

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 Committee on Banking and Insurance

BILL: SB 1490

INTRODUCER: Senator Garcia

SUBJECT: Financial Institution Records

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			GO	
3.			FP	

I. Summary:

SB 1490 clarifies that the Office of Financial Regulation (OFR), is not prevented or restricted from providing otherwise confidential information to any Federal Home Loan Bank (FHLB) or any state, federal, or foreign agency responsible for the regulation or supervision of financial institutions. This change reflects the FHLBs' status as not being a regulator of federal financial institutions. The bill also requires the OFR to make reports of examinations (and other information relating to a FHLB member's condition) available to the FHLB.

The Federal Home Loan Bank (FHLB) System is a government-sponsored enterprise designed to support residential mortgage lending and community investment at the local level by providing primary mortgage liquidity (direct loans) to member financial institutions. Currently, there are over 7,300 members located in 11 regions of the country. Each member (typically a bank, thrift, credit union, or insurance company) is a shareholder in one or more of the regional FHLBs, which are privately capitalized, separate corporate entities managed within a framework established by the Federal Housing Finance Agency. Collectively, the FHLBs have been described as the largest provider of mortgage credit in the U.S. In essence, they are the "bankers' banks."

As one of the conditions for FHLB membership eligibility, federal law requires that the financial institutions agree that state and federal examination reports be provided to the FHLBs in order to determine the financial condition of the financial institution. The scope of the OFR examinations of Florida chartered financial institutions includes an evaluation of the institutions' financial condition and compliance with state and federal requirements for safety and soundness. The OFR examination reports contain highly sensitive financial information, and in some instances, may result in a corrective or enforcement action. Currently, the Codes generally provide that OFR records related to investigations and reports of examination, operations, or condition are confidential and exempt from public records disclosure, with certain exceptions. One such exception states that the OFR is not prevented or restricted from furnishing records or

information to “any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks.” However, the current law does not specify that the OFR provide examination reports or information regarding the financial condition of FHLB members to those agencies or to the FHLBs. Secondly, the FHLBs are not federal financial institution regulators, resulting in some uncertainty regarding the OFR’s ability to share confidential supervisory information with the FHLBs. While the OFR currently has information-sharing agreements with other federal financial institution regulators, it does not have any such agreements with the FHLBs.

II. Present Situation:

U.S. Banking System

The U.S. dual banking system allows commercial banks to become chartered under either federal or state law. National banks are chartered under federal law, i.e., the National Bank Act.¹ Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.

State-chartered banks are chartered under the laws of the state in which the bank is headquartered. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB). The primary federal regulator for non-FRB member banks is the Federal Deposit Insurance Corporation (FDIC).² Credit unions may also be either state or federally chartered. Their primary federal regulator is the National Credit Union Administration.

Office of Financial Regulation

In Florida, the Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes).³ The OFR does not regulate financial institutions that are nationally chartered or chartered in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida.

The OFR ensures Florida-chartered financial institutions’ compliance with state and federal requirements for safety and soundness.⁴ Like their federal counterparts, the OFR conducts

¹ The act give enumerated powers and “all such incidental powers as shall be necessary to carry on the business of banking” to nationally chartered banks.” [12 U.S.C. s. 24 Seventh]

² 12 U.S.C. s. 1813(q).

³ Chs. 655, 657, 658, 660, 663, 665, 667, F.S.

⁴ While the Codes do not specifically define “safety and soundness,” s. 655.005(1)(y), F.S., defines “unsafe and unsound practice” as “any practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.”

regular examinations of Florida institutions. The Codes require the OFR to conduct examinations of each Florida financial institution during each 18-month period, although it may examine more frequently based on the institution's risk profile, prior exam history, or significant changes in the institution or its operations.⁵ The examinations primarily review the institution's condition as to its Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity (such as interest rate risk), based on a uniform supervisory rating system (CAMELS) that is used by state and federal financial institution regulators to classify a financial institution's overall condition.⁶ Upon completion of the examination, the regulator presents its findings and recommended corrective measures to the institution through a highly confidential examination report.⁷

Confidentiality of records and information

Currently, s. 655.057, F.S., governs the confidentiality of records and information relating to investigations; informal enforcement actions; trade secrets; and reports of examination, operations, or condition, including working papers prepared by, or for the use of, the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida. The statute generally provides that, except as otherwise provided in that section and except for such portions thereof that are otherwise public record, OFR records related to investigations and reports of examination, operations, or condition are confidential and exempt from s. 119.07(1), F.S. Subsection (5) of the current statute states that s. 655.057, F.S., does not prevent or restrict the OFR from "furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks." However, the current statute does not clearly require or mandate that the OFR provide records or information relating to investigations, informal enforcement actions, trade secrets, and reports of examination, operations, or condition to any other agency, or any Federal Home Loan Bank.

The OFR routinely shares confidential supervisory information with other federal and state agencies that are responsible for the regulation and supervision of financial institutions (such as the FDIC, the National Credit Union Administration, or the Financial Crimes Enforcement Network⁸), in accordance with memoranda of understanding (MOUs) that acknowledge the existing framework of federal and state laws and regulations which uniformly respect the confidential treatment that the documents or information would receive under the submitting agency's applicable confidentiality laws.⁹ In particular, OFR reports of examination, described above, routinely contain confidential supervisory information obtained from other bank regulators, and the OFR is obligated to protect such information pursuant to federal

⁵ Section 655.045(1), F.S.

⁶ CAMELS is based on the Federal Financial Institutions Examination Council's Uniform Financial Institutions Rating System. Institutions are assessed on a 1 (best) to 5 (worst) rating system. See FDIC Financial Institution Letter FIL-105-96 (Dec. 26, 1996).

⁷ Section 655.057(12)(a), F.S.

⁸ FinCEN is a bureau of the U.S. Department of Treasury that safeguards the U.S. financial system from illicit use, money laundering, and terrorist financing through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. It administers portions of the federal Bank Secrecy Act and anti-money laundering regulations, which were significantly enhanced by the U.S. Patriot Act of 2001. The Codes and federal law require the OFR to monitor and assess state-chartered financial institutions' compliance with these laws, subject to significant federal confidentiality restrictions.

⁹ See, e.g., s. 655.057(9), F.S.; 12 C.F.R. pts. 261 and 309.

confidentiality restrictions and these MOUs. Willful release of confidential information is a violation of s. 655.057(13), F.S., a third-degree felony. Similar federal criminal sanctions may also apply if confidential supervisory information owned by federal financial institution regulators is improperly released.

Despite the statute's inclusion of FHLBs as permissive recipients of confidential supervisory information along with other federal bank regulators, the FHLBs are not federal agencies responsible for the regulation of financial institutions, but are 11 separate corporations owned by eligible financial institution members that collectively make up the FHLB System. As a result, there is some uncertainty regarding the OFR's ability to share information with the FHLBs under s. 655.057, F.S. The OFR does not currently have an MOU with the FHLBs.

Federal Home Loan Banks

The FHLB System, established in 1932 by the Federal Home Loan Bank Act,¹⁰ is a group of government-sponsored enterprises comprising of 11 regional, federally chartered banks. Each FHLB is cooperatively owned by its members—such as commercial and community banks, thrifts, credit unions, and insurance companies.¹¹ As of year-end 2014, over 7,300 financial institutions were members of the FHLB System.¹²

Eligible financial institutions become members through an application process and, once approved, purchase stock in their regional FHLB. To become a member of its regional FHLB, a financial institution must meet certain eligibility requirements and purchase capital stock; thereafter, it must maintain an investment in the capital stock of the FHLB sufficient to satisfy the minimum investment required for that institution in accordance with the FHLB's capital plan.¹³ Federal law requires the institution to demonstrate compliance with certain financial condition requirements by providing documentation such as regulatory financial reports, financial statements, and regulatory examination reports.¹⁴ Each potential member must agree to certain conditions, including that reports of examination by local, state, or federal agencies may be furnished by such authorities to the FHLB or the FHFA upon request.¹⁵ According to the OFR, however, the laws pertaining to FHLBs do not address or protect the ownership or confidentiality of any information it may obtain from a state agency,¹⁶ should a FHLB or the FHFA receive a federal Freedom of Information Act (FOIA) request.¹⁷

The federal regulator charged with overseeing the FHLBs is the Federal Housing Finance Agency (FHFA), and is thus considered a “federal agency responsible for the regulation of

¹⁰ Public Law 72-304 (1932); 12 U.S.C. 1421 *et seq.*

¹¹ General Accounting Office, *Federal Home Loan Banks, Information on Governance Changes, Board Diversity, and Community Lending* (GAO-15-435) (May 2015).

¹² See <http://www.fhlbanks.com/#what> (last visited Jan. 27, 2016).

¹³ 812 C.F.R. s. 931.3(d).

¹⁴ 12 U.S.C. s.1424(a)(2)(B) and § 1263.6(a)(4); 12 C.F.R. s. 1263.11.

¹⁵ 12 C.F.R. s. 1263.31(b).

¹⁶ Office of Financial Regulation, Agency Legislative Bill Analysis of Senate Bill 1490 (Jan. 21, 2016).

¹⁷ FOIA does not apply to “matters that are...contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an *agency* responsible for the regulation or supervision of financial institutions.”

5 U.S.C. s. 522(b)(8). For purposes of FOIA, “agency” means authorities of the government of the United States (excluding its territories and possessions), but not of the states themselves.

financial institutions” that the OFR is authorized by s. 655.057, F.S., to share certain confidential information. However, the OFR currently does not have a MOU with the FHFA.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 655.057(5), F.S., to clarify that OFR is not prevented or restricted from providing otherwise confidential information to any FHLB *or* any state, federal, or foreign agency responsible for the regulation or supervision of financial institutions. This change correctly reflects the FHLBs’ status as not being a regulator of federal financial institutions. The bill requires the OFR to make reports of examination (and other information relating to a FHLB member’s condition) available to the FHLB.

Section 2 makes the act effective July 1, 2016.

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:

None.

B. Private Sector Impact:

The bill’s clarification of the OFR’s ability to share information with the FHLBs may expedite or facilitate financial institutions’ new membership in the FHLBs and continued supervision by the FHFA.

C. Government Sector Impact:

As noted above, the OFR’s examination reports routinely contain other regulators’ confidential information, which the OFR protects pursuant to federal laws and information-sharing agreements with those regulatory agencies. These agreements contain specific limitations on what information can be shared. The OFR notes that if it

¹⁸ Office of Financial Regulation, Agency Legislative Bill Analysis of Senate Bill 1490 (Jan. 21, 2016).

provides unredacted examination reports to the FHFB because of the bill, it would be in breach of their agreements with these other regulatory agencies.

According to the OFR, the bill will require indeterminate staff time for redaction and legal review as part of the production process to FHLB, in order to comply with existing federal confidentiality restrictions and the OFR's information-sharing agreements with other agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the OFR, the bill could endanger the ability of the OFR to be accredited by the Conference of State Bank Supervisors ("CSBS") and the National Association of State Credit Union Supervisors ("NASCUS"). A key component of the accreditation process of a state financial institutions regulatory agency such as the OFR is the agency's ability to maintain complete control of the confidential supervisory information it possesses. Federal Home Loan Banks are not regulatory agencies. Rather, Federal Home Loan Banks are government-sponsored enterprises like Fannie Mae and Freddie Mac that are overseen by the Federal Housing Finance Authority (FHFA). By providing confidential information to the Federal Home Loan Bank, without any agreements in place to protect and maintain confidentiality, the OFR would be failing to maintain complete control of the confidential information and could fail to be accredited. Losing accreditation would create the inability for the OFR to coordinate and work with other regulators, including the sharing of information with those regulators.¹⁹

VIII. Statutes Affected:

This bill substantially amends section 655.057 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁹ *Id.*