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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/09
 LAST UPDATED 03/20/09

SPONSOR Griego, P. HB 342/aSJC/aSCORC/
 SHORT TITLE NM Mortgage Loan Originator Licensing Act SB aSFC/aSFL/aHJC

ANALYST C. Sanchez

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		
NA	\$2,825.0	\$2,825.0	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	\$0.1	\$900.0	\$1,823.0	\$2,723.0	Recurring	Mortgage Regulatory

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendments make several technical corrections to the original bill. Under Section 18 (Confidentiality) the amendment strikes several requirements.

The amendment also adds a new section to read, "A. The director shall exercise general supervision and control over mortgage loan originators doing business in New Mexico. In addition to the other duties imposed on the director by law, the director shall make reasonable rules necessary for the implementation of the New Mexico Mortgage Loan Originator Licensing Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978."

Synopsis of SFL Amendment

According to the AGO, the Senate Floor Amendment to SB 342 clarifies the second sentence of Section 58-21-18 to permit the inclusion of additional costs and fees as permissible charges when the fees are assessed in connection with a mortgage loan. The additional costs and fees include charges for reasonable settlement, origination, transaction and other fees or charges not prohibited by law. This language recognizes that mortgage companies incur additional costs and fees associated with the originating of a loan beyond the broker fee and permits the collection of those costs and fees.

Synopsis of SFC Amendments

The SFC amendment changes the effective date of the provisions of Section 4 and 16 to July 31, 2010. The amendment also changes the effective date of the provisions of Sections 1, 3, 5 through 15, and 17 through 60 to July 31, 2009.

All other changes are technical and clean up and clarify the introduced bill version.

Synopsis of SCORC Amendments

Amendment 1 reverts language back to surety bond coverage liability for exclusive agents to being provided under the mortgage loan company umbrella and corrects duplicative language in the paragraph.

Amendments 2, 4, 7, 8, and 12 make technical changes.

Amendment 3, 9, and 11 add the definition of servicer not previously defined in the New Mexico Mortgage Loan Originator Licensing Act, Mortgage Loan Company Act, and Home Loan Protection Act.

Amendment 5 expands the exemption from compliance with the Act to include mortgage loan originators, who are currently licensed in another state through the nationwide mortgage licensing system and registry for more than 90 days, by permitting the issuing of temporary New Mexico licenses, to be valid for 90 days, in order to allow the originators time to complete the education and testing requirements as required by this Act.

Amendment 6, 10, and 13 exempt government sponsored enterprise loans from being subject to

the “ability to repay” standard as defined by the New Mexico Mortgage Loan Originator Licensing Act, Mortgage Loan Company Act, and Home Loan Protection Act.

Amendment 14 – clarifies the measure of the lifetime interest cap of 6% as beginning from the initial loan rate.

Amendment 15 deletes the application of the Act to loans made after April 1, 2004.

Synopsis of SJC Amendments

Amendment 1 - This amendment replaces the exemption contained in Section 4 (B) (3) of The New Mexico Loan Originator Licensing Act (SB 342 Original bill). Formerly, an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence has been changed to state: “an individual who offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property”. According to the AGO, this amendment may not be in compliance with the federally approved model state law in which The New Mexico Loan Originator Licensing Act is based.

Amendment 2 – this amendment excludes juvenile courts from this provision.

Amendment 3 – removes “exclusive agent” from the bonding provisions.

Amendment 4 – this amendment removes “customers” from the purview of the regulators authority in this section.

Amendment 5 – is just a stylistic change

Amendment 6 – This amendment replaces language in the Original SB 342, making any violation of The New Mexico Loan Originator Licensing Act a violation of the Unfair Practices Act, with new language allowing any person who has suffered injury by reason of any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act to sue in district court. The attorney general may also bring an action in the name of the state alleging violations of that act.

Amendment 7 – adds the standard of “knowingly” to the aids and abets enforcement provision.

Amendment 8 and 9 – are technical and stylistic changes.

Amendment 10 – adds language requirement the notice be in such a manner as to be able to be “understood by a reasonable borrower.”

Amendment 11 – adds an exemption for government agencies and government sponsored enterprises to prove borrowers reasonable ability to repay the mortgage. According to the AGO, this added language is duplicative of current language in same section and/or paragraph and may render the paragraph vague for constitutional purposes.

Amendment 12 – added language allows lenders to utilize additional tests other than equity in the home to determine borrower qualification.

Amendment 13 - eliminates the appropriation for start up costs.

Amendment 14 – changes the effective date.

This SJC amendment removes the \$500,000 appropriation and reverting fund that is necessary to

hire four additional staff to start up a Mortgage Originator Licensing program.

Synopsis of Original Bill

This Bill would enact a new law entitled the New Mexico Mortgage Loan Originator Licensing Act that would regulate and license mortgage loan originators and it would amend the current Mortgage Loan Company and Loan Broker Act and the Home Loan Protection Act. This bill identifies certain prohibited practices under the Unfair Trade Practices Act. The highlights of this Bill are as follows:

New Mexico Mortgage Loan Originator Licensing Act

This portion of the Bill should meet or exceed the standards set forth by the Federal SAFE Mortgage Licensing Act that was signed into law July 30, 2008.

The mortgage loan originator will be subject to the following requirements:

- Licensing of all Mortgage Loan Originators;
- National and State approved initial and continuing education courses regarding mortgage laws, ethics and business;
- National and State testing for license approval;
- National background checks (fingerprinting and credit report checks);
- Surety Bond requirements based on the volume of loan originations annually;
- Annual Continuing Education through approved courses in mortgage laws, ethics and business;
- Creates a fiduciary relationship between mortgage loan originator and borrower;
- Nationwide tracking of mortgage loan originators and licenses they hold in all states, complaints and disciplinary and enforcement actions against mortgage loan originators;
- Examination and investigation;
- Minimum standards for licensing.

In addition, the Act includes provisions for administrative due process, confidentiality and enforcement powers.

This Act also creates a non-reverting fund and an appropriation to support the Financial Institutions Division's administration of this Act.

Mortgage Loan Company Act

This portion of the Bill will revise the current Mortgage Loan Company Act (58-21-1, et seq.) as follows:

- Coordinate with the New Mexico Mortgage Loan Originator Licensing Act;
- Change mortgage loan company approvals from a registration process to a licensing process;
- Require mortgage loan companies to designate a Qualified Manager who needs to meet certain requirements including years of experience and licensing under the New Mexico Mortgage Loan Originator Licensing Act before a license is issued to the mortgage loan company;
- Update the licensing fees charged to the mortgage loan companies including charging for licenses for divisions and branches of the mortgage loan company;
- Impose bonding requirements based on the volume of loan originations annually;
- Create new fees that would be deposited into the mortgage regulatory fund to administer the

costs of licensing and supervision of the mortgage industry;

- Update the violations, due process, enforcement and penalties portions of the Act so that the Financial Institutions Division may enhance and expand its regulation and supervision of the mortgage industry;
- Introduce new disclosure requirements;
- Introduce a requirement for an annual Mortgage Call Report;
- Synchronize the licensing cycle, bonding, enforcement, due process and penalties with mortgage loan originators to coincide with the National Licensing System.

Home Loan Protection Act

The portion of the Bill will amend the Home Loan Protection Act (58-21A-1 et seq.) as follows:

- Add the upfront government and private mortgage insurance premiums and veteran administration funding fees to the list of fees exempt from the points and fees threshold test;
- Add to the list of prohibited practices and change some prohibited practices for high cost home loans to pertain to all home loans.

FISCAL IMPLICATIONS

This SJC amendment removes the \$500,000 appropriation and reverting fund that is necessary to hire four additional staff to start up a Mortgage Originator Licensing program.

According to RLD, the first table below shows the proposed budget for the initial start-up of the program. These expenses can be covered by a \$500,000 appropriation from the General Fund to the Mortgage Regulatory Fund. At start-up, the Financial Institutions Division will hire 2 mortgage examiners and 2 licensing specialists to assist the current staff implement the licensing process that will require licensure of approximately 1200 Mortgage Loan Companies and Branches, 3000 Mortgage Loan Originators and an undetermined number of Manufactured Housing Companies and sales personnel. It also allows for office space and FF&E for the entire Mortgage Licensing and Regulation Unit.

Proposed cost - FY 09 Appropriation				
Financial Examiners				
	FTE	Cost	Total	
Salary	2	\$ 53,040.00	\$ 106,080.00	
Benefits		\$ 21,216.00	\$ 42,432.00	
Computer /printer/ equipment		\$ 4,220.00	\$ 8,440.00	
Office Furniture / Supplies		\$ 5,355.00	\$ 10,710.00	
Car / Gas		\$ 7,500.00	\$ 15,000.00	
Technical Training		\$ 1,500.00	\$ 3,000.00	
Per Diem		\$ 7,000.00	\$ 14,000.00	
Cell Phones		\$ 900.00	\$ 1,800.00	
		Sub Total		\$ 201,462.00
Court, Municipal Licensing Clerk - A				
	FTE	Cost	Total	
Salary	2	\$ 30,000.00	\$ 60,000.00	
Benefits		\$ 12,000.00	\$ 24,000.00	
Computer /printer/equipment		\$ 2,500.00	\$ 5,000.00	
Office Furniture / Supplies		\$ 5,355.00	\$ 10,710.00	
		Sub Total		\$ 99,710.00
TOTAL				\$ 301,172.00
Office Space and Equipment				
Lease Space 3420 square feet			\$ 92,340.00	
Total Furniture, Supplies and Office Equipment			\$ 105,296.00	
		Sub Total	\$ 197,636.00	\$ 197,636.00
TOTAL				\$ 498,808.00

Once the program is fully staffed, RLD anticipates the annual budget 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	Non-reverting 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	Non-reverting 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

The FY 10 “Estimated Additional Operating Budget Impact” shown above 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. RLD shows these figures as “Estimated Additional Operating Budget Impact” because although the revenue will more than cover the program expenses, the bill does not provide an appropriation for start up. RLD asks that the Legislature provide sufficient appropriations from the Mortgage Regulatory Fund so as to not impact the General Fund.

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

The Act adds 9 specific fiduciary duties of the loan originator to the borrower, includes 25 prohibited practices for licensees and 2 new disclosure requirements in the New Mexico Mortgage Loan Originator Licensing Act.

The Director may deny, suspend, revoke or decline to renew a license for: violating the New Mexico Mortgage Loan Originator Licensing Act or rules, failing to meet licensing standards, withholding information and making material misstatements. The director may order restitution, impose fines, order affirmative action, bar or suspend a license, issue orders and directives.

The Director may pursue violations in district court with penalties that include a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation, disgorgement, declarative judgment, restitution to the consumers and other relief the court deems just.

The Act addresses penalties for mortgage loan originators and mortgage loan companies who originate mortgage loans in New Mexico without being properly licensed.

Mortgage Loan Originators will be subject to background checks and finger printing. If they have been convicted of a felony involving an act of fraud or dishonesty, a breach of trust or money laundering, that individual will not be able to work in the mortgage industry.

OTHER SUBSTANTIVE ISSUES

According to the National conference of State Legislators (NCSL) if New Mexico fails to implement the Federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE) by July 31, 2009 the state’s authority to license and regulate mortgage loan originators will be preempted. Mortgage loan originators in any state that fails to act by July 31, 2009 would be licensed and regulated by the federal Department of Housing and Urban Development (HUD)

CONFLICT,

HB 316 duplicates and conflicts with the changes to the Home Loan Protection Act addressed in this bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Federal SAFE Mortgage Licensing Act of 2008 requires that if a State does not enact a law requiring Mortgage Loan Originator Licensing, the Department of Housing and Urban Development (HUD) shall be in charge of administering the Federal Licensing law for that State and all fees collected, under that law, by the Department of Housing and Urban Development (HUD) will remain with the Federal government.

The Mortgage Loan Company Act would revert back to its original form and the Financial Institutions Division would still be in charge of the regulation of mortgage loan companies, loan brokers and independent mortgage loan originators, which will lead to dual regulation of the mortgage industry in New Mexico by both federal and state agencies without the additional revenue.

The Home Loan Protection Act would revert to its present form without the new consumer protections and prohibited practices. Additionally, it would reduce the availability of FHA, VA and PMI insured mortgages.

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