Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Housing and Community Development

(DLS Control No. 14-119)

Overview and Legal and Fiscal Impact

These regulations expand the scope of COMAR 05.13.05 to include the Linked Deposit Program for Small Businesses and, pursuant to Chapter 345 of 2013, alter the interest rate necessary for a loan to qualify under the Linked Deposit Program for Minority Businesses and the Linked Deposit Program for Small Businesses.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies. The regulations implement Chapter 345 of 2013. Any fiscal impact is a result of that legislation and not the regulations.

Regulations of COMAR Affected

Department of Housing and Community Development:
Neighborhood Business Development: Linked Deposit Program:
COMAR 05.13.05.01-.05 and .08

Legal Analysis

Background

Chapter 393 of 2006 and Chapter 586 of 2012 established the Linked Deposit Program for Minority Businesses and the Linked Deposit Program for Small Businesses, respectively. During the fall of 2012, the Department of Housing and Community Development convened a Linked Deposit Workgroup at the request of the Senate Finance Committee. The workgroup was tasked with examining the barriers to the effective use of the linked deposit programs and increasing lender participation. Chapter 345 of 2013 implements the recommendations of the Linked Deposit Workgroup.

Summary of Regulations

Regulation .01 of COMAR 05.13.05 clarifies that the Linked Deposit Program regulations apply to eligible minority business enterprises under § 6-211 of the State Finance and Procurement Article, and to small business under § 6-212.

Regulation .02 provides a list of defined terms for COMAR 05.13.05 and states that the definition of "small business" that is used throughout the chapter has the same meaning as the Linked Deposit Program statute in the State Finance and Procurement Article.

Regulation .03 clarifies that the regulation applies to eligible minority business enterprises and eligible small businesses. Regulation .03 also alters the interest rate necessary for a loan to qualify under certain programs from "at least two percentage points below the interest rate the financial institution would charge for the loan for a similar purpose" to " lower than that interest rate the financial institution would charge for a loan for a similar purpose and term by at least two percentage points, or the difference between the financial institution's rate on a 60 month certificate of deposit and the interest rate acceptable to the Treasurer's Office for its receipts."

Regulations .04 and .05 clarify that the regulations apply to eligible minority business enterprises and eligible small businesses. Finally, Regulation .08 clarifies what happens to the interest rate of a loan made under either linked deposit program when a minority business enterprise or a small business is decertified or does not meet certain terms to reflect the changes made in Regulation .03.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 6-211 and 6-212 of the State Finance and Procurement Article as legal authority for the regulations. Sections 6-211 and 6-212 authorize the department and the Treasurer to adopt regulations to carry out the Linked Deposit Program for Minority Businesses and the Linked Deposit Program for Small Businesses. The cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections

The department has been made aware of the opportunity to provide greater clarity with regard to the amended definition of "small business."

Fiscal Analysis

There is no fiscal impact on State or local agencies. The regulations implement Chapter 345 of 2013. Any fiscal impact is a result of that legislation and not the regulations.

Agency Estimate of Projected Fiscal Impact

The department advises that general fund revenues decrease from foregone interest on Treasurer deposits to the extent that the regulations encourage participation in one or both linked deposit programs; however, the amount is indeterminable. Depending on market conditions, these changes may result in the Treasurer accepting a lower interest rate for certificates of deposit at participating financial institutions for loans enrolled in the program, resulting in reduced interest income. The department can implement the regulations with existing program resources and staff. The Department of Legislative Services disagrees with this assessment, as the regulations merely implement Chapter 345 of 2013 (SB 1072), and any fiscal impact is a

result of that legislation and not the regulations. However, the department's assessment is consistent with the fiscal and policy note for SB 1072.

The fiscal and policy note for SB 1072 indicated that (1) general fund revenues decline from foregone interest on Treasurer deposits to the extent that the legislation encourages participation in one or both linked deposit programs (but the amount could not be reliably estimated); (2) the department can implement the legislation with existing budgeted resources; and (3) altering the requirements under which the Treasurer may make an interest-bearing deposit in a financial institution under the linked deposit programs is not anticipated to materially affect State finances.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses in the State. The regulations encourage lender participation in one or both linked deposit programs. Small businesses benefit from below-market-rate loans provided through the programs. The Department of Legislative Services disagrees with this assessment, as the regulations merely implement Chapter 345 of 2013, and any small business impact is a result of that legislation and not the regulations. However, the department's assessment is consistent with the fiscal and policy note for SB 1072.

Additional Comments

The general purpose of the linked deposit programs is to offset the cost to financial institutions of offering loans at below-market rates to minority business enterprises (MBEs) and small businesses. This is accomplished by financial institutions paying below-market interest on deposits from the Treasurer. For example, with sufficiently high interest rates, a financial institution could offer a 7% loan (instead of a 9% loan) to an MBE. The Treasurer could then deposit an amount equal to the loan with the financial institution at 3% interest (instead of 5%).

In the recent interest rate climate, however, market interest rates paid by financial institutions to depositors are not sufficiently high to allow for a 2% reduction in interest payments to the Treasurer. Chapter 345 addressed this issue by authorizing a financial institution to issue a loan at a below-market rate that is consistent with the reduction the Treasurer can accept on deposits under historically low-interest-rate conditions. For example, the financial institution could offer a 7% loan (rather than 7.75%) to an MBE. The Treasurer could then deposit an amount equal to the loan with the financial institution at 0.25% interest (instead of 1%).

Contact Information

Legal Analysis: Tiffany J. Johnson – (410) 946/(301) 970-5350
Fiscal Analysis: Stephen M. Ross – (410) 946/(301) 970-5510