The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 1532

INTRODUCER: Banking and Insurance Committee and Senator Fasano

SUBJECT: Reverse Mortgage Loans to Senior Individuals

DATE: February 17, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.				
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

A reverse mortgage is a special type of loan that allows a homeowner to convert a portion of the equity in the home into cash. But, unlike a home equity loan or second mortgage, no repayment is required unless the borrower no longer meets certain conditions. Reverse mortgages are becoming popular because they allow seniors to use the proceeds of such loans to supplement social security income and meet unexpected medical expenses or other obligations.

The complicated nature of the product and the concern that older consumers can be more vulnerable to unscrupulous sales practices have brought reverse mortgages to the attention of consumer advocates and policymakers. This bill provides the following additional protections for senior citizens who are considering a reverse mortgage:

- Requires a lender to provide a borrower with a list of five HUD-approved counseling agencies; requires counseling sessions to include information regarding the financial implications of a reverse mortgage loan and other options, and prohibits a lender from accepting a final application or collecting any fees from a prospective borrower until the borrower has completed such counseling.

- Requires the lender to provide detailed disclosures in plain language to the borrower, prior to the loan closing, about the terms and conditions of the loan, such as the interest rate, the term of the loan, schedule of payments, and conditions under which repayment is triggered.
- Prohibits a lender from requiring an applicant to purchase an insurance or other similar financial product (excluding title insurance or hazard, flood, or other peril insurance) as a condition of obtaining a reverse mortgage.
- Caps origination fees for proprietary programs at the same level as the federal Home Equity Mortgage Conversion program. The origination fee would be equal to 2.0 percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000 plus 1 percent of any portion of the maximum claim amount that is greater than $200,000, with a cap of $6,000.

This bill creates the following section of the Florida Statutes: 494.00297.

II. Present Situation:

Reverse mortgage loans are designed for people ages 62 years and older. This product enables seniors to convert home equity into cash through a lump sum disbursement or through a series of payments from the lender to the borrower, without any periodic repayment of principal or interest. Repayment is required when there is a "maturity event", that is, when the borrower dies, sells the house, or no longer occupies it as principal residence.

The Home Equity Conversion Mortgage (HECM)[1] is the only reverse mortgage program insured by the federal government, and is available through a Federal Housing Authority (FHA) approved lender. The loan amount is based on the lesser of the appraised value of the house or the FHA loan limit of $625,500.

The following table summarizes the HECM requirements: [2]

Key HECM Requirements
Borrower Requirements: • Be 62 years of age or older • Own the property outright or have a small mortgage balance • Occupy the property as principal residence • Not be delinquent on any federal debt • Participate in a consumer information session given by an approved HECM counselor
Mortgage Amount Based On: • Age of the youngest borrower • Current interest rate • Lesser of appraised value or the HECM-FHA mortgage limit
Financial Requirements: • No income or credit qualifications • No repayment as long as the property is the principal residence • Closing costs may be financed in the mortgage

[1] 12 U.S.C. 1715z–20 and 24 C.F.R. 206.
[2] http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin08/reverse_mortgages.html#six.

Eligible Properties -- The following eligible property types must meet all FHA property standards and flood requirements: • Single family home or 1-4 unit home with one unit occupied by the borrower • HUD-approved condominium • Manufactured home that meets FHA requirements
Repayment -- A HECM loan must be repaid in full when the borrower dies or sells the home. The loan also becomes due and payable if: • The property taxes or hazard insurance are not paid or the borrower violates other obligations • The borrower permanently moves to a new principal residence • The borrower, or the last borrower, fails to live in the home for 12 consecutive months • The borrower allows the property to deteriorate and fails to make necessary repairs

Proprietary Lending Programs

In some cases, individuals with high-value homes seek loans that exceed the HECM maximums. This demand has led to the development of private, proprietary programs through which consumers can obtain alternative loan products if they need access to higher equity amounts. The proprietary loans are not federally insured and are not subject to the same restrictions and requirements as the HECMs.

According to the AARP,[3] proprietary reverse mortgages typically offer lower upfront and monthly fees than HECMs, but charge much greater interest rates than HECMs – as much as three percentage points greater. The AARP notes "…the lower fees on a proprietary plan can be offset by its much higher interest rate, resulting in greater total costs for the proprietary plan."

Consumer Protections

Consumer advocates and others have expressed concern that some borrowers may not fully understand the complexities of the terms and costs of a reverse mortgage loan. Federal and state law provides consumer disclosures and protection for mortgage loans and specifically for reverse mortgage loan transactions. These federal laws and regulations include the Truth in Lending Act (TILA),[4] Regulation Z,[5] and the Real Estate Settlement Procedures Act (RESPA).[6] For example, existing federal regulations[7] require independent third-party counseling prior to the closing of a HECM loan, which is designed to explain the nature of reverse mortgages, including the risks and costs and limitations on the origination fees for the mortgages. However, the counseling requirement only applies to HECM loans.

In Florida, the Office of Financial Regulation is responsible for the licensure and regulation of loan originators, mortgage broker businesses, and non-depository, mortgage lender businesses. State and federally chartered depository institutions and other specified entities are exempt from state licensure as a loan originator, mortgage broker, or as a mortgage lender under ch. 494, F.S. A person licensed or required to be licensed under parts I-III of ch. 494, F.S., is subject to

[3] AARP Foundation Reverse Mortgage Education Project, *More Costly Loans,* April 25, 2003.
[4] 15 U.S.C. 1601 et seq.
[5] 12 C.F.R. 226.1.
[6] 12 U.S.C. 2601 et seq., Regulation X, 24 CFR 3500.
[7] 24 C.F.R. 206.41.

administrative fines and penalties for violating any provision of parts I-III of ch. 494, F.S., RESPA, TILA, or any regulations adopted under such acts.[8]

Some lenders may engage in aggressive cross-selling of annuities or other insurance or financial products. Some financial service providers may encourage reverse mortgage borrowers to draw funds to purchase an annuity that might not be suitable for an elderly person. Some consumer advocates consider these practices to be predatory. The federal Housing and Economic Recovery Act of 2008 prohibits lenders from conditioning the extension of an HECM loan on a requirement that borrowers purchase any other financial or insurance product, except those that are usual and customary in mortgage lending, such as hazard or flood insurance.[9] However, this prohibition applies to HECMs.

III. Effect of Proposed Changes:

The bill provides the following additional consumer protections for reverse mortgages through a mortgage broker loan regulated under ch. 494, F.S.:

Counseling -- Requires a lender to provide a borrower with a list of at least five HUD-approved counseling agencies; requires counseling session to include information regarding the financial implications of a reverse mortgage loan and other options, and prohibits a lender from accepting a final application or collecting any fees from a prospective borrower until the borrower has completed such counseling.

Cross Selling -- Prohibits a lender from requiring an applicant to purchase an insurance or other similar financial product (excluding title insurance or hazard, flood, or other peril insurance) as a condition of obtaining a reverse mortgage.

Disclosures -- Requires the lender to provide a disclosure in plain language to the borrower, prior to the loan closing, the terms and conditions of the loan, such as the interest rate, the term of the loan, schedule of payments, and conditions under which repayment is triggered.

Fees -- Caps origination fees for proprietary programs at the same level as the federal Home Equity Mortgage Conversion program. The origination fee would be equal to 2.0 percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000 plus 1 percent of any portion of the maximum claim amount that is greater than $200,000, with a cap of $6,000.

The bill provides that this act will take effect January 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[8] Section 494.00255, F.S.
[9] 12 U.S.C. 1715z–20.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would provide additional disclosures and information a consumer could use in evaluating the appropriateness of a reverse mortgage loan. In addition, the bill caps the origination fees a borrower could be charged.

The provisions of this bill would impact proprietary reverse mortgage programs that are not following the HECM provisions (e.g., counseling, disclosure, and fees). Proprietary reverse mortgages represent less than 10 percent of all reverse mortgages. Federal laws and regulations currently subject the HECM program to the consumer protection provisions required in the bill.

C. Government Sector Impact:

Since reverse mortgages originated by a non-depository mortgage lender are subject to licensure and regulation by the Office of Financial Regulation under ch. 494, F.S., it is anticipated that this bill would have an insignificant fiscal impact on the OFR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 16, 2010:

- **Fees --** Caps origination fees for proprietary programs at the same level as the federal Home Equity Mortgage Conversion program. The origination fee would be equal to

2.0 percent of the maximum claim amount of the mortgage, up to a maximum claim amount of $200,000 plus 1 percent of any portion of the maximum claim amount that is greater than $200,000, with a cap of $6,000.

- **Disclosures –** Clarifies that proprietary reverse mortgage loans are subject to specific federal laws and regulations and the provisions of ch. 494, F.S.

B. Amendments:

None.