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June 7, 2018

SMALL BUSINESS IMPACT STATEMENT

As required by NRS 233B.0608 and NRS 233B.0609

Concerning the Division of Mortgage Lending's Proposed Regulatory Changes to

NAC 645F

(2018)

The following information comprises the Small Business Impact Statement drafted by the Nevada Division of Mortgage Lending ("the Division") in compliance with Chapter 233B of the Nevada Revised Statutes ("NRS") regarding its proposed additions to Chapter 645F of the Nevada Administrative Code ("NAC"). Specifically, this Small Business Impact Statement addresses the Division's proposed amendments relative to NAC 645F.004 to 645F.920 (governing covered service providers, foreclosure consultants, and loan modification consultants) and NAC 645F.930 to 645F.994 (governing mortgage servicers).

The proposed regulations were drafted to comply with the requirements of the 2017 Nevada Legislature, as subject of Senate Bill 69, which mandates that certain state regulatory bodies adopt regulations providing for licensure by endorsement to a *natural person* to engage in the described occupations or professions in Nevada, where such person: (1) holds a comparable license issued by the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in such activities in the state of Nevada; and (3) satisfies other requirements as directed or authorized by Senate Bill 69.

The Division accordingly drafted proposed regulations to provide for licensure by endorsement to a *natural person* to engage in the activities of a covered service provider, foreclosure consultant, loan modification consultant, or mortgage servicer in Nevada. In effort to determine whether or not its proposed regulations were likely to impose a direct and significant economic burden upon a small business, or directly restrict the formation, operation, or expansion of a small business, the Division posted the proposed regulations to the Division's website as accompanied by a summary of their provisions and opportunity to provide comments. In addition, the Division solicited comments by its licensees under Chapters 645F of the NRS and NAC, as well as by other interested persons, when it

emailed them copies of the proposed regulations with a summary of the provisions. Following receipt of response(s) thereto, the Division prepared its Small Business Impact Statement as set forth below:

(a) A description of the manner in which comment was solicited from affected small businesses, a summary of their response, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

On May 21, 2018 and May 22, 2018, respectively, in its concerted effort to assure that the proposed regulatory amendments to NAC 645F do not unnecessarily burden the business activity of a small business, the Division posted its draft regulations on its website, http://mld.nv.gov/About/MLD_Updates, and made e-mail notification to its Nevada-licensed covered service providers, foreclosure consultants, loan modification consultants, and mortgage servicers, as well as to other interested persons (a total of approximately 129 recipients), soliciting input concerning the proposed regulations. Specifically, the Division sought both public and industry feedback concerning whether or not such proposals were likely to impose a direct and significant economic burden upon a small business subject to NRS 645F, or were likely to restrict the formation, operation, or expansion of a small business subject to NRS 645F. The Division set forth the definition of a "small business" as provided in NRS 233B.0382: "[A] business conducted for profit which employs fewer than 150 full-time or part-time employees."

The Division did not receive any response to its solicitations of comments or input concerning the proposed regulations.

(b) The manner in which the analysis was conducted.

See the answer provided to Item (a) directly above.

In order to determine how the Division could reduce the impact upon small businesses through the proposed regulations, Division staff considered the legal requirements and policies sought to be advanced by the 2017 Nevada Legislature in enacting Senate Bill 69, as well as the Division's continued mission to protect the public interest. The proposed regulations reflect the Division's efforts to provide a balanced approach in achieving both the legislature's mandate and the agency's goals. As stated above, the Division did not receive any public input in response to its solicitations of comments.

Current law requires that applicants for Nevada licensure to engage in the activities of a covered service provider, foreclosure consultant, loan modification consultant, or mortgage servicer, possess specified qualifications and satisfy certain conditions, including satisfactory completion of required courses of education and a criminal-background check. Senate Bill 69 provides that under certain circumstances relative to licensure by endorsement, a regulatory body may issue a license to a natural person to engage in such activities where among other things, that person holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States and possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation or profession in the state

of Nevada. Review of Senate Bill 69 specifically reveals that in the case of licensure by endorsement, the regulatory body must not allow issuance of a license by endorsement unless the applicant “[s]ubmits to the regulatory body a complete set of his or her fingerprints and written permission authorizing the regulatory body to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report *or* proof that the applicant has previously passed a comparable criminal background check.” [Emphasis added.] Accordingly recognizing that Nevada lawmakers have expressly granted a regulatory body with the discretion to accept proof that an applicant has previously passed a comparable criminal background check instead of having to require the applicant be background checked again, the Division included in its proposed regulations, a provision allowing for the possibility that the Commissioner of the Division may accept satisfactory proof that the applicant has previously passed a comparable criminal-background check, if passed within the 6 months immediately preceding the date on which the Nevada application is submitted. The Division further requires that the applicant have been licensed to engage in the activities of a covered service provider, foreclosure consultant, loan modification consultant, or mortgage servicer (in the District of Columbia or any state or territory of the United States), for at least 5 continuous years immediately preceding filing of the Nevada application.

The Division anticipates discussion concerning the impact of the proposed regulations upon small businesses at the time it conducts its scheduled workshop concerning the matter.

(c) The estimated economic impact of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

- (1) Both adverse and beneficial effects; and**
- (2) Both direct and indirect effects.**

The proposed regulations should not result in any adverse economic impact because they do not establish any additional requirements for a small businesses with respect to issuance of a license by endorsement. There should be no adverse effects because the procedure does not apply to any *existing* Nevada-licensed covered service providers, foreclosure consultants, loan modification consultants, or mortgage servicers. Further, the proposed regulations do not exempt one who obtains such a license by endorsement, from compliance with the requirements of NRS 645F and NAC 645F.

The proposed regulations should have a beneficial economic impact because they seek to remove the existing barriers to licensure as perceived by the 2017 Nevada Legislature, by providing a process for licensure by endorsement to an applicant who is a natural person holding a comparable license issued by the District of Columbia or any state or territory of the United States, where the licensing requirements are *equal to or substantially similar* to those in Nevada and other criteria are satisfied, particularly providing for the Commissioner’s discretionary recognition or acceptance of an applicant’s previously passed, comparable criminal-background check, if passed within the 6 months immediately preceding the date on which the Nevada application is submitted.

Direct or indirect beneficial effects: Potential cost and time-savings by applicants who, among other things, have already been licensed to engage in the activities of a covered service provider, foreclosure consultant, loan modification consultant, or mortgage servicer for 5 continuous years in another jurisdiction immediately preceding filing of the Nevada application, and have previously passed a comparable criminal-background check, if required to pass such a background check, where there is proof satisfactory to the Commissioner that the applicant has previously passed such check within the 6 months immediately preceding the date on which the Nevada application is submitted.

Direct adverse effects: No direct adverse effects were noted.

Indirect adverse effects: No indirect adverse effects were noted.

The Division anticipates that both the direct and indirect effects may result in cost savings and expedited licensure for those who meet the criteria for licensure by endorsement as stated in the proposed regulations.

(d) A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

In order to enable public input concerning how the proposed regulations may impact a small business, the Division posted to its website the proposed regulations, as well as a summary of their provisions, providing opportunity to provide comments concerning the regulations. The Division additionally provided this same information directly to its Nevada-licensed covered service providers, foreclosure consultants, loan modification consultants and mortgage servicers, as well as other interested persons, pursuant to e-mail transmission. In attempt to reduce potential burden upon a small business, and in conformance with the requirements of Senate Bill 69, the Division drafted the proposed regulations to allow for the discretionary recognition or acceptance of an applicant's previously passed, comparable criminal-background check, under specified circumstances in the application process, thereby potentially resulting in both cost and time savings to an out-of-state applicant.

The Division anticipates that potential input by the public concerning the impact of the proposed regulations upon a small business, including any methods to reduce any adverse impacts, will be addressed and considered at the time the Division conducts its scheduled workshop in this matter. Any feedback will be taken into account when determining if revisions to the proposed regulations are necessary.

(e) The estimated cost to the agency for enforcement of the proposed regulation.

The Division anticipates that the cost to the agency will be minimal, if any. The Division currently expects that the costs for enforcement of the proposed regulations will be absorbed into the existing workloads of current staffing levels.

(f) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

To the extent that the anticipate fee for an applicant seeking licensure by endorsement be interpreted as a new fee, the fee for filing such application will be the same as those currently imposed upon any other natural person who applies for a Nevada license to engage in the activities of a covered service provider, foreclosure consultant, loan modification consultant, or mortgage servicer. The Division is unable to estimate the annual amount of application fee(s) that may be collected for licensure by endorsement.

The proposed regulations do not otherwise provide a new fee, and do not provide for any increase to an existing fee.

(g) If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The proposed regulations neither duplicate, nor are they more stringent, than any existing federal, state, or local standards regulating the same activity.

(h) The reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.

Based upon lack of public comment in response to the Division's solicitations of comments or input concerning the proposed regulations as set forth in Item (a) above. and considering the legislative directives or goals that the Division seeks to implement by its drafted proposals as discussed herein, the Division believes the impact of the proposed regulations upon small businesses may be only beneficial, neither being likely to impose a direct and significant economic burden upon a small business, nor likely to restrict the formation, operation, or expansion of a small business.

The Commissioner of the Division of Mortgage Lending has determined that the proposed additions to NAC 645F will not impose a significant and direct burden upon a small business and will not restrict the formation, operation, or expansion of a small business.

I certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this Small Business Impact Statement for its proposed changes to NAC 645F was prepared properly and is accurate.

 6/7/18

Cathy Sheehy, Commissioner
Nevada Division of Mortgage Lending