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## FISCAL IMPACT REPORT

**ORIGINAL DATE**

**SPONSOR** Padilla **LAST UPDATED** 1/20/15 **HB** \_\_\_\_\_

**SHORT TITLE** Home Loan Loss Mitigation Servicing Standards **SB** 30

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Narrative	See Narrative	See Narrative	See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 122

Relates to SB 27, SB 28, SB 29, SB 141, SB 142

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation & Licensing Department (RLD)

New Mexico Mortgage Finance Authority (MFA)

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

Senate Bill 30 enacts the Home Loan Loss Mitigation Standards Act, which codifies certain provisions of the federal Consumer Financial Protection Bureau (CFBPB) Mortgage Servicing Rules directly related to loss mitigation, as well as adding additional standards, into state law. It provides New Mexico homeowners with alternatives to foreclosure by requiring servicers to take certain actions prior to foreclosure, including an opportunity for loss mitigation, along with providing remedies for violation of the Act. SB 30's provisions apply to all servicers except those who service five thousand or fewer home loans nationally.

Within 36 days after a home loan becomes delinquent, a servicer must notify the borrower of all applicable loss mitigation options, the application for those options and information concerning them, contact information for mitigation counselors in New Mexico, and a payment history.

Contact information for the servicer's single point of contact must be provided within 45 days. Action on a mitigation application and other actions must be taken within stated time frames. Robo-signing is prohibited, and the first notice or filing for foreclosure cannot be issued until the loan is more than 120 days delinquent.

The Financial Institutions Division (FID) of RLD is charged with enforcing the provisions of SB 30, including promulgating rules to implement the Act as well as drafting multilingual versions of required notices and disclosures the Act requires.

SB 30 also allows a court to halt foreclosure proceedings upon finding a material violation of the Act by the servicer and order other relief provided by law, including the award of attorney fees.

### **FISCAL IMPLICATIONS**

Although SB 30 requires FID to enforce the Act, including promulgating rules to implement it and notices and disclosures required by the Act, RLD advises that FID does not license servicers, and thus has no regulatory authority over them. Thus costs that would otherwise be associated with FID's performance of these specified duties are not quantified.

AOC suggests that the loss mitigation procedures outlined in SB 30 may result in a decrease in foreclosure filings in state district courts.

### **SIGNIFICANT ISSUES**

Several responding agencies note that SB 30 to some extent duplicates the federal CFPB rules that were implemented January 2014 regarding loss mitigation in foreclosures. The MFA expresses concern that because these federal standards are subject to change based on industry feedback, identification of legal and operational issues with the regulations and the ever-changing mortgage industry, codification of these rules into state law may prove to be problematic. MFA believes the additional standards contained in SB 30, while not unreasonable, may create confusion for servicers and lead to differing interpretations between federal and state regulators.

On the other hand, the AGO points out that the federal rules do not permit a homeowner to assert violations of the Act as a defense in a foreclosure action, which SB 30 expressly allows. Further, others suggest that this bill may "plug the gaps" in federal law and decrease the risk of needless foreclosures by providing a method to seek loan modifications or other workouts.

RLD advises it does not currently license servicers, and thus does not have the regulatory authority to promulgate rules or notices or disclosures as required by SB 30. It also expresses concern that the provisions of this bill will lengthen the timeline of foreclosures, which would be detrimental to mortgage lending in the state because lenders could not purge these nonperforming assets from their books, which could weaken their safety and soundness. It may also result in increased fees to homeowners, based on other states' experience with lengthy foreclosure periods. RLD also expresses concern that the effective date of June 15, 2015 would not allow sufficient time to implement the Act.

MFA and RLD also report there may be some overlap between SB 30 and the Unfair Trade Practices Act (Sections 57-12-1-30, NMSA 1978) and the New Mexico Home Loan Protection Act (Sections 58-21A-1-14, NMSA 1978).

## **ADMINISTRATIVE IMPLICATIONS**

In spite of SB 30's directive that FID enforce the Act, RLD reports that FID has no jurisdiction over mortgage servers because they are not required to be licensed in New Mexico.

## **CONFLICT, RELATIONSHIP**

The 120 day time delinquency requirement before filing for foreclosure contained in Section 4B of SB 30 conflicts with Section 3A of SB 122, which allows a mortgage holder to immediately bring a summary action to foreclose on a mortgage loan secured by residential property that appears to be vacant or abandoned, which matter must be heard no later than 15 days after the period to answer has expired.

SB 30 relates to SB 27 (Foreclosure Process Task Force), SB 28 (Pre-Purchase Homebuyer Education Program), SB 29 (Foreclosure Deficiency Judgments Time Period), SB 141 (Settlement Facilitation Before Foreclosure), and SB 142 (Foreclosure As Judicial Process), all of which resulted from the Foreclosure Process Task Force in 2014.

## **OTHER SUBSTANTIVE ISSUES**

MFA reports that SB 30 is a recommendation of the Foreclosure Process Task Force, created in SM 11 in 2014, which requested the United South Broadway Corporation convene a task force to study the foreclosure process in New Mexico and make recommendations to protect neighborhood and community stability, prevent unnecessary and improper foreclosures and preserve the due process rights of financially strapped families. The Foreclosure Process Task Force met during 2014 and its work resulted in several pieces of legislation currently before the 2015 New Mexico Legislature. MFA was named as a member of and participated in the task force during 2014.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AGO reports that if this bill is not enacted, homeowners will continue to face potentially unlawful acts by lenders and servicers (or failure to comply with loss mitigation standards) without effective recourse.

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