Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 292 (The Speaker, *et al.*) (By Request - Administration)
Economic Matters Finance

Financial Institutions - Mortgage Lenders and Mortgage Loan Originators

This Administration bill revises the State's mortgage lender and mortgage loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Mortgage Licensing Act). The bill alters the licensing requirements, initial license terms, and renewal license terms for mortgage lenders and mortgage loan originators; requires licensees to submit certain information to the Nationwide Multistate Licensing System and Registry (NMLSR); increases civil penalties; and permits the Commissioner of Financial Regulation to issue interim mortgage loan originator licenses.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: Special fund revenues increase by $1,375,000 in FY 2010 due to collection of licensing fees for new mortgage loan originators twice in the fiscal year. Potential additional special fund revenue increase due to higher civil penalties. Out-years reflect a constant number of new and renewal mortgage loan originator license applicants. Special fund expenditures increase by $470,000 in FY 2010. Out-years reflect elimination of one-time-only costs and inflation for ongoing expenses.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	$1,375,000	$631,300	$631,300	$631,300	$631,300
SF Expenditure	$470,000	$25,300	$25,500	$25,800	$26,000
Net Effect	$905,000	$606,000	$605,700	$605,500	$605,200

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

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: The Administration 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

Bill Summary:

Mortgage Lender Licensing Requirements: The bill requires a residential mortgage lender applicant or licensee to provide NMLSR with:

- fingerprints for submission to the FBI or other government agency for a state, national, or international criminal history background check;
- an NMLSR form containing the applicant's personal history and experience;
- an authorization form allowing NMLSR and the commissioner to obtain an independent credit report and information related to administrative, civil, or criminal findings by any government jurisdiction.

Along with each initial application, an applicant for a mortgage lender's license must pay the commissioner a nonrefundable investigation fee and a license fee. Applicants are also responsible for NMLSR processing fees in connection with the application.

Under current statutory provisions, a mortgage lender's license expires two years from its date of issue. However, the bill conforms licensure terms to recently promulgated regulations so that a licensee may no longer renew a license for a two-year term; instead, a licensee must renew each year upon the expiration of the initial term. This change in renewal terms is required by the federal SAFE Mortgage Licensing Act and is necessary for the transition to NMLSR. In addition to the license renewal fee, each renewal applicant is responsible for processing fees imposed by NMLSR.

Exemptions from the Mortgage Loan Originator Licensing Requirements: In defining a "mortgage loan originator" subject to the licensing requirements of the bill, mortgage loan processors and underwriters are specifically excluded. Several other individuals are exempted from the licensing requirements, including individual loan servicers On the other hand, the bill expands the total number of individuals subject to licensing by eliminating a statutory exemption for mortgage loan originators employed by licensed mortgage lenders. Currently, if a mortgage loan originator works for a licensed mortgage lender, and acts only in a capacity as a mortgage lender, that mortgage loan originator is not required to obtain a loan originator's license. Under the bill, these originators are no longer exempt from licensing requirements. This change is mandated by the SAFE Mortgage Licensing Act and required for NMLSR compliance.

Under the bill, an individual is prohibited from originating mortgage loans without a valid license issued by the commissioner. Each licensee is also required to obtain a unique identifier issued by NMLSR upon obtaining an initial or renewal license on or after July 1, 2009. If the commissioner has not joined NMLSR by July 1, however, the unique identifier must be obtained upon notice by the commissioner to the licensee once the transition to NMLSR is complete.

Background, Continuing Education, and Additional Protections for Mortgage Loan Originators: Under the bill, an applicant for a mortgage loan originator's license must provide NMLSR with fingerprints for a criminal history background check, an NMLSR-approved form containing the applicant's personal history and experience, and an authorization form that allows NMLSR and the commissioner to obtain independent credit reports and information relating to administrative, civil, or criminal findings by any government jurisdiction.

Thus, the commissioner may not issue a mortgage loan originator's license unless the applicant:

- has never had a mortgage loan originator's license revoked in any jurisdiction;
- has not been convicted of, pled guilty, or pled *nolo contendere* to a felony in the seven years prior to the application date;
- has never been convicted of, pled guilty, or pled *nolo contendere* to a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;
- demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community;
- completed at least 20 hours of NMLSR-approved prelicensing education requirements;
- passed an NMLSR-approved written test; and
- met the statutory surety bond requirement.

Subject to any regulations adopted by the commissioner in connection with the transition to NMLSR, the initial license term and each renewal term for a mortgage loan originator's license may not exceed one year (also conforming the licensure terms to recently promulgated regulations). Prior to renewing a license, a licensee must complete at least eight hours of NMLSR-approved continuing education courses.

Certain licensees may only act as mortgage originators while employed by a licensed mortgage lender. If an employee acting as a mortgage originator is no longer employed by a licensed mortgage lender, the commissioner must place that employee's license in nonactive status until the commissioner receives notice of new employment.

Additionally, a mortgage loan originator employed by a licensed mortgage lender may use the employer's surety bond to meet the mortgage loan originator's surety bond requirement, provided the bond meets statutory residential mortgage loan volume requirements.

Interim Mortgage Originator's License: The commissioner may issue interim mortgage loan originator licenses to certain individuals but only if they apply during the month of July 2009. Any such interim license expires on December 31, 2010. Eligible individuals are those employed by a licensed mortgage lender (or statutorily exempt lender) that makes residential loans and is not a mortgage broker. An interim license may also be granted to a person who owns a 25% or more interest in a mortgage lender as of July 1, 2009.

Applicants for an interim license must pay the commissioner a nonrefundable investigation fee, 150% of the initial mortgage loan originator's license fee, and any fees imposed by NMLSR. Applicants and interim licensees must comply with statutory requirements concerning fingerprinting, criminal history background checks, surety bond coverage, prelicensing education, and prelicensing testing. An individual holding an interim mortgage loan originator license may only engage in transactions in which the interim licensee's employer makes a residential mortgage loan, and may not engage in any transaction in which the interim licensee's employer acts as a mortgage broker.

Civil Penalties Applicable to Mortgage Lenders and Mortgage Loan Originators: The commissioner may issue a cease and desist order and impose a civil penalty if a mortgage lender or mortgage loan originator (1) makes any material misrepresentation in a license application; (2) is convicted of a felony; (3) is convicted of a misdemeanor related to the character and fitness of the applicant to perform mortgage-lending services; (4) commits fraud, engages in dishonest behavior, or materially misrepresents facts as to a residential mortgage loan or application; (5) violates any other rule or regulation governing residential mortgage loan lending in the State; or (6) demonstrates unworthiness, bad faith, dishonesty or any quality that indicates the licensee has not conducted business in good faith.

The bill increases the civil penalties associated with residential mortgage lending that the commissioner may impose from a maximum of $1,000 per violation to $5,000 per violation. If a violator fails to comply with the commissioner's cease and desist order, the commissioner may impose a civil penalty up to $5,000 per violation instead of the $1,000 maximum under current law.

Affiliated Insurance Producer-Mortgage Loan Originator Licensing: The bill establishes an affiliated insurance producer-mortgage loan originator license and specifies the circumstances under which the license will be issued. An "affiliated insurance producer-mortgage loan originator" is an individual who (1) originates mortgage loans only on behalf of a single financial institution; (2) is a licensed insurance producer in good standing; and (3) holds an appointment as an insurance producer for an insurer that controls, or is controlled by, the aforementioned financial institution or an approved mortgage lender licensee.

The bill exempts an affiliated insurance producer-mortgage loan originator from certain provisions of law applicable to mortgage loan originator licensees. Furthermore, an affiliated insurance producer-mortgage loan originator is not considered a mortgage lender within the scope of the Maryland Mortgage Lender Law. A licensee who is an affiliated insurance producer-mortgage loan originator must also maintain a surety bond that meets specified requirements.

Applicability: The bill's mortgage loan originator licensing laws apply to retail sellers of manufactured homes based on interpretations of the SAFE Mortgage Licensing Act by the U.S. Department of Housing and Urban Development (HUD). The bill further states that a mortgage loan originator licensee, duly licensed as of July 1, 2009, may comply with certain prelicensing testing requirements as a condition of renewal on or before December 31, 2010. Those provisions are effective when and if HUD determines that the requirement is applicable to those licensees.

Current Law: On January 1, 2009, regulations went into effect that begin transitioning State mortgage lender and originator licensees to NMLSR and establish a new fee schedule for these licensees. Prior to January 1, the licensing fees for mortgage originators included a $100 investigation fee and a $300 fee for a two-year license, while the fees for mortgage lenders included a $100 investigation fee and a $1,000 fee for a two-year license. Effective January 1, 2009, mortgage lenders must pay an annual license fee of $1,000, and mortgage originators must pay an annual license fee of $225.

New applicants for an initial mortgage lender's license must complete 40 hours of classroom education and achieve a passing grade on a written examination. Applicants for a mortgage originator's license must have at least three years of experience in the mortgage lending business, or complete 40 hours of classroom education and achieve a passing grade on a written examination.

An applicant for a mortgage lender's license or a current licensee must also meet minimum net worth requirements. The requirements range from $25,000 if the applicant or licensee does not lend money, to $250,000 if an applicant or licensee lent more than $10 million in the 12 months prior to the application or renewal date. Verification of net worth is required, and a line of credit may only be used to satisfy up to 75% of the minimum net worth requirement.

The commissioner may deny an application for a license filed by an individual who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery; or an entity that has a director, officer, partner, member, or owner of at least 10% of the entity who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery.

Mortgage lender licensees must also maintain a surety bond, trust account, or letter of credit based on an aggregate principal amount of all mortgage loans secured by property in Maryland that were applied for, procured, and accepted by the lender during the 12 months prior to the month of the license application. A licensee is required to maintain a surety bond, trust account, or letter of credit of $50,000 for an aggregate principal amount of mortgage loans of $3 million or less; $100,000 for an amount more than $3 million, but no more than $10 million; $150,000 for amounts greater than $10 million; and $750,000 when an applicant files five or more applications and chooses to submit a blanket bond.

Background: NMLSR is a web-based system that allows state-licensed mortgage lenders, mortgage brokers, and mortgage loan originators to apply for, amend, update or renew a license online using a set of uniform applications. Chapters 7 and 8 of 2008 authorized the commissioner to participate in the establishment and implementation of NMLSR. The online system was established in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators in response to the increased volume and variety of residential mortgage originators. As of October 2008, 47 states have signed a statement of intent announcing their participation in NMLSR.

Applicants for a new mortgage loan originator's license must pay NMLSR $57.25 for a criminal history background check and a $30 annual registration fee. These costs are not paid to the Office of the Commissioner of Financial Regulation and are mandated by federal law.

The commissioner advises that NMLSR will provide:

- improved efficiency and effectiveness of the commissioner's supervision of the State's mortgage industry;
- enhanced consumer protection;
- enhanced ability for the commissioner's staff to fight mortgage fraud and predatory lending;
- increased accountability of mortgage industry professionals; and
- improved data management through its multistate repository and streamlined multistate licensing of mortgage lenders and mortgage loan originators.

The commissioner reports that as of February 2009 approximately 3,300 mortgage lenders and 10,000 mortgage originators are licensed in the State. According to the commissioner, 1,833 mortgage lender applications were filed in fiscal 2005; 2,191 lender applications were filed in fiscal 2006; 12,289 lender and originator applications were filed in fiscal 2007; and 2,431 lender and originator applications were filed in the first half in fiscal 2008. The large number of applications in fiscal 2007 consisted of 10,200 new applications for mortgage originator licenses following the creation of the originator licensing requirement. The commissioner advises that new applications require a substantial amount of time for review due to the many factors that must be considered including financial statements, criminal background checks, credit reports, experience and continuing education requirements, corporate documentation, and other statutory prerequisites.

State Revenues: Due to the expanded licensing requirements for mortgage originators, Mortgage Lender-Originator Special Fund revenues increase by $1,375,000 in fiscal 2010, which also accounts for the issuance of such licenses on a calendar-year basis (so that those newly subject to licensure must apply for a license and then renew it in fiscal 2010). Annually thereafter, this expansion generates $631,250 in special fund revenue. As shown in **Exhibit 1**, revenue estimates assume 2,500 new mortgage originators apply for an initial license and then renew later in the year. In future years, the commissioner estimates that 500 new mortgage originators will apply for licenses and 500 will let their licenses expire, resulting in a constant base of 2,500 licensees. Future year revenues assume that 10% or 250 of the licensees change companies or addresses, resulting in a $75 change fee per license.

Exhibit 1
Mortgage Lender-Originator Additional Special Fund Revenues
Fiscal 2010 and 2011

	Fiscal 2010	Fiscal 2011
New Applicants	2,500	500
Renewal Applicants	2,500	2,000
Investigation Fee ($100)	$250,000	$50,000
New License Fee ($225)	562,500	112,500
Renewal Fee ($225)	562,500	450,000
Change of Address Fee ($75)	0	18,750
Total Licensing Revenue	**$1,375,000**	**$631,250**

Regulations effective January 1, 2009, shifted the prior two-year licensing fee structure to a one-year fee structure. The fiscal estimate does not include the impact of the shift from two-year licenses to one-year licenses for the entire population of lenders and originators. The commissioner estimates that the shift, as required by federal law, results in a Mortgage Lender-Originator Special Fund loss of $1.5 to $2.0 million during the 2009-2010 transition period only.

The estimate does not account for any additional revenue due to the higher civil penalties under the bill.

State Expenditures: Mortgage Lender-Originator Special Fund expenditures increase by $470,000 in fiscal 2010. This estimate reflects one-time computer programming costs to transition to NMLSR, software purchases, and ongoing operating expenses. Future year expenditures reflect 1% annual increases in ongoing operating expenses.

NMLSR Computer System Costs	$345,000
Computer Programming Fees	100,000
Operating Expenses	25,000
Total FY 2010 State Expenditures	**$470,000**

The commissioner's office expects to process the new mortgage originator license applications with existing staff. Historically, the expansion of licensure programs results in an additional workload and corresponding need for additional personnel. However, the commissioner's office added personnel to its licensing function as a result of the enactment of Chapters 7 and 8 of 2008. Given the shift to a streamlined electronic application system, coupled with the recent declines in residential mortgage lending, Legislative Services concurs that existing staff can likely handle the increased volume of applications.

To the extent existing staff is unable to handle the additional workload, short-term contractual support may be needed to assist with the processing of applications. If required, the annual budget process can provide for long-term additional staffing, so long as future fee revenues prove sufficient. Despite the short-term reduction in fee revenues for the entire population subject to licensure (as noted above), future fee revenues are likely to prove sufficient because of the longer-term impact of the recent licensing changes promulgated by regulations. The regulations increased fees for mortgage originators by 50% and effectively doubled fees for mortgage lenders, as the fees are now collected annually rather than biennially.

Additional Information

Prior Introductions: None.

Cross File: SB 269 (The President, *et al.*) (By Request - Administration) - Finance.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2009
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Financial Institutions-Mortgage Lenders and Mortgage Loan Originators

BILL NUMBER: House Bill 292

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.