Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 302 (Chair, Finance Committee, *et al.*) (By Request - Departmental - Labor, Licensing and Regulation)

Finance Economic Matters

Financial Institutions - Commissioner of Financial Regulation - Investigative and Enforcement Powers and Regulation of Mortgage Lenders

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This departmental bill removes the mortgage lender licensing exemption for (1) a person who makes three or fewer mortgage loans per calendar year; (2) a person who brokers at most one mortgage loan per calendar year; and (3) a specified subsidiary or affiliate of any financial institution without specified connections to the State. The bill also provides the Commissioner of Financial Regulation with investigative and enforcement powers over a subsidiary or affiliate of an institution over which the commissioner has jurisdiction.

The bill takes effect January 1, 2013.

Fiscal Summary

State Effect: Special fund revenues increase by $55,000 in FY 2013 and $50,000 in subsequent years. The additional workload can likely be handled with existing resources. No impact on expenditures.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	$55,000	$50,000	$50,000	$50,000	$50,000
Expenditure	0	0	0	0	0
Net Effect	$55,000	$50,000	$50,000	$50,000	$50,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law:

General Investigative and Enforcement Authority

The commissioner may make public or private investigations in order to (1) determine whether a violation has occurred; and (2) aid in the enforcement of a law or in the prescribing of regulations, rules, and orders over which the commissioner has jurisdiction. The commissioner may perform specified actions, such as administer oaths or subpoena witnesses, for the purposes of an investigation or proceeding. The commissioner may also require or permit a person to make an oral or written statement regarding a matter under investigation and, subject to State law, publish information concerning a violation of a law, regulation, rule, or order over which the commissioner has jurisdiction.

If a person refuses to obey a subpoena, the commissioner may apply to the appropriate circuit court to issue an order requiring the person to appear before the commissioner, or an officer designated by the commissioner, and produce evidence, if so ordered. A failure to obey this order is punishable as contempt of court.

When the commissioner determines that a person has violated a law, regulation, rule, or order over which the commissioner has jurisdiction, the commissioner may issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity if immediate action is in the public interest. The commissioner must notify the person of the opportunity for a hearing before the commissioner and the consequences of failing to request a hearing. The hearing must be held in accordance with the Administrative Procedure Act.

If, after notice and a hearing, the commissioner determines a violation has occurred, the commissioner may, in addition to taking any other action authorized by law, issue a final cease and desist order, suspend or revoke the license of the person, issue a penalty order for up to $1,000 for the first violation and up to $5,000 for each subsequent violation, or take any combination of these actions. In determining the amount of the civil penalty, the commissioner must consider numerous specified factors.

In the event of a violation, the commissioner may also bring an action in the appropriate circuit court to obtain one or more of the following remedies:

- a temporary restraining order;
- a temporary or permanent injunction;
- a civil penalty of up to $1,000 for a first violation and up to $5,000 for each subsequent violation;
- a declaratory judgment;
- an order preventing access to the violator's assets;
- rescission;
- restitution; and
- any other relief as the court deems just.

If the commissioner believes a person is *about to* violate a law, regulation, rule, or order over which the commissioner has jurisdiction, the commissioner may bring an action in the appropriate circuit court to obtain a temporary restraining order, a temporary or permanent injunction, or both.

These general investigative and enforcement powers do not apply to (1) any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of Maryland or the United States that maintains its principal office in this State; (2) any out-of-state bank, as defined by State law, having a branch that accepts deposits in this State; (3) any institution incorporated under federal law as a savings association or savings bank that does not maintain its principal office in this State but has a branch that accepts deposits in this State; or (4) an affiliate of any of these institutions.

Mortgage Lender Licensing

The commissioner is responsible for licensing and regulating mortgage lenders, brokers, servicers and originators, sales finance companies, consumer loan companies, money transmitters, check cashers, installment loan lenders, credit reporting agencies, consumer debt collection agencies, and debt management services providers. The office also regulates and supervises State-chartered financial institutions including State-chartered banks, credit unions, and trust companies.

Chapter 4 of 2009 overhauled the State's mortgage lender and loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE). Chapter 4 altered the licensing requirements, initial license terms, and renewal terms for mortgage lenders and loan originators.

Several institutions are exempt from the mortgage lender licensing laws. This includes a specified subsidiary or affiliate of (1) any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered in Maryland or the United States that maintains its principal office in Maryland; (2) any out-of-state bank as defined by the Financial Institutions Article, with a branch that accepts deposits in Maryland; and (3) any institution incorporated under federal law as a savings association or savings bank without a principal office in Maryland but that accepts deposits in Maryland.

However, the licensing exemption only applies to a subsidiary or affiliate that is subject to an audit or examination by a regulatory body or agency in Maryland, the United States, or the state where the subsidiary or affiliate maintains its principal office and files specified information with the commissioner prior to making a mortgage loan.

Background:

Dodd-Frank Wall Street Reform and Consumer Protection Act

In July of 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) became law. Prior to the Dodd-Frank Act, a subsidiary or affiliate of a national bank was exempt from state licensing and reporting laws. The Dodd-Frank Act makes significant changes in the area of federal preemption of state consumer protection law and specifically states that the Consumer Financial Protection Act does not preempt, annul, or affect the applicability of any state law to a subsidiary or affiliate of a national bank or federal savings association. The new preemption laws took effect on July 21, 2011. The bill reacts to the changes in the Dodd-Frank Act and allows the commissioner to license and oversee these institutions.

Secure and Fair Enforcement for Mortgage Licensing Act

The federal SAFE definition of a loan originator does not place a similar exemption as Maryland's law that allows a lender to provide up to three loans a year without being licensed. The bill aligns state law with the federal definition. The commissioner reports that repealing this exemption will eliminate the issue of a lender meeting the exemption because it has provided only three loans in the current year, even though it may have provided a substantially higher number in the past.

State Fiscal Effect: Despite the bill's effective date of January 1, 2013, the commissioner anticipates that all existing offices or branches of operating subsidiaries and affiliates of national banks in Maryland, approximately 50, will obtain the mortgage lender license in fiscal 2013. The application fee for new mortgage lender licenses is $1,100 in the first year and $1,000 in subsequent years.

As of December 31, 2011, there were 1,402 mortgage lenders with active licenses. The commissioner advises that 10 staff members perform examinations of licensees. A licensee must be examined once every three years, meaning one staff member performs 46 examinations in a year. If an additional 50 mortgage lenders apply for a license due to the bill, each staff member would perform an additional two examinations a year. Because an examination may be performed within a week, the additional workload may be handled within existing resources. However, it is possible that the increased workload may require additional personnel if the new population of licensees commits more violations than the current population.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Attorney General (Securities Division); Department of Labor, Licensing, and Regulation; www.fredlaw.com; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2012
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Financial Institutions – Commissioner of Financial Regulation – Investigative and Enforcement Powers and Regulation of Mortgage Lenders

BILL NUMBER: SB 302

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.