

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 1316

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Loan Processing

DATE: March 23, 2011 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Office of Financial Regulation under the Financial Services Commission regulates mortgage loan originators whose scope of work includes loan processing.

The CS makes the following changes:

- Amends ch. 494, F.S., to define loan processing with regard to mortgage lending.
- Allows licensed loan originators to work as contract loan processors or in-house loan processors.
- Further streamlines license processing by creating an in-house loan processing license type with fewer requirements and lower fees than a loan originator license.
- Allows the department not to issue a license to an in-house loan processor applicant who has had a license revoked in any jurisdiction.
- Requires all loan processors enroll in the national registry.

- Authorizes the registry to obtain independent credit reports on each of a mortgage lender's control persons and share those reports with the Office.
- Makes technical conforming changes to ch. 494, F.S., required by the federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE) of 2008.

The CS creates the following sections of the Florida Statutes: 494.00314 and 494.00315.

The CS amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.0018, 494.0025, 494.00255, 494.00312, 494.00331, 494.0035, 494.0038, 494.00421, 494.00611, 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 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 not to 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 access to the reports.

In 2008, the 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),

¹ Title V of P.L. 110-289.

² Ch. 2009-241.

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, HUD has indicated that the form cannot be altered to include a signature block.⁴

III. Effect of Proposed Changes:

The CS 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 a letter of intent to engage only in loan processing. These requirements are consistent with the SAFE Act.

The CS creates an “in-house loan processor” license for individuals who are employed by a mortgage broker or a mortgage lender and engage only in loan processing. This license type will not be subject to the same licensing requirements of a loan originator but will still be required to pay an initial license fee and subsequent renewal fee and complete a background check. The CS allows the department not to issue a license to an in-house loan processor applicant who has had a license revoked in any jurisdiction. Creating this license type for this scope of work is a streamlining measure in line with the SAFE Act and does not decrease any consumer protections.

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 (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 The CS will correct this discrepancy with regard to compliance with the SAFE Act. The CS also requires all loan processors be enrolled in the national registry.

The CS 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 CS 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 HUD to the good faith estimate form.

The act shall take effect on January 1, 2012.

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).

6 Ch. 2009-241, L.O.F.

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:

The average cost savings for a new in-house loan processor license compared to a loan originator license is estimated to be \$600. The average cost saving for a renewal of an in-house loan processor license compared to a loan originator license is estimated to be \$225.⁷

B. Private Sector Impact:

Between October 1, 2010, and March 2, 2011, the Office received 15,549 loan originator applications. It is indeterminate how many licensed loan originators will opt for the in-house loan processor license. Given the in-house loan processor license does not require educational courses, there could be an impact on the schools that teach the licensure courses.

C. Government Sector Impact:

It is indeterminate what effect these changes could have. Due to the lesser requirements and lower fees more people may apply for the in-house loan processor license who otherwise would have applied for the costlier loan originator license. With the in-house loan processor license more people may choose to be licensed who previously were not licensed as loan originators to perform the scope of work.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷ Cost savings are the result of lower licensing fees and no educational or testing requirements.

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 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.