

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 250

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor)

Economic Matters

Finance

Financial Institutions - Third-Party Service Providers - Examinations

This departmental bill authorizes the Office of Financial Regulation (OFR) to examine a “third-party service provider” as to services and activities performed on behalf of an entity licensed or chartered by OFR within the Maryland Department of Labor (MDL).

Fiscal Summary

State Effect: OFR can handle any additional examination and enforcement activities with existing resources. Revenues are likely not materially affected.

Local Effect: None.

Small Business Effect: MDL has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Definitions and Applicability

A “third-party service provider” is a person who performs activities relating to financial services on behalf of a “regulated entity” (*i.e.*, a person who is licensed or chartered by OFR) for that regulated entity’s customers.

The bill delineates several types of third-party service providers that meet those criteria, including (1) data processing services; (2) activities that support specified financial services; (3) Internet-related services; or (4) any other similar activity OFR designates by regulation as related to financial services.

However, a third-party service provider does *not* include (1) a provider of an interactive computer service or a general audience Internet or communications platform (except to the extent that the service or platform is specially designed or adapted for financial services and related activities) or (2) any person that controls, or is under common control with, an entity licensed by OFR unless the person performs any of the activities noted in the criteria above for the licensed entity.

Office of Financial Regulation Examination Authority

To the extent authorized by law, regulation, or any other agreement to which OFR is a party, OFR must notify a licensed person of any examination initiated by OFR of any third-party service provider who performs activities relating to financial services on behalf of the licensed person.

The power of OFR to examine a third-party service provider pursuant to the bill's authority is not limited to services and activities conducted on the premises of a regulated entity.

After commencement of an examination of a person licensed by OFR or any third-party service provider who performs activities relating to financial services on behalf of a person licensed by OFR:

- OFR may request information from the third-party service provider; and
- if the licensed person has access to the information, the licensed person may provide the information to OFR (1) with the consent of OFR or (2) if the third-party service provider fails to provide the information.

The bill authorizes OFR to collect a fee in connection with each examination to cover the cost of the examination from (1) the examined third-party provider or (2) the regulated entity that contracts with the third-party service provider (only if the examined third-party provider fails to cover the cost of the examination within 60 days after OFR sends an invoice).

OFR may accept the results of an examination of a federal supervisory agency or responsible supervisory agency of another state as the results of an examination by OFR.

OFR is expressly authorized to examine the following:

- all books, accounts, and records of a regulated entity or a third-party service provider (as necessary) to conduct a complete examination; and
- any officer, director, or employee of the regulated entity or, as appropriate, the third-party service provider, under oath, who may provide information on behalf of the regulated entity (or the third-party service provider).

The examination powers of OFR authorized by the bill are in addition to any examination powers of OFR authorized under any other provision of law.

Enforcement Actions

The bill authorizes OFR to take enforcement actions against any third-party service provider who (1) refuses to submit to an examination; (2) refuses to pay any assessed fee for the cost of the examination; or (3) engages in activities that OFR deems unsafe or unsound.

OFR may advise any regulated entity that uses the services of a third-party service provider who refuses to submit to examination (or engages in unsafe or unsound activities) that the continued use of the third-party service by the regulated entity may constitute unsafe or unsound activity.

Pursuant to State law, OFR and any employees must hold as confidential any information obtained or generated by an examination.

Current Law/Background: OFR notes that the bill is intended to grant the office the authority to examine third parties that provide services to entities formally licensed or chartered by OFR. OFR further notes that it is seeking this authority because many entities licensed or chartered by OFR contract with third-party service providers for critical functions. Additionally, OFR states that regulators in 38 states have the authority to examine third-party service providers for banks and credit unions. According to OFR, a reaccreditation examination of the office in 2022 noted its lack of authority to examine third-party service providers and recommended that it seek that authority.

OFR further advises that Maryland depository institutions and licensed financial service providers all rely on third-party service providers for a range of services (*e.g.*, processing their lending and deposit taking activities, providing physical and technological security monitoring services, building and operating mobile applications, and more).

While the use of such third-party service providers confers many benefits to financial institutions, it also multiplies the risks that financial service providers and their products

pose to consumers and the financial system. OFR currently lacks the authority to examine such third-party service providers and the bill is intended to enhance OFR's ability to effectively participate in federal and multi-state networked supervisory activities.

Office of Financial Regulation – Duties and General Investigative and Enforcement Powers

OFR regulates State-chartered and State-licensed financial institutions operating in Maryland. These include depository institutions such as Maryland-chartered banks, trust companies, bank holding companies, and credit unions, as well as nondepository entities such as money transmitters, check cashers, consumer lenders, sales finance companies, installment lenders, mortgage lenders, mortgage loan originators, credit services businesses, debt management services providers, debt settlement services providers, consumer reporting agencies, and collection agencies.

OFR has the power to vigorously investigate financial transactions to determine whether a person has violated a law, regulation, rule, or order over which the commissioner has jurisdiction. For the purposes of an investigation or proceeding, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, and require the production of documents and other evidence. If a person refuses to obey a subpoena from the commissioner, the commissioner may apply to the appropriate circuit court to issue an order requiring the person to appear before the commissioner and produce any requested evidence. If the court issues such an order, failure to obey it subjects the person to contempt of court.

When the commissioner determines, after notice and a hearing, as specified, that a person has engaged in a violation of a law, regulation, rule, or order, the commissioner may issue a cease and desist order, suspend or revoke the license of the violator, and/or issue a penalty order against the person for up to \$10,000 for a first violation and up to \$25,000 for each subsequent violation.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

Fiscal Note History:
rh/mcr

First Reader - January 19, 2024
Third Reader - March 18, 2024
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

**TITLE OF BILL: Financial Institutions - Third-Party Service
Providers - Examinations**

BILL NUMBER: HB0250

PREPARED BY: Amy Hennen

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

 WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES