HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 845 Reverse Mortgage Loans to Senior Individuals
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Legg
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 1 N, As CS	Marra	Cooper
2)	Policy Council			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

A reverse mortgage is a type of loan that allows a senior homeowner to convert a portion of his or her home equity into cash. The lender advances money as a lump sum, in monthly payments or as a line of credit. The homeowner does not have to make monthly payments; rather, the total loan amount comes due upon certain occurrences, such as the homeowner's death or a sale of the home.

The Federal Housing Administration (FHA) insures reverse mortgages through the Home Equity Conversion Mortgage (HECM) program, which places certain requirements on disclosure, fees and counseling on lenders. Loans available under the HECM program are capped at $625,500. Homeowners seeking loans for amounts beyond that amount turn to proprietary reverse mortgage programs, which account for approximately 5 to 10 percent of the market. These loans are not subject to the HECM regulations and are only subject to general fair practice and disclosure requirements.

Consumer advocates have expressed concern that some borrowers may not fully understand the complexities of the terms and costs of a reverse mortgage loan. Additionally, reverse mortgages have given rise to claims of abuse. Such claims range from marketing reverse mortgages as "free money," or government programs for seniors, to aggressively cross-selling annuities or other insurance or financial products.

The bill would subject proprietary reverse mortgages to many of the same requirements that HECMs must meet, including those requiring counseling and disclosure of certain terms, prohibiting cross-selling, and limiting origination fees.

The bill may have an insignificant fiscal impact on the Office of Financial Regulation, which licenses and regulates non-depository mortgage lenders.

The bill provides an effective date of January 1, 2011.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A reverse mortgage is a type of loan that allows a homeowner to convert a portion of their home equity into cash. The lender advances money as a lump sum, in monthly payments or as a line of credit. The homeowner does not have to make monthly payments; rather, the total loan amount comes due upon certain occurrences, such as the homeowner's death or a sale of the home.

Generally, to be eligible for a reverse mortgage, a homeowner must be older than 62 years of age and must own his or her home with little to no outstanding liens. Because the transaction is equity-based, there are seldom income or credit qualifications.[1] Reverse mortgages are generally non-recourse loans, meaning that the borrower will never owe more than the value of the property.[2]

Equity conversion products, including reverse mortgages, have been around since the early 1960s and grew in popularity during the 1980s. In 1988, Congress created the Home Equity Conversion Mortgage (HECM) program, allowing the Federal Housing Administration (FHA) to insure reverse mortgages.[3] While HUD was originally limited to insuring 2,500 mortgages, the number of insured reverse mortgages had reached 425,000 by 2008.[4]

HECMs are only available through an FHA-approved lender and are subject to certain regulations; including:[5]

Borrower Eligibility 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

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[1] Tara Twomey, Subprime Revisited: How Reverse Mortgage Lenders Put Older Homeowners' Equity at Risk. National Consumer Law Center 2 (Oct. 2009).
[2] *See* Mortgage Letter 2008-38. If an estate or homeowner wishes to maintain ownership of the home, however, it must pay the loan balance, regardless of the home's value.
[3] 12 U.S.C. 1715z–20 and 24 C.F.R. 206.
[4] Twomey, *supra* n. 1 at 4-5.
[5] *See* U.S. Dept. of Housing and Urban Development. FHA Reverse Mortgages (HECMs) for Consumers. *Available at* http://www.hud.gov/offices/hsg/sfh/hecm/hecmabou.cfm.

Eligible Properties (must meet FHA requirements)
- Single family home or 1-4 unit home with one unit occupied by the borrower
- Manufactured home
- HUD-approved condominium

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

Mortgage Amount Based On:
- Age of the youngest borrower
- Current interest rate
- Lesser of appraised value or the HECM-FHA mortgage limit, currently $625,500.

Repayment – The loan becomes due and payable in full if:
- Borrower dies or sells home
- Borrower fails to live in the home for 12 consecutive months
- Borrower permanently moves to a new principal residence
- Borrower allows the property to deteriorate and fails to make necessary repairs
- Property taxes or hazard insurance are not paid or borrower violates other obligations

However, not all reverse mortgages are HECMs. Homeowners seeking loan amounts beyond the HECM maximum turn to proprietary programs. An accurate assessment of the number of proprietary reverse mortgages made does not exist. However, it is widely believed that proprietary reverse mortgages account for 5-10% of all reverse mortgages made. With the recent developments in the housing market and economy in general, this percentage may be smaller.[6]

These programs are not subject to the same restrictions as HECMs. They are, however, subject to basic federal creditor protection laws, including:

- Truth in Lending Act (TILA), as implemented by Regulation Z[7]
  - Requires disclosure of overall costs of credit.
  - Requires a disclosure of the "total annual cost" using three scenarios.

- Real Estate Settlement Procedures Act (RESPA)[8]
  - Requires disclosure of fees and charges in the real estate settlement process.
  - Prohibits kickbacks between settlement service providers.

- Fair Lending (Equal Credit Opportunity & Fair Housing acts)[9]
  - Prohibits discrimination in all aspects of credit transactions on certain prohibited bases.

- Unfair and Deceptive Acts or Practices (UDAP)[10]
  - Generally prohibits unfair or deceptive acts or practices in all aspects of the transaction.
  - Provides legal parameters for determining whether a particular act or practice is unfair or deceptive.

In Florida, the Office of Financial Regulation (OIR) 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

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[6] Twomey, *supra* n. 1 at 4-5.
[7] 15 U.S.C. 1601 *et seq*. and 12 C.F.R. 226.1.
[8] 12 U.S.C. 2601 *et seq*., Regulation X, 24 CFR 3500.
[9] 15 U.S.C. 1691 et *seq*., Regulation B, 12 CFR 202, and 42 U.S.C. 3601 *et seq.*
[10] Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a)

licensure. A person licensed or required to be licensed under parts I-III of ch. 494, F.S., is subject to 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.[11]

Consumer advocates have expressed concern that some borrowers may not fully understand the complexities of the terms and costs of a reverse mortgage loan.[12] Additionally, reverse mortgages have given rise to claims of abuse.[13] Such claims range from marketing reverse mortgages as "free money," or as a government program for seniors, to aggressively cross-selling annuities or other insurance or financial products.

Financial service providers may encourage borrowers to invest the reverse mortgage proceeds in an annuity, sometimes earning less than the interest mounting on the reverse mortgage and restricting the borrower's access to much-needed funds. 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.[14] However, this prohibition does not apply to proprietary reverse mortgage lenders.

<u>Proposed changes</u>

The bill limits originating reverse mortgages to Florida-licensed mortgage lenders and brokers.

The bill provides the following requirements for reverse mortgages:

- Prepayment must be allowed without penalty.
- Periodic advances to a borrower may not be reduced based on adjustments in the interest rate.
- The reverse mortgage may become due upon:
  - Death of the last mortgagor;
  - Sale or transfer of the home;
  - The borrowers' failure to occupy the home as a principal residence for more than 12 months; or
  - The borrowers' failure to perform an obligation under the mortgage.
- The lender may collect an origination fee of 2% of the maximum claim amount up to $200,000 and 1% of amounts greater than $200,000, subject to a maximum origination fee of $6,000.
- The lender must provide disclosures to the borrower before the loan closing, including information regarding the Interest rate, term of the loan, schedule of advancements, and conditions under which repayment is triggered. The Financial Services Commission is given rulemaking authority to require additional specific disclosures.
- The lender may not condition the reverse mortgage on the applicant purchasing an insurance annuity or other financial product, excluding those customary for mortgages. The lender or broker may not participate in or be associated with a party associated with another financial or insurance activity, unless it can demonstrate to the Office of Financial Regulation that it can ensure that cross selling will not occur.
- The borrower must receive financial counseling regarding reverse mortgages.
  - The lender must provide prospective borrowers with a list of 5 independent, HUD-approved counseling agencies, including at least 2 offering counseling by phone.
  - Counseling may be face to face or by phone.
  - Counseling must include financial and other implications of reverse mortgages and alternative options.

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[11] Section 494.00255, F.S.
[12] *See, e.g.,*Twomey, *supra* n. 1 at 1.
[13] *See, e.g.,* Sid Kirchheimer, Scam Alert: Reverse Mortgage Seduction, AARP Bulletin Today. (Feb. 9, 2009); Twomey, *supra* n. 1.
[14] 12 U.S.C. 1715z–20.

- The borrower may be charged a fee for the counseling, which may be financed under the loan.
- The lender may not accept a final application or collect any fees without receiving a certification that the applicant has received the requisite counseling.

The bill also provides that failure to comply with the requirements does not invalidate the loan agreement. However, the application of any other existing civil remedies at law is not precluded.

The bill provides an effective date of January 1, 2011.

B. SECTION DIRECTORY:

Section 1 creates a new, unnumbered section to provide definitions and requirements for reverse mortgage loans.

Section 2 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant fiscal impact on the Office of Financial Regulation, which licenses and regulates non-depository mortgage lenders.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides additional disclosure requirements that may help consumers choose a more cost-effective reverse mortgage.

The bill may impact proprietary reverse mortgage lenders not currently following HECM guidelines for disclosure.

D. FISCAL COMMENTS:

The bill may have an insignificant fiscal impact on the Office of Financial Regulation, which licenses and regulates non-depository mortgage lenders.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business and Financial Affairs Policy Committee met, adopted a strike-all amendment, and passed the bill as a Committee Substitute.

The Committee Substitute differs from the bill as follows:

- Changes definitions and loan requirements,
- Limits originators of reverse mortgages to those licensed by the state,
- Caps fees consistent with federal limits,
- Removes provisions granting treble damages for a lender's failure to make scheduled payments
- Removes provisions exempting reverse mortgages from laws in conflict with their purpose;
- Changes the effective date to January 1, 2011; and
- Clarifies that civil remedies available at law are **not** precluded by the act.