

CHAPA asks the Legislature to include language re-establishing an exemption from mortgage loan originator licensing requirements for certain affordable housing nonprofits in the final Economic Development Bill

Language in the Senate Economic Development Bill (S.2625) would re-establish an exemption from mortgage loan originator licensing requirements previously provided for affordable housing nonprofits until the exemption was rescinded in 2017. The House did not include this language in its Economic Development Bill (H.4732).

Specifically, the exemption would apply to Massachusetts nonprofits and their employees that exclusively make mortgage loans on residential property financed with public funds under a contract with a government or quasi-government entity. This recognizes the charitable nature of nonprofit organizations that administer publicly-funded programs.

The legislation would also create an exemption for “Bona fide nonprofit affordable homeownership organizations” if their primary purpose is to help qualified low-income individuals build, repair, and purchase affordable housing. This would include Habitat Humanity, recognizing its work in making affordable homeownership a reality for so many low-income families in Massachusetts.

Unfortunately, there will be negative impacts on affordable housing in Massachusetts if these affordable housing nonprofits are required to be licensed as mortgage loan originators. Affordable housing nonprofits and their employees would incur significant additional time and expense for training that is more suitable for lenders operating in a commercial context.

This may result in some nonprofits choosing to stop offering housing assistance programs that involves lending public funds. Even for nonprofits who choose to continue offering this assistance, due to the time involved in obtaining a license for their affected employees, some of these nonprofit organizations may need to suspend the provision of such assistance until the organization becomes compliant with the licensing requirements.

Habitat for Humanity affiliates will also have to limit their production of affordable housing in Massachusetts because Habitat acts as the lender to subsidize the sale of its homes to low-income families.

Ultimately, the low-and moderate-income households and their communities would be harmed by losing access to programs that help create and preserve affordable homes.

There has been no opposition to the language and re-establishing the exemption would come at no cost to the Commonwealth.

The language was developed in partnership with Citizens’ Housing and Planning Association (CHAPA), Habitat for Humanity, the Massachusetts Association of Community Development Corporations (MACDC), the Massachusetts Mortgage Bankers Association (MMBA), the Regional Housing Network, and the Massachusetts Division of Banks (DOB). Similar language was reported favorably out of the Joint Committee on Financial Services in H.4334.

Background Information

Many affordable housing nonprofit organizations administer loan programs that help families buy homes, address home repair needs or lead paint remediation, prevent foreclosure, and acquire or preserve rental housing. These loans offer terms that are favorable to the borrower, in some cases loans at no interest with repayment deferred. Frequently, the non-profit is administering loans on behalf of a government entity, which sets the terms of the loans.

Unfortunately, current state law does not permit these nonprofits to be exempt from mortgage loan originator requirements created by the federal SAFE Act.¹ The law governs the licensing requirements for mortgage loan originators, setting minimum standards for mortgage loan officers who may profit from the sale and origination of mortgages.

Recognizing the differences between the loans administered by nonprofits with a public or charitable purpose and the commercial purpose of the typical mortgage lender, the SAFE Act permits states to exempt certain nonprofits and their employees, from licensing requirements.²

Specifically, states are permitted to exempt a “bona fide nonprofit organization,” defined in the SAFE Act as a tax-exempt organization that promotes housing or provides homeownership services, conducts its business in a manner that serves charitable purposes, provides loan terms that are favorable to the borrower, and compensates its employees in a manner that does not incentivize employees to act other than in the best interests of the borrower.³ Currently, 34 states and the District of Columbia provide some kind of exemption for nonprofits.

In 2008, the DOB issued guidance stating that certain nonprofits and employees were exempt from the licensing requirements.⁴ However, in 2017, the DOB revoked this exemption for nonprofits based on a reinterpretation of state law, stating that Massachusetts law does not currently provide for this exemption from the licensing requirements.⁵

Without a change to state law,⁶ the DOB states that it cannot exempt employees of “bona fide nonprofit organizations” even if they meet the requirements for exemption under the SAFE Act.

***For more information, please contact Eric Shupin,
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¹ See Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008, 12 U.S.C. § 5100.

² See 12 C.F.R. § 1008.103 (describing mortgage loan originators required to be licensed by state and those that may be exempted).

³ 12 C.F.R. § 1008.103(e)(7)(ii).

⁴ See Mass. Div. of Banks, *Selected Opinion 08-018* (July 17, 2008) <https://www.mass.gov/opinion/selected-opinion-08-018>.

⁵ Mass. Div. of Banks, *Industry Letter Regarding Applicability of Mortgage Loan Originator Licensing to Individuals Employed by Nonprofit Entities* (June 15, 2017) (stating that amendments to ch. 255F in 2009 altered the regulatory scheme to require that any person that meets the definition of a mortgage loan originator must be licensed as such, even if he or she is employed by a nonprofit entity). <http://www.mass.gov/ocabr/docs/dob/industry-letter-06152017.pdf>.

⁶ See Mass. Gen. Laws ch. 255E, § 2 (concerning mortgage broker or lender license requirements and exempted entities); see also Mass. Gen. Laws ch. 255F, § 2 (concerning licensing or exemption requirements for mortgage loan originators).