Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 33 (Chair, Finance Committee)(By Request - Departmental - Labor, Licensing and Regulation)

Finance Economic Matters

Financial Institutions - Mortgage Lenders - Examinations and Records

This departmental bill requires the Commissioner of Financial Regulation to examine each mortgage lender licensee at least once during any 60-month period, instead of at least once during any 36-month period. The bill also extends, from 25 to 61 months, the minimum time period for which a mortgage lender licensee must retain specified records.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: The bill may improve operational efficiency for the department, but it otherwise does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing and Regulation (DLLR) has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment as discussed below.

Analysis

Current Law: The commissioner is required to examine the business of each licensee according to a schedule established by the commissioner. The schedule must take into account (1) the length of time the licensee has been engaged in business as a mortgage lender; (2) any prior violations of the mortgage lending law or regulations; (3) the nature

and number of any complaints made against the licensee; and (4) the result of findings from any prior examination of the licensee. New licensees must be examined within 18 months of the date the license is issued. All other licensees must be examined at least once during any 36-month period.

Mortgage lender licensees are required to keep and make available to the commissioner any books and records that the commissioner requires in order to enforce specified provisions of State law. A licensee must retain records required by the commissioner for at least 25 months.

Background: The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act) was enacted into federal law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008, and required that a state's loan originator supervisory authority be maintained to provide effective supervision and enforcement of the law. The U.S. Department of Housing and Urban Development (HUD) adopted a rule creating a safe harbor for determining that a state is providing the proper supervision and enforcement. Pursuant to this rule, a state supervisory authority that is accredited under the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Mortgage Accreditation Program is presumed to be compliant with the SAFE Act. Failure to comply with the provision of the SAFE Act requiring effective supervision and enforcement could result in HUD implementing its own regulations in lieu of state law.

DLLR advises that the commissioner is seeking mortgage accreditation, which requires a risk-based examination process, particularly for high-risk licensees. The department further advises that the number of examination staff has declined in recent years, making it more challenging to meet the statutory requirement to examine all licensees once every 36 months. In addition, the 36-month requirement does not provide enough flexibility for the commissioner to allocate resources using a risk-based model and also does not correspond with regulatory best practices. DLLR notes that the bill amends the law to make it consistent with regulatory best practices as well as the recommended standard for accreditation by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Mortgage Accreditation Program.

Small Business Effect: The department advises that reducing the frequency of mandatory examinations also reduces a licensee's cost of doing business in the State. Licensees are required to pay for the cost of examinations, with the cost based upon the time spent by the commissioner's staff in conducting the examinations. Licensees are also required to pay for any out-of-state travel costs.

While examination costs vary among licensees, DLLR advises that the average cost of an examination was approximately $1,500 in fiscal 2015. Thus, over a 36-month period, the

average annual cost of an examination is approximately $500. Under the bill, for a licensee examined once every five years rather than once every three years, the average annual cost would decline to about $300, assuming the total amount of time spent per examination remains constant. DLS notes that the financial benefit to a small business examined by DLLR once every five years instead of once every three years is likely to be modest. However, DLS concurs with DLLR's estimate that extending the interval between examinations is likely to reduce disruption to a licensee's business operations. DLS also notes that some licensees may be examined more frequently under the bill. For those licensees, examination costs (as well as any disruptions caused by examinations) increase instead.

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 - January 13, 2017
fn/kdm Third Reader - January 25, 2017

Analysis by: Eric Pierce

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Maryland Mortgage Lender – Mandatory Examination Interval**

BILL NUMBER: SB 33

PREPARED BY:

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

_X_ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Reducing the frequency of mandatory examinations reduces a licensee's cost of doing business in Maryland. The Commissioner is required by law to charge licensees for the cost of examinations, with the cost being based upon the time spent by the Commissioner's staff in conducting the examinations. Additionally, if an examination is conducted outside the geographic boundaries of Maryland, the licensee is required by law to reimburse the Commissioner for the cost of examiners' travel and lodging. While examination costs vary widely among licensees, depending upon the amount and nature of the Maryland mortgage business conducted by a given licensee, the specific activities being examined, and the need for out-of-state travel, the average cost of an examination billed in FY2015 was $1,505. Spread over 36 months, that equates to an average annual cost to each examined licensee of $502. Spreading that cost over 60 months would equate to an average annual cost of $301, a reduction of $201, or approximately 40%.

In addition to monetary cost, examinations unavoidably cause some degree of disruption to a licensee's business, and place a demand on the licensee's time, resources and personnel. Making mandatory examinations less frequent would reduce the disruption and the demand on the licensee's time, making it less burdensome for licensees to conduct business in Maryland. It would also give the Commissioner greater flexibility to participate in multi-state examinations; these examinations, conducted under the auspices of the Multistate Mortgage Committee (a Conference of State Bank Supervisors-facilitated committee of state regulators), satisfy the Commissioner's statutory requirement to examine, while placing less demand upon a licensee's resources than would separate, individual examinations by each participating state.