SB 1036

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1036 (Senator Middleton)

Finance Economic Matters

Credit Regulation - Mortgage Loans - Proof of Ability to Repay - Exception

This emergency bill exempts refinancing mortgage loans offered by Fannie Mae and Freddie Mac under the federal Homeowner Affordability and Stability Plan and mortgage loans made through certain affordable housing programs from statutory income and asset verification provisions that require lenders to give due regard to a borrower's ability to repay the loan.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: Under Chapters 7 and 8 of 2008, a lender may not make a mortgage loan or a second mortgage loan without giving due regard to the borrower's ability to repay the terms of the loan, including the fully indexed rate of the loan, and if applicable, property taxes and homeowner's insurance. Such due regard is required to include (1) consideration of the borrower's debt to income ratio; and (2) verification of the borrower's gross monthly income and assets by review of third-party documentation, including W-2 forms, income tax returns, payroll receipts, records of a financial institution, or other third-party documents that provide reasonably reliable evidence of the borrower's income or assets.

The income and asset verification requirements do not apply to mortgage loans approved for government guaranty by the Federal Housing Administration, Veterans Administration, or Community Development Administration.

Background: In September 2008, the U.S. government seized control of Freddie Mac and Fannie Mae, two government-sponsored enterprises (GSEs) that own or guarantee approximately $5.2 trillion of the $12 trillion residential mortgage loan market. The U.S. Treasury Department acquired $1 billion of preferred shares in each company; it has pledged $200 billion to Freddie Mac and an additional $200 billion to Fannie Mae. Both companies were placed in conservatorship, giving their regulator, the Federal Housing and Finance Agency, full powers to control the assets and operations of both GSEs.

On February 18, 2009, President Obama announced the Home Affordability and Stability Plan, a $75 billion federal initiative to provide loan modifications and refinancing opportunities to millions of American households. The Home Affordability and Stability Plan comprises two main initiatives – the Home Affordable Refinance Program and the Home Affordable Modification Program.

The Home Affordable Refinance Program is designed to help a homeowner who is current on his or her existing Fannie Mae or Freddie Mac mortgage payments, but who is unable to refinance the mortgage loan due to a loan-to-value ratio that exceeds 80%. Under current rules, most homeowners who owe more than 80% of the value of their homes have a difficult time securing refinancing. The refinance program is designed to help borrowers with loans owned or guaranteed by Fannie Mae and Freddie Mac to refinance through the two institutions using a 30-year or 15-year fixed rate loan. The refinance program ends in June 2010.

Based on U.S. Treasury Department guidelines issued March 4, 2009, the Home Affordable Modification Program will provide loan modifications to homeowner-occupants who are at risk of default or already in default, experiencing a hardship, and have unpaid principal balances below the Fannie Mae and Freddie Mac conforming loan limit of $729,750 (or higher for two-, three-, or four-unit properties). Under the modification program, an eligible home may not be investor-owned and may not be vacant or condemned. All borrowers must fully document income, including a signed copy of the most recent tax return, two most recent pay stubs, and a signed affidavit of financial hardship.

The U.S. Treasury Department will partner with financial institutions to reduce a borrower's monthly mortgage payment to a level that does not exceed 38% of the borrower's income. The modification program will match further reductions in monthly payments dollar-for-dollar, from a 38% to 31% debt-to-income ratio for the borrower. Modified loan payments will be kept in place for five years, and the loan rate will be capped for the life of the loan. The program allows borrowers in active litigation regarding a mortgage loan to qualify for a modification without waiving their legal rights. Loans subject to modification must have been originated on or before January 1, 2009, and may only be modified once under the Home Affordable Modification Program. The modification program will accept new borrowers until December 31, 2012.

Additional Information

Prior Introductions: None.

Cross File: HB 1535 (Delegate Rudolph) - Economic Matters.

Information Source(s): U.S. Department of the Treasury, Congressional Research Service, *The Wall Street* Journal, Dow Jones Newswires, Bloomberg L.P., Department of Housing and Community Development, Department of Legislative Services

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Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510