

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 Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1316

INTRODUCER: Budget Subcommittee on General Government Appropriations, Banking and Insurance Committee, and Senator Detert

SUBJECT: Loan Processing

DATE: April 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Frederick</u>	<u>DeLoach</u>	<u>BGA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill includes the following provisions relating to mortgage loan originators whose scope of work includes loan processing:

- Defines loan processing as it relates to mortgage lending.
- Allows licensed loan originators to work as contract loan processors or in-house loan processors.
- Authorizes the Nationwide Mortgage Licensing System and Registry to obtain independent credit reports on each of a mortgage lender’s control persons and share those reports with the Office of Financial Regulation (office).
- Makes technical conforming changes to chapter 494, Florida Statutes, required by the federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) of 2008.

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.00255, 494.00331, 494.0038, 494.00421, 494.00612 and 494.0067.

II. Present Situation:

The federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) was enacted in July 2008.¹ Under the SAFE Act, a loan processor who performs clerical or support duties at the direction and supervision of a state licensed loan originator is not required to be licensed. In

¹ Title V of P.L. 110-289.

2009, the Florida Legislature adopted the minimum standards of the SAFE Act.² The SAFE Act minimum standards adopted by the Florida Legislature did not distinguish between in-house loan processors and contract loan processors, as all loan processors are required to be licensed as loan originators under ch. 494, F.S. The definition of a loan originator under s. 494.001(14), F.S., includes "process[ing] a mortgage loan application." In-house and contract loan processors are captured under this provision. Licensure as a loan originator under ch. 494, F.S., and the SAFE Act includes pre-licensure education, testing, credit history screening, and criminal background checks. To renew a license, the licensee must pay a fee, meet continuing education requirements, and undergo a criminal background check on an annual basis. Section 494.00611, F.S., allows the department to not issue a loan originator license if the applicant has had a licensed revoked in any jurisdiction.

The SAFE Act also required the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry. Under the act, each mortgage lender must submit to the national mortgage licensing system and registry for the purpose of providing: uniform state licensing application and reporting requirements for residential mortgage loan originators; and a comprehensive database to find and track mortgage loan originators licensed by the states and mortgage loan originators that work for federally regulated depository institutions. Section 494.00612(e), F.S., allows the registry to obtain an independent credit report of a mortgage lender and provide the Office of Financial Regulation access to the reports.

In 2008, the U.S. Department of Housing and Urban Development (HUD) published its final rule amending parts of Regulation X of the Real Estate and Settlement Procedures Act (RESPA), substantially revising the Good Faith Estimate and required settlement disclosures.³ The new Good Faith Estimate became effective January 1, 2010, and no longer requires the borrower's signature. Further, the HUD has indicated that the form cannot be altered to include a signature block.⁴

III. Effect of Proposed Changes:

This bill defines "contract loan processor" as a licensed loan originator under s. 494.00312 F.S., who is an independent contractor for a mortgage broker or a mortgage lender and has on file with the Office of Financial Regulation a letter of intent to engage only in loan processing. These requirements are consistent with the SAFE Act.

The SAFE Act provides that "[e]ach mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require."⁵ Although the SAFE Act applies to individual loan originators, the national system is being designed so that the reports are submitted by the businesses on behalf of the loan originators. Florida's 2009 legislation implemented this requirement for mortgage brokers

² Ch. 2009-241.

³ RESPA: Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, 73 Fed. Reg. 22, 68204 (November 17, 2008).

⁴ See "New RESPA Rule FAQs (Updated 4-2-10)," Page 10, Question 28, available on HUD's website: http://www.hud.gov/offices/hsg/rmra/res/RESPA_hm.cfm.

⁵ Title V of P.L. 110-289 Sec. 1505(e).

(businesses) at s. 494.004(3), F.S., but it did not address it in the mortgage lenders' counterpart statute, s. 494.0067, F.S.⁶ This bill addresses this discrepancy with regard to compliance with the SAFE Act.

The bill authorizes the registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the office. This will allow the office to ensure those controlling persons have no discrepancies regarding their credit history.

The bill removes the requirement in s. 494.0038(3)(c), F.S., that the borrower must sign and date the good faith estimate of settlement charges upon receipt. This change will conform ch. 494, F.S., to the requirements of RESPA and changes made by the HUD to the good faith estimate form.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

It is not known how many individuals currently licensed as loan originators will choose to practice as in-house loan processors and forgo the annual application fees and licensure requirements of loan originators. According to the Office of Financial Regulation, the number is estimated to be insignificant.

C. Government Sector Impact:

The Office of Financial Regulation reports that, between October 1, 2010, and March 2, 2011, it received 15,549 applications for licensure as a loan originator, including 275 from applicants who were known to be contracted loan processors and, therefore, not

impacted by the bill. Of the remaining 15,274 individuals, it is unknown how many are actually in-house loan processors and may discontinue licensure as loan originators. According to the office, it is anticipated to be a small number of licensees and, therefore, the reduction in the amount of loan originator licensure revenue collected by the office would be minimal.

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/CS by General Government Appropriations on April 13, 2011

The committee substitute makes the following changes:

- Revises the definition of the term “borrower” to mean a person obligated to repay a mortgage loan and includes, but is not limited to, a coborrower or cosignor.
- Removes the licensure requirement for in-house loan processors.
- Changes the implementation date of the bill to July 1, 2011.

CS by Banking and Insurance on March 22, 2011

The CS makes the following changes:

- Clarifies the definition of “Contract Loan processor.”
- Requires all loan processors take part in the national registry.
- Allows for the denial of a license if the applicant had a previous licensed revoked in another jurisdiction.
- Authorizes the registry to obtain independent credit reports on lender’s control persons and share those reports with the Office.
- Changes the implementation date to January 1, 2012.

B. Amendments:

None.