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March 10, 2020

TO: The Honorable Delores G. Kelley, Chair  
Finance Committee

FROM: W. Thomas Lawrie, Assistant Attorney General

RE: Senate Bill 621 – Maryland Mortgage Lender Law – Considerations of a  
Mortgage Servicer – Borrower's Ability to Repay – SUPPORT

The Consumer Protection Division of the Office of the Attorney General (the "Division") supports Senate Bill 621, a Bill sponsored by Senator Rosapepe, to prohibit mortgage servicers from making a mortgage loan or modifying a mortgage loan without giving due regard to the borrower's ability to repay the mortgage loan or modified mortgage loan in accordance with its terms. SB 621 would revise Title 11, Subtitle 5 of the Financial Institutions Article, the Maryland Mortgage Lender Law ("MMLL"), by adding a new Section 11-522 that would extend "ability-to-repay" protections to mortgage loan modifications and refinances offered by mortgage servicers.

One of the contributing factors of the mortgage crisis was that many mortgage lenders made predatory mortgage loans to consumers without regard to the consumers' ability to repay the loans. *See e.g.*, Consumer Financial Protection Bureau ("CFPB"), *Ability-to-Repay and Qualified Mortgage Rule: Small Entity Compliance Guide*, at 9 (Nov. 3, 2014), available at [https://files.consumerfinance.gov/f/201411\\_cfpb\\_atr-qm\\_small-entity-compliance-guide.pdf](https://files.consumerfinance.gov/f/201411_cfpb_atr-qm_small-entity-compliance-guide.pdf) (last visited March 10, 2020). The creditors' loose underwriting practices – including failure to verify consumers' income or debts and qualifying consumers for mortgages based on "teaser" interest rates after which monthly payments would jump to unaffordable levels – contributed to a mortgage crisis that led to the nation's most serious recession since the Great Depression. *Id.* To address this issue, both federal and Maryland State laws were amended impose ATR requirements on mortgage lenders in the context of closed-end residential mortgage loans. *See, e.g.*, 12 C.F.R. § 1026.43 of federal Regulation Z ("Minimum standards for transactions secured by a dwelling"), implemented pursuant to the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act); *see also* Md. Code Ann., Com. Law § 12-127 ("Lender to consider homeowner's ability to repay loan") (2008 Md. Laws chs. 7, 8, amended 2009 Md. Laws chs. 114,

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115), Code of Maryland Regulations (“COMAR”) 09.03.06.19 (“Mortgage Lenders: Ability to Repay”).

The ATR rule is the reasonable and good faith determination that most mortgage lenders are required to make that a consumer is able to pay back his or her mortgage loan. *See* CFPB, *What is the ability-to-repay rule? Why is it important to me?* (Updated Sep. 12, 2017), available at <https://www.consumerfinance.gov/ask-cfpb/what-is-the-ability-to-repay-rule-why-is-it-important-to-me-en-1787/> (last visited March 10, 2020). These ATR requirements have proven very beneficial to consumers, precluding lenders from placing a consumer into an exotic loan product or other loan containing affordable, initial repayment terms, but which becomes completely unmanageable for the homeowner after a few years and can readily lead to default in repaying the mortgage. *See, e.g., id.*

However, there are gaps in the scope of mortgages covered by the federal and State ATR rules discussed above. In particular, some mortgage loans made to Maryland consumers by nonbank lenders or servicers may be outside the scope of existing federal and State ATR rules. *See* Maryland Financial Consumer Protection Commission (“MFCPC”), *2018 Final Report* at 25, available at <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2019/01/1-Cover-Letter-for-Annual-Report-2018-002-1.pdf> (last visited March 10, 2020). Moreover, loan modifications, which are almost always offered by a mortgage servicer, are currently not subject to ATR standards. *Id.* at 26. This is particularly problematic in the context of mortgages that have been assigned to non-bank lenders or other creditors, which are not subject to any of the regulation or oversight that applies to banks and other depository financial institutions. *See id.* at 25. The result is that numerous struggling homeowners have been placed into loan modifications that are affordable for a few years, but which then revert to completely unmanageable repayment or other terms that frequently result in default followed by a foreclosure or short sale. *See* National Consumer Law Center (“NCLC”), *Opportunity Denied: How HUD’s Note Sale Program Deprives Homeowners of the Basic Benefits of Their Government-Insured Loans*, at 34-5, 37-9 (May 2016), available at <https://www.nclc.org/images/pdf/pr-reports/opportunity-denied-report.pdf> (last visited March 10, 2020).

To close the gap in ATR protections discussed above, SB 621 would implement the MFCPC’s recommendation requiring that nonbank mortgage loan servicers comply with affordability protections with regard to loss mitigation activity. The Division believes that SB 621 would provide important protections for Maryland homeowners seeking a loan modification or other loss mitigation relief, and asks that the Senate Finance Committee give Senate Bill 621 a favorable report.

Enclosure

cc: Members, Finance Committee