

Date of Hearing: June 27, 2016

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Matthew Dababneh, Chair
SB 657 (Berryhill) – As Amended June 13, 2016

SENATE VOTE: Vote not relevant

SUBJECT: The California Residential Mortgage Lending Act: lenders: licensees

SUMMARY: Revises the definition of "lender" under the California Residential Mortgage Lending Act (CRMLA) to clarify the inclusion of loan processors and underwriters under specified circumstances. Specifically, **this bill:**

- 1) Provides that a "lender" under the CRMLA is a person that is either of the following:
 - a) Not a natural person and engages in the activities of a loan processor or underwriter for a residential mortgage loan; or,
 - b) A natural person and an independent contractor who engages in the activities of a loan processor or underwriter for a residential mortgage loan.
- 2) Allows the Commissioner of the Department of Business Oversight (DBO), at his or her discretion, to require a lender that engages in the activities of a loan processor or underwriter to maintain a minimum tangible net worth of an amount that is greater than two hundred fifty thousand dollars (\$250,000), but does not exceed the net worth required by an approved lender under the Federal Housing Administration (FHA).

EXISTING LAW:

- 1) Provides that the CRMLA is specifically designed to authorize and regulate mortgage banking activities. An applicant under the CRMLA may obtain a license as a lender, a servicer, or both. The CRMLA authorizes licensees to make federally related mortgage loans, to make loans to finance the construction of a home, to sell the loans to institutional investors, and to service such loans. Licensees are authorized to purchase and sell federally related mortgage loans and to provide contract underwriting services for institutional lenders. Licensees are authorized to service any federally related mortgage loan regardless of whether they make the loan or purchase a servicing portfolio. A licensed CRMLA lender is also authorized to provide brokerage services to a borrower, by attempting to obtain a mortgage loan on behalf of the borrower from an institutional lender. Employees who engage in brokering activities on behalf of the CCRMLA licensee must be licensed mortgage loan originators employed by the licensee. (Financial Code, Section 50000 et seq.)
- 1) Defines "lender" under the CRMLA as a person that (1) is an approved lender for the FHA, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions. (Financial Code, Section 50003(m))

- 2) Defines “mortgage servicer” or “residential mortgage loan servicer” under the CRMLA as a person that (1) is an approved servicer for the FHA, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans. (Financial Code, Section 50003(q)).
- 3) Specifies that an independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a residential mortgage lender or residential mortgage servicer license and a mortgage loan originator license. (Financial Code, Section 50003.6(c)).

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill.

According to the author:

In 2015, FHA said that its federal lender approval should and would no longer be granted or allowed to third party processors and underwriters who did not themselves actually lend. Consequently, because of this policy change, these individuals will have to surrender their current FHA lender approval. The ultimate effect of this change in HUD policy means that current California licensees that rely on the FHA approval to satisfy the California requirement will have challenges in technically meeting the definition of “lender” in the CRMLA. So although they have been active and in good standing in California, through no action or fault of its own making and based on a policy shift by a federal entity, some California independent contractors may no longer be able to do business in CA under the CRMLA.

This bill is intended to modify the technical definition of lender in the statute. It would make clear that this category of CRMLA mortgage lender licensees who engage solely in mortgage loan processing and underwriting, which can no longer be FHA/HUD approved lenders, still can be licensed in California and remain subject to DBO jurisdiction and oversight, just as they are now.

Background.

SB 657 seeks to resolve an issue concerning the overlap of the requirements to be licensed under the CRMLA, the definition of a "lender" under the CRMLA and recent changes to the Department of Housing and Urban Development (HUD) Mortgage Handbook.

Under the CRMLA a "lender" directly makes residential mortgage loans and makes credit decisions in the loan transaction. The final qualifier to be licensed as a lender under the CRMLA is that the lender must be an approved lender for the FHA, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation. These licensing requirements allowed mortgage underwriters and processors to be licensed under the CRMLA with the full set of responsibilities and requirements as those actually making or arranging the mortgage loans.

In September of 2015 HUD modified its Mortgage Handbook to change the definition of entities that are eligible for HUD lender or government approval. HUD previously described entities as "financial entity" considered to be a broader definition than the revision which changed to "lending institutions." This narrower definition suggests that loan processors and underwriters are not considered "lending institutions" and therefore are no longer endorsed as lenders by HUD or other government entities. This has created a situation where several CRMLA licensees no longer meet the required definition of "lender" in order to remain licensed and are at risk of not being able to renew their licenses with DBO.

The revisions proposed in SB 657 are intended to maintain the status quo where entities that are independent contractors and that do loan processing and underwriting remain licensed under the CRMLA in the State of California.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Bankers Association
California Mortgage Bankers Association

Opposition

None on file.

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