

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 631 Loan Originators, Mortgage Brokers, & Mortgage Lenders
SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Workman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 666

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Insurance & Banking Subcommittee | 13 Y, 0 N, As CS | Bauer | Cooper |
| 2) Government Operations Appropriations Subcommittee | 11 Y, 0 N | Keith | Topp |
| 3) Regulatory Affairs Committee | 15 Y, 3 N, As CS | Bauer | Hamon |

SUMMARY ANALYSIS

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for enforcing and administering ch. 494, F.S. (the Act), which governs the regulation of non-depository residential loan originators, mortgage brokers, and mortgage lenders. Licensure of these individuals and entities is conducted through the Nationwide Mortgage Licensing System & Registry, as required by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) created the Consumer Financial Protection Bureau (CFPB) and authorized the CFPB to enforce and write regulations for many existing federal consumer protection laws. Dodd-Frank also made significant changes to federal mortgage loan origination and lending laws, which has resulted in several potential inconsistencies and redundancies with the Act.

The bill:

- Makes several changes to the Act's provisions regarding mortgage fees and disclosures, where they may be inconsistent or duplicative with Dodd-Frank and the CFPB mortgage regulations;
- Authorizes the OFR to conduct joint or concurrent examinations with any state or federal regulatory agency and to share examination material with those regulators;
- Authorizes the OFR to take administrative action against applicants found to be engaging in pre-licensing examination misconduct, and reenacts the OFR's authority to enforce the federal Real Estate Settlement Procedures Act and the Truth in Lending Act;
- Repeals provisions in the Act regarding arbitration, fees, the loan application process; the Florida Fair Lending Act and the Loans Under Florida Uniform Land Sales Practices Law (parts IV and V of ch. 494, F.S.);
- Provides for an extended license renewal period for all individuals and entities licensed under the Act; and
- Makes technical or clarifying changes to the Act.

The bill has a positive, yet indeterminate fiscal impact on state revenues. The bill allows for new fees for late renewal or reinstatement of licensure for loan originators, mortgage brokers, mortgage broker branch office locations, mortgage lenders, and mortgage lender branch offices. According to the OFR, the number of licensees that would use the late renewals and reinstatement capability is unknown at this time. The bill potentially has a positive impact on the private sector, in that regulatory requirements for the residential, non-depository mortgage professionals in Florida are simplified.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Loan Originators and Mortgage Brokers Act (ch. 494, F.S.)

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for enforcing and administering ch. 494, F.S. (the Act), which governs the regulation of non-depository residential loan originators, mortgage brokers, and mortgage lenders. The following is a brief description of the various licenses under the Act:

- *Loan originator*: This license is required for an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, processes a mortgage loan application, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes the activities of a loan originator as defined by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289, codified at 12 U.S.C. 5101 et seq., "S.A.F.E.")
- *Mortgage broker*: This license is required for an entity conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.¹
- *Mortgage lender*: This license is required for an entity making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a non-institutional investor. Making a mortgage loan means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.²
- *Mortgage lender servicer*: This licensing endorsement is required for any mortgage lender licensee who services a mortgage loan. "Servicing a mortgage loan" means to receive, cause to be received, or transferred for another, installment payments of principal, interest, or other payments pursuant to a mortgage loan. A "servicing endorsement" means authorizing a mortgage lender to service a loan for more than 4 months. A mortgage lender servicer may also conduct those activities described under Mortgage Lender without the need for two separate licenses.³
- *Branch licenses*: This license is required for company licensees who conduct business at locations other than the main license holder's principal place of business: (a) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this chapter; (b) At which the licensee's name, advertising or promotional materials, or signage suggests that mortgage loans are originated or negotiated. (c) At which mortgage loans are originated or negotiated by a licensee.⁴

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.)

In 2008, Congress enacted the Housing and Economic Recovery Act. Title V of this act is the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E.).⁵ The intent of S.A.F.E. was to provide greater accountability and regulation of *individual* loan originators and to enhance consumer protections by establishing minimum licensure and registration requirements and a national registry for consumer to inquire into the credentials and disciplinary history of such loan originators. S.A.F.E. requires non-depository mortgage loan originators to be state-licensed in accordance with the following minimum standards of S.A.F.E.:

- Criminal history background checks and specified disqualifying periods for certain convictions and pleas,

¹ Section 494.001(21), F.S.

² Section 494.001(19), (22), F.S.

³ Sections 494.001(33), (34); 494.00611(1)(e), F.S.

⁴ Sections 494.001(3), F.S.; 494.000036; 494.0066, F.S.

⁵ Section 494.001(16), F.S.

- Credit background checks for “financial responsibility” determination,
- No loan originator license revocation in any state,
- Pre-licensure education and testing,
- Continuing education,
- States must also establish a net worth, surety bond, or recovery fund, and
- All states must licensure mortgage loan originators through the Nationwide Mortgage Licensing System & Registry (“NMLS”).

S.A.F.E. required all states to implement these minimum licensure and regulatory standards and for the U.S. Department of Housing and Urban Development (HUD) to determine whether each state met the federally mandated minimums. In response, the Florida Legislature enacted CS/CS/SB 2226 in 2009, which substantially amended the Act to bring Florida into compliance with S.A.F.E.⁶

Nationwide Mortgage Licensing System (NMLS)⁷

NMLS is the sole system of licensure for mortgage companies for 54 state agencies and the sole system of licensure for Mortgage Loan Originators (MLOs) for 58 state and territorial agencies. The NMLS is also the system of record for many other non-depository, financial services licensing or registration frameworks for participating state agencies, and provided operational uniformity for companies and individuals seeking to apply for, amend, renew and surrender license authorities managed through NMLS by 58 state or territorial governmental agencies. NMLS itself does not grant or deny license authority.

NMLS was created by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators¹ and began operations in January 2008. It is owned and operated by the State Regulatory Registry LLC,² a wholly owned subsidiary of CSBS.⁸

Dodd-Frank & the U.S. Consumer Financial Protection Bureau

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173, commonly referred to as “Dodd-Frank”) was signed into law. It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent “to focus directly on consumers, rather than on bank safety and soundness or on monetary policy.”⁹

Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System. Dodd-Frank:

- Assigned the CFPB broad authority to examine and enforce consumer protection regulations over all mortgage-related businesses, large non-bank financial companies, and banks and credit unions with assets greater than \$10 billion. In essence, Dodd-Frank makes the CFPB the primary regulator over non-depository lenders.
- Granted broad authority to the CFPB to write regulations to protect consumers from unfair and deceptive financial products, acts, or practices.
- Consolidated and transferred most federal consumer financial protection authority under the CFPB’s jurisdiction, including¹⁰:
 - Real Estate Settlement and Procedures Act (RESPA)
 - Truth in Lending Act (TILA)
 - Home Ownership and Equity Protection Act (HOEPA)
 - Home Mortgage Disclosure Act (HMDA)
 - HUD’s regulations promulgated under S.A.F.E.

⁶ Chapter 2009-241, L.O.F.

⁷ The Act refers to NMLS as “the registry,” which is defined at s. 494.001(31), F.S.

⁸ “About NMLS,” at <http://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (last accessed February 4, 2014).

⁹ “Creating the Consumer Bureau,” at <http://www.consumerfinance.gov/the-bureau/creatingthebureau/> (last accessed February 6, 2014).

¹⁰ Dodd-Frank required the Secretary of the U.S. Treasury to establish a designated transfer date by which the CFPB would receive certain rulemaking, supervision, and enforcement powers from seven existing federal agencies. The Treasury Secretary established July 11, 2011, or one year after the enactment of Dodd-Frank, as the designated transfer date. See 75 FR 57272 (Sept. 20, 2010) and 76 FR 43569 (July 21, 2011).

Title XIV of Dodd-Frank, also known as the Mortgage Reform and Anti-Predatory Lending Act, made significant changes to mortgage loan origination and lending standards, to be discussed below. The CFPB has issued several mortgage regulations implementing the changes to the various federal laws above.¹¹

Regulation X of RESPA states that “state laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.” However, a state law or regulation that provides greater protection to consumers is not an inconsistency.¹² This “only if consistent” preemption standard also applies to TILA, although to a more limited extent.

Effect of the Bill

License renewals - Sections 5, 6, 7, 13, and 14

Currently, mortgage licensees in Florida must submit a renewal request through NMLS from November 1 to December 31 every year, and meet other renewal requirements (completion of continuing education requirements, payment of applicable renewal fees, and authorization to run a new criminal background check and credit report check). According to the NMLS, 48 out of 60 state licensing authorities allow for late renewals/reactivations, with varying late fees and deadlines.¹³ However, following the S.A.F.E. implementation legislation in 2009, Florida does not allow for late renewals, so that licenses that have not been renewed by December 31 will automatically expire and persons desiring to continue in the mortgage industry must submit a new initial application.¹⁴ Branch office licenses must also be renewed annually at the time the main license is renewed.¹⁵

The bill’s language for late renewals, which has been modeled after several other state lending laws, provides an additional 60 days to renew all mortgage license types. As a result, all licensees who do not renew before March 1¹⁶ will be placed in a “failed to renew” status, and will be required to pay a reinstatement fee outside of the registry to reactivate the license. The new reinstatement fees range from \$150 to \$475, depending on the type of license being reinstated. However, licensees who do not complete the renewal process before March 1 will be placed in a “terminated-expired” status and will have to submit new initial applications if they desire to continue doing mortgage business in Florida.

Indirect owners of a mortgage company

Currently, the Act requires “control persons” of a mortgage company (broker or lender) to be fingerprinted and screened for their criminal background history and credit reports to determine their fitness to be on a company license.¹⁷ Such persons possess the power to direct the management or policies of a company, whether through the 10% or more ownership of securities or capital contribution, by contract, or otherwise.¹⁸ However, the NMLS Company Form asks applicants to disclose “are there any *indirect owners* of the entity required to be reported?”¹⁹ According to the OFR, the NMLS uniform application form uses a 25% ownership threshold, and the Act’s lack of a definition of “indirect owner” creates a disconnect from the definition of “control person,” especially for large mortgage lender or broker companies with complex corporate structures.²⁰

¹¹ CFPB “Mortgage Rules at a Glance,” at <http://www.consumerfinance.gov/mortgage-rules-at-a-glance/> (last accessed February 7, 2014).

¹² 24 C.F.R. 3500.13 (relation to state laws).

¹³ NMLS Renewal Deadlines Chart (accessed February 6, 2014), on file with the Insurance & Banking Subcommittee staff.

¹⁴ See Rules 69V-40.0313, 69V-40.0322, and 69V-40.0612, F.A.C.

¹⁵ Sections 494.0036 and 494.0066, F.S.

¹⁶ The NMLS provides that the reinstatement period will be open from January 1st through February 28th. NMLS Renewal Period End and Reinstatement, at <http://mortgage.nationwidelicencingsystem.org/Pages/default.aspx> (last accessed February 6, 2014).

¹⁷ Sections 494.00321 and 494.0067, F.S.

¹⁸ Section 494.001(6), F.S.

¹⁹ NMLS Company Form, at [http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%](http://mortgage.nationwidelicencingsystem.org/licensees/resources/LicenseeResources/NMLS%20) (last accessed February 6, 2014).

²⁰ E-mail with the OFR (January 31, 2014), on file with the Insurance & Banking Subcommittee staff.

Accordingly, Section 1 of the bill creates a definition of “indirect owner” which closely parallels the definition of “control person,” but uses a 25% ownership threshold.

Joint and concurrent examinations

Currently, the Act authorizes the OFR to conduct intermittent examinations of any licensee or other person, and allows the OFR to recover travel and per diem out-of-state examination costs from the licensee.²¹

Section 2 of the bill authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and furnish copies of all examinations to an appropriate regulator, if said regulator agrees to maintain the confidentiality requirements applicable to such examinations pursuant to chs. 119 and 494, F.S.²² The OFR is also authorized to accept an examination from an appropriate regulator.

Administrative penalty for pre-licensure examination misconduct

Currently, all loan originator applicants seeking licensure must abide by the NMLS Rules of Conduct for Test Takers, which prohibits misconduct, assistance and the use of study materials during pre-licensure examinations.²³ The NMLS Rules of Conduct provide that test center representatives may report any alleged violations to the state(s) in which the applicant is seeking licensure.

Section 3 of the bill makes it a ground for administrative action (denial of licensure, action against an existing license, or administrative fines) by the OFR when a mortgage loan originator applicant violates the NMLS Rules of Conduct in connection with a pre-licensing examination.

Arbitration

Section 4 of the bill repeals s. 494.0028, F.S., relating to arbitration. Currently, this provision authorizes arbitration between noninstitutional investors or borrowers and a mortgage lender or broker regarding mortgage broker agreements, servicing agreements, loan applications, or purchase agreements. Currently, the Act allows the noninstitutional investor or borrower to elect arbitration before the American Arbitration Association or other approved arbitration forum, and provides that any election under this section is irrevocable.

However, Dodd-Frank amended the federal Truth in Lending Act to prohibit creditors from including mandatory arbitration terms or any other non-judicial procedure in residential mortgages and open-end consumer credit secured by principal dwellings. The CFPB’s implementing rule took effect January 10, 2014. This federal prohibition does not apply to certain time-share plans or for a home equity line of credit secured by the consumer’s principal dwelling.²⁴

Mortgage call reports

Due to a S.A.F.E. requirement, the Act requires mortgage broker and mortgage lender licensees to file “reports of condition” to the NMLS, in such form and containing such information as NMLS may require.²⁵ NMLS refers to these as “mortgage call reports,” and these reports involve:

²¹ Section 494.0012(3), F.S.

²² The Public Records Act (ch. 119, F.S.) contains an agency-specific exemption for the OFR, in which any information that the OFR *receives* from other state or federal regulatory, administrative, or criminal justice agencies that confidential or exempt in accordance with the laws of the other agency. Additionally, this exemption provides confidentiality for any information that the OFR *receives or develops* as part of a joint or multiagency examination or investigation with these other agencies and that the OFR may obtain and use this information in accordance with a joint or multiagency agreement, except to any information that would otherwise be public if the OFR independently conducted an investigation or examination under Florida law. Section 119.0712(3), F.S. Section 494.00125, F.S., contains a similar regulatory information-sharing exemption and allows the OFR to share confidential and exempt information to any law enforcement or regulatory agency.

²³ NMLS Rules of Conduct for Test Takers, at

<http://mortgage.nationwidelicencingsystem.org/profreq/Documents/Test%20Taker%20Rules%20of%20Conduct.pdf> (last accessed February 6, 2014).

²⁴ Section 1414 of Dodd-Frank; 78 FR 11279 (Feb. 15, 2013), finalizing a proposal issued on August 17, 2012 (77 FR 55271 (Sept. 7, 2012) (2012 Loan Originator Proposal)), amending 12 C.F.R. Parts 1026 (Regulation Z). The amendment to Reg Z that prohibits arbitration is effective June 1, 2013.

²⁵ Section 1505(e) of S.A.F.E.; Sections 494.004(3) and 494.0067(13), F.S.

- *Residential mortgage loan activity information* (application, closed loan, individual loan originator, line of credit, and repurchase information by state), which must be submitted quarterly (within 45 days of the end of every calendar quarter), and
- *Financial condition* (financial information at the company level), which NMLS requires to be filed annually with the company's fiscal year end.²⁶

In order to clarify the OFR's authority to enforce the timely filing of the mortgage call report, sections 9 and 15 of the bill authorize the Financial Services Commission to prescribe by rule the timeframe by which mortgage broker and mortgage lender licensees must file the reports of condition, which the bill also defines as synonymous with the NMLS Mortgage Call Report.

Provisions of the Act affected by Dodd-Frank changes

It is noted that the Act currently authorizes the OFR to enforce the provisions of the Real Estate Settlement Procedures Act and the Truth in Lending Act and any regulations adopted thereunder, and to pursue administrative fines and license sanctions against a licensee (or person required to be licensed).²⁷ However, in light of the significant changes to these federal laws, reenactment of this provision is necessary for the OFR to enforce these federal changes that have been adopted after the last time the Florida Legislature reenacted s. 494.00255(1)(m), F.S.²⁸ As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed *at the time* the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.²⁹ The Legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body "that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."³⁰

The bill also amends or removes provisions in the Act that are potentially inconsistent or redundant with the new changes to RESPA and TILA.

Section 1 of the bill amends the definition of "loan origination fee." Currently, it is defined as the total compensation from any source received by a mortgage broker acting as a loan originator, and requires any payment for processing the mortgage loan application must be included in the fee and paid to the mortgage broker.³¹ However, Dodd-Frank and CFPB implementing regulations now prohibit loan originators from receiving compensation that varies based on the terms of a loan (other than the amount of principal), and provides for certain exceptions. This is intended to prohibit yield spread premiums or other similar compensation based on terms (including rate) that would cause a loan originator to "steer" borrowers to particular mortgage products.³² Additionally, Dodd-Frank created new requirements for "qualified mortgages" – a mortgage which would have certain characteristics and requirements and, if those required features are met, the loan would be given either a "safe harbor" or "rebuttable presumption" status. One of the requirements is a 3 percent cap on points and fees for loan amounts that are \$100,000 or greater. Lesser loan amounts also have fee cap restrictions. Due to Florida's requirement for the processing fee to be part of the origination fee, mortgage broker businesses must include this fee towards the 3 percent cap. If this fee was not required to be part of the origination fee, it would not have to be included unless the processing company being used was affiliated with the creditor and/or mortgage broker. The inclusion of processing fees, more than likely from contract processing companies, may result in mortgage broker businesses no longer utilizing the services of a contract processor and attempting to process files on their own. The unintended consequence of this decision may result in a loss of checks and balances on a file

²⁶ NMLS Mortgage Call Report, at <http://mortgage.nationwidelicencingsystem.org/slr/common/mcr/Pages/default.aspx> (last accessed February 6, 2014).

²⁷ Section 494.00255(1)(m), F.S.

²⁸ It appears that the last time the Act readopted RESPA and TILA was in the 2011 legislative session (s. 14 of ch. 2011-071, L.O.F.).

²⁹ See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).

³⁰ *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). See also *Freimuth v. State*, 272 So.2d 473 (Fla.1972); *State v. Camil*, 279 So.2d 832 (Fla.1973).

³¹ Section 494.001(16), F.S.

³² Section 1403 of Dodd-Frank; effective January 1, 2014.

and potential harm to the consumer.³³ The bill amends the definition of “loan origination fee” to remove payment for processing a mortgage application.

Section 8 of the bill amends s. 494.0038, F.S., relating to loan origination fees and disclosures. Currently, the Act prohibits loan origination fees unless there has been a written, signed mortgage brokerage agreement between the broker and the borrower that contain certain disclosures. The Act requires that at least 3 business days before the execution of a closing or settlement statement, the broker must provide a written disclosure. In addition, Section 9 of the bill amends s. 494.004, F.S., relating to requirements of licensees, to:

- Remove certain notification requirements relating to mortgage loan transaction, including the requirement that each licensee must notify a borrower of any material change in the terms of a mortgage loan previously offered to the borrower within 3 business days of being made aware of the change by the mortgage lender.
- Remove language giving the borrower the ability to waive the right to receive such a notice under certain circumstances.

These disclosures are already required by RESPA and the CFPB implementing regulations, which provide for simplified disclosures effective August 1, 2015, and also provide when re-disclosure is required (such as an annual percentage rate increase of 1/8%).³⁴ Accordingly, the bill:

- Removes language related to loan origination fees between a borrower to a mortgage broker, the requirement for a written mortgage broker agreement describing the services to be provided by the broker, and the execution requirements for such an agreement.
- Removes the requirement that a disclosure must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing.

Section 10 of the bill makes a technical change to s. 494.0042, F.S., relating to loan origination fees, by deleting a cross-reference for a law repealed in section 11 of the bill.

Section 11 of the bill repeals s. 494.00421, F.S., relating to fees earned upon obtaining a bona fide commitment. New federal laws and regulations do not allow most fees before closing to be charged or collected from the borrower, including a commitment fee. Industry advocates recommend the removal of the requirement for a mortgage broker to issue a mortgage broker agreement to a borrower. Under TILA’s loan originator compensation requirements, a mortgage broker is not permitted to receive a fee for services rendered prior to the culmination of a transaction. Due to this requirement, a contract for fees between a mortgage broker and a borrower is weakened, since federal requirements do not permit fees to be obtained if a transaction fails to close.³⁵

Section 15 of the bill amends s. 494.0067, F.S., relating to requirements of mortgage lenders, to:

- Remove language that is currently found in federal law under 24 CFR 3500.7 and 12 CFR 1026.19.
- Specifically, it removes the requirement that a mortgage lender provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can expect to pay in obtaining a mortgage loan and the delivery requirements of the documents associated with this estimate.
- Remove the requirement that a disclosure related to an adjustable rate mortgage loan and any changes associated with the terms of such loan occur prior to closing be provided to the applicant by the mortgage lender as well as the process for which such notification is furnished by the lender.
- Remove the requirement that a mortgage lender, in every mortgage transaction, notify the borrower of any material changes in the terms of a mortgage loan previously offered to the borrower as well as the process for which such notification is furnished.
- Remove the requirement that a licensee bears the burden of proof that a notification was provided to and accepted by the borrower. It removes the right of a borrower to waive receipt of the notice of a material change.

³³ FAMP bill analysis of HB 623 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.

³⁴ *Id.*; see also Integrated Mortgage Disclosures Under RESPA (Regulation X) and TILA (Regulation Z), 78 FR 79730 (December 31, 2013).

³⁵ FAMP bill analysis of HB 673 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.

Section 16 of the bill repeals s. 494.0068, F.S., relating to loan application process, which set forth required disclosures for mortgage lenders. However, federal law already provides for mandatory disclosures under Regulation X of RESPA.³⁶

Section 17 of the bill amends s. 494.007, F.S., relating to the commitment process. The bill removes language related to the amount of the commitment fee from the disclosure in writing a mortgage lender must issue if a commitment is issued, in order to align with federal law.

Section 18 of the bill amends s. 494.0073, F.S., relating to mortgage lender when acting as a mortgage broker. The bill deletes a cross-reference (s. 494.004(2), F.S., regarding the 3-day notice of material change), which Section 9 of this bill deletes.

Servicing capabilities

Currently, a mortgage lender may close loans in its own name, but may not service the loan without a “servicing endorsement” (authorization), which currently requires a minimum net worth of \$250,000 (versus a minimum net worth of \$63,000 for mortgage lenders who do not seek a servicing endorsement).³⁷ According to FAMP, mortgage lenders have sometimes faced difficulties fulfilling the requirements necessary to transfer servicing rights within the current 4-month timeframe, and has requested that the timeframe be extended to 6 months.³⁸ Section 15 of the bill amends s. 494.0067, F.S., to permit mortgage lenders to service loans for up to 6 months without a servicing endorsement.

High-cost loans / Florida Fair Lending Act

Part IV of the Act is the Florida Fair Lending Act, which provides certain consumer protections for high-cost home loans, which are typically subprime, equity-based mortgages, and is administratively enforced by the OFR.

- 494.0078 (Florida Fair Lending Act),
- 494.0079 (Definitions),
- 494.00791 (Prohibited Acts),
- 494.00792 (Required Disclosures for High-Cost Home Loans),
- 494.00793 (Liability of Purchasers and Assignees),
- 494.00794 (Right to Cure High-Cost Home Loans),
- 494.00795 (Powers and Duties of the Commission and Office; Investigations, Examinations, Injunctions; Orders),
- 494.00796 (Enforcement), and
- 494.00797 (General Rule).

In January 2013, the CFPB issued its final rule amending Regulation Z (TILA) by expanding the types of mortgage loans that are subject to the protections of the Home Ownership and Equity Protections Act of 1994 (HOEPA), revising and expanding the tests for coverage under HOEPA, and imposing additional restrictions on mortgages that are covered by HOEPA, including a pre-loan counseling requirement. The new rules became effective on January 10, 2014.³⁹ HOEPA changes include the following requirements for high-cost mortgages:

- Balloon payments are generally banned;
- Prepayment penalties, financing points, mortgage broker points fees, and negative amortization are banned;
- Late fees are restricted to four percent of the payment that is past due, fees for providing payoff statements are restricted, and fees for loan modification or payment deferral are banned.
- Creditors originating HELOCs are required to assess consumers’ ability to repay; equity-based lending is eliminated;
- Creditors and mortgage brokers are prohibited from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage; and

³⁶ 12 CFR § 1026.4.

³⁷ Section 494.00611(2)(f), F.S.

³⁸ FAMP bill analysis of HB 631 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.

³⁹ 78 FR 6855 (January 31, 2013). See also ss. 1431-1432 of Dodd-Frank.

- Before making a high-cost mortgage, creditors are required to obtain confirmation from a federally certified or approved homeownership counselor that the consumer has received counseling on the advisability of the mortgage.

Due to these changes, FAMP has requested the repeal of part IV, ch. 494, F.S., because federal law will provide broader protections than Florida law with regard to high-cost mortgages.⁴⁰ Section 19 of the bill repeals part IV, ch. 494, F.S.

However, the Florida Alliance for Consumer Protection has noted that part IV, ch. 494, F.S., differs from federal law by allowing borrowers to cure the default for high-cost loans in certain circumstances and by providing that any material violation of the Fair Lending Act shall result in the forfeiture of the entire interest charged in the high-cost loan, but there are no such corresponding consumer protections in the federal law.⁴¹

Loans Under Florida Uniform Land Sales Practices Law

Section 20 of the bill repeals s. 494.008, F.S., relating to the Loans Under Florida Uniform Land Sales Practices Law. This provision was enacted in 1977⁴² and provides notice and recording requirements for mortgage loans with face amount of \$35,000 or less and is secured by vacant land before the loan can be sold to a mortgagee (other than a financial institution). According to FAMP, this is an obsolete and rarely used provision.⁴³ According to the Uniform Law Commission, the Model Land Sales Practices Act was promulgated in 1966 and provides regulations for the promotional sale of land. Florida is one of only nine states that has adopted this model act.⁴⁴

Other

Section 12 of the bill amends s. 494.00611, F.S., relating to mortgage lender license. The bill corrects a cross-reference relating to the principal loan originator for a mortgage lender license.

B. SECTION DIRECTORY:

Section 1 of the bill amends s. 494.001, F.S., relating to definitions.

Section 2 of the bill amends s. 494.0012, F.S., relating to investigations; complaints; examinations.

Section 3 of the bill amends s. 494.00255, F.S., relating to administrative penalties and fines; license violations.

Section 4 of the bill repeals s. 494.0028, F.S., relating to arbitration.

Section 5 of the bill amends s. 494.00313, F.S., relating to loan originator license renewal.

Section 6 of the bill amends 494.00322, F.S., relating to mortgage broker license renewal.

Section 7 of the bill amends s. 494.0036, F.S., relating to mortgage broker branch office renewal.

Section 8 of the bill amends s. 494.0038, F.S., relating to loan origination fees and disclosures.

Section 9 of the bill amends s. 494.004, F.S., relating to requirements of licensees.

Section 10 of the bill amends s. 494.0042, F.S., relating to loan origination fees.

⁴⁰ FAMP bill analysis of HB 631 (received January 28, 2014), on file with the Insurance & Banking Subcommittee staff.

⁴¹ See ss. 494.00794 and 494.00796; F.S.; Florida Alliance for Consumer Protection White Paper on HB 631 (received February 11, 2014), on file with the Insurance & Banking Subcommittee staff.

⁴² Section 3, ch. 77-397, L.O.F.

⁴³ FAMP bill analysis of HB 413, on file with the Insurance & Banking Subcommittee staff.

⁴⁴ Uniform Law Commission, "Legislative Fact Sheet – Land Sales Practices," at

[http://uniformlaws.org/LegislativeFactSheet.aspx?title=Land Sales Practices](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Land%20Sales%20Practices) (last accessed on February 7, 2014).

Section 11 of the bill repeals s. 494.00421, F.S., relating to fees earned upon obtaining a bona fide commitment.

Section 12 of the bill amends s. 494.00611, F.S., relating to mortgage lender license.

Section 13 of the bill amends s. 494.00612, F.S., relating to mortgage lender license renewal.

Section 14 of the bill amends s. 494.0066, F.S., relating to branch offices.

Section 15 of the bill amends s. 494.0067, F.S., relating to requirements of mortgage lenders.

Section 16 of the bill repeals s. 494.0068, F.S., relating to loan application process.

Section 17 of the bill amends s. 494.007, F.S., relating to commitment process.

Section 18 of the bill amends s. 494.0073, F.S., relating to mortgage lender when acting as a mortgage broker.

Section 19 of the bill repeals part IV of chapter 494, F.S., relating to the High Cost Loans and Fair Lending Act.

Section 20 of the bill repeals s. 494.008, F.S., relating to the Loans Under Florida Uniform Land Sales Practices Law.

Section 21 of the bill provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The OFR indicates that revenues could potentially increase based on the number of license reinstatements sought after December 31 of each year. The bill allows for new fees for late renewal or reinstatement of licensure for loan originators, mortgage brokers, mortgage broker branch office locations, mortgage lenders, and mortgage lender branch offices. Reinstatement fees range from \$150 to \$475 outside of the current renewal fee, depending on the type of license being reinstated. According to the OFR, a projection on the number of potential license reinstatements sought is currently unknown; the fiscal impact on revenues is positive, yet indeterminate at this time.⁴⁵

2. Expenditures:

The OFR indicates that additional expenditures are possible based on the number of license reinstatements sought after December 31 of each year. The increased expenditures would consist of additional workload for existing staff to take the time to electronically notify licensees that their renewal deadline has been missed. In addition, effects of the bill will require minimal configuration changes to the OFR's Regulatory Enforcement and Licensing (REAL) System. According to the OFR, a projection on the number of potential license reinstatements sought is currently unknown; therefore an exact fiscal impact is indeterminate at this time.⁴⁶ However, the OFR indicates that any additional workload, as well as any technology configuration changes as a result of this legislation, can be absorbed within their current resources and their current operations and maintenance contract for the REAL system.⁴⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁴⁵ OFR's analysis of HB 631 (received February 4, 2014), on file with the Insurance & Banking Subcommittee.

⁴⁶ *Id.*

⁴⁷ *Id.*

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases fees to mortgage licensees through the reactivation fee, which allows an expired licensee to renew their license with payment of a fee instead of having to file a new application. According to the OFR, an exact fiscal impact is indeterminate at this time as the OFR cannot project how many licensees will use this reactivation option.⁴⁸

The bill's allowance for late license renewals and regulatory streamlining may be beneficial to the residential, non-depository mortgage industry in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill's allowance for late renewals will require the OFR to amend the following administrative rules regarding license renewal: 69V-40.0313, 69V-40.0322, 69V-40.0612, F.A.C.

The bill grants the Financial Services Commission authority to adopt rules relating to a licensure renewal forms for mortgage lender branch office and a mortgage broker branch office and to adopt rules relating to the deadline by which a mortgage broker must file a report of condition. It removes rulemaking authority relating to an acceptable form for disclosure of brokerage fees. It removes rulemaking authority relating to furnishing of the disclosure relating to the costs an applicant can reasonably expect to pay in obtaining a mortgage loan.

The substantial amendment to s. 494.0038, F.S., regarding loan origination and disclosure requirements, would require the OFR, with approval of the Financial Services Commission, to repeal or amend Rule 69V-40.008, F.A.C. (fees and commissions).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Association of Mortgage Professionals supports this bill.

The Florida Consumer Action Network and Florida Alliance for Consumer Protection support the bill's additions to the Act that enhance and streamline the OFR's enforcement authority and align the Act with the new federal changes. However, they have expressed concerns about the bill's elimination of

⁴⁸ *Id.*

arbitration, the amendment to the definition of loan origination fee and disclosures required under current law, and the repeal of the Florida Fair Lending Act (part IV, ch. 494, F.S.).⁴⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment retained the provisions of the bill and made the following changes:

- Provided a March 1 deadline for late license renewals for all license types under the Act, in order to align with dates established by the National Mortgage Licensing System & Registry;
- Clarified the OFR's administrative authority over applicants found to be engaging in pre-licensure examination misconduct; and
- Reenacted and updated the OFR's authority to enforce the federal Real Estate Settlement Procedures Act, the Truth in Lending Act, and related federal regulations due to the recent significant changes to those federal laws and regulations.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

On March 12, 2014, the Regulatory Affairs Committee considered and adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that licensees must meet renewal requirements and pay all required fees before March 1 to reactivate a license.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.

⁴⁹ Florida Alliance for Consumer Protection, White Paper: HB 631/SB 666 Loan Originators, Mortgage Brokers, & Mortgage Lenders (received February 11, 2014), on file with the Insurance & Banking Subcommittee staff.