February 21, 2023

Kira Wilpone-Welborn, Assistant Attorney General

Consumer Protection Division

RE: House Bill 400 – Commercial Law – Ability to Repay Verification – Exemption (RESPONSE)

The Legislative Committee of the Maryland Mortgage Bankers and Brokers Association, Inc. (MMBBA) has reviewed your letter of opposition dated February 13, 2023, to HB 400. The MMBBA believes that the opposition from your office may come from lack of familiarity with certain aspects of the loan underwriting process as well as HB 400's misleading title.

The MMBBA strongly agrees with your premise that in order to avoid the type of calamity that we faced in the 2000's when so many borrowers defaulted on their loans, it is imperative that lenders properly underwrite their loans, including verifying that borrowers have the ability to repay them. The title of HB 400 is seriously misleading, and this misleading title creates a major problem in understanding the purpose and effect of HB 400. HB 400 **<u>does not create an exemption</u>** from a lender's obligation to verify borrower's ability to repay. Instead, HB 400 would permit an **<u>alternative method</u>** to verify the ability of borrowers to repay their loans.

The State of Maryland passed an Ability to Repay law in 2010 which captured CDFI lending under the law. In 2013, The Consumer Financial Protection Board (CFPB) issued a Federal Ability to Repay rule that exempted CDFI's from the rule. HB 400 aligns Maryland law with the CFPB rule.

To prevent a repeat of the financial crisis of 2008, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") creating an independent agency to set and enforce clear and consistent rules for the financial marketplace. Recognizing that too many responsible American families had paid the price for an outdated regulatory system that failed to adequately oversee financial institutions and lenders, the CFPB was created to ensure that financial firms and lenders were held to high standards. Utilizing a comprehensive consumer focused view when drafting the regulations implementing Title XIV of the Act, the CFPB recognized ***the discriminatory effects certain quantitative credit metrics would have on minority borrowers and chose to mitigate the effects by exempting the specific entities responsible for serving such minority people and communities.*** The MMBBA understands the important role that the CFPB set out for CDFIs to play in the post Dodd-Frank regulatory environment through its exemption authority. In short, the CFPB wrote that:

> "CDFI's provide mortgage loans [that] generally employ underwriting guidelines tailored to the needs of LMI [Low to Moderate Income] consumers. Unlike creditors that rely on industry-wide underwriting guidelines, which generally do not account for the unique credit characteristics of LMI consumers, CDFI and CHDO underwriting requirements include a variety of compensating factors. For example, these creditors often consider personal narratives explaining prior financial difficulties, such as gaps in employment or negative credit history. Others consider the amount of time a consumer spends working on the construction or rehabilitation of affordable homes. Some creditors also consider a consumer's general reputation, relying on references from a landlord or persons with whom the consumer does business. In these transactions, a CDFI or CHDO may determine that the strength of these compensating characteristics outweigh weaknesses in other underwriting factors, such as negative credit history or irregular income. Including these compensating factors in the underwriting process enables CDFIs and CHDOs to more appropriately underwrite LMI consumers history."

> "The [CFPB] understands that creditors with [the CDFI designation] typically engage in a lengthy underwriting process that is specifically tailored to the needs of these consumers by incorporating a variety of compensating factors. Also… ***CDFI loan performance reflect the low default levels associated with these creditors' programs***, which strongly suggest that consumers are extended credit on reasonably repayable terms. Finally, commenters confirmed that these creditors serve consumers that have difficulty obtaining responsible and affordable credit, and that the burdens imposed by the ability-to-repay requirements would significantly impair the ability of these creditors to continue serving this market. Taken together, this feedback demonstrates that creditors with these designations provide residential mortgage loans on reasonably repayable terms, ***that these exemptions are necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers served by these creditors, and that the government approval and oversight associated with these designations ensures that there is little risk that consumers would be subject to abusive lending practices…"***

> "The Final Rule… "[t]he [CFPB] has concluded that a creditor designated as a CDFI or DAP should be exempt from the ability-to-repay requirements, provided these creditors meet certain other applicable requirements. As comments confirmed, creditors seeking these designations must undergo a screening process related to the ability of applicants to provide affordable, responsible credit to obtain

the designation and must operate in accordance with the requirements of these programs, including periodic recertification. Comments provided to the Bureau also confirmed that the ability-to-repay requirements generally differ from the unique underwriting criteria which are related to the characteristics of the consumers served by these creditors. The ability-to-repay requirements primarily consist of quantitative underwriting considerations, such as an analysis of the consumer's debt-to-income ratio."

The MMBBA would appreciate the reconsideration of your office regarding HB 400 based on the foregoing. If you have any questions about this, please let me know.

Timothy J. Gough, CMB

Chair, Legislative Committee

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Footnote: **https://www.federalregister.gov/documents/2013/06/12/2013-13173/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z**