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1 A bill to be entitled
2 An act relating to loan processing; amending s.
3 494.001, F.S.; creating and revising definitions;
4 deleting a redundant definition; amending s. 494.0011,
5 F.S.; specifying rulemaking powers of the Financial
6 Services Commission; amending s. 494.00115, F.S.;
7 providing an exemption from regulation under ch. 494,
8 F.S., for certain persons regulated under ch. 475,
9 F.S.; amending s. 494.00255, F.S.; including in-house
10 loan processors in disciplinary provisions; amending
11 s. 494.00331, F.S.; providing that specified
12 provisions do not apply to a licensed contract loan
13 processor who has on file with the office a
14 declaration of intent to act solely as a contract loan
15 processor; deleting a definition; providing
16 restrictions on employment of persons licensed as in-
17 house loan processors; amending s. 494.0035, F.S.;
18 clarifying provisions concerning the operation of
19 mortgage brokers; amending s. 494.0038, F.S.; revising
20 provisions relating to disclosure of settlement
21 charges and loan terms; amending s. 494.00421, F.S.;
22 revising an agency reference in the mortgage broker
23 agreement; providing that a borrower may contact the
24 Office of Financial Regulation rather than the
25 Department of Financial Services regarding any
26 complaints against a loan originator; amending s.
27 494.00612, F.S.; requiring that in order to renew a
28 mortgage lender license a mortgage lender must
29 authorize the Nationwide Mortgage Licensing System and

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30 Registry to obtain an independent credit report on
31 each of the mortgage lender's control persons;
32 amending s. 494.0067, F.S.; requiring each mortgage
33 lender to submit certain reports to the registry as
34 may be required; providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

37
38 Section 1. Subsections (1), (14), (25), and (26) of section
39 494.001, Florida Statutes, are amended, new subsections (5),
40 (11), and (17) are added to that section, present subsections
41 (5) through (9) are renumbered as subsections (6) through (10),
42 respectively, present subsections (10) through (14) are
43 renumbered as subsections (12) through (16), respectively,
44 present subsections (15) through (24) are renumbered as
45 subsections (18) through (27), respectively, and present
46 subsections (26) through (34) are renumbered as subsections (28)
47 through (36), respectively, to read:

48 494.001 Definitions.—As used in ss. 494.001-494.0077, the
49 term:

50 (1) "Borrower" means a person obligated to repay a mortgage
51 loan and includes, but is not limited to, a coborrower or
52 cosignor, ~~or guarantor~~.

53 (5) "Contract loan processor" means an individual who is
54 licensed under part II of this chapter as a loan originator, who
55 is an independent contractor for a mortgage broker or mortgage
56 lender, and who engages only in loan processing.

57 (11) "In-house loan processor" means an individual who is
58 an employee of a mortgage broker or a mortgage lender who

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59 engages only in loan processing.

60 (16)~~(14)~~ "Loan originator" means an individual who,
61 directly or indirectly, solicits or offers to solicit a mortgage
62 loan, accepts or offers to accept an application for a mortgage
63 loan, negotiates or offers to negotiate the terms or conditions
64 of a new or existing mortgage loan on behalf of a borrower or
65 lender, ~~processes a mortgage loan application,~~ or negotiates or
66 offers to negotiate the sale of an existing mortgage loan to a
67 noninstitutional investor for compensation or gain. The term
68 includes an individual who is required to be licensed as a loan
69 originator under the activities of a loan originator as that
70 ~~term is defined in the S.A.F.E. Mortgage Licensing Act of 2008,~~
71 ~~and an individual acting as a loan originator pursuant to that~~
72 ~~definition is acting as a loan originator for purposes of this~~
73 ~~definition.~~ The term does not include an employee of a mortgage
74 broker or mortgage lender whose duties are limited to who
75 ~~performs only administrative or clerical tasks, including~~
76 ~~quoting available interest rates,~~ physically handling a
77 completed application form~~,~~ or transmitting a completed
78 application form to a lender on behalf of a prospective
79 borrower.

80 (17) "Loan processing" means:

81 (a) Receiving, collecting, distributing, and analyzing
82 information common for the processing of a mortgage loan; or
83 (b) Communicating with a consumer to obtain information
84 necessary for the processing of a mortgage loan if such
85 communication does not include offering or negotiating loan
86 rates or terms, or counseling consumers about residential
87 mortgage loan rates or terms.

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88 ~~(25) "Person" has the same meaning as in s. 1.01.~~

89 (28)~~(26)~~ "Principal loan originator" means the licensed
90 loan originator in charge of, and responsible for, the operation
91 of a mortgage lender or mortgage broker, including all of the
92 activities of the mortgage lender's or mortgage broker's loan
93 originators, in-house loan processors, and branch managers,
94 whether employees or independent contractors.

95 Section 2. Subsection (2) of section 494.0011, Florida
96 Statutes, is amended to read:

97 494.0011 Powers and duties of the commission and office.—

98 (2) ~~To administer ss. 494.001-494.0077,~~ The commission may
99 adopt rules to administer parts I, II, and III of this chapter,
100 including rules:

101 (a) Requiring electronic submission of any forms,
102 documents, or fees required by this act.

103 (b) Relating to compliance with the S.A.F.E. Mortgage
104 Licensing Act of 2008, including rules to:

105 1. Require loan originators, mortgage brokers, mortgage
106 lenders, and branch offices to register through the registry.

107 2. Require the use of uniform forms that have been approved
108 by the registry, and any subsequent amendments to such forms if
109 the forms are substantially in compliance with the provisions of
110 this chapter. Uniform forms that the commission may adopt
111 include, but are not limited to:

112 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

113 b. Uniform Mortgage Biographical Statement & Consent Form,
114 MU2.

115 c. Uniform Mortgage Branch Office Form, MU3.

116 d. Uniform Individual Mortgage License/Registration &

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117 Consent Form, MU4.

118 3. Require the filing of forms, documents, and fees in
119 accordance with the requirements of the registry.

120 4. Prescribe requirements for amending or surrendering a
121 license or other activities as the commission deems necessary
122 for the office's participation in the registry.

123 5. Prescribe procedures that allow a licensee to challenge
124 information contained in the registry.

125 6. Prescribe procedures for reporting violations of this
126 chapter and disciplinary actions on licensees to the registry.

127 (c) Establishing time periods during which a loan
128 originator, mortgage broker, or mortgage lender license
129 applicant under part II or part III is barred from licensure due
130 to prior criminal convictions of, or guilty or nolo contendere
131 pleas by, any of the applicant's control persons, regardless of
132 adjudication.

133 1. The rules must provide:

134 a. Permanent bars for felonies involving fraud, dishonesty,
135 breach of trust, or money laundering;

136 b. A 15-year disqualifying period for felonies involving
137 moral turpitude;

138 c. A 7-year disqualifying period for all other felonies;
139 and

140 d. A 5-year disqualifying period for misdemeanors involving
141 fraud, dishonesty, or any other act of moral turpitude.

142 2. The rules may provide for an additional waiting period
143 due to dates of imprisonment or community supervision, the
144 commitment of multiple crimes, and other factors reasonably
145 related to the applicant's criminal history.

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146 3. The rules may provide for mitigating factors for crimes
147 identified in sub-subparagraph 1.b. However, the mitigation may
148 not result in a period of disqualification less than 7 years.
149 The rule may not mitigate the disqualifying periods in sub-
150 subparagraphs 1.a., 1.c., and 1.d.

151 4. An applicant is not eligible for licensure until the
152 expiration of the disqualifying period set by rule.

153 5. Section 112.011 is not applicable to eligibility for
154 licensure under this part.

155 Section 3. Paragraph (f) is added to subsection (1) of
156 section 494.00115, Florida Statutes, to read:

157 494.00115 Exemptions.—

158 (1) The following are exempt from regulation under this
159 part and parts II and III of this chapter.

160 (f) A person who performs only real estate brokerage
161 activities and is licensed or registered in this state under
162 part I of chapter 475, unless the person is compensated by a
163 lender, a mortgage broker, or other loan originator or by an
164 agent of such lender, mortgage broker, or other loan originator.
165 The term "real estate brokerage activity" has the same meaning
166 as in the federal Secure and Fair Enforcement for Mortgage
167 Licensing Act of 2008.

168 Section 4. Subsections (3), (4), (5), and (6) of section
169 494.00255, Florida Statutes, are amended, and paragraph (m) of
170 subsection (1) of that section is reenacted, to read:

171 494.00255 Administrative penalties and fines; license
172 violations.—

173 (1) Each of the following acts constitutes a ground for
174 which the disciplinary actions specified in subsection (2) may

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175 be taken against a person licensed or required to be licensed
176 under part II or part III of this chapter:

177 (m) In any mortgage transaction, violating any provision of
178 the federal Real Estate Settlement Procedures Act, as amended,
179 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
180 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
181 under such acts.

182 (3) A mortgage broker or mortgage lender, as applicable, is
183 subject to the disciplinary actions specified in subsection (2)
184 for a violation of subsection (1) by:

185 (a) A control person of the mortgage broker or mortgage
186 lender; ~~or~~

187 (b) A loan originator employed by or contracting with the
188 mortgage broker or mortgage lender; or

189 (c) An in-house loan processor who is an employee of the
190 mortgage broker or mortgage lender.

191 (4) A principal loan originator of a mortgage broker is
192 subject to the disciplinary actions specified in subsection (2)
193 for violations of subsection (1) by a loan originator or an in-
194 house loan processor in the course of an association with the
195 mortgage broker if there is a pattern of repeated violations by
196 the loan originator or in-house loan processor or if the
197 principal loan originator has knowledge of the violations.

198 (5) A principal loan originator of a mortgage lender is
199 subject to the disciplinary actions specified in subsection (2)
200 for violations of subsection (1) by a loan originator or an in-
201 house loan processor in the course of an association with a
202 mortgage lender if there is a pattern of repeated violations by
203 the loan originator or in-house loan processor or if the

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204 principal loan originator has knowledge of the violations.

205 (6) A branch manager is subject to the disciplinary actions
206 specified in subsection (2) for violations of subsection (1) by
207 a loan originator or an in-house loan processor in the course of
208 an association with the mortgage broker or mortgage lender if
209 there is a pattern of repeated violations by the loan originator
210 or in-house loan processor or if the branch manager has
211 knowledge of the violations.

212 Section 5. Section 494.00331, Florida Statutes, is amended
213 to read:

214 494.00331 Loan originator and loan processor employment.—

215 (1) LOAN ORIGINATORS.—An individual may not act as a loan
216 originator unless he or she is an employee of, or an independent
217 contractor for, a mortgage broker or a mortgage lender, and may
218 not be employed by or contract with more than one mortgage
219 broker or mortgage lender, or either simultaneously.

220 (2) CONTRACT LOAN PROCESSORS.—~~Subsection (1) However, this~~
221 ~~provision~~ does not apply to a contract loan processor who has a
222 declaration of intent to act solely as a contract loan processor
223 on file with the office. The declaration of intent must be on a
224 form as prescribed by commission rule ~~any licensed loan~~
225 ~~originator who acts solely as a loan processor and contracts~~
226 ~~with more than one mortgage broker or mortgage lender, or either~~
227 ~~simultaneously.~~

228 (2) ~~For purposes of this section, the term "loan processor"~~
229 ~~means an individual who is licensed as a loan originator who~~
230 ~~engages only in:~~

231 (a) ~~The receipt, collection, distribution, and analysis of~~
232 ~~information common for the processing or underwriting of a~~

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233 ~~residential mortgage loan; or~~

234 ~~(b) Communication with consumers to obtain the information~~
235 ~~necessary for the processing or underwriting of a loan, to the~~
236 ~~extent that such communication does not include offering or~~
237 ~~negotiating loan rates or terms or does not include counseling~~
238 ~~consumers about residential mortgage loan rates or terms.~~

239 ~~(3) A person may not act as a loan processor unless the~~
240 ~~person is licensed as a loan originator under this chapter and~~
241 ~~has on file with the office a declaration of intent to engage~~
242 ~~solely in loan processing. The declaration of intent must be on~~
243 ~~such form as prescribed by the commission by rule.~~

244 ~~(a) (4) A loan originator that currently has a declaration~~
245 ~~of intent to engage solely in loan processing on file with the~~
246 ~~office may withdraw his or her declaration of intent to engage~~
247 ~~solely in loan processing. The withdrawal of declaration of~~
248 ~~intent must be on such form as prescribed by commission rule.~~

249 ~~(b) (5) A declaration of intent or a withdrawal of~~
250 ~~declaration of intent is effective upon receipt by the office.~~

251 ~~(c) (6) The fee earned by a contract loan processor may be~~
252 ~~paid to the company that employs the loan processor without~~
253 ~~violating the restriction in s. 494.0025(7) requiring fees or~~
254 ~~commissions to be paid to a licensed mortgage broker or mortgage~~
255 ~~lender or a person exempt from licensure under this chapter.~~

256 ~~(3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as~~
257 ~~an in-house loan processor unless he or she is an employee of a~~
258 ~~mortgage broker or a mortgage lender and may not be employed by~~
259 ~~more than one mortgage broker or mortgage lender, or either,~~
260 ~~simultaneously. An in-house loan processor must work at the~~
261 ~~direction of and be subject to the supervision and instruction~~

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262 of a loan originator licensed under this part.

263 Section 6. Subsection (1) of section 494.0035, Florida
264 Statutes, is amended to read:

265 494.0035 Principal loan originator and branch manager for
266 mortgage broker.—

267 (1) Each mortgage broker must be operated by a principal
268 loan originator who shall have full charge, control, and
269 supervision of the mortgage broker ~~business~~. The principal loan
270 originator must have been licensed as a loan originator for at
271 least 1 year before being designated as the principal loan
272 originator, or must demonstrate to the satisfaction of the
273 office that he or she has been actively engaged in a mortgage-
274 related ~~mortgage broker-related~~ business for at least 1 year
275 before being designated as a principal loan originator. Each
276 mortgage broker must keep the office informed of the person
277 designated as the principal loan originator as prescribed by
278 commission rule. If the designation is inaccurate, the mortgage
279 broker ~~business~~ shall be deemed to be operated under the full
280 charge, control, and supervision of each officer, director, or
281 ultimate equitable owner of a 10-percent or greater interest in
282 the mortgage broker, or any other person in a similar capacity.
283 A loan originator may not be a principal loan originator for
284 more than one mortgage broker at any given time.

285 Section 7. Paragraph (c) of subsection (3) of section
286 494.0038, Florida Statutes, is amended to read:

287 494.0038 Loan origination and mortgage broker fees and
288 disclosures.—

289 (3) At the time a written mortgage broker agreement is
290 signed by the borrower or forwarded to the borrower for

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291 signature, or at the time the mortgage broker business accepts
292 an application fee, credit report fee, property appraisal fee,
293 or any other third-party fee, but at least 3 business days
294 before execution of the closing or settlement statement, the
295 mortgage broker shall disclose in writing to any applicant for a
296 mortgage loan the following information:

297 (c) A good faith estimate that discloses settlement charges
298 and loan terms, ~~signed and dated by the borrower, which~~
299 ~~discloses the total amount of each of the fees the borrower may~~
300 ~~reasonably expect to pay if the loan is closed, including, but~~
301 ~~not limited to, fees earned by the mortgage broker, lender fees,~~
302 ~~third party fees, and official fees, together with the terms and~~
303 ~~conditions for obtaining a refund of such fees, if any.~~

304 1. Any amount collected in excess of the actual cost shall
305 be returned within 60 days after rejection, withdrawal, or
306 closing.

307 2. At the time a good faith estimate is provided to the
308 borrower, the loan originator must identify in writing an
309 itemized list that provides the recipient of all payments
310 charged the borrower, which, except for all fees to be received
311 by the mortgage broker, may be disclosed in generic terms, such
312 as, but not limited to, paid to lender, appraiser, officials,
313 title company, or any other third-party service provider. This
314 requirement does not supplant or is not a substitute for the
315 written mortgage broker agreement described in subsection (1).
316 The disclosure required under this subparagraph must be signed
317 and dated by the borrower.

318 Section 8. Paragraph (a) of subsection (7) of section
319 494.00421, Florida Statutes, is amended to read:

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320 494.00421 Fees earned upon obtaining a bona fide
321 commitment.—Notwithstanding the provisions of ss. 494.001-
322 494.0077, any mortgage broker which contracts to receive a loan
323 origination fee from a borrower upon obtaining a bona fide
324 commitment shall accurately disclose in the mortgage broker
325 agreement:

326 (7) (a) The following statement, in at least 12-point
327 boldface type immediately above the signature lines for the
328 borrowers:

329 "You are entering into a contract with a mortgage broker to
330 obtain a bona fide mortgage loan commitment under the same terms
331 and conditions as stated hereinabove or in a separate executed
332 good faith estimate form. If the mortgage broker obtains a bona
333 fide commitment under the same terms and conditions, you will be
334 obligated to pay the loan origination fees even if you choose
335 not to complete the loan transaction. If the provisions of s.
336 494.00421, Florida Statutes, are not met, the loan origination
337 fee can only be earned upon the funding of the mortgage loan.
338 The borrower may contact the Office of Financial Regulation
339 ~~Department of Financial Services~~, Tallahassee, Florida,
340 regarding any complaints that the borrower may have against the
341 loan originator. The telephone number of the office ~~department~~
342 is: ...(insert telephone number)...."

343 Section 9. Paragraph (e) of subsection (1) of section
344 494.00612, Florida Statutes, is amended to read:

345 494.00612 Mortgage lender license renewal.—

346 (1) In order to renew a mortgage lender license, a mortgage
347 lender must:

348 (e) Authorize the registry to obtain an independent credit

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349 report on each of the mortgage lender's control persons ~~lender~~
350 from a consumer reporting agency, and transmit or provide access
351 to the report to the office. The cost of the credit report shall
352 be borne by the licensee.

353 Section 10. Subsection (13) is added to section 494.0067,
354 Florida Statutes, to read:

355 494.0067 Requirements of mortgage lenders.-

356 (13) Each mortgage lender shall submit to the registry
357 reports of condition which are in a form and which contain such
358 information as the registry may require.

359 Section 11. This act shall take effect July 1, 2011.