



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING
3300 W. Sahara Ave., Ste. 285
Las Vegas, Nevada 89102
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C. J. MANTHE
Director

CATHY SHEEHY
Commissioner

June 7, 2018

NOTICE OF PUBLIC WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS

AND

WORKSHOP AGENDA

FOR

Escrow Agencies and Agents (NAC 645A)
Mortgage Brokers and Mortgage Agents (NAC 645B)
Mortgage Bankers (NAC 645E)
Covered Service Providers, Foreclosure Consultants, and Loan Modification Consultants (NAC 645F)
Mortgage Servicers (NAC 645F)

NOTICE IS HEREBY GIVEN that the Division of Mortgage Lending of the Department of Business and Industry, State of Nevada ("the Division"), will hold a public workshop to consider proposed amendments to the Nevada Administrative Code ("NAC"). A workshop to solicit comments from interested persons has been scheduled for the following date, time, and locations:

June 26, 2018 - 9:00 a.m.

LAS VEGAS
NEVADA STATE BUSINESS CENTER
3300 W. SAHARA AVENUE
TAHOE ROOM, 4th FLOOR, SUITE #430
LAS VEGAS, NV 89102

VIDEOCONFERENCE CONDUCTED AT:
CARSON CITY
DEPARTMENT OF BUSINESS & INDUSTRY
1830 COLLEGE PKWY, SUITE #100
CONFERENCE ROOM
CARSON CITY, NV 89706

The purpose of the workshop is to solicit comments from interested persons regarding the Division's proposals to amend the regulations subject of NAC Chapters 645A (governing escrow agencies and escrow agents); 645B (governing mortgage brokers and mortgage agents); 645E (governing mortgage bankers); 645F (governing covered service providers, foreclosure consultants and loan modification consultants); and 645F (governing mortgage servicers). In particular, the Division seeks input from interested persons to assist in its determination as to whether or not the

proposed regulations are likely to impose a direct and significant economic burden upon a small business, or restrict the formation, operation, or expansion of a small business.

As generated from, or in compliance with revisions made to the Nevada Revised Statutes (“NRS”) by the Nevada Legislature in 2017, the Division has drafted proposed regulations as follows:

- In accordance with Senate Bill 69, establishment of the criteria required of a *natural person* seeking licensure in Nevada to engage in the occupations or professions governed by Chapters 645A, 645B, 645E, and 645F of the NRS and NAC, to obtain a license by endorsement 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 *equal to or 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. Licensure obtained by such endorsement does *not* exempt compliance with the laws and regulations to which a licensee is otherwise subject under Chapters 645A, 645B, 645E, and 645F of the NRS and NAC.
- With respect to mortgage brokers and mortgage agents pursuant to NAC 645B, revision of regulatory language to conform with the statutory changes made in Senate Bill 498, which effective January 1, 2018, eliminated from the state’s annual continuing education requirements, the requirement that a mortgage broker or mortgage agent complete three hours of *Nevada laws and regulations* (the Division, however, proposing that one hour of such instruction be required of qualified employees) and reduced the number of continuing education which must be completed on an annual basis, from 10 hours to 8 hours.
- With respect to mortgage brokers and mortgage bankers pursuant to NAC 645B and NAC 645E, respectively, revision of regulatory language to conform to the statutory changes made in Senate Bill 498, which effective January 1, 2018, granted the Commissioner of the Division discretion to waive the required reporting of certain monthly activity report(s), if substantially similar information is available to the Commissioner from another source.

WORKSHOP AGENDA

9:00 a.m.

1. Call to Order & Welcome – Cathy Sheehy, Commissioner of the Division of Mortgage Lending
2. Public Comment – may limit public comment to 5 minutes per speaker

3. Introduction of workshop process and provision of basis for, and summary of, proposed regulatory amendments to *NAC 645A, NAC 645B, NAC 645E, and NAC 645F*
4. Public Comment – may limit public comment to 5 minutes per speaker
5. Adjournment

9:30 a.m. (specifically regarding **NAC 645A**)

1. Call to Order and Resumption of Introductions – Cathy Sheehy, Commissioner of the Division of Mortgage Lending
2. Public comment – may limit public comment to 5 minutes per speaker
3. Presentation of 2018 proposed regulations amending NAC 645A, establishing criteria required for a natural person who engages in the activities of an *escrow agency* or *escrow agent* to obtain licensure by endorsement in accordance with Senate Bill 69 of the 2017 Nevada Legislative Session
4. Discussion concerning written comments received, including those described in Small Business Impact Statement
5. Workshop review and discussion of proposed regulations
6. Public Comment – may limit public comment to 5 minutes per speaker
7. Adjournment

10:00 a.m. (specifically regarding **NAC 645B and NAC 645E**)

1. Call to Order and Resumption of Introductions – Cathy Sheehy, Commissioner of the Division of Mortgage Lending
2. Public comment – may limit public comment to 5 minutes per speaker
3. Presentation of 2018 proposed regulations amending NAC 645B and NAC 645E which:
 - a. Establish criteria required for a natural person who engages in the activities of a *mortgage broker, mortgage agent, or mortgage banker* to obtain licensure by endorsement in accordance with the requirements of Senate Bill 69 of the 2017 Nevada Legislative Session (as subject of NAC 645B and NAC 645E);

- b. Provide revised annual, continuing education requirements for *mortgage brokers* and *mortgage agents* to conform with the requirements of Senate Bill 498 of the 2017 Nevada Legislative Session (the Division, however, proposing that qualified employees still be required to complete *one hour* of instruction pertaining to Nevada laws and regulations) (as subject of NAC 645B); and
 - c. Provide discretion to the Commissioner of the Division to waive the required reporting of certain monthly activity report(s) by *mortgage brokers* and *mortgage bankers*, if substantially similar information is available to the Commissioner from another source (as subject of NAC 645B and NAC 645E)
- 4. Discussion concerning written comments received, including those described in Small Business Impact Statements
 - 5. Workshop review and discussion of proposed regulations
 - 6. Public Comment – may limit public comment to 5 minutes per speaker.
 - 7. Adjournment

10:30 a.m. (specifically regarding **NAC 645F**)

- 1. Call to Order and Resumption of Introductions – Cathy Sheehy, Commissioner of the Division of Mortgage Lending
- 2. Public comment – may limit public comment to 5 minutes per speaker
- 3. Presentation of 2018 proposed regulations amending NAC 645F which:
 - a. Establish criteria required for a natural person who engages in the activities of a *covered service provider, foreclosure consultant, or loan modification consultant* to obtain licensure by endorsement in accordance with the requirements of Senate Bill 69 of the 2017 Nevada Legislative Session; and
 - b. Establish criteria required for a natural person who engages in the activities of a *mortgage servicer* to obtain licensure by endorsement in accordance with the requirements of Senate Bill 69 of the 2017 Nevada Legislative Session
- 4. Discussion concerning written comments received, including those described in Small Business Impact Statement

5. Workshop review and discussion of proposed regulations
6. Public Comment – may limit public comment to 5 minutes per speaker.
7. Adjournment

Agenda items may be taken out of order. Two or more agenda items may be combined for consideration. An item may be removed or discussion on an item may be delayed at any time.

Copies of the instant *Notice of Public Workshop to Solicit Comments on Proposed Regulations and Workshop Agenda*; the proposed regulations to be considered for amendment; the respective small business impact statements; and copies of Senate Bills 69 and 498, may be obtained at the public workshop, and are available on the Division's website at http://mld.nv.gov/About/MLD_Updates. Copies of these materials may also be obtained by contacting the Division at its Las Vegas office, 3300 W. Sahara Avenue, Suite 285, Las Vegas, Nevada 89102, (702) 486-0782. A reasonable fee for copying may be charged.

Members of the public may make oral comments on the proposed regulatory changes at this meeting. Persons wishing to submit written comments, testimony, or documentary evidence prior to the meeting should submit such on or before June 20, 2018, at the following address:

Division of Mortgage Lending
3300 W. Sahara Ave., Suite 285
Las Vegas, NV 89102
(702) 486-0782
Fax: (702) 486-0785
mldinfo@mld.nv.gov

Written submissions should identify the particular chapter(s) of the NAC subject of concern with respect to the proposed regulations (NAC 645A, NAC 645B, NAC 645E, or NAC 645F).

The Division is pleased to make reasonable efforts to assist and accommodate members of the public who are disabled and wish to attend the workshop. If special arrangements for the meeting are necessary, such persons must notify Commissioner Cathy Sheehy in writing, at the Division's Las Vegas office, or by calling (702) 486-0782, no later than five (5) working days prior to the date of the public workshop.

Following the workshop, interested persons can contact Susan Slack, Administrative Assistant, at 702-486-7251, in order to request a copy of the Summary of Comments considered at the June 26, 2018 public workshop.

In addition to the Division's website as provided above, this *Notice of Public Workshop to Solicit Comments on Proposed Regulations and Workshop Agenda*, with attached Small Business Impact Statements relative to each chapter of NAC as described herein, has been posted to the Nevada Public Notice Website at <https://notice.nv.gov> and the Nevada Legislature's web page at <https://www.leg.state.nv.us/App/Notice/A/>.

This *Notice of Public Workshop to Solicit Comments on Proposed Regulations and Workshop Agenda*, with attached Small Business Impact Statements, was further provided to its licensees under NAC Chapters 645A, 645B, 645E, and 645F; all persons on the agency's mailing list for administrative regulations and other interested persons; and posted at the following locations:

Division of Mortgage Lending 3300 W. Sahara Ave., Suite 285 Las Vegas, NV 89102	Nevada State Business Center 3300 W. Sahara Ave. Las Vegas, NV 89102	Dept. of Business and Industry 1830 College Pkwy, Suite 100 Carson City, NV 89706	NV State Library & Archives 100 N. Stewart Street Carson City, NV 89701
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ATTACHMENTS: Small Business Impact Statement for NAC 645A
 Small Business Impact Statement for NAC 645B
 Small Business Impact Statement for NAC 645E
 Small Business Impact Statement for NAC 645F



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C. J. MANTHE
Director

CATHY SHEEHY
Commissioner

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 645B

(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 645B of the Nevada Administrative Code ("NAC") governing mortgage brokers and mortgage agents. 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 small positive impact), and should not prevent the formation, operation, or expansion of a small business in Nevada.

The proposed regulations were drafted in response to enacted statutory changes made by the Nevada Legislature in 2017, specifically to comply with the requirements of Senate Bill 69, and to provide conforming regulatory language to mirror certain statutory amendments as subject of Senate Bill 498.

Senate Bill 69 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 mortgage broker and mortgage agent.

The proposed regulations additionally include revisions made to conform with certain statutory amendments made to NRS 645B pursuant to Senate Bill 498. The Nevada Legislature eliminated from the state's annual continuing education requirements for renewal of a license, the requirement that a

mortgage broker or mortgage agent complete three hours of Nevada laws and regulations (the Division, however, proposing in its regulations that *one* hour of Nevada instruction be required of qualified employees) and reduced the total number of continuing education which must be completed by a mortgage broker or mortgage agent on an annual basis, from 10 hours to 8 hours. Senate Bill 498 further permits the Commissioner to waive the required reporting by a mortgage broker of certain monthly activity report(s), if substantially similar information is available to the Commissioner from another source.

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 the provisions and opportunity to provide comments. In addition, the Division solicited comments by its licensees under Chapters 645B 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 645B 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, http://mld.nv.gov/About/MLD_Updates and made e-mail notification to its Nevada-licensed mortgage brokers and mortgage agents, as well as to other interested persons (a total of approximately 9,200 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 645B, or were likely to restrict the formation, operation, or expansion of a small business subject to 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."

In response to its solicitation of input, the Division received *three* e-mailed comments which voiced concern only about the proposed criteria and/or process for issuing a license by endorsement. Objecting to the proposed regulations, the first responder claimed that the proposed regulations would permit a "non-citizen" to work in the United States (which thus "opens the door to fraud"), questioned why the state would "want to intervene" in making a licensure determination, and urged that the "[t]he State licensing should not be permitted to supersede the NMLS [the Nationwide Mortgage Licensing System]." This commenter also asserted that "[t]he licensing requirements we have now don't need to have any adjustments."

The second response to the Division's amendments to NAC 645B, expressed worry that the continuous 5-year period of required licensure in another jurisdiction, which the Division included among the expressed conditions which must be satisfied in order to obtain a mortgage broker license or mortgage agent license by endorsement in Nevada, could serve to eliminate many persons from applying for such licensure.

Finally, the third person who responded to the Division's solicitation of comments, requested clarification concerning the meaning of the language contained in Section 2, paragraph (1)(c) of the proposed regulations, which provides that among the prerequisites for submission for an initial license by endorsement, the applicant must possess "qualifications that are equal to or substantially similar to the qualifications required for issuance of a license to engage in the activity of a mortgage broker or mortgage agent in this State." This person additionally expressed that it "would be interesting to know the reasoning for the proposed changes, and why there might be different regulations than how mortgage brokers were previously regulated." In his provided answer to the third response, the Deputy Commissioner clarified that the terminology applied only to out-of-state, non-Nevada licensed persons, the licensure-by-endorsement provisions providing only a framework for licensure in Nevada based upon an "equal playing field" as originating from the requirements of Senate Bill 69, and emphasized that the scheme does *not* change the way in which the Division regulates or licenses *current* Nevada licensees.

The Division received no other responses to its solicitation for comments concerning its proposed regulatory changes.

A summary of the three comments received regarding the proposed amendments to NAC 645B are available for viewing on the Division's website at http://mld.nv.gov/About/MLD_Updates.

(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 reviewed and considered the input it obtained in response to the Division's request for comments, most notably concerning the legal requirements and policies sought to be advanced by the 2017 Nevada Legislature in enacting Senate Bill 69.

Current law requires that applicants for a Nevada mortgage broker license or mortgage agent license 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 an 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 mortgage broker or mortgage agent 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 further 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 licensure, report filing, or continuing education requirements. The one-hour of continuing-education instruction on *Nevada* laws and regulations, as the Division proposes to impose only upon *qualified employees* for license renewal under NRS 645B, reduces by two hours the length of such required education as was formerly mandated for all NRS 645B-licensees.

With respect to the revised regulations continuing education requirements for license renewal by mortgage brokers and mortgage agents, as well as the proposed changes concerning monthly activity reports for mortgage brokers, these should not result in any adverse economic impact, but rather only a beneficial impact, because the proposed changes not only eliminate or reduce the number of hours by which a mortgage broker or mortgage agent must engage to meet continuing education requirements, but may serve to decrease the required efforts of which a mortgage broker must otherwise make in filing a particular monthly activity report.

With respect to the proposed language concerning issuance of a license by endorsement, there should be no adverse effects, because the procedure does not apply to any *existing* Nevada-licensed mortgage

brokers or mortgage agents. Further, the proposed regulations do not exempt one who obtains a mortgage broker license or mortgage agent license by endorsement, from compliance with NRS 645B and NAC 645B.

The 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 beneficial effects: With respect to licensure by endorsement, potential cost and time-savings for applicants, who among other things, have already been licensed to engage in the activities of a mortgage broker or mortgage agent for 5 continuous years in another jurisdiction immediately preceding the 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.

Moreover, the proposed changes with respect to the required instruction and continuing education requirements of a mortgage broker or mortgage agent eliminate or reduce the number of hours by which a mortgage broker or mortgage agent must engage to meet continuing education requirements. Finally, the proposed changes concerning mortgage brokers may serve to decrease the required efforts of which a mortgage broker must otherwise make in filing a particular monthly activity report.

Indirect beneficial effects: With respect to licensure by endorsement as a mortgage agent in Nevada, the potential time-saving repercussions as addressed above may make it easier or quicker to obtain employment or sponsorship in Nevada by a Nevada-licensed mortgage broker.

Direct adverse effects: No direct adverse effects were noted.

Indirect adverse effects: No indirect adverse effects were noted.

(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 mortgage brokers and mortgage agents,

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, or in the case of an already Nevada-licensed mortgage broker, reducing any fees it may have determined to pay as part of its employment or sponsorship of an applicant seeking licensure as a Nevada mortgage agent.

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 in this matter. Any additional 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 anticipated fee for an applicant seeking licensure by endorsement may be interpreted as a new fee, the fee for filing such application will be the same as those currently imposed for any other natural person who applies for a Nevada license to engage in the activities of a mortgage broker or mortgage agent. 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 the comments received 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 and amendments to NAC 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 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 645B was prepared properly and is accurate.

A handwritten signature in blue ink that reads "Cathy Sheehy" followed by the date "6/7/18". The signature is written over a horizontal line.

Cathy Sheehy, Commissioner
Nevada Division of Mortgage Lending



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

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C. J. MANTHE
Director

CATHY SHEEHY
Commissioner

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 645E

(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 the Division's proposed additions and amendments to Chapter 645E of the Nevada Administrative Code ("NAC") governing bankers. 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 small positive impact), and should not prevent the formation, operation, or expansion of a small business in Nevada.

The proposed regulations were drafted in response to enacted statutory changes made by the Nevada Legislature in 2017, specifically to comply with the requirements of Senate Bill 69, and to provide conforming regulatory language to mirror certain statutory amendments as subject of Senate Bill 498.

Senate Bill 69 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 engage in the activities of a mortgage banker.

The proposed regulations additionally include revisions made to conform with certain statutory amendments made to NRS 645E pursuant to Senate Bill 498. As subject of Senate Bill 498, the Nevada Legislature permits the Commissioner to waive the required reporting by a mortgage banker of

certain monthly activity report(s), if substantially similar information is available to the Commissioner from another source.

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 the provisions and opportunity to provide comments. In addition, the Division solicited comments by its licensees under Chapters 645E 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 645E 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, [http://mld.nv.gov/About/MLD Updates](http://mld.nv.gov/About/MLD_Updates), and made e-mail notification to its Nevada-licensed bankers, as well as to other interested persons (a total of approximately 110 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 645E, or were likely to restrict the formation, operation, or expansion of a small business subject to NRS 645E. 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 the solicitation 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 a Nevada banker license 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 proof that an 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 mortgage banker in the District of Columbia or any state or territory of the United States, for at least 5 continuous years immediately preceding the 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 licensure or the filing of reports.

With respect to the proposed regulations concerning monthly activity reports for mortgage bankers, these should not result in any adverse economic impact, but rather only a beneficial impact, because, they potentially serve to decrease the required efforts of which a mortgage banker must otherwise make in filing a particular monthly activity report.

With respect to the proposed language concerning issuance of a license by endorsement, there should be no adverse effects because the procedure does not apply to any *existing* Nevada-licensed mortgage banker. Further, the proposed regulations do not exempt one who obtains a mortgage banker license by endorsement, from compliance with NRS 645E and NAC 645E.

The 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 beneficial effects: With respect to licensure by endorsement, potential cost and time-savings for applicants who, among other things, have already been licensed to engage in the activities of a mortgage banker for 5 continuous years in another jurisdiction immediately preceding the 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 a check within the 6 months immediately preceding the date on which the Nevada application is submitted.

Moreover, the proposed changes may serve to decrease the required efforts of which a mortgage banker must otherwise make in filing a particular monthly activity report, should the Commissioner, in the exercise of discretion, waive the filing of a particular monthly activity report if substantially similar information is available from another source.

Indirect beneficial effects: The potential time-saving repercussions as addressed above.

Direct adverse effects: No direct adverse effects were noted.

Indirect adverse effects: No indirect adverse effects were noted.

(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 mortgage bankers, as well as other interested persons, pursuant to e-mail transmissions. 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 throughout the application process.

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 in this matter. Any additional 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 anticipated fee for an applicant seeking licensure by endorsement may be interpreted as a new fee, the fee for filing such application will be the same as those currently imposed for any other natural person who applies for a Nevada license to engage in the activities of a mortgage banker. 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 the lack of public comment received 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 and amendments to NAC 645E 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 645E was prepared properly and is accurate.



Cathy Sheehy, Commissioner
Nevada Division of Mortgage Lending