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August 3, 2018

The Honorable Charlie Baker
Governor of the Commonwealth
The State House, Room 280
Boston, MA 02133

RE: Please Support Economic Mobility Commission & Mortgage Loan Originator Licensing Exemption for Affordable Housing Nonprofits in Economic Development Bill

Dear Governor Baker,

On behalf of Citizens' Housing and Planning Association (CHAPA), I am writing to ask that you sign the Economic Development Bill (H.4868) and include provisions that create an economic mobility commission¹ and establish a narrow exemption in state law for affordable housing nonprofits from mortgage loan originator licensing requirements.²

CHAPA's mission is to encourage the production and preservation of housing that is affordable to low and moderate income families and individuals and to foster diverse and sustainable communities through planning and community development. We advocate for the resources and policies that will help everyone in the Commonwealth have a safe, healthy, and affordable place to call home.

We support the Economic Development Bill because housing is directly tied to economic development. The housing industry creates and supports thousands of jobs in the Commonwealth, including construction workers, architects, and the permanent staff needed to manage developments. Housing also generates revenue through state and local tax collections and residents support small businesses like restaurants and retail shops in communities across Massachusetts. Finally, housing provides the foundation for a family to be stable and economically self-sufficient.

CHAPA strongly supports the \$250 million capital reauthorization for the MassWorks Infrastructure Development Program. This will allow more grants to communities to support economic development, affordable housing, and job creation.

¹ H.4868, 190th Gen. Ct. § 63 (Mass. 2018).

² H.4868, § 49–52.

Again, CHAPA also asks that you sign into law two provisions in the bill that will support economic development for all families and affordable housing:

- I. Establishing an economic mobility commission; and
- II. Creating a narrow exemption from mortgage loan originator licensing requirements for certain affordable housing nonprofits.

I. Establishing an economic mobility commission

CHAPA respectfully requests that you sign the Economic Development Bill and include Section 63 to establish an Economic Mobility Commission. The commission will help identify the most effective components of many self-sufficiency programs, examine the impact of cliff effects, provide recommendations, and help shape programs that will better assist families reach economic independence.

Numerous self-sufficiency and economic mobility programs administered on federal, state and local levels work to provide households a path to economic mobility. These programs help families get education, increase their incomes, and build assets to attain financial self-sufficiency and reduce reliance on supports with stable housing as the foundation. Each program offered across the state, including the Family Self-Sufficiency Program, MassLEAP, and Jobs Plus, has a different approach and varying program components with different outcomes.

The legislative commission would provide the opportunity to bring together stakeholders to examine these programs. The commission would make recommendations to the Legislature and Administration for programs and components that could be scaled to assist more families across the Commonwealth towards a path of economic mobility.

Tied to increases in income, the commission will also examine cliff effects and determine ways to adjust assistance in response to changes in income, including automatic adjustments tied to minimum wage increases. When recipients of support programs begin to work or receive raises, they often experience an economic penalty because of the steep decline in their benefits which leaves them worse off than prior to getting a job or a raise. These setbacks, referred to as “cliff effects”, are a barrier for families trying to achieve economic independence and financial stability.

This commission will help more households across the Commonwealth build assets, reduce their reliance on public assistance, and attain financial stability. Establishing this commission will ensure an evidence-based approach to identify and expand, effective economic development opportunities in Massachusetts.

II. **Creating a narrow exemption from mortgage loan originator licensing requirements for certain affordable housing nonprofits**

CHAPA respectfully requests that you sign the Economic Development Bill and include Sections 49–52 to create a narrow exemption from mortgage loan originator licensing requirements and fees for certain affordable housing nonprofit organizations that will support new affordable housing and economic development opportunities.

Many affordable housing nonprofit organizations administer loan programs that help families buy homes, address home repair needs or lead paint remediation, prevent foreclosure, and acquire or preserve rental housing. These loans offer terms that are favorable to the borrower, in some cases loans at no interest with repayment deferred. Frequently, the non-profit is administering loans on behalf of a government entity, which sets the terms of the loans.

Unfortunately, current state law does not permit these nonprofits to be exempt from mortgage loan originator requirements created by the federal SAFE Act.³ Congress enacted the SAFE Act during the height of the mortgage crisis. The law governs the licensing requirements for mortgage loan originators, setting minimum standards for mortgage loan officers who may profit from the sale and origination of mortgages.

In recognition of the material differences between the loans administered by nonprofits with a public or charitable purpose and the commercial purpose of the work of a typical mortgage lender, the SAFE Act permits states to exempt certain nonprofits, and the employees who work for them, from the mortgage licensing requirements.⁴

Specifically, states are permitted to exempt from the licensing requirements a “bona fide nonprofit organization,” defined in the SAFE Act as a tax-exempt nonprofit organization that promotes housing or provides homeownership services, conducts its business in a manner that serves charitable purposes, provides loan terms that are favorable to the borrower, and compensates its employees in a manner that does not incentivize employees to act other than in the best interests of the borrower.⁵ Currently, 34 states and the District of Columbia provide some kind of exemptions for nonprofit lenders, either by statute or through their regulating authority.

Massachusetts law governing the licensing of mortgage loan originators does not currently provide for this exemption from the licensing requirements.⁶ However, a 2008 Opinion Letter from the Massachusetts Division of Banks (DOB) stated that certain nonprofits and employees were exempt from the licensing requirements.⁷

³ See Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008, 12 U.S.C. § 5100.

⁴ See 12 C.F.R. § 1008.103 (describing mortgage loan originators required to be licensed by state and those that may be exempted).

⁵ 12 C.F.R. § 1008.103(e)(7)(ii).

⁶ See Mass. Gen. Laws ch. 255E, § 2 (concerning mortgage broker or lender license requirements and exempted entities); see also Mass. Gen. Laws ch. 255F, § 2 (concerning licensing or exemption requirements for mortgage loan originators).

⁷ See Mass. Div. of Banks, *Selected Opinion 08-018* (July 17, 2008) <https://www.mass.gov/opinion/selected-opinion-08-018>.

Unfortunately, in June 2017, the DOB revoked this exemption stating that amendments to ch. 255F in 2009 altered the regulatory scheme to require that any person that meets the definition of a mortgage loan originator must be licensed as such, even if he or she is employed by a nonprofit entity.⁸

Without a change to state law, the DOB states that it cannot exempt employees of “bona fide nonprofit organizations,” even if they meet the requirements for exemption under the SAFE Act.

Prior to obtaining a mortgage loan originator license, individuals must pay licensing fees, complete pre-licensing coursework, and pass a written test. Consequently, these nonprofits and their employees would need to make a significant investment of time and money that would not materially benefit their organizations or people served by their programs.

Sections 49–52 create an exemption from mortgage loan originator licensing requirements and fees for certain affordable housing nonprofit organizations would re-establish in state law the exemption provided for these nonprofits from 2008 to 2017. Specifically, the exemption would apply to Massachusetts nonprofits and their employees that exclusively make mortgage loans on residential property to be financed with public funds under a contract with a government or quasi-government entity. This recognizes the charitable nature of nonprofit organizations that administer publicly-funded programs.

The sections also create an exemption for “Bona fide nonprofit affordable homeownership organizations” if their primary purpose is to help qualified low-income individuals build, repair, and purchase affordable housing. This would include Habitat Humanity, recognizing its work in making affordable homeownership a reality for so many low-income families in Massachusetts.

Unfortunately, there will be negative impacts on affordable housing in Massachusetts if the DOB starts requiring these affordable housing nonprofits to be licensed as mortgage loan originators. Affordable housing nonprofits and their employees would incur significant additional expense for training that is more suitable for lenders operating in a commercial context. This may result in some nonprofits choosing to stop offering housing assistance programs that involves lending public funds.

Even for nonprofits who choose to continue offering this assistance, due to the time involved in obtaining a license for their affected employees, some of these nonprofit organizations may need to suspend the provision of such assistance until the organization becomes compliant with the licensing requirements.

⁸ Mass. Div. of Banks, *Industry Letter Regarding Applicability of Mortgage Loan Originator Licensing to Individuals Employed by Nonprofit Entities* (June 15, 2017) <http://www.mass.gov/ocabr/docs/dob/industry-letter-06152017.pdf>.

Habitat for Humanity affiliates will also have to limit their production of affordable housing in Massachusetts because Habitat acts as the lender to subsidize the sale of its homes to low-income families.

Ultimately, the low-and moderate-income households and their communities would be harmed by losing access to programs that help create and preserve affordable homes.

The language for these sections was developed in partnership with CHAPA, Habitat for Humanity, the Massachusetts Association of Community Development Corporations (MACDC), and the Massachusetts Mortgage Bankers Association (MMBA), the Regional Housing Network, and the Division of Banks.

There is no known opposition to either of these provisions and including them come at no additional costs to the Commonwealth.

As always, thank you for your leadership and for your dedication to making sure everyone in the Commonwealth has a safe, healthy, and affordable place to call home.

Sincerely,



Eric Shupin
Director of Public Policy

cc: Lieutenant Governor Karyn Polito
Secretary Michael Heffernan, Executive Office of Administration and Finance
Secretary Jay Ash, Executive Office of Housing and Economic Development
Undersecretary Janelle Chan, Department of Housing and Community
Development