



# HOUSE COMMITTEE ON APPROPRIATIONS

2009-10 Legislative Session

## FISCAL NOTE

HOUSE BILL: 1654

PRINTER'S NO: 2084

PRIME SPONSOR: Daley

FISCAL IMPACT SUMMARY	FY 2008/09	FY 2009/10
<b>Estimated Expenditure Increase/(Decrease):</b>		
Banking Department Fund	\$0	see analysis
Pennsylvania Housing Finance Agency funds	\$0	\$200 <sup>a</sup>
<b>Estimated Revenue Increase/(Decrease):</b>		
Banking Department Fund	\$0	see analysis
General Fund	\$0	indeterminate

<sup>a</sup>Does not include any educational expenses required by this bill.

### OVERVIEW:

This bill makes numerous changes to the Act of July 8, 2008, P.L.796, No.56 (HB 2179 of last session), which created a new Chapter 61 on Mortgage Loan Industry Licensing and Consumer Protection in Title 7 (Banks and Banking), Pa.C.S., to expand the scope of regulating the mortgage industry. According to the Department of Banking, many of the changes in H.B. 1654 are necessary to comply with the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.), enacted in July of 2008 after Pennsylvania enacted Act 56. Pursuant to S.A.F.E., failure to comply with federal standards will mean a preemption of Pennsylvania's regulatory powers over the mortgage industry, and such regulatory powers will be taken over by the U.S. Department on Housing and Urban Development (H.U.D.).

### Summary of Bill

The changes made by this bill include the following:

- (1) Chapter 61 is named the Mortgage Licensing Act.
- (2) It requires all related licenses for mortgage loans to be licensed through and originators registered with the Nationwide Mortgage Licensing System and Registry, which was developed and is maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.
- (3) It expands the scope of the regulation to require additional persons to be licensed as loan originators if they take applications, offer or negotiate terms of mortgage loans for "compensation or gain" that includes originators of affiliates, attorneys, nonprofit employees, those who deal with less than three mortgage loans in a year, and, if so determined by the HUD, employees of a licensee who solely renegotiates the terms of a existing mortgage loan
- (4) It allows applicants and originators to challenge information entered by the Department into the Nationwide Mortgage Licensing System and Registry and requires the Department to review the complaint and respond within thirty days.
- (5) It requires mortgage originators to have a unique identifier issued by the Nationwide Licensing System and Registry, and those identifiers to be on all mortgage loan application forms and personal solicitations or advertisements, including business cards. The Department of Banking is also required to list this unique identifier on licenses.

- (6) It removes the language that mortgage lenders may charge application fees but specifies it may charge interest, origination, and delinquency fees. Application fees, however, are subsumed under origination fees. It also changes language to clarify that mortgage lenders in the secondary mortgage loan business may charge origination fees as opposed to application fees.
- (7) It allows lenders to collect reasonable attorney fees at the execution of a mortgage or for the collection of delinquent mortgages.
- (8) It changes the minimum net worth required for a mortgage lender from “\$250,000 tangible net worth” to \$250,000 in assets less liability and assets unacceptable to H.U.D. pursuant to 24 CFR §202.5(n) or 202.8(b)(1).
- (9) It requires mortgage lenders, mortgage loan correspondents, and mortgage brokers to have surety bonds covering mortgage loan originators, and it requires surety bonds for mortgage originators in the following amounts:

<b>Required Surety Bonds</b>			
<b>Mortgage Loans for Pennsylvania Real Estate</b>	<b>Lender and Correspondent</b>	<b>Broker</b>	<b>Originator</b>
Less than \$7.5 million	\$100,000	\$50,000	\$25,000
\$7.5 million or more but less than \$15 million			\$50,000
\$15 million or more but less than \$30 million		\$100,000	\$100,000
\$30 million or more but less than \$50 million	\$300,000	\$200,000	\$200,000
\$50 million or more but less than \$100 million			
\$100 million or more but less than \$250 million	\$500,000	\$300,000	\$300,000
\$250 million or more	\$1,000,000		

- (10) It also requires surety bonding and annual reports for the following entities and persons now exempt from licensing in the same amount as required for mortgage lenders:
  - (a) Federal agencies and instrumentalities;
  - (b) State and local government agencies, including the Pennsylvania Housing Finance Agency;
  - (c) Employers offering mortgage loans as an employee benefit; and
  - (d) Nonprofit corporations.
- (11) It requires the Department to make available to the public access to the Nationwide Mortgage Licensing System and Registry and employment history of mortgage originators.
- (12) It increases required education from 12 to 20 hours for “pre-licensing” education and from 6 to 8 hours for continuing education. It details the required hours to be spent on specific subjects and requires a written examination for a license, specifying some subject areas that must be covered. The programs and examinations shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry “or as otherwise determined by the department based upon reasonable standards.”
- (13) It mandates that all Pennsylvania-specific education and testing programs must be approved by the Department of Banking and gives the Department the power to charge fees to educational providers. It specifies materials to be submitted by providers to the Department for approval of educational programs that must be submitted at least sixty days prior to the first date of the proposed education.

- (14) The Department has 45 days to approve or deny an educational program, and if the Department fails to respond within the 45 days, then it is deemed approved. All approvals are valid for one year, except the Department may revoke an approval for failure to comply with any provision of the Act. Providers must keep records and notify the Department of all programs and allow the Department free access to any program for monitoring purposes.
- (15) It removes the specification for the mortgage lenders, loan correspondents, and broker licenses and renewal fees that the principal place of business is "in this Commonwealth." This enables a business to operate in Pennsylvania without having a physical presence in Pennsylvania. This provision is not required by S.A.F.E.
- (16) It requires the Department to regularly report violations of the Chapter to the Nationwide Mortgage Licensing System and Registry.
- (17) It clarifies that the Department may reinstate a suspended license.
- (18) It requires a licensee to keep separate records of its mortgage loan business from other business operation it may be engaged in.
- (19) It expands possible reasons for a denial of a license to include denials, non-renewals, suspensions, or revocations from other state and Federal licensing/regulatory agencies and for personal financial responsibility, including tax liens and other government filings against the person, foreclosures within the past three years, patterns of delinquent accounts, and outstanding judgments, other than judgments based solely on medical expenses.
- (20) It mandates denial of a mortgage originator license if the applicant was convicted of a felony within seven years or at any time if the felony involved fraud, dishonesty, breach of trust or money laundered, unless if the offense has been pardoned.
- (21) It mandates denial of a mortgage originator license if an applicant had a license revoked by the Department, another state, or the Federal government and if the applicant does not possess financial responsibility, character, reputation, integrity, and general fitness, including tax liens and other government filings against the person, foreclosures within the past three years, patterns of delinquent accounts, and outstanding judgments, other than judgments based solely on medical expenses.
- (22) It changes the requirement for filing annual reports by brokers, lenders and loan correspondents to the Department to be filed periodically as determined by the Department, and expands the requirement to originators. It also requires copies of the report to be filed with the Nationwide Mortgage Licensing System and Registry.
- (23) It gives non licensed mortgage originators now required to be licensed the ability to continue operating as an originator provided they apply for a license within sixty days, and it establishes a December 31, 2009, deadline for compliance with the educational requirements those licensees that received conditional licenses.

#### General Background on Department of Banking

The Department of Banking is funded exclusively from the Banking Department Fund, which receives revenue from licenses, fees, fines, penalties, and miscellaneous revenues from the various institutions and businesses under its jurisdiction. The 2009/10 Governor's Executive Budget book shows \$17,534,000 in estimated revenues to the Banking Department Fund for FY 2008/09 and \$17,700,000 for FY 2009/10.

The General Appropriation Act of 2008 (Act No. 38A) provides a \$21,917,000 appropriation out of the Banking Department Fund to the department for general government operations, and the Governor has proposed \$21,054,000 for this line item for FY 2009/10.

Last year prior to the enactment of Act 56, the Department had estimated an average of 22,500 originators would provide \$4.5 million in revenue due to the new \$200 license fee. The actual number of originators who filed as of May 31, 2009, was 6,561, which is far below expectations. The revenue has been only \$1,312,200.

#### General Background on the Pennsylvania Housing Finance Agency (PHFA)

The Agency does not receive appropriations for general government operations. It pays for its expenses through fees and profits it makes running housing programs. For FY 2008/09, Act 38A of 2008 provided an \$11,000,000 appropriation to the Agency for the Homeowners Emergency Mortgage Assistance Program (HEMAP) and \$1,250,000 for an early childhood education capital program. The Governor has not renewed his request for funding the early childhood education capital program for FY 2009/10, and he has recommended again \$11,000,000 for HEMAP.

The effective date is immediate.

#### **ANALYSIS:**

##### Administrative Costs for the Department of Banking

According to the Department of Banking, very few of the changes enumerated above will create an increase in the Department's cost for regulating the industry. Most of the departmental responsibilities are already being done or anticipated to be done pursuant to Act 56 of 2008. Utilizing the Nationwide Mortgage Licensing System and Registry, for example, was planned, and it will likely reduce costs that the Department would have to incur if it were to administer those provisions separately.

The one provision that will add costs is the requirement for the Department to approve Pennsylvania-specific content for educational training, especially the content for continuing education. Costs related to educational training, however, will be offset by fees the Department may charge. Prior to the enactment of Act 56 of 2008, the Department did approve such educational programs and charged a fee of \$750 to cover its costs, and it approved on average about 17 a year. The new educational programs pursuant to Act 56 have not yet commenced, and this bill would supersede those provisions.

The Department anticipates that it will be able to coordinate with the Nationwide Mortgage Licensing System and Registry and utilize its approval system to fulfill its function under the educational system.

##### Revenue Increase to the Banking Department Fund

Beyond the fees for approving educational programs described above, the bill will increase revenue to the Banking Department Fund because it expands the number of mortgage originators who will be required to be licensed. Nonprofit employees, those who deal with less than three mortgage loans in a year, attorneys, employees of PHFA who would originate loans, and employees of affiliates all will be required to be licensed.

The Department has not been able to provide an estimate the number of additional persons who will be captured under this change in law. Under provisions of Act 56, each new applicant will pay \$200 for a license and \$100 for an annual renewal. The revenue, therefore, will be the product of \$200 multiplied by the number of new applicants for the first year, and for subsequent years, \$100 multiplied by the number of those persons seeking renewal plus \$200 multiplied by the number of new applicants in that subsequent year.

Because no estimates are available on the number of potential new applicants or future persons seeking renewal, it is not possible at this time to quantify the increase.

#### Indeterminate Net Revenue Impact on General Fund

By enabling mortgage lenders, loan correspondents, and brokers to operate in Pennsylvania without a physical presence may have the impact of reducing tax revenue for two reasons. First, these out-of-state firms may compete with and take away business from in-state firms, and second, the Department of Revenue may be unable to tax some of them due to lack of nexus. Although this provision is not required by S.A.F.E., it will be partially or fully offset by the fact that most states, New Jersey being an exception, do not require a physical presence, thus enabling Pennsylvania-based firms to compete for business in other states without a physical presence in those states. It is not possible to generate a reliable estimate on the net impact to the General Fund.

#### Administrative Costs for the Pennsylvania Housing Finance Agency

According to the Pennsylvania Housing Finance Agency, it already purchases surety bonds that provide protection comparable to the amounts mandated by this bill. The Agency further believes that the costs of the reports required by this bill will likely be negligible.

The Agency does not originate loans, except possibly for the Homeowners' Equity Recovery Opportunity (HERO) Loan Program. The provision requiring PHFA originators to be licensed, therefore, would have little or no impact on the Agency, except it might consider having one employee working with the HERO program to be licensed at a cost of \$200 for the first year and \$100 for subsequent years. While this bill imposes specific educational requirements for that person who may be licensed, PHFA currently provides employee education on a continual basis, and this cost will be absorbed into its budget already anticipated for educational purposes.

#### Sources

The Department of Banking and the Pennsylvania Housing Finance Agency were consulted in the preparation of this fiscal note:

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**General Note and Disclaimer:** *This Fiscal Note was prepared pursuant to House Rule 19(a), and the elements considered and reported above are required by Section 5 of the rule. Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*