Although there are currently no private, non-HECM loans offered in Maryland, there is nothing in current Maryland law that would prevent private companies from offering reverse mortgages as long as they comply with HECM.

Although it is impossible to quantify how many new reverse mortgages might be offered in Maryland if HB 1196 was passed, it seems likely that reverse mortgage foreclosure rates overall would increase, given that any new non-HECM loans would not be subject to those measures listed above that were expressly implemented to reduce foreclosures from property charge defaults. That potential harm alone far outweighs any marginal benefit that might arise from making non-HECM reverse mortgage loans available to Maryland homeowners. As such, the Division asks that the Economic Matters Committee give HB 1196 an unfavorable report.

cc: The Honorable Christopher T. Adams
Members, Economic Matters Committee