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FISCAL IMPACT REPORT

SPONSOR HBICS **ORIGINAL DATE** 2/06/09
LAST UPDATED 3/16/09 **HB** 316/HBICS/aSCORC
SHORT TITLE Prohibit Certain Home Loans **SB** _____
ANALYST Hoffmann/Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
None	None		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
		\$763.5	Recurring	General Fund
NA		\$2,062.5	Recurring	Mortgage Regulatory

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$900.0	\$1,823.0	\$2,723.0	Recurring	Mortgage Regulatory

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General's Office (AGO)
 Regulation and Licensing (RLD)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment effectively replaces the HBIC substitute with the content of Senate Bill 342 as amended. The SCORC amendment does not precisely replicate Senate Bill 342 as amended, but there is no functional difference between the two. See the FIR for Senate Bill 342 as amended for extensive discussion of the intent of the bills.

FISCAL IMPACT OF SCORC AMENDMENT

The fiscal impact tables above reflect the impact reported in the FIR for SB 342 as amended.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The RLD reported the following revenue and expense estimates in its response to the original SB 342. The amendments to SB 343 changed the effective date to 7/31/2010 for Sections 4 and 16 (LICENSE AND REGISTRATION REQUIRED TO ORIGINATE LOANS, and UNLICENSED ACTIVITY) these estimates would be applicable to FY 11 assuming FY 10 would be used by RLD to implement the initial non-licensing requirements of The New Mexico Loan Originator Licensing Act without additional resources since there is no general fund appropriation. Distribution of funds in the table below reflects the distribution of fees in 58-12-5 D. as amended in the bill.

PROJECTION OF ANNUAL REVENUES AND EXPENSES OF FULLY OPERATIONAL MORTGAGE REGULATION AND LICENSING UNIT.

Once the program is fully staffed, we anticipate an annual budget as shown in the table below. The Mortgage Licensing and Regulation Unit, at full staff, will consist of 3 persons in management, 1 attorney, 1 office manager, 3 licensing specialists and 12 mortgage examiners/investigators. After the start up costs from the appropriation, the entire Mortgage Licensing and Regulation Unit, and all costs associated with the administration and enforcement of the New Mexico Mortgage Loan Originator Licensing Act and the Mortgage Loan Company Act, will be funded by the fees collected and deposited into the non-reverting Mortgage Regulatory Fund. All fees will be set by rule and no longer by statute.

ANNUAL TOTAL REVENUES AND EXPENSES FOR THE MORTGAGE LICENSING AND REGULATION UNIT			
Revenue	General Fund	Nonreverting Fund	
License Fees	\$ 62,500.00	\$ 600,000.00	
License Renewal Fees	\$ 400,000.00	\$ -	
License Late Fees	\$ 50,000.00	\$ -	
License Amendment Fees	\$ 10,000.00	\$ -	
Application Fees	\$ -	\$ 662,500.00	
Supervisory Fees	\$ -	\$ 600,000.00	

Branch Location Fee		\$ -	\$ 200,000.00	
Investigation Fees		\$ 240,000.00	\$ -	
Sub Totals		\$ 762,500.00	\$ 2,062,500.00	
Total Revenues				\$ 2,825,000.00
Expenditures	General Fund	Nonreverting Fund		
Salaries/Benefits			\$ 1,479,072.00	
Office Lease Space			\$ 92,340.00	
Car/Gas			\$ 75,000.00	
Office Supplies/Phone			\$ 34,989.00	
Cell Phones/Wireless Internet			\$ 25,200.00	
Technical Training			\$ 22,500.00	
Per Diem			\$ 94,000.00	
Total Expenditures				\$ 1,823,101.00
Revenue Surplus				\$ 1,001,899.00
Revenue to the General Fund				\$ 762,500.00
Revenue to the Mortgage Regulatory Fund				\$ 239,399.00

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT

The FY 10 “Estimated Additional Operating Budget Impact” shown above (\$900,000) is less than the estimated expense of the full program expenditure because the expenses will be less in the beginning as the program ramps up.

Whether or not there would be sufficient revenue to the Mortgage Regulatory Fund in FY 10 to support the start up costs in RLD is not known.

Synopsis of Original HBIC substitute Bill

The “PURPOSE” section is deleted.

House Bill Industry Committee substitute 316 amends the current Home Loan Protection Act, Chapter 58, Article 21A. The purpose of the amendments is to address some of the adverse mortgage lending practices that have harmed New Mexico homeowners by permitting homeowners to be placed into mortgage loan plans that homeowners cannot afford and that have subsequently forced homeowners into foreclosure proceedings that often result in their eviction. The amendments seek to prohibit or restrict the use of some of these toxic mortgage lending practices involving:

1. interest-only home loans;
2. adjustable rate home loans; or
3. negative amortization loans.

The amendments seek to strengthen mortgage lending underwriting practices by requiring lenders to:

1. obtain documents that demonstrate borrower's reasonable ability to repay the loan;
2. determine borrower's ability to repay loans;
3. limit rate adjustments both in interval and in the amount of increase of the interest and principal payment;
4. fairly and accurately advertise the available product; and
5. provide an escrow account for property taxes and insurance when the loan to value ratio exceeds 80%

The amendments seek to provide consumers protection by prohibiting lenders from:

1. making loans based upon the foreclosure or liquidation value of the home;
2. making interest only loans (with the exception of home equity lines of credit);
3. misrepresenting borrower's credit rating;
4. misrepresenting borrower's income or assets;
5. defrauding or misleading borrowers;
6. obtaining property by fraud or misrepresentation;
7. engaging in unfair or deceptive practices toward any person;
8. requiring borrowers to obtain property insurance coverage exceeding the replacement cost of the improvements.

House Business and Industry Committee Substitute for House Bill 316 makes the following changes.

Definitions are added for "open-end loan," "variable rate interest" and "interest rate threshold."

It adds an exclusion to the definition of "points and fees" for federal housing administration upfront mortgage insurance, veterans administration funding, guaranteed rural housing loan guarantee or upfront premium private mortgage insurance at a percentage rate, as set by the director biannually, equal to the highest up-front government mortgage insurance percentage rate or United States Department of Veterans Affairs funding fee percentage rate.

It adds yield spread premiums to the definition of "points and fees" and removes from the definition "the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents" along with "all prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or and affiliate of the creditor."

"Rate threshold" for a first lien mortgage home loan is redefined to mean an interest rate equal to seven percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month preceding the month in which the loan was made. The same comparison of securities and interest rates also applies for the base rate on subordinate mortgage liens.

Section 58-21A-4 NMSA 1978 "PROHIBITED PRACTICES AND PROVISIONS REGARDING HOME LOANS" is amended by adding new subsections C through N. Some of the changes address concerns of the AGO. These new subsections expand and clarify the specific prohibited home loan practices. These practices now include restrictions on payments to contractors by creditors for home improvement loans and limits on the amount of late fees for payments.

House Business and Industry Committee Substitute for House Bill 316 also amends Section 58-21A-5 NMSA 1978 by removing subsections that are covered in section 58-21A-4.

FISCAL IMPLICATIONS

House Bill 316 makes no appropriations.

SIGNIFICANT ISSUES

The AGO¹ notes that 58-21A-4(C) (8) prohibits creditors from making loans that include pre-payment penalties for early payment of the principal. State laws concerning the prohibition of pre-payment penalties may be pre-empted by the federal Home Owners' Loan Act which permits the collection of pre-payment penalties for loans provided by federally chartered thrift institutions and banks. This provision also appears to be in conflict with NMSA 1978, § 58-21A-3(G) which permits pre-payment penalties or fees authorized by federal law.

The RLD Financial Institutions Division provided the following technical notes.

Section 58-21A-4 (C) (3) (g) should require the use of only long term debt in determining borrower's ability to pay the costs of a home loan in compliance with industry underwriting practices.

Section 58-21A-4 (C) (6) does not correspond with standard industry practice.

Section 58-21A-4 (C) (11) This provision may need to be clarified to make it clear that a borrower may take into consideration certain "protected income," as set forth in Supplement I to 12 CFR 202.6, in making underwriting decisions.

TECHNICAL ISSUES

The AGO also notes that 58-21A-4 C (1) permits the use of high risk underwriting and lending programs, identified in these amendments, for homeowners who are refinancing due to an imminent foreclosure where there is a reasonable, tangible net benefit. While there may be situations where providing such an exception in limited circumstances may be beneficial to homeowners, the provision is written broadly and ambiguous as to permit mortgage rescue schemes or predatory lending practices to continue to the potential detriment of vulnerable homeowners.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Home Loan Protection Act will remain unchanged.

GH/mt

¹ The analysis from the AGO includes this disclaimer: This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request.