

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 944

(Delegate Lafferty, *et al.*)

Economic Matters

Finance

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Credit Regulation - Advisory Loans - Requirements for Housing Advice

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This bill prohibits a lender from closing certain types of nontraditional “advisory” loans for a borrower’s principal residence until the lender receives proof that the primary borrower has completed home buyer education or obtained housing advice from a governmental agency or nonprofit organization approved by the Department of Housing and Community Development. The bill requires a mortgage broker or lender to provide an applicant for an advisory loan with notice that includes the list of government agencies and nonprofit organizations approved by DHCD to provide home buyer education or housing advice.

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Fiscal Summary

**State Effect:** Enforcement could be handled with existing resources.

**Local Effect:** The bill would not directly affect local finances or operations.

**Small Business Effect:** Potential minimal.

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Analysis

**Bill Summary:** The bill defines an “advisory” loan as a loan that • permits interest-only payments; • may result in negative amortization; • has points and fees payable by the borrower at or before closing that will exceed 5% of the total loan amount; • includes a prepayment penalty; or • has a variable rate and a fully indexed rate that would cause the loan to exceed the yield on applicable comparable U.S. Treasury securities by 5% or more.

Advisory loans do not include • an open-end or revolving home equity line of credit; • a construction loan; • a reverse mortgage loan; • a loan where the interest rate is fixed for the entire loan term (unless the loan has points and fees payable by the borrower at or before closing that will exceed 5% of the total loan amount); or • a loan where the principal amount exceeds the limitation on maximum loan amounts in the State for a single-family dwelling as defined by federal law.

The bill defines “fully indexed rate” as the index rate, as expected to be defined in the mortgage loan documents, prevailing at the time that the loan application is received by the lender, plus the margin that will apply after the expiration of an introductory interest rate. “Home buyer education or housing advice” is defined as instruction on preparing for home ownership, shopping for a home, obtaining a mortgage, loan closing, and life as a homeowner. This instruction may be provided by telephonic means.

The bill requires lenders and mortgage brokers to provide an applicant for an advisory loan with written notice in a form specified by regulations adopted by DHCD. Mortgage brokers are required to provide the required notice within 10 business days after the date the initial loan application is made, and lenders are required to provide the notice at the time the lender offers to make an advisory loan.

The bill requires DHCD to adopt regulations implementing the bill’s provisions. A violation of the bill’s provisions is within the scope of the investigative and enforcement powers of the Commissioner of Financial Regulation and the Division of Consumer Protection of the Office of the Attorney General. The bill states that it will not apply to any lender, mortgage broker, or credit grantor until • DHCD has determined that there are a sufficient number of housing advisors, in a sufficient number of locations, to serve all areas of the State; • DHCD has specified the form of the written notice required by the bill; and • DHCD has made the list of approved government agencies and nonprofit organizations available through posting on DHCD’s website for at least 60 days.

**Current Law:** Lenders and credit grantors are currently required to provide borrowers of covered loans with a written recommendation that the borrower seek home buyer education or housing counseling. Mortgage lenders are prohibited from making “covered loans” without giving due regard to the borrower’s ability to repay the loan in accordance with its terms. A “covered loan” is defined as a mortgage loan that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act, with modified percentages. An exemption from this requirement exists when the borrower’s monthly gross income is greater than 120% of the median family income for the metropolitan statistical area in which the residential real property securing the loan is located. Borrowers are presumed to be able to repay a loan if, at the time the loan is made, the

borrower's monthly payment obligations including the required loan payment do not exceed 45% of the borrower's monthly income.

**Background:** By all accounts, recent changes in the real estate market and the economy in general have led to a marked increase in foreclosure events both nationwide and in Maryland. Many such foreclosures have involved residential properties that have been financed through subprime loans and nonbank loan originators, leading to heightened concern regarding the lending practices that surround these nontraditional financing methods. Opinions differ regarding the exact number of recent foreclosures in Maryland, as well as the severity of the situation, but all sources report a substantial recent increase in foreclosure activity in the State.

In November 2007, the Homeownership Preservation Task Force reported that the total of all foreclosure events in the State during the second quarter of 2007 numbered 4,092, an increase of 344% when compared to the 920 events in the second quarter of 2006. According to the National Delinquency Survey (NDS) from the Mortgage Banker's Association, in the second quarter of 2007, 4.19% of all mortgage loans for one-to-four unit residential properties reported serviced in Maryland were past due. Furthermore, 1.46% of all loans for similar properties during this period were seriously delinquent, meaning 90 days or more delinquent or in the process of foreclosure. This is an increase from 3.26% past due and 0.96% seriously delinquent in the second quarter of 2006.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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