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May 3, 2019

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: House Bill 22, "Occupational Licenses or Certificates - Application Determinations - Use of Criminal History."

Dear Governor Hogan:

We have reviewed and approve House Bill 22, "Occupational Licenses or Certificates - Application Determinations - Use of Criminal History," for constitutionality and legal sufficiency. We write to recommend an application of the law in a manner to avoid conflict with federal law.

House Bill 22 provides that a department of State Government, including the Department of Labor, Licensing, and Regulation, may not deny an occupational license or certificate to a person solely on the basis that the applicant has previously been convicted of a crime if more than seven years has passed since the applicant completed serving the sentence for the crime and has not been charged with another crime other than a minor traffic violation since that time. This provision does not apply to a person who was previously convicted of a crime of violence as defined in Criminal Law Article, § 14-101 or to a conviction of a crime for which registration on the sex offender registry is required under Criminal Procedure Article, Title 11, Subtitle 7.

Federal regulations implementing the Secure and Fair Enforcement for Mortgage Licensing Act (“SAFE Act”), require that any employee of a covered financial institution who acts as a mortgage loan originator must register with the Nationwide Mortgage Licensing System and Registry (“the Registry”). 12 C.F.R. § 1007.103(a)(1). The regulations further prohibit a covered financial institution from permitting an employee to act as a mortgage originator if the employee has not registered with the Registry, maintained that registration, and obtained a unique identifier. 12 C.F.R. § 1007.103(a)(2)(i) and (ii). To achieve these requirements the covered institution must require each employee who is a mortgage loan originator to submit to the Registry, or submit on behalf of the employee, certain information, including convictions of any criminal offense involving dishonesty, breach of trust, or money laundering against the employee or organization controlled by the employee and “fingerprints of the employee and any appropriate identifying information for a state and national criminal history background for submission to the Federal Bureau of Investigation and any other governmental agency...” 12 C.F.R. § 1007.103(d)(1)(iii) and (ix). The regulations further require that for an individual to be eligible for a loan originator license, a state “must require and find” that the applicant has never been convicted of, or pled guilty or nolo contendere to a felony during the seven year period preceding the date of the application for licensing or at any time if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. 12 C.F.R. § 1008.105(b)(2). To the extent that House Bill 22 would prohibit consideration of felonies over seven years old that involve fraud, dishonesty, a breach of trust, or money laundering and are not crimes of violence or crimes that require registration on the sex offender registry, House Bill 22 appears to conflict with SAFE Act regulations.

Federal regulations provide that any time a state enacts legislation that affects its compliance with the SAFE Act, the state must notify the Bureau of Consumer Financial Protection and provide evidence that it is in compliance with the requirements of the SAFE Act and accompanying regulations; “descriptions of processes followed by the state’s supervisory authority; and data concerning examination, investigation, and enforcement actions.” 12 C.F.R. § 1008.115(a). If the Bureau determines that a state is not in compliance, it will notify the state and publish a notice in the Federal Register presenting the opportunity for public comment. 12 C.F.R. § 1008.115(b). If the Bureau makes a final determination of noncompliance but finds that the state is making a good-faith effort to meet the requirements of the law and regulations, it may grant the state a period of not more than 24 months to comply with these requirements. 12 C.F.R. § 1008.115(d). Thus, given the differences between the SAFE Act and House Bill 22, it is our view that the Commissioner of Financial Regulation would have to report the enactment of the law. We cannot predict whether the Bureau would accept a determination by the Commissioner to

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continue to reject loan originators with convictions older than seven years as good faith, or as compliance. It may ultimately be necessary to amend the law to make an express exemption for SAFE Act requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian E. Frosh
Attorney General

BEF/KMR/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Victoria L. Gruber