

By the Committees on Budget Subcommittee on General Government Appropriations; and Banking and Insurance; and Senator Detert

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1 A bill to be entitled
2 An act relating to loan processing; amending s.
3 494.001, F.S.; creating and revising definitions;
4 deleting a redundant definition; amending s. 494.0011,
5 F.S.; specifying rulemaking powers of the Financial
6 Services Commission; amending s. 494.00255, F.S.;
7 including in-house loan processors in disciplinary
8 provisions; amending s. 494.00331, F.S.; providing
9 that specified provisions do not apply to a licensed
10 contract loan processor who has on file with the
11 office a declaration of intent to act solely as a
12 contract loan processor; deleting a definition;
13 providing restrictions on employment of persons
14 licensed as in-house loan processors; amending s.
15 494.0035, F.S.; clarifying provisions concerning the
16 operation of mortgage brokers; amending s. 494.0038,
17 F.S.; revising provisions relating to disclosure of
18 settlement charges and loan terms; amending s.
19 494.00421, F.S.; revising an agency reference in the
20 mortgage broker agreement; providing that a borrower
21 may contact the Office of Financial Regulation rather
22 than the Department of Financial Services regarding
23 any complaints against a loan originator; amending s.
24 494.00612, F.S.; requiring that in order to renew a
25 mortgage lender license a mortgage lender must
26 authorize the Nationwide Mortgage Licensing System and
27 Registry to obtain an independent credit report on
28 each of the mortgage lender's control persons;
29 amending s. 494.0067, F.S.; requiring each mortgage

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30 lender to submit certain reports to the registry as
31 may be required; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsections (1), (14), (25), and (26) of section
36 494.001, Florida Statutes, are amended, new subsections (5),
37 (11), and (17) are added to that section, present subsections
38 (5) through (9) are renumbered as subsections (6) through (10),
39 respectively, present subsections (10) through (14) are
40 renumbered as subsections (12) through (16), respectively,
41 present subsections (15) through (24) are renumbered as
42 subsections (18) through (27), respectively, and present
43 subsections (26) through (34) are renumbered as subsections (28)
44 through (36), respectively, to read:

45 494.001 Definitions.—As used in ss. 494.001-494.0077, the
46 term:

47 (1) "Borrower" means a person obligated to repay a mortgage
48 loan and includes, but is not limited to, a coborrower or
49 cosignor, ~~or guarantor~~.

50 (5) "Contract loan processor" means an individual who is
51 licensed under part II of this chapter as a loan originator, who
52 is an independent contractor for a mortgage broker or mortgage
53 lender, and who engages only in loan processing.

54 (11) "In-house loan processor" means an individual who is
55 an employee of a mortgage broker or a mortgage lender who
56 engages only in loan processing.

57 (16) ~~(14)~~ "Loan originator" means an individual who,
58 directly or indirectly, solicits or offers to solicit a mortgage

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59 loan, accepts or offers to accept an application for a mortgage
60 loan, negotiates or offers to negotiate the terms or conditions
61 of a new or existing mortgage loan on behalf of a borrower or
62 lender, ~~processes a mortgage loan application,~~ or negotiates or
63 offers to negotiate the sale of an existing mortgage loan to a
64 noninstitutional investor for compensation or gain. The term
65 includes an individual who is required to be licensed as a loan
66 originator under the activities of a loan originator as that
67 ~~term is defined in~~ the S.A.F.E. Mortgage Licensing Act of 2008,
68 ~~and an individual acting as a loan originator pursuant to that~~
69 ~~definition is acting as a loan originator for purposes of this~~
70 ~~definition.~~ The term does not include an employee of a mortgage
71 broker or mortgage lender whose duties are limited to who
72 ~~performs only administrative or clerical tasks, including~~
73 ~~quoting available interest rates,~~ physically handling a
74 completed application form, or transmitting a completed
75 application form to a lender on behalf of a prospective
76 borrower.

77 (17) "Loan processing" means:

78 (a) Receiving, collecting, distributing, and analyzing
79 information common for the processing of a mortgage loan; or

80 (b) Communicating with a consumer to obtain information
81 necessary for the processing of a mortgage loan if such
82 communication does not include offering or negotiating loan
83 rates or terms, or counseling consumers about residential
84 mortgage loan rates or terms.

85 ~~(25) "Person" has the same meaning as in s. 1.01.~~

86 (28)~~(26)~~ "Principal loan originator" means the licensed
87 loan originator in charge of, and responsible for, the operation

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88 of a mortgage lender or mortgage broker, including all of the
89 activities of the mortgage lender's or mortgage broker's loan
90 originators, in-house loan processors, and branch managers,
91 whether employees or independent contractors.

92 Section 2. Subsection (2) of section 494.0011, Florida
93 Statutes, is amended to read:

94 494.0011 Powers and duties of the commission and office.—

95 (2) ~~To administer ss. 494.001-494.0077,~~ The commission may
96 adopt rules to administer parts I, II, and III of this chapter,
97 including rules:

98 (a) Requiring electronic submission of any forms,
99 documents, or fees required by this act.

100 (b) Relating to compliance with the S.A.F.E. Mortgage
101 Licensing Act of 2008, including rules to:

102 1. Require loan originators, mortgage brokers, mortgage
103 lenders, and branch offices to register through the registry.

104 2. Require the use of uniform forms that have been approved
105 by the registry, and any subsequent amendments to such forms if
106 the forms are substantially in compliance with the provisions of
107 this chapter. Uniform forms that the commission may adopt
108 include, but are not limited to:

109 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

110 b. Uniform Mortgage Biographical Statement & Consent Form,
111 MU2.

112 c. Uniform Mortgage Branch Office Form, MU3.

113 d. Uniform Individual Mortgage License/Registration &
114 Consent Form, MU4.

115 3. Require the filing of forms, documents, and fees in
116 accordance with the requirements of the registry.

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117 4. Prescribe requirements for amending or surrendering a
118 license or other activities as the commission deems necessary
119 for the office's participation in the registry.

120 5. Prescribe procedures that allow a licensee to challenge
121 information contained in the registry.

122 6. Prescribe procedures for reporting violations of this
123 chapter and disciplinary actions on licensees to the registry.

124 (c) Establishing time periods during which a loan
125 originator, mortgage broker, or mortgage lender license
126 applicant under part II or part III is barred from licensure due
127 to prior criminal convictions of, or guilty or nolo contendere
128 pleas by, any of the applicant's control persons, regardless of
129 adjudication.

130 1. The rules must provide:

131 a. Permanent bars for felonies involving fraud, dishonesty,
132 breach of trust, or money laundering;

133 b. A 15-year disqualifying period for felonies involving
134 moral turpitude;

135 c. A 7-year disqualifying period for all other felonies;
136 and

137 d. A 5-year disqualifying period for misdemeanors involving
138 fraud, dishonesty, or any other act of moral turpitude.

139 2. The rules may provide for an additional waiting period
140 due to dates of imprisonment or community supervision, the
141 commitment of multiple crimes, and other factors reasonably
142 related to the applicant's criminal history.

143 3. The rules may provide for mitigating factors for crimes
144 identified in sub-subparagraph 1.b. However, the mitigation may
145 not result in a period of disqualification less than 7 years.

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146 The rule may not mitigate the disqualifying periods in sub-
147 subparagraphs 1.a., 1.c., and 1.d.

148 4. An applicant is not eligible for licensure until the
149 expiration of the disqualifying period set by rule.

150 5. Section 112.011 is not applicable to eligibility for
151 licensure under this part.

152 Section 3. Subsections (3), (4), (5), and (6) of section
153 494.00255, Florida Statutes, are amended, and paragraph (m) of
154 subsection (1) of that section is reenacted, to read:

155 494.00255 Administrative penalties and fines; license
156 violations.—

157 (1) Each of the following acts constitutes a ground for
158 which the disciplinary actions specified in subsection (2) may
159 be taken against a person licensed or required to be licensed
160 under part II or part III of this chapter:

161 (m) In any mortgage transaction, violating any provision of
162 the federal Real Estate Settlement Procedures Act, as amended,
163 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
164 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
165 under such acts.

166 (3) A mortgage broker or mortgage lender, as applicable, is
167 subject to the disciplinary actions specified in subsection (2)
168 for a violation of subsection (1) by:

169 (a) A control person of the mortgage broker or mortgage
170 lender; ~~or~~

171 (b) A loan originator employed by or contracting with the
172 mortgage broker or mortgage lender; or

173 (c) An in-house loan processor who is an employee of the
174 mortgage broker or mortgage lender.

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175 (4) A principal loan originator of a mortgage broker is
176 subject to the disciplinary actions specified in subsection (2)
177 for violations of subsection (1) by a loan originator or an in-
178 house loan processor in the course of an association with the
179 mortgage broker if there is a pattern of repeated violations by
180 the loan originator or in-house loan processor or if the
181 principal loan originator has knowledge of the violations.

182 (5) A principal loan originator of a mortgage lender is
183 subject to the disciplinary actions specified in subsection (2)
184 for violations of subsection (1) by a loan originator or an in-
185 house loan processor in the course of an association with a
186 mortgage lender if there is a pattern of repeated violations by
187 the loan originator or in-house loan processor or if the
188 principal loan originator has knowledge of the violations.

189 (6) A branch manager is subject to the disciplinary actions
190 specified in subsection (2) for violations of subsection (1) by
191 a loan originator or an in-house loan processor in the course of
192 an association with the mortgage broker or mortgage lender if
193 there is a pattern of repeated violations by the loan originator
194 or in-house loan processor or if the branch manager has
195 knowledge of the violations.

196 Section 4. Section 494.00331, Florida Statutes, is amended
197 to read:

198 494.00331 Loan originator and loan processor employment.—

199 (1) LOAN ORIGINATORS.—An individual may not act as a loan
200 originator unless he or she is an employee of, or an independent
201 contractor for, a mortgage broker or a mortgage lender, and may
202 not be employed by or contract with more than one mortgage
203 broker or mortgage lender, or either simultaneously.

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204 (2) CONTRACT LOAN PROCESSORS.~~Subsection (1) However, this~~
205 ~~provision~~ does not apply to a contract loan processor who has a
206 declaration of intent to act solely as a contract loan processor
207 on file with the office. The declaration of intent must be on a
208 form as prescribed by commission rule ~~any licensed loan~~
209 ~~originator who acts solely as a loan processor and contracts~~
210 ~~with more than one mortgage broker or mortgage lender, or either~~
211 ~~simultaneously.~~

212 ~~(2) For purposes of this section, the term "loan processor"~~
213 ~~means an individual who is licensed as a loan originator who~~
214 ~~engages only in:~~

215 ~~(a) The receipt, collection, distribution, and analysis of~~
216 ~~information common for the processing or underwriting of a~~
217 ~~residential mortgage loan; or~~

218 ~~(b) Communication with consumers to obtain the information~~
219 ~~necessary for the processing or underwriting of a loan, to the~~
220 ~~extent that such communication does not include offering or~~
221 ~~negotiating loan rates or terms or does not include counseling~~
222 ~~consumers about residential mortgage loan rates or terms.~~

223 ~~(3) A person may not act as a loan processor unless the~~
224 ~~person is licensed as a loan originator under this chapter and~~
225 ~~has on file with the office a declaration of intent to engage~~
226 ~~solely in loan processing. The declaration of intent must be on~~
227 ~~such form as prescribed by the commission by rule.~~

228 (a)(4) ~~A loan originator that currently has a declaration~~
229 ~~of intent to engage solely in loan processing on file with the~~
230 ~~office may withdraw his or her declaration of intent to engage~~
231 ~~solely in loan processing. The withdrawal of declaration of~~
232 ~~intent must be on such form as prescribed by commission rule.~~

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233 (b)~~(5)~~ A declaration of intent or a withdrawal of
234 declaration of intent is effective upon receipt by the office.

235 (c)~~(6)~~ The fee earned by a contract loan processor may be
236 paid to the company that employs the loan processor without
237 violating the restriction in s. 494.0025(8)~~(7)~~ requiring fees or
238 commissions to be paid to a licensed mortgage broker or mortgage
239 lender or a person exempt from licensure under this chapter.

240 (3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as
241 an in-house loan processor unless he or she is an employee of a
242 mortgage broker or a mortgage lender and may not be employed by
243 more than one mortgage broker or mortgage lender, or either,
244 simultaneously. An in-house loan processor must work at the
245 direction of and be subject to the supervision and instruction
246 of a loan originator licensed under this part.

247 Section 5. Subsection (1) of section 494.0035, Florida
248 Statutes, is amended to read:

249 494.0035 Principal loan originator and branch manager for
250 mortgage broker.—

251 (1) Each mortgage broker must be operated by a principal
252 loan originator who shall have full charge, control, and
253 supervision of the mortgage broker ~~business~~. The principal loan
254 originator must have been licensed as a loan originator for at
255 least 1 year before being designated as the principal loan
256 originator, or must demonstrate to the satisfaction of the
257 office that he or she has been actively engaged in a mortgage-
258 related ~~mortgage broker-related~~ business for at least 1 year
259 before being designated as a principal loan originator. Each
260 mortgage broker must keep the office informed of the person
261 designated as the principal loan originator as prescribed by

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262 commission rule. If the designation is inaccurate, the mortgage
263 broker business shall be deemed to be operated under the full
264 charge, control, and supervision of each officer, director, or
265 ultimate equitable owner of a 10-percent or greater interest in
266 the mortgage broker, or any other person in a similar capacity.
267 A loan originator may not be a principal loan originator for
268 more than one mortgage broker at any given time.

269 Section 6. Paragraph (c) of subsection (3) of section
270 494.0038, Florida Statutes, is amended to read:

271 494.0038 Loan origination and mortgage broker fees and
272 disclosures.—

273 (3) At the time a written mortgage broker agreement is
274 signed by the borrower or forwarded to the borrower for
275 signature, or at the time the mortgage broker business accepts
276 an application fee, credit report fee, property appraisal fee,
277 or any other third-party fee, but at least 3 business days
278 before execution of the closing or settlement statement, the
279 mortgage broker shall disclose in writing to any applicant for a
280 mortgage loan the following information:

281 (c) A good faith estimate that discloses settlement charges
282 and loan terms, ~~signed and dated by the borrower, which~~
283 ~~discloses the total amount of each of the fees the borrower may~~
284 ~~reasonably expect to pay if the loan is closed, including, but~~
285 ~~not limited to, fees earned by the mortgage broker, lender fees,~~
286 ~~third party fees, and official fees, together with the terms and~~
287 ~~conditions for obtaining a refund of such fees, if any.~~

288 1. Any amount collected in excess of the actual cost shall
289 be returned within 60 days after rejection, withdrawal, or
290 closing.

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291 2. At the time a good faith estimate is provided to the
292 borrower, the loan originator must identify in writing an
293 itemized list that provides the recipient of all payments
294 charged the borrower, which, except for all fees to be received
295 by the mortgage broker, may be disclosed in generic terms, such
296 as, but not limited to, paid to lender, appraiser, officials,
297 title company, or any other third-party service provider. This
298 requirement does not supplant or is not a substitute for the
299 written mortgage broker agreement described in subsection (1).
300 The disclosure required under this subparagraph must be signed
301 and dated by the borrower.

302 Section 7. Paragraph (a) of subsection (7) of section
303 494.00421, Florida Statutes, is amended to read:

304 494.00421 Fees earned upon obtaining a bona fide
305 commitment.—Notwithstanding the provisions of ss. 494.001-
306 494.0077, any mortgage broker which contracts to receive a loan
307 origination fee from a borrower upon obtaining a bona fide
308 commitment shall accurately disclose in the mortgage broker
309 agreement:

310 (7) (a) The following statement, in at least 12-point
311 boldface type immediately above the signature lines for the
312 borrowers:

313 “You are entering into a contract with a mortgage broker to
314 obtain a bona fide mortgage loan commitment under the same terms
315 and conditions as stated hereinabove or in a separate executed
316 good faith estimate form. If the mortgage broker obtains a bona
317 fide commitment under the same terms and conditions, you will be
318 obligated to pay the loan origination fees even if you choose
319 not to complete the loan transaction. If the provisions of s.

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320 494.00421, Florida Statutes, are not met, the loan origination
321 fee can only be earned upon the funding of the mortgage loan.
322 The borrower may contact the Office of Financial Regulation
323 ~~Department of Financial Services~~, Tallahassee, Florida,
324 regarding any complaints that the borrower may have against the
325 loan originator. The telephone number of the office ~~department~~
326 is: ...(insert telephone number)...."

327 Section 8. Paragraph (e) of subsection (1) of section
328 494.00612, Florida Statutes, is amended to read:

329 494.00612 Mortgage lender license renewal.-

330 (1) In order to renew a mortgage lender license, a mortgage
331 lender must:

332 (e) Authorize the registry to obtain an independent credit
333 report on each of the mortgage lender's control persons ~~lender~~
334 from a consumer reporting agency, and transmit or provide access
335 to the report to the office. The cost of the credit report shall
336 be borne by the licensee.

337 Section 9. Subsection (13) is added to section 494.0067,
338 Florida Statutes, to read:

339 494.0067 Requirements of mortgage lenders.-

340 (13) Each mortgage lender shall submit to the registry
341 reports of condition which are in a form and which contain such
342 information as the registry may require.

343 Section 10. This act shall take effect July 1, 2011.