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BILL



ANALYSIS

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Senate Bill 908 (as enacted)
Sponsor: Senator Darwin L. Booher
Senate Committee: Banking and Financial Institutions
House Committee: Banking and Financial Services

PUBLIC ACT 150 of 2012

Date Completed: 6-20-12

RATIONALE

Several concerns were raised in regard to the Mortgage Loan Originators Licensing Act. This law was enacted in 2009 to bring Michigan into compliance with a Federal statute, the Secure and Fair Enforcement for Mortgage Licensing Act, known as the SAFE Act. That Act requires states to establish uniform regulations and minimum licensure requirements for residential mortgage loan originators (MLOs). Therefore, subject to certain exceptions, Michigan's law requires a person to obtain a license from the Commissioner of the Office of Financial and Insurance Regulation (OFIR) in order to originate a residential mortgage loan (e.g., take a loan application or negotiate a loan). The Act took effect in July 2009 and the licensure requirement took effect on July 31, 2010. As allowed by the Federal government, the Act delayed that requirement for one year for individuals who were working exclusively for a mortgage servicer and were authorized to perform loan modification activities but not to originate new loans. Evidently, there was some confusion as to what constituted "loan modification activities". Since the one-year extension expired in July 2011, it was suggested that the related provisions be deleted.

In addition, the SAFE Act requires states to ensure that MLOs register with the Nationwide Mortgage Licensing System and Registry (NMLS), and this requirement is reflected in Michigan's Act. In order to reflect terminology used by the NMLS, OFIR suggested that the MLO Licensing Act should require an originator to have a "sponsor", which is the company supervising the individual.

Another issue involves the Act's requirement that an MLO provide a surety bond or be covered by a bond provided by a person the MLO works for. If an MLO is covered by another person's bond but the MLO's relationship with that person terminates, the individual may be subject to enforcement action, such as license suspension or revocation, if he or she continues to originate mortgage loans. It was suggested that the Act should provide for a less formal method of addressing situations in which an MLO is not covered by a security bond.

CONTENT

The bill amended the Mortgage Loan Originators Licensing Act to do the following:

- **Require a person to have an approved sponsor in the Nationwide Mortgage Licensing System and Registry, in order to be licensed as a mortgage loan originator.**
- **Provide that the license of an MLO who fails to meet the Act's surety bond requirement or to have a sponsor is automatically subject to a condition that he or she may not originate mortgage loans under the Act, and require the MLO to cease doing so until the condition is removed.**
- **Delete a provision under which a person was not required to be licensed before July 31, 2011, if he or she was authorized to perform loan modification activities but not to originate new residential mortgages.**

The bill took effect on May 30, 2012.

Sponsor & Surety Bond Requirements

To obtain a license as a mortgage loan originator, an applicant must meet prelicensing education requirements, pass a test, demonstrate financial responsibility, pay a fee, and post a surety bond with the Office of Financial and Insurance Regulation.

The Act prohibits the OFIR Commissioner from issuing an MLO license unless he or she finds that the applicant meets criteria set forth in the Act. The bill also requires the Commissioner to find that the applicant has a sponsor in the NMLS that is approved by the Commissioner.

The Act requires the Commissioner to renew an MLO's license annually if the originator continues to meet the minimum standards for license issuance, has satisfied the Act's annual continuing education requirements, and pays a fee. Under the bill, the MLO must continue to meet the requirements for license issuance *except* the requirement to have a sponsor.

Each mortgage loan originator must provide to the Commissioner or be covered by a surety bond in an amount prescribed by the Act, which is based on the principal amounts of mortgage loans the MLO originated in the preceding year. Under the bill, if a mortgage loan originator is an employee or exclusive agent of a sponsor, and that sponsor has provided the Commissioner with a surety bond that satisfies the Act, the Commissioner may accept that bond in lieu of the MLO's bond. The principal amount of this surety bond must provide coverage for all of the sponsor's mortgage loan originators. Previously, these and related provisions referred to a "person subject to this act" or a "person", rather than a "sponsor".

The bill provides that the license of an MLO who fails to meet the requirement to have a sponsor or satisfy the surety bond requirement is automatically subject to a condition that the MLO may not originate mortgage loans under the Act. The MLO must immediately cease originating mortgage loans and may not originate mortgage loans until the Commissioner removes that condition.

The bill defines "sponsor" as a person that meets all of the following:

- Has a unique identifier in the NMLS.
- Is approved by the Commissioner in the NMLS as an exempt company or as a person licensed or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act, the Secondary Mortgage Loan Act, or the Consumer Financial Services Act.
- Has indicated in the NMLS that an individual will act as a mortgage loan originator for that person under the person's specific license, registration, or status as an exempt company.

"Exempt company" means a person that is not required to obtain a license or registration, or is exempt from licensure or registration, under one of the statutes listed above; has a unique identifier in the NMLS; and has been approved by the Commissioner in the NMLS as an exempt company.

Licensure Requirement Date

Under the MLO Licensing Act, an individual engaged in the business of a mortgage loan originator was not required to be licensed until July 31, 2011 (rather than July 31, 2010), if he or she was employed exclusively by a mortgage servicer; if he or she was authorized to perform loan modification activities concerning existing residential mortgage loans, and not to originate new mortgage loans or perform any other activities of an MLO, on behalf of that servicer; and if this extension of time was not inconsistent with a Federal guideline, rule, regulation, or interpretative letter.

The bill deleted this provision as well as the definition of "loan modification activities". That term meant any of the following:

- Collecting or receiving payments on existing residential mortgage loans due and owing to a mortgagor or mortgage servicer, when the borrower is in default or in reasonably foreseeable likelihood of default.
- Working with such a borrower to collect data concerning his or her residential mortgage loan or loans.
- Making any decisions necessary to modify certain terms of the residential

mortgage loan or loans of a borrower or otherwise finalize collection through the foreclosure process.

MCL 493.133 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The SAFE Act was enacted to enhance consumer protection and reduce fraud through the establishment of uniform regulations and minimum standards for the licensure of mortgage loan originators. The Act also requires registration with the NMLS in order to increase accountability and provide the ability to track individuals across state lines. The Mortgage Loan Originators Licensing Act allows Michigan to reap the benefits of the Federal requirements, as well as maintain OFIR's supervisory authority over State-licensed MLOs.

As discussed above, the Act allowed a one-year delay of the licensure requirement for individuals who were authorized to perform loan modification activities as employees of mortgage servicers, but this resulted in some confusion as to what constituted "loan modification activities". That term was used only in the provision allowing the license requirement delay, which itself was obsolete. By deleting that provision and the definition of the term, the bill simply cleans up the Act and removes an unnecessary source of confusion.

The bill also brings the Act into conformity with the terminology used by the NMLS, by incorporating the term "sponsor" into the statute and requiring an individual to have a sponsor in order to receive an MLO license. According to the NMLS website, companies employing mortgage loan originators are required to sponsor MLOs and sponsorship indicates that the company will be supervising the individual's license.

Supporting Argument

The bill provides an alternative to license suspension or revocation in situations in which an MLO loses his or her surety bond coverage. This may happen when an MLO is covered by a bond provided by his or her employer and the licensee is laid off or quits.

If the individual continues to originate mortgage loans without providing OFIR with a new surety bond, he or she will be in violation of the Act and the Commissioner can take action to suspend, revoke, or condition the license, or deny renewal. The bill avoids the need for this formal action, and hardship to the licensee, by providing that an MLO is subject to an automatic condition that he or she may no longer originate mortgage loans when the surety bond requirement is not met. In effect, the MLO's license will be in a state of suspension until he or she provides a surety bond and the Commissioner lifts the condition. The same provisions will apply if an MLO does not have a sponsor.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.