HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Loan Processing
SPONSOR(S): Insurance & Banking Subcommittee, Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Barnum	Cooper
2) Rulemaking & Regulation Subcommittee	14 Y, 0 N	Miller	Rubottom
3) Government Operations Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Housing and Economic Recovery Act of 2008 was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E.". The intent is to provide greater accountability and regulation of loan originators. In 2009, the state became compliant with S.A.F.E.

The Office of Financial Regulation is responsible for loan originator licensure and annual renewal. The process includes confirming completion of educational requirements, conducting criminal history background checks, and reviewing credit histories.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. Current law provides an exception for "loan processors," who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies. S.A.F.E. requires licensure of contract loan processors as loan originators.

The bill distinguishes between in-house loan processors and contract loan processors, and creates a new type of license, unique to in-house loan processors.

The bill specifies that those applying for licensure as an in-house loan processor must comply with some, but not all, of the requirements which must be met for licensure as a loan originator. Applicants must submit fingerprints and undergo a state and federal criminal history background check. However, there is no pre-licensure education requirement or requirement for release of a credit report or a credit history.

The bill requires that applicants for initial licensure or renewal must submit a nonrefundable fee of $100 or $75 respectively, while similar fees for loan originators are $195 and $150. In-house loan processors are not subject to the $20 nonrefundable fee required of loan originators for deposit into the Mortgage Guaranty Trust Fund.

The bill requires direction and supervision of an in-house loan processor by a state-licensed loan originator.

Individuals currently licensed as loan originators who wish to be licensed as in-house loan processors, will be subject to fewer regulatory requirements and lower fees.

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by S.A.F.E., the bill removes the requirement for the borrower to sign and date the good faith estimate.

The bill codifies a requirement of S.A.F.E. that a mortgage lender submit reports of mortgage activity and financial information to the Nationwide Mortgage Licensing System and Registry.

The bill should have a positive fiscal impact on the private sector. The fiscal impact on state government is indeterminate.

The bill provides for an effective date of January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The Housing and Economic Recovery Act of 2008[1] was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E.". The intent of S.A.F.E. is to provide greater accountability and regulation of loan originators, defined to include mortgage brokers and lenders, and enhance consumer protections by:

- Providing uniform license applications and reporting requirements for state-licensed loan originators.
- Providing a comprehensive licensing and supervisory database.
- Aggregating and improving the flow of information to and between regulators.
- Providing increased accountability and tracking of loan originators.
- Streamlining the licensing process and reducing the regulatory burden.
- Enhancing consumer protections and supporting anti-fraud measures.
- Providing consumers with easily accessible information, offered at no charge, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending.
- Facilitating the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.[2]

S.A.F.E. establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. It defines the term, "loan originator," to mean an individual who takes loan applications and offers or negotiates terms of a loan for compensation.

S.A.F.E. requires that states participate in a national licensing registry, the Registry, which has been developed by the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators. It contains employment history, as well as disciplinary and enforcement actions against loan originators, and provides for free consumer access to this information.

S.A.F.E requires loan originators, which include mortgage brokers and lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

In 2009, the Legislature enacted and the Governor approved legislation bringing the state into compliance with the S.A.F.E. Mortgage Licensing Act of 2008.[3] The law requires licensure of individual loan originators, plus mortgage broker businesses and mortgage lender businesses. Loan originators employed by or contracting with a mortgage lender are subject to licensure.

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[1] H.R. 3221, Public Law 110-289

[2] H.R. 3221, Public Law 110-289, Title V, sec. 1502

[3] Chapter 2009-241, Laws of Florida

Licensure as a loan originator[4] includes the following requirements:

- Twenty (20) hours of pre-licensure education through Registry authorized providers and satisfactory completion of a test authorized by the Registry. The course content is specified by the Registry.
- Eight (8) hours of prescribed Continuing Education Units every year through Registry authorized providers.
- Submission of fingerprints to the Office of Financial Regulation (OFR) and the Registry. The cost associated with fingerprinting is the responsibility of the individual.
- An independent credit report to be reviewed by the Registry and OFR. The cost associated with the credit report is the responsibility of the individual.
- A state and federal criminal history background check.
- A demonstration of character, general fitness, and financial responsibility such as to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently.

When applying for licensure as a loan originator, an individual must submit a nonrefundable application fee of $195. At the time of annual renewal, a nonrefundable fee of $150 must be submitted. There is an additional $30 fee for initial set-up in the Registry, plus a $30 annual processing fee at the time of renewal. In addition, at the time of initial application and renewal, the individual must submit a $20 nonrefundable fee to be deposited into the Mortgage Guaranty Trust Fund.[5] That fund was established to compensate persons, in specific circumstances, who have suffered monetary damages because of a violation of ch. 494, F.S., by a licensed individual or business.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. Current law provides an exception for “loan processors,” who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies.

Current law does not differentiate between in-house loan processors and contract loan processors.[6] A loan processor needs to be licensed as a loan originator and, in addition, have a “declaration of intent” filed with the OFR, if (s)he wishes to engage solely in loan processing and work for multiple employers. If a loan processor wishes to return to standard loan origination activities, the individual can withdraw the declaration of intent.[7]

When executing a written mortgage broker agreement, current law requires that the mortgage broker disclose, in writing, to any applicant for a mortgage loan, a good faith estimate of the total amount of each of the fees the borrower may reasonably expect to pay if the loan is closed. These include fees earned by the mortgage broker, lender fees, third-party fees, and official fees, together with the terms and conditions for obtaining a refund of such fees, if any. Except for all fees to be received by the mortgage broker, they may be disclosed in generic terms. The good faith estimate must be signed and dated by the borrower.[8]

The Department of Housing and Urban Development requires that loan originators provide borrowers with a standardized good faith estimate using a prescribed form.[9] The form does not contain a signature block and cannot be altered or modified to accommodate a signature block with date.[10]

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[4] s. 494.00312, F.S.

[5] s. 494.00172, F.S.

[6] An in-house loan processor is an employee of a mortgage broker or mortgage lender, while a contract loan processor provides services as an independent contractor.

[7] s. 494.00331, F.S.

[8] s. 494.0038(3)(c), F.S.

[9] http://hud.gov/offices/hsg/ramh/res/respa_hm.cfm (Last visited on March 10, 2011)

[10] 24 CFR 3500 App C (Instructions for Completing Good Faith Estimate (GFE) Form

Effect of the bill:

The bill creates a new type of license, unique to in-house loan processors. In so doing, it clearly defines "loan processing" as:

- Receipt, collection, distribution, and analysis of information common for the processing of a mortgage loan.
- Communicating with a consumer to obtain the information necessary for the processing of a mortgage loan.

Equally important, the bill makes clear that loan processing does not include offering or negotiating rates or terms, or providing counseling to consumers regarding residential mortgage loan rates or terms.

The bill, through definitions, distinguishes between in-house loan processors and contract loan processors. Making this distinction is essential because S.A.F.E. requires licensing of contract loan processors as loan originators.[11]

The bill specifies that those applying for licensure as an in-house loan processor must comply with some, but not all, of the requirements which must be met for licensure as a loan originator. In addition to reduced requirements, the fees are also reduced. Like a loan originator applicant, an individual must submit fingerprints and undergo a state and federal criminal history background check. Costs associated with fingerprint processing and retention are borne by the applicant. Consistent with the loan originator requirements, in-house loan processor licensure or renewal may be denied if the person is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude. An individual who has had a loan originator or in-house loan processor license, or its equivalent, revoked in any jurisdiction, cannot be licensed as an in-house loan processor.

Unlike the loan originator, the in-house loan processor applicant has no pre-licensure education requirement, nor must the individual undergo educational testing as part of the licensure process. In like manner, there is no requirement for release of a credit report or a credit history to be reviewed by the OFR, nor is continuing education required for the annual license renewal.

While applicants for initial licensure or renewal as an in-house loan processor must submit a nonrefundable application fee of $100 or $75 respectively, similar fees for loan originators are $195 and $150. In-house loan processors are not subject to the $20 nonrefundable fee required of loan originators for deposit into the Mortgage Guaranty Trust Fund.

While performing clerical or support duties as an employee of a mortgage broker or mortgage lender, the bill requires direction and supervision of an in-house loan processor by a state-licensed loan originator. That loan originator is subject to disciplinary actions for work-related activities of the in-house loan processor (s)he is supervising.

The bill amends s. 494.0011(2), F.S., to extend the rulemaking authority of the Financial Services Commission to the licensing and regulation of in-house loan processors. Revisions to s. 494.0018 and s. 494.0025, F.S., subject unlicensed in-house loan processors to administrative fines and penalties but not to criminal sanctions.

Under the provisions of the bill, individuals currently licensed as loan originators, but performing as in-house loan processors, will be subject to fewer requirements and lower fees should they desire to become licensed as in-house loan processors at their next annual license renewal. The bill provides for less regulation and lower costs for an individual seeking initial licensure in order to be qualified to perform loan processing as an employee of a mortgage broker or mortgage lender.

[11] H.R. 3221, Public Law 110-289, Title V, sec. 1504

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by S.A.F.E., the bill removes the requirement for the borrower to sign and date the good faith estimate.

The bill codifies a requirement of S.A.F.E. that a mortgage lender submit "reports of condition"[12] to the Nationwide Mortgage Licensing System and Registry.[13]

The bill provides for an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.001, F.S., by creating and revising definitions.

Section 2. Amends s. 494.0011, F.S., by specifying the rulemaking powers authorized to the Financial Services Commission extend to in-house loan processors.

Section 3. Amends s. 494.0018, F.S., by revising cross-references so that acting as an in-house loan processor without a current license is not punishable as a criminal offense.

Section 4. Amends s. 494.0025, F.S., by revising prohibited activities to include in-house loan processors.

Section 5. Amends s. 494.00255, F.S., by including in-house loan processors under those subject to administrative penalties and fines for license violations.

Section 6. Amends s. 494.00312, F.S., by revising the circumstances under which a loan originator license may not be issued.

Section 7. Creates s. 494.00314, F.S., providing application and processing requirements for an in-house loan processor license.

Section 8. Creates s. 494.00315, F.S., providing application and processing requirements for an in-house loan processor license renewal.

Section 9. Amends s. 494.00331, F.S., by revising provisions relating to employment as a loan processor to include distinctions between employment as a contract loan processor and as an in-house loan processor.

Section 10. Amends s. 494.0035, F.S., by clarifying language concerning the operation of a mortgage broker.

Section 11. Amends s. 494.0038, F.S., by revising provisions relating to a good faith estimate.

Section 12. Amends s. 494.00421, F.S., by revising an agency reference.

Section 13. Amends s. 494.00611, F.S., by revising the circumstances under which a mortgage lender license may not be issued.

Section 14. Amends s. 494.00612, F.S., by clarifying a mortgage lender license renewal requirement.

Section 15. Amends s. 494.0067, F.S., by requiring each mortgage lender to submit reports of condition.

Section 16. Provides an effective date of January 1, 2012.

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[12] Reports of condition contain mortgage activity and financial information.

[13] H.R. 3221, Public Law 110-289, Title V, sec. 1505

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See FISCAL COMMENTS.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An individual currently licensed as loan originator, but performing as an in-house loan processor, will pay $95 less in fees should (s)he desire to become licensed as an in-house loan processor at the time of license renewal. In addition, annual cost avoidance related to continuing education equates to approximately $100. For an individual joining the industry for the first time as an in-house loan processor, the cost would be approximately $540 less than under current law. For both individuals there would be a savings of approximately $195 at the time of annual license renewal.[14]

D. FISCAL COMMENTS:

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 who are known to be contract loan processors and therefore not affected by the bill.[15] Of the remaining 15,274 individuals, it cannot be determined how many are performing as in-house loan processors, nor how many would desire to change to the new category of licensee with lower fees. The number of new-to-the-industry applicants which could result from the lower costs and fewer licensure requirements, with associated application fees and processing workload, is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

[14] Savings are a result of lower application fees, no education and/or testing requirements, and no annual requirement for the $20 payment into the Mortgage Guarantee Trust Fund. Pre-licensure courses plus testing average $460, and the cost for 8 hours of continuing education courses averages $102.

[15] OFR e-mail dated March 9, 2011 on file with the Insurance & Banking Subcommittee.

B. RULE-MAKING AUTHORITY:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[16] Rulemaking authority is delegated by the Legislature[17] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[18] a rule. Agencies do not have discretion whether to engage in rulemaking.[19] To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.[20] The grant of rulemaking authority itself need not be detailed.[21] The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[22]

The bill incorporates in-house loan processor licensing and regulation into the general rulemaking authority of the Financial Services Commission under s. 494.0011(2), F.S. The present statute provides significant and specific guidance to the Commission for developing rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[16] s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[17] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[18] s. 120.52(17), F.S.
[19] s. 120.54(1)(a), F.S.
[20] s. 120.52(8) & s. 120.536(1), F.S.
[21] *Save the Manatee Club, Inc.*, supra at 599.
[22] *Sloban v. Florida Board of Pharmacy*,982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).