Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Department of Labor, Licensing, and Regulation
(DLS Control No. 15-238)

Overview and Legal and Fiscal Impact

This regulation reduces the investigation fee for mortgage lender license applicants.

This regulation presents no legal issues of concern.

Mortgage Lender-Originator Fund revenues decrease by approximately $49,401 annually due to the reduction of the mortgage lender license investigation fee.

Regulation of COMAR Affected

Department of Labor, Licensing, and Regulation:
Commissioner of Financial Regulation: Mortgage Lenders: COMAR 09.03.06.23

Legal Analysis

Background

A mortgage lender is a person that brokers, makes, or services a loan or other extension of credit secured by a lien on residential real property. The mortgage may be categorized as a first or second mortgage loan, a secured open-end line of credit, or a closed-end mortgage. As of June 2014, the Commissioner of Financial Regulation licensed approximately1,965 mortgage lenders.

A person may not engage in the business of a mortgage lender in this State without first obtaining a license from the office. An applicant for a mortgage lender's license must pay a $1,000 annual license fee and a $100 investigation fee and is required to meet certain bond requirements, which depend upon the applicant's aggregate lending activity. Applications are processed through the Nationwide Mortgage Licensing System and Registry. Criminal history background checks are performed on all applicants. The office examines new mortgage lenders within 18 months after licensure and examines all mortgage lenders at least once within every three-year period. The licensing provisions do not apply to certain financial institutions that take deposits, insurance companies, or certain federal corporations. Individuals or entities that make three or fewer mortgage loans per calendar year and broker no more than one mortgage loan per year are exempt from licensure.

On September 15, 2015, Governor Larry Hogan announced a plan to reduce or eliminate a number of fees across State government. This regulation is part of that plan. Additional information regarding Governor Hogan's fee reduction initiative may be found here.

Summary of Regulation

The regulation reduces the investigation fee for a mortgage lender license applicant from $100 to $1.00.

Legal Issue

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Commissioner of Financial Regulation cites § 2-105 of the Business Regulation Article, §§ 2-105.1, 11-503, 11-503.1, 11-505, 11-506(a), 11-506(c)(1), 11-507, 11-508(g), 11-511, 11-511.1, 11-513(a) and 11-515(c) of the Financial Institutions Article, and § 3-104.1 of the Real Property Article as statutory authority for the proposed regulation. Section 2-105 of the Business Regulation Article generally authorizes the Secretary of Labor, Licensing, and Regulation to adopt regulations for the Office of the Secretary, and § 11-503 of the Financial Institutions Article broadly authorizes the Commissioner of Financial Regulation to adopt regulations to carry out the mortgage lender subtitle. Specific authority for the regulation is found in §§ 11-503.1 and 11-507(b) of the Financial Institutions Article. Section 11-503.1 requires the commissioner to (1) set by regulation fees provided for in the subtitle and (2) ensure that those fees are reasonable and will cover the actual direct and indirect costs of regulating licensees in accordance with the provisions of the subtitle. Section 11-507(b) specifies that a mortgage lender license applicant must pay a nonrefundable investigation fee set by the commissioner. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. Assuming that, following the fee reductions, fee revenues continue to approximate the administrative costs associated with mortgage lender license applicant investigations and criminal background checks, the regulation complies with the legislative intent of the law.

Fiscal Analysis

Mortgage Lender-Originator Fund revenues decrease by approximately $49,401 annually due to the reduction of the mortgage lender license investigation fee.

Agency Estimate of Projected Fiscal Impact

The department advises that the reduction of the mortgage lender license investigation fee from $100 to $1 reduces Mortgage Lender-Originator Fund revenues by approximately $49,401 annually. This estimate is based on actual revenue obtained from this fee in fiscal 2015. The

Department of Legislative Services concurs and notes that the regulation will likely only be effective for half of fiscal 2016, mitigating the Mortgage Lender-Originator Fund revenue loss in that year only.

Impact on Budget

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

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Additional Comments

The Mortgage Lender-Originator Fund consists of fee revenues collected pursuant to Title 11, Subtitle 5 and Subtitle 6 of the Financial Institutions Article. The purpose of the fund is to pay the costs and expenses incurred by the Commissioner of Financial Regulation that are related to the regulation of mortgage lending and mortgage origination. At the end of fiscal 2015, the Mortgage Lender-Originator Fund had a $3,456,308 fund balance. The Department of Legislative Services notes that, if the fee reduction affects the balance of the Mortgage Lender-Originator Fund to the extent that it would be unable to carry out its purposes, the regulation may impact the State budget in the out-years. However, the department advises that the investigation fee was first authorized prior to the national requirement to transition to the Nationwide Mortgage Licensing System (NMLS). By federal rule, NMLS requires applicants to submit to a criminal history records check as well as a credit check. Since most of the investigative work is now done through NMLS, the department advises that the fee reduction will not impact its operations.

Technical Corrections and Special Notes

In response to a suggestion from the Department of Legislative Services, staff for the commissioner agreed to remove § 11-605.1 of the Financial Institutions Article as authority for the regulations because the section was repealed by Chapter 148 of 2011.

Contact Information

Legal Analysis: Sally Guy – (410) 946/(301) 970-5350
Fiscal Analysis: Matthew B. Jackson – (410) 946/(301) 970-5510