

FINAL BILL ANALYSIS

BILL #: CS/CS/SB 1316

FINAL HOUSE FLOOR ACTION:
116 Y's 1 N's

SPONSOR: Sen. Detert (Rep. Workman)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/HB 823

SUMMARY ANALYSIS

CS/CS/SB 1316 passed the House on May 6, 2011. The bill was approved by the Governor on May 31, 2011, chapter 2011-71, Laws of Florida, and becomes effective July 1, 2011.

The bill distinguishes between in-house loan processors, who will no longer require licensure, and contract loan processors. It requires direction and supervision of an in-house loan processor by a state-licensed loan originator.

While retaining the requirement that a good faith estimate be provided to an individual applying for a mortgage loan, as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (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 provides that real estate brokers are not subject to licensure as loan originators unless they are compensated by a lender, mortgage broker, or other loan originator, or by an agent of such parties.

The bill may have an insignificant fiscal impact on the Office of Financial Regulation. The bill should have a positive fiscal impact on the private sector.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background:

The Housing and Economic Recovery Act of 2008¹ 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

¹ H.R. 3221, Public Law 110-289

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

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.

Licensure as a loan originator⁴ 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

³ Chapter 2009-241, Laws of Florida

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.

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

Effect of the bill:

The bill 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

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.

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 that real estate brokers are not subject to licensure as loan originators unless they are compensated by a lender, mortgage broker, or other loan originator, or by an agent of such parties.

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

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

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

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:

The bill is likely to have a positive fiscal impact on the private sector. An individual currently licensed as loan originator, but performing as an in-house loan processor, will pay \$200 less in fees should (s)he desire to become 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 \$735 less than under current law.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. The number of licensees who may opt to discontinue licensure as loan originators is unknown, however, it is anticipated to be small. Therefore, the bill may have an insignificant fiscal impact on the Office of Financial Regulation.

¹⁴ Savings are a result of no application fees, no education and/or testing requirements, no fees associated with the Registry, 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.