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Commissioner

SMALL BUSINESS IMPACT STATEMENT
AS REQUIRED BY NRS 233B.0608
PROPOSED AMENDMENT TO NAC 645B AND NRS 645B
May 30, 2024

1. Background:

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 645B of the Nevada Administrative Codes (“NAC”) which governs mortgage brokers and mortgage agents, and Chapter 645B of the NRS which governs mortgage companies and mortgage loan originators. The Division has determined that the proposed additions and amendments should not have an adverse economic impact upon small businesses (but potentially may rather have a positive impact), and should not prevent the formation, operation, or expansion of a small business in Nevada.

The proposed regulations were drafted to comply with the requirements of the 2023 Nevada Legislature by Senate Bill 355 (“SB 355”) which mandates the Commissioner to adopt regulations governing the conducting of the business of a mortgage company at a remote location. The Division proposes to amend NAC 645B and NRS 645B to accommodate the changes made in law and to ensure regulations are written clearly and concisely, that regulations are not duplicative and unnecessary and that regulations protect the health and welfare of Nevada without unnecessarily burdening business activity. Specifically, the proposed regulations provide provisions that apply to mortgage companies and mortgage loan originators regarding working from a remote location.

2. Description of Solicitation:

The Division sent an email notice to its licensees and interested parties on April 26, 2024, containing the proposed regulation amendments to NAC 645B and NRS 645B in effort to ensure that these amendments do not unnecessarily burden the business activity of a small business or do not directly restrict the formation, operation, or expansion of a small business, the Division posted its draft regulations on its website, <https://mld.nv.gov/> and made e-mail notification to its Nevada-licensed mortgage brokers, mortgage agents, mortgage companies and mortgage loan originators, as well as to other interested persons (a total of approximately 9,257 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 NAC 645B or NRS 645B, or were likely to restrict the formation, operation, or expansion of a small business subject to NAC 645B or NRS 645B. 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 reviewed and considered eleven email responses received from the solicitation of the proposed regulations. Below are a list of questions or comments received along with the Division’s response to questions raised:

A few responders questioned if working from a remote location is allowed. The Division explained that the passage of SB 355 allows mortgage loan originators to work from a remote location in Nevada as of January 1, 2024.

One responder questioned if the remote locations impact the mortgage loan originators branch distance requirements? The Division advised that the remote location does not impact the branch distance requirements.

Another responder questioned how the mortgage company initially authorizes the remote location? The Division advised that per passage of SB 355 remote work for mortgage loan originators are licensed and sponsored by a licensed mortgage branch or mortgage company is allowed. The responder then asked about the evidence required to demonstrate the authorization by the mortgage company to allow a mortgage loan originator to work from a remote location. The Division responded that the Division is charged with proposing and implementing the regulatory framework. Then the Division went on to explain that currently the Division is not requiring any process of review/approval for mortgage companies to allow mortgage loan originators to work from an authorized remote location such as their private residence. Additionally, the Division stated the proposed regulations further detail and guide how to accordingly supervise mortgage loan originators working from a remote location. Further the Division clarified that at this time, mortgage loan originators may work from authorized remote locations at the approval of a mortgage company. Finally, the Division indicated that mortgage companies are responsible for supervision and the conduct of the mortgage loan originator who is working from a remote location.

A few responders sent in support of the proposed regulations making the following comments: “It is a good thing, no brainer, and the safeguards make sense.”

Objecting to the proposed regulations one responder claimed that “verification or remote arrangements” are “overreaching and not warranted.”

Several responders have concerns regarding the proposed regulations: (1) regarding clarification on the language around the licensable activities, (2) scope of employees allowed to work remotely, (3) the number of people allowed to work remotely at the same location, (4) flexibility of remote locations, (5) restrictions of remote locations, (6) determination of compliance by the Commissioner, and (7) the Commissioner’s power in regards to lack of reasonable and adequate supervision of a remote employee.

Also, some responders provided suggested language changes to the proposed regulations. The first proposed language change is to NAC 645B. ____ (1)(3) “Only one employee of the licensed mortgage company may work out of a single remote location, or multiple employees who reside at the same address.” The second proposed language change is to NAC 645B. ____ (1) “A mortgage company may allow employees ~~licensed as mortgage loan originators~~, other than Qualified Employees as defined pursuant to NAC 645B.008 and NAC 645B.021, to work from an authorized remote location without being physically present at such location. An employee of a licensed mortgage company may work remotely, and any licensable activity conducted by the employee while working remotely shall designate the address that appears on the mortgage company’s license or licensees ...”. The third proposed language change is to NAC 645B.__(2)(3)(a) “Allowing employees working at remote locations authorized by this section to access the licensee’s information technology system, other systems, and data needed to perform the employer’s job functions in a safe and secure manner, including a cloud-based system, directly from any out-of-office device the mortgage loan originator or employee uses, including, but not limited to, a laptop, phone, desktop computer, mobile device or tablet, via a virtual private network or comparable system that ensures secure connectivity and requires passwords or other forms of authentication to access.” The fourth proposed language change is to NAC 645B.__(2)(3)(d) “Ensuring that mortgage loan originators or other employees working at a remote location access the company’s secure systems.” The fourth proposed language changes is to NAC 645B.__(1)(c)(4) “May not meet consumers in-person at the employee’s personal residence.”

The Division anticipates that further 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 on this matter. Any additional feedback will be taken into account when determining if revisions to the proposed regulations are necessary.

3. Does the proposed regulation impose a direct and significant economic burden upon a small business or directly restrict the formation, operation, or expansion of a small business?

The proposed regulations should not impose a direct and significant economic burden on a small business as it does not increase any cost to the business. There is no negative effect on the formation of a small business, nor does it restrict the operation of a small business because nothing in the proposed regulations prevents the formation or operation of a small business. Although the proposed regulations do not directly address the expansion of any business, the flexibility of the proposed regulations could expand a small business via recruiting and retaining talented employees.

4. How was that conclusion reached?

Based upon the comments received in response to the Division’s solicitations of comments or input concerning the proposed regulations as set forth 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 and amendments to NAC 645B or NRS 645B 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, Cathy Sheehy, Commissioner, 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 statement was prepared properly and is accurate.



Dated: May 30, 2024

Nevada Division of Mortgage Lending