

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 392
Finance

(Senator Hershey, *et al.*)

Economic Matters

Credit Regulation - Closed End Credit Loans - Elimination of Duplicative
Disclosures

This bill establishes that mortgage loan estimate disclosures and mortgage closing disclosures provided by a mortgage lender to a borrower that comply with applicable federal law satisfy disclosure requirements under Maryland law. The bill is intended to eliminate duplicative disclosures that are required under both State and federal law. The disclosures required for some mortgages, such as reverse mortgages, are not altered under the bill and must continue to abide by State disclosure requirements.

In addition, the bill requires the Commissioner of Financial Regulation to monitor requirements implemented by the federal Consumer Financial Protection Bureau relating to disclosures provided to borrowers of mortgage loans under federal regulations. The commissioner must notify the Governor and the General Assembly if the commissioner determines that federal disclosure requirements are proposed to be modified (or have been modified) to be less stringent or less consumer friendly.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: The Office of the Commissioner of Financial Regulation can monitor federal disclosure requirements using existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Mortgage Loans Addressed by the Bill: The bill applies to “closed end” mortgages. A mortgage lender may use loan estimate and closing disclosure documents as specified under the Code of Federal Regulations (CFR) for mortgages that are categorized as specified:

- a loan secured by a first mortgage or first deed of trust on a single- to four-family home to be occupied by the borrower; and
- a loan that sets forth the terms of a purchase money loan or refinancing of an existing loan that results in or is secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower (for example, a typical mortgage to purchase a home or refinance a home that is negotiated by a consumer and which is regarded as a closed end mortgage).

Under current law, “closed end credit” is defined as the extension of credit to a borrower under an arrangement or agreement which is *not* a revolving credit plan. A “revolving credit plan” is a plan in which the credit grantor permits the borrower (and possibly other authorized individuals) to make multiple purchases or loans over time. However, under a closed end credit account, generally the finance charge is computed in advance and assessed on the original unpaid balance.

Disclosures: A mortgage lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower must provide the borrower with a financing agreement executed by the lender within 10 business days after the loan application is completed. The financing agreement must provide specified information, including:

- the term and principal amount of the loan;
- an explanation of the type of mortgage loan being offered;
- the interest rate that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to a final determination based on an objective standard, a specific statement of those facts;
- the points, if any, to be paid by the borrower or the seller, or both; and
- the term during which the financing agreement remains in effect.

If the entire financing agreement is *not* subject to future determination, change, or alteration during its term, the financing agreement constitutes the final binding agreement between

the parties. However, if any portions of the agreement *are* subject to change, the lender must provide the borrower with a commitment at least 72 hours before the time of settlement that includes (1) the effective fixed interest rate or initial interest rate that will be applied to the loan and (2) a restatement of all the remaining unchanged provisions of the financing agreement. After the execution of the financing agreement, the borrower may waive (in writing) the 72-hour advance presentation requirement and accept the commitment at settlement only if the lender shows that compliance with the 72-hour requirement is infeasible.

The above-mentioned disclosures are substantially similar to those required under federal regulations which must be given to the consumer by the lender as part of the loan application and settlement process.

Background: In a closed end consumer credit transaction secured by real property (other than a reverse mortgage), 12 CFR § 1026.37 requires mortgage lenders to disclose specific content. Among other things, the loan estimate disclosure must contain the loan term, a description of the loan product, and the interest rate of the loan. 12 CFR § 1026.38 also requires the lender to include certain information related to closing costs, in addition to other basic information about the loan that is also required under 12 CFR § 1026.37.

The Commissioner of Financial Regulation advises that, under State law, mortgage lenders are required to provide a financing agreement and, in most cases, a commitment to any Maryland borrower applying for a first-lien residential mortgage loan. These disclosures provide the borrower with specific information regarding the loan, including the term of the loan; amount of the loan; type of loan; interest rate; whether the interest rate is fixed or variable; and points to be paid.

The commitment binds the lender to the terms of the loan, and it must be provided at least 72 hours prior to settlement in order to protect the borrower from “bait and switch” tactics. Federal rules, effective as of October 2015 and applicable to closed end mortgage loans, consolidated existing federal disclosures into new forms (the loan estimate and the closing disclosure), which provide, in a clear and simple format, all of the information contained in the Maryland financing agreement and commitment documents. These disclosures are binding as to the terms of the loan. In addition, the closing disclosure form must be provided at least three days prior to loan closing, thus providing the same protection afforded by the commitment required under Maryland law. The commissioner advises that the new federal disclosures render the Maryland disclosures duplicative and of no added value to the borrower.

The commissioner notes that, under the bill, some mortgage types other than those noted above (such as reverse mortgages and mortgage loans made by lenders who make five or fewer loans per year) must continue to follow the Maryland financing agreement and

commitment requirements. However, the commissioner advises that this is a relatively small portion of the overall number of mortgages made in the State.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Code of Federal Regulations; Department of Legislative Services

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