

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 944

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

Financial Institutions - Mortgage Lenders and Mortgage Loan Originators

This departmental bill requires specified persons, exempt from licensing as mortgage lenders, that employ a licensed mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry (NMLSR). The bill repeals provisions relating to (1) an alternative method of licensing for sole proprietor mortgage lenders who do not meet the three-year experience requirement; (2) the requirement that a mortgage lender with whom a mortgage loan originator is affiliated must maintain an office in the State in specified circumstances; (3) interim mortgage loan originator licenses as obsolete; and (4) in order to conform with federal law, provisional licenses for mortgage loan originators. The commissioner may request from specified databases information relating to licensee's criminal records. A mortgage loan originator licensee with nonactive status may renew the license while remaining in nonactive status if specified requirements are met.

Fiscal Summary

State Effect: The bill does not materially affect State finances. Any fee charged for registration by mortgage lenders goes to NMLSR and not the State. Any change in licensing requirements is to comply with already enacted federal law or repeal obsolete provisions.

Local Effect: None.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law:

Background Check: Applicants for a license in industries regulated by the Commissioner of Financial Regulation, or the corporate agents of an applicant, must provide fingerprints for use by the Federal Bureau of Investigation and the Criminal Justice Information System (CJIS) Central Repository to conduct criminal history records checks. An applicant or licensee must pay any processing or other required fees. An applicant for a mortgage lender or mortgage loan originator's license must provide to NMLSR information concerning the applicant's identity, including fingerprints; a written personal history; credit history; and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

The commissioner must 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 10% or more of the entity who has been convicted within the last 10 years of a felony involving fraud, theft, or forgery

Sole Proprietorship Mortgage Lender Licenses: The commissioner may issue a license to an applicant who is a sole proprietorship and who does have the three years of necessary experience if the applicant meets specified requirements. If the commissioner does issue a license to a sole proprietor without the necessary experience, the sole proprietor is prohibited from specified actions, including aiding or assisting a borrower in obtaining a loan from a financial institution other than the financial institution identified in the license application; collecting a finder's fee; handling borrower or other third-party funds in connection with the brokering or closing of mortgage loans; or making mortgage loans.

Interim Mortgage Loan Originator Licenses: The commissioner was authorized to accept applications for an interim mortgage loan originator license through July 31, 2009; any such interim license expired on December 31, 2010. Applicants for an interim license had to 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 had to comply with statutory requirements concerning fingerprinting, criminal history background checks, surety bond coverage, pre-licensing education, and pre-licensing testing. An individual holding an interim mortgage loan originator license was only authorized to engage in transactions in which the interim

licensee's employer made a residential mortgage loan, and was not authorized to engage in any transaction in which the interim licensee's employer acted as a mortgage broker.

Mortgage Loan Originator Provisional Licenses: When an applicant for a mortgage loan originator license files the application and pays the necessary fees, the commissioner must conduct an investigation into whether the applicant meets the required qualifications, including whether the applicant has ever had a mortgage loan originator license revoked or been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering. The commissioner must issue a mortgage loan originator license if the applicant meets the required qualifications.

If, within 30 days after the commissioner receives an application, the commissioner has not notified the applicant in writing that the application is incomplete or has been denied, the application must be considered provisionally approved. If the application is incomplete, the commissioner must notify the applicants of the actions needed in order for the applicant to complete the application. The application is not provisionally approved until 30 days after the applicant completes the steps itemized in the commissioner's notice. Regardless of whether an application is provisionally approved, the commissioner may still deny the application for failure to qualify or any other reason that an issued mortgage loan originator or mortgage lender license may be revoked or suspended. The commissioner must approve or deny an application within 60 days after the commissioner receives a completed application.

Nonactive Mortgage Loan Originator Licenses: Once a license is issued, if it then becomes nonactive, the license remains nonactive until (1) the licensee notifies the commissioner in writing that the licensee has obtained employment with a licensed mortgage lender or with a person exempt from licensing as a mortgage lender and has complied with specified requirements; or (2) the license expires or is revoked.

Licensee's Office: Generally, a mortgage lender or mortgage loan originator licensee must maintain an office in Maryland. However, a mortgage loan originator license may be issued to an individual who is employed by a mortgage lender that has its principal office located outside Maryland if the mortgage lender maintains a resident agent within Maryland and an office within Maryland with at least one employee authorized to originate a mortgage loan. Additionally, a mortgage lender is not required to maintain an office in Maryland if the state where its principal office is located allows Maryland mortgage lenders to operate in the state without maintaining an office.

Background: The Office of the Commissioner of Financial Regulation is responsible for licensing and regulating mortgage lenders, brokers, servicers and originators, sales finance companies, consumer loan companies, money transmitters, check cashers, installment loan lenders, credit reporting agencies, consumer debt collection agencies,

and debt management service providers. The office also regulates and supervises State-chartered financial institutions including State-chartered banks, credit unions, and trust companies.

Chapter 4 of 2009 overhauled the State's mortgage lender and loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008. Chapter 4 altered the licensing requirements, initial license terms, and renewal terms for mortgage lenders and loan originators. The State law required applicants and licensees to submit certain information and fees to the NMLSR and increased civil penalties for violations of State mortgage lender and loan originator laws.

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. 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. In fiscal 2010, there were 1,478 licensed mortgage lenders and 5,007 licensed mortgage loan originators in Maryland.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2011
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

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

BILL NUMBER: HB 944

PREPARED BY: Department of Labor, Licensing, and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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 state will NOT charge any fee for registration by mortgage lenders who employ licensed originators. However, mortgage lenders are charged a fee by the NMLS. The NMLS charges an annual processing fee of \$100 for the registration. This is a NATIONWIDE fee. Any company operating in multiple states may already be registered under that state's law and regulations, in which case the incremental cost is zero. As a result, we expect that the impact is small, particularly versus the benefits since the system is specifically designed to link licensed originators with their employers.