

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/SB 1316

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Loan Processing

DATE: April 7, 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>Pre-meeting</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.
- Creates an in-house loan processing license type with fewer requirements and lower fees than a loan originator license, in order to streamline license processing.
- Allows the department to not issue a license to an in-house loan processor applicant who has had a license revoked in any jurisdiction.
- Requires all loan processors to 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 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, 494.0018, 494.0025, 494.00255, 494.00312, 494.00331, 494.0035, 494.0038, 494.00421, 494.00611, 494.00612 and 494.0067.

The bill creates sections 494.00314 and 494.00315, Florida Statutes.

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 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.

¹ Title V of P.L. 110-289.

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.

The bill 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 requirements of a loan originator, but will require an initial license fee and subsequent renewal fee and the completion of a background check. The bill allows the department to not 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 This bill addresses this discrepancy with regard to compliance with the SAFE Act. The bill also requires all loan processors be enrolled in the national registry.

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, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

⁶ Ch. 2009-241, L.O.F.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

According to the Office of Financial Regulation, under the provisions of the bill, the estimated costs of fees associated with the licensure of the new in-house loan processor license will be \$188, as compared to the \$777 in costs of fees associated with the loan originator's license. The average annual renewal costs for an in-house loan processor's license will be \$135, as compared to the annual \$347 license renewal fees for loan originators.

B. Private Sector Impact:

Between October 1, 2010, and March 2, 2011, the Office of Financial Regulation 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.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
