

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 2269 (Grayson) – As Introduced February 16, 2022

SUBJECT: Financial regulation: fingerprinting

SUMMARY: Authorizes the Department of Financial Protection and Innovation (DFPI) to require potential licensees to submit, as part of the background check process, their fingerprints to the National Mortgage Licensing System and Registry (NMLS).

Specifically, **this bill:**

- 1) Deletes the requirement that the DFPI commissioner must submit to Department of Justice (DOJ) the fingerprint images and related information for California Financing Law (CFL) license applicants.
- 2) Authorizes the DFPI commissioner to require an applicant for CFL licensure to submit to NMLS their fingerprints for a criminal background check.
- 3) Makes comparable changes described in #1 and #2 to the licensing laws covering the Student Loan Servicing Act (SLSA), pertaining to student loan servicers, and the Debt Collection Licensing Act (DCLS), applicable to debt collectors.
- 4) Amends the California Residential Mortgage Lending Act (CRMLA) to authorize the DFPI commissioner to require fingerprints submitted by an applicant for criminal background check to be submitted to the NMLS.

EXISTING LAW:

- 1) The CFL (Fin. Code Sec. 22000 et seq.) requires licensing and regulation of Finance lenders and brokers making and brokering consumer and commercial loans, except as specified; prohibits misrepresentations, fraudulent and deceptive acts in connection with making and brokering of loans; and provides administrative, civil (injunction and ancillary relief) and criminal remedies for violations of the law.

The CFL requires an applicant who does not currently hold a license as a finance lender, broker, or program administrator to furnish with their application a full set of fingerprints and related information for the purposes of the commissioner conducting a criminal history record check. The DFPI commissioner must obtain and receive criminal history information from DOJ and the Federal Bureau of Investigation (Financial Code Section 22101).

The DFPI commissioner must submit to DOJ the fingerprint images and related information required by DOJ of all finance lender, broker, or program administrator license candidates for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state and federal arrests for which DOK establishes that the person is free on bail.

- 2) The SLSA (Fin. Code sec. 28100 et seq.) requires licensing and regulation of student loan servicers. Covered servicing includes activity that originated in California and is directed to persons in or outside of California, or originated outside of California and is directed to persons inside California. The statute established state standards to ensure consistent, fair, and quality servicing; and provides administrative and criminal remedies for violations of the law.

The SLSA requires the DFPI commissioner to investigate an applicant and its general partners and individuals owning or controlling, directly or indirectly, 10% or more of the outstanding interest or any individual responsible for the conduct of the applicant's servicing activities in California, if the applicant is a partnership. If the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner must investigate the applicant, its principal officers, directors, trustee, managing members, and individuals owning or controlling, directly or indirectly, 10% or more of the outstanding equity securities or any individual responsible for the conduct of the applicant's servicing activities in this state (Fin. Code Sec. 28116).

The DFPI commissioner must submit to DOJ the fingerprint images and related information required by DOJ of each application for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state and federal arrests for which DOJ establishes that the person is free on bail (Fin. Code Sec. 28114).

- 3) The DCLA (Fin. Code Sec 100000 et seq.) requires debt collectors to submit to examination, file reports under oath, maintain surety bonds, submit to criminal background checks and pay pro rata shares of all costs and expenses reasonably incurred by the DFPI to license and regulate the industry.

The DCLA requires the DFPI commissioner, if the applicant is a partnership, to investigate the applicant and its general partners and individuals owning or controlling, directly or indirectly, 10% or more of the outstanding interests or any individual responsible for the conduct of the applicant's servicing activities in this state. If the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, trustee, managing members, and individuals owning or controlling, directly or indirectly, 10% or more of the outstanding equity securities or any individual responsible for the conduct of the applicant's debt collection activities in this state (Fin. Code Sec 100009).

The DFPI commissioner must submit to DOJ the fingerprint images and related information required by DOJ of each application for the purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state and federal arrests for which DOJ establishes that the person is free on bail (Fin. Code Sec. 100008).

- 4) The CRMLA (Fin. Code Sec. 50000 et seq.) requires licensing and regulation of residential mortgage lenders and servicers of specified federally-regulated mortgage loans, except as specified; prohibits misrepresentations, fraudulent and deceptive acts in connection with making, brokering and servicing of these residential mortgage loans; and provides

administrative, civil (injunction, ancillary relief and appointment of receiver) and criminal remedies for violations of the law.

Requires the DFPI commissioner to issue a residential mortgage lender license upon satisfaction of, among other things, an investigation of required statements upon which the commissioner is able to issue findings that the financial responsibility, criminal records (verified by fingerprinting, at the discretion of the commissioner), experience, character, and general fitness of the applicant and of the partners or members thereof, if the applicant is a partnership or association, and of the principal officers and directors thereof, if the applicant is a corporation, support a finding that the business will be operated honestly, and fairly (Fin. Code Sec. 50121).

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) **Purpose.**

According to the author:

AB 2269 amends the licensing laws for residential mortgage lending, nonresidential lending, student lending, and debt collection in the state to streamline the criminal background check procedures and allow licensees to submit fingerprints by live scan directly to the FBI through NMLS. The process would eliminate unnecessary staff resources and postal costs as well as potentially reduce application processing times.

2) **How background checks are conducted today.**

State law requires DFPI to work with DOJ to process fingerprint-based background checks. In the last few years, DOJ has seen a significant increase in the number of requests for criminal background checks to aid public agencies in their hiring efforts. According to the DOJ website, there are over 45,000 agencies authorized to perform background checks, and DOJ processes approximately 2 million state-level background checks and 1.2 million federal level background checks each year.¹ Typically, DOJ is authorized to charge the requesting agency a fee for this service.

Fingerprint-based background checks can take significant time. The requesting agency will provide the applicant the form they need to complete and take to a live scan operator, who acts as a sort of notary and checks the applicant's identity and documents and captures the applicant's fingerprints and transmits the data to DOJ. After receiving the fingerprint images, DOJ conducts a search, and if there is a match in the database then a technician will review the RAP sheet, a manual process that can take considerable time. If the agency requires an FBI criminal background check (like DFPI does, as is required under state law), then DOJ forwards the fingerprint images to the FBI.

¹ <https://oag.ca.gov/fingerprints>

For those who cannot physically make it to a California-based live scan operator, the process to submit fingerprints can be quite onerous for both the applicant and DFPI. The applicant must submit fingerprints on an FBI fingerprint hard card, and then DFPI must track these cards and retain hard copies of the fingerprints.

3) **What is NMLS?**

This bill would allow for more widespread use of NMLS for background checks. The Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators created the NMLS to improve coordination and information sharing among regulators while allowing for increased efficiencies for industry and enhance consumer protection for consumers of financial services and products.

NMLS acts as the “system of record” for non-depository, financial services licensing or registration in participating state agencies. NMLS serves as the portal that companies and individuals use to apply for their license, and more than 60 state or territorial government agencies use NMLS to this effect.

DFPI already uses NMLS for many licensing-related functions. For example, as of March 15, 2022, all applications under CFL must be submitted through NMLS, and existing CFL licensees must transition onto the NMLS system. This bill will further engrain the NMLS into DFPI’s licensing procedures.

4) **Mortgage loan originators already use NMLS for background checks.**

Since 2010, mortgage loan originators (MLOs) working for employers licensed under the CFL or the CRMLA have submitted their fingerprints directly to NMLS, an indication that this process is well-tested and able to handle additional California-based licensees.

The MLO licensure process was codified by SB 36 (Calderon), Chapter 160, Statutes of 2009, which the Legislature passed to bring the state into compliance with the federal SAFE Act. The SAFE Act requires all states to license and register MLOs through NMLS, and this licensure process must require a background check and credit check.

At the time, the licensure of MLOs was a significant shift for those in the mortgage industry. MLOs were typically employees of businesses that were licensed under the CFL, the CRMLA, or through the Department of Real Estate (DRE). For CFL and CRMLA licensees, it was a new concept for employees who were previously untracked to now undergo a background check and a credit check. Today, the NMLS processes thousands of MLO applications, with more than 21,000 Californians submitting applications in 2020 alone.²

5) **Interaction with DOJ’s record clearance process**

An important policy question is whether any meaningful information is lost by no longer utilizing the DOJ database. This is especially important since the passage of AB 1076 (Ting), Chapter 578, Statutes of 2019, which created a process through which DOJ reviews its database on a regular basis and identifies persons eligible for relief by having their arrest or

² Data accessed at <https://nationwidelicingsystem.org/about/pages/reports.aspx>. Data is for individuals and includes both DFPI and DRE employers.

conviction records withheld from disclosures. While state records are included in the FBI database, it is unclear that this system would, or could, track the changes implemented by AB 1076 in a timely fashion. Therefore, there is a possibility of differing information disseminated through the NMLS database versus the DOJ database, including information that the Legislature has already indicated it does not want disseminated in some situations.

The author's intent with AB 2269 is to create a more efficient process for both DFPI and licensees, but this bill may also require some additional staff review to ensure that what DFPI has received from NMLS does not result in a denial of licensure based on state records that DFPI would not have seen with a DOJ-provided background check. It is the committee's understanding that DFPI staff re-review background check information before they deny an application based on that record, so it is unlikely that AB 2269 would generate any new significant workload or licensure denials.

6) What about those who must also receive a real estate license?

Some mortgage professionals, based on the nature of their work, must receive a license from both DFPI and the Department of Real Estate (DRE). Currently, these individuals must submit fingerprints to both departments separately, meaning an applicant must submit two sets of fingerprints that then are both sent to DOJ, as DRE and DFPI do not share this information with each other.

Under AB 2269, these dual license holders would similarly need to submit two sets of fingerprints. Because this bill only affects DFPI's process, these dual license holders would see their fingerprints run through two separate background check systems. Thus, AB 2269 would not impose additional work for these licensees, but it would return background information from two different databases.

REGISTERED SUPPORT / OPPOSITION:

Support

United Wholesale Mortgage.

Opposition

None on file.

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