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February 2, 2022

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

From: Steven M. Sakamoto-Wengel
Consumer Protection Division

Re: Senate Bill 217 – Commissioner of Financial Regulation – Consumer Loans – Fees (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General (the “Division”) opposes Senate Bill 217, a Departmental Bill that would authorize lenders and servicers to charge borrowers transaction fees for accepting payment by electronic methods, such as credit card, PayPal, Venmo and similar electronic payment methods. The U.S. Court of Appeals for the Fourth Circuit recently held that collecting such fees violates the Maryland Consumer Debt Collection Act and Consumer Protection Act if the fees are not set forth in the original loan documents.¹ Senate Bill 217, however, would allow such fees to be collected regardless of whether they are authorized in the original loan documents. As any fees incurred by a lender or servicer for accepting electronic payments are already included in the interest payments being made by the borrower, the Division opposes allowing such fees to be added to the transaction.

As the Carrington case reflects, some servicers have sought to profit from the imposition of “convenience fees.” The Consumer Financial Protection Bureau (“CFPB”) has observed: “Supervision has found that one or more mortgage servicers ... violated the [FDCPA] when they charged fees for taking mortgage payments over the phone to borrowers whose mortgage instruments did not expressly authorize collecting such fees and who reside in states where applicable law does not expressly permit collecting such fees.” CFPB [Compliance Bulletin 2017-01, 82 Fed. Reg. 35,936, 35,938 \(Aug. 2, 2017\)](#)

The Division has discussed its concerns with the Commissioner of Financial Regulation and appreciates the Commissioner’s intention to limit fees rather than authorize such fees. However, the Division is concerned that, especially in light of the *Carrington* decision, Senate Bill 217 would

¹ *Ashly Alexander, et. al. v. Carrington Mortgage Services, LLC*, Case No. 20-2359 (4th Circuit, January 19, 2022).

allow a lender to assess fees that are currently not permitted. The Division also appreciates that the Commissioner has offered amendments to address some of the Division's concerns, including prohibiting fees for electronic ACH payments.² That change would prevent a lender from providing for a charge for ACH payments in the loan documents, which is a dramatic improvement for the bill. However, the bill would still allow a lender to charge fees regardless of whether the fees are authorized in the original loan documents as long as the lender offers a form of payment without charge, regardless of how realistic it may be for a borrower to use that payment method.³

There is a long history of lenders and servicers charging illegal and improper fees to Maryland borrowers and both the Division⁴ and the Commissioner have undertaken enforcement actions to protect Maryland consumers in such instances. The Division has significant concerns that, if Maryland law allows such fees, it will make it harder to take actions to protect consumers when such fees are charged in an illegal and abusive manner. Accordingly, the Consumer Protection Division respectfully requests that the Finance Committee issue an unfavorable report on Senate Bill 217.

cc: The Honorable Tony Salazar
Members, Finance Committee

² ACH transactions are cost-effective for the lender or servicer, with a "median cost range of \$0.26-\$0.50 per item." p. 18, *Payments Cost Benchmarking Survey*, Association for Financial Professionals (2022)

³ Of course, if a lender, or its servicer, provided no means for the borrower to make payments without a fee, the lender would have misrepresented the interest rate on the loan in violation of the Consumer Protection Act.

⁴ See, e.g., <https://www.marylandattorneygeneral.gov/Press/2018/051418.pdf> (Nationstar inspection fees) and <https://www.marylandattorneygeneral.gov/Press/2019/041619a.pdf> (Celink inspection fees).