SB 621

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 621 (Senator Rosapepe)
Finance

Maryland Mortgage Lender Law - Considerations of a Mortgage Servicer - Borrower's Ability to Repay

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This bill prohibits a mortgage servicer 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 the modified mortgage loan) in accordance with its terms, including the fully indexed rate of the mortgage loan or the modified mortgage loan, if applicable, and property taxes and homeowner's insurance associated with the property.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Fully indexed rate" means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the mortgage servicer, plus the margin that will apply after the expiration of an introductory interest rate.

Due regard to a borrower's ability to repay a mortgage loan or a modified mortgage loan must include (1) consideration of the borrower's debt-to-income ratio, including existing debts and other obligations and (2) verification of the borrower's gross monthly income and assets by review of the third-party written documentation reasonably believed by the mortgage servicer to be accurate and complete.

Acceptable third-party written documentation includes:

- the borrower's Internal Revenue Service form W-2;
- a copy of the borrower's income tax return;
- payroll receipts;
- the records of a financial institution; or
- other third-party documents that provide reasonably reliable evidence of the borrower's income or assets.

The bill's requirements do not apply to a mortgage loan or a modified mortgage loan:

- that is approved for government guaranty by specified federal agencies; or
- that refinances an existing mortgage loan if the loan is (1) offered under the federal Homeowner Affordability and Stability Plan and (2) made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Current Law/Background: This bill is, in part, a recommendation made by the Maryland Financial Consumer Protection Commission (MFCPC) in its 2018 final report.

A mortgage *lender* may not make a mortgage loan without giving due regard to a borrower's ability to repay the mortgage.

MFCPC recommended requiring nonbank mortgage loan *servicers* to comply with affordability protections with regard to loss mitigation activity, specifically when lenders or servicers offer loan modifications. Loan modifications are not subject to the ability to repay standards that apply to loan originations; however, MFCPC concluded that a requirement that they adhere to affordability standards may assist consumers in retaining their property.

Small Business Effect: The Office of the Commissioner of Financial Regulation advises that mortgage servicers rarely make loans; thus, the bill primarily affects mortgage servicers who make loan modifications. Any such servicers may need to alter their loan modification processes as a result of the bill and may need to spend more time reviewing modification requests.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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