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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2011	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (14), (25), and (26) of section 494.001, Florida Statutes, are amended, new subsections (5), (11), and (17) are added to that section, present subsections (5) through (9) are renumbered as subsections (6) through (10), respectively, present subsections (10) through (14) are renumbered as subsections (12) through (16), respectively, present subsections (15) through (24) are renumbered as subsections (18) through (27), respectively, and present



594020

13 subsections (26) through (34) are renumbered as subsections (28)
14 through (36), respectively, to read:

15 494.001 Definitions.—As used in ss. 494.001-494.0077, the
16 term:

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

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

24 (16) ~~(14)~~ "Loan originator" means an individual who,
25 directly or indirectly, solicits or offers to solicit a mortgage
26 loan, accepts or offers to accept an application for a mortgage
27 loan, negotiates or offers to negotiate the terms or conditions
28 of a new or existing mortgage loan on behalf of a borrower or
29 lender, ~~processes a mortgage loan application,~~ or negotiates or
30 offers to negotiate the sale of an existing mortgage loan to a
31 noninstitutional investor for compensation or gain. The term
32 includes an individual who is required to be licensed as a loan
33 originator under ~~the activities of a loan originator as that~~
34 ~~term is defined in the S.A.F.E. Mortgage Licensing Act of 2008,~~
35 ~~and an individual acting as a loan originator pursuant to that~~
36 ~~definition is acting as a loan originator for purposes of this~~
37 ~~definition.~~ The term does not include an employee of a mortgage
38 broker or mortgage lender whose duties are limited to ~~who~~
39 ~~performs only administrative or clerical tasks, including~~
40 ~~quoting available interest rates,~~ physically handling a
41 completed application form~~,~~ or transmitting a completed



594020

42 application form to a lender on behalf of a prospective
43 borrower.

44 (17) "Loan processing" means:

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

47 (b) Communicating with a consumer to obtain information
48 necessary for the processing of a mortgage loan if such
49 communication does not include offering or negotiating loan
50 rates or terms, or counseling consumers about residential
51 mortgage loan rates or terms.

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

53 ~~(28)~~ ~~(26)~~ "Principal loan originator" means the licensed
54 loan originator in charge of, and responsible for, the operation
55 of a mortgage lender or mortgage broker, including all of the
56 activities of the mortgage lender's or mortgage broker's loan
57 originators, in-house loan processors, and branch managers,
58 whether employees or independent contractors.

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

61 494.0011 Powers and duties of the commission and office.—

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

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

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

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



594020

71 2. Require the use of uniform forms that have been approved
72 by the registry, and any subsequent amendments to such forms if
73 the forms are substantially in compliance with the provisions of
74 this chapter. Uniform forms that the commission may adopt
75 include, but are not limited to:

- 76 a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.
- 77 b. Uniform Mortgage Biographical Statement & Consent Form,
78 MU2.
- 79 c. Uniform Mortgage Branch Office Form, MU3.
- 80 d. Uniform Individual Mortgage License/Registration &
81 Consent Form, MU4.

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

84 4. Prescribe requirements for amending or surrendering a
85 license or other activities as the commission deems necessary
86 for the office's participation in the registry.

87 5. Prescribe procedures that allow a licensee to challenge
88 information contained in the registry.

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

91 (c) Establishing time periods during which a loan
92 originator, mortgage broker, or mortgage lender license
93 applicant under part II or part III is barred from licensure due
94 to prior criminal convictions of, or guilty or nolo contendere
95 pleas by, any of the applicant's control persons, regardless of
96 adjudication.

97 1. The rules must provide:

- 98 a. Permanent bars for felonies involving fraud, dishonesty,
99 breach of trust, or money laundering;



594020

100 b. A 15-year disqualifying period for felonies involving
101 moral turpitude;
102 c. A 7-year disqualifying period for all other felonies;
103 and
104 d. A 5-year disqualifying period for misdemeanors involving
105 fraud, dishonesty, or any other act of moral turpitude.
106 2. The rules may provide for an additional waiting period
107 due to dates of imprisonment or community supervision, the
108 commitment of multiple crimes, and other factors reasonably
109 related to the applicant's criminal history.
110 3. The rules may provide for mitigating factors for crimes
111 identified in sub-subparagraph 1.b. However, the mitigation may
112 not result in a period of disqualification less than 7 years.
113 The rule may not mitigate the disqualifying periods in sub-
114 subparagraphs 1.a., 1.c., and 1.d.
115 4. An applicant is not eligible for licensure until the
116 expiration of the disqualifying period set by rule.
117 5. Section 112.011 is not applicable to eligibility for
118 licensure under this part.
119 Section 3. Subsections (3), (4), (5), and (6) of section
120 494.00255, Florida Statutes, are amended, and paragraph (m) of
121 subsection (1) is reenacted, to read:
122 494.00255 Administrative penalties and fines; license
123 violations.-
124 (1) Each of the following acts constitutes a ground for
125 which the disciplinary actions specified in subsection (2) may
126 be taken against a person licensed or required to be licensed
127 under part II or part III of this chapter:
128 (m) In any mortgage transaction, violating any provision of



594020

129 the federal Real Estate Settlement Procedures Act, as amended,
130 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as
131 amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted
132 under such acts.

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

136 (a) A control person of the mortgage broker or mortgage
137 lender; ~~or~~

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

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

142 (4) A principal loan originator of a mortgage broker is
143 subject to the disciplinary actions specified in subsection (2)
144 for violations of subsection (1) by a loan originator or an in-
145 house loan processor in the course of an association with the
146 mortgage broker if there is a pattern of repeated violations by
147 the loan originator or in-house loan processor or if the
148 principal loan originator has knowledge of the violations.

149 (5) A principal loan originator of a mortgage lender is
150 subject to the disciplinary actions specified in subsection (2)
151 for violations of subsection (1) by a loan originator or an in-
152 house loan processor in the course of an association with a
153 mortgage lender if there is a pattern of repeated violations by
154 the loan originator or in-house loan processor or if the
155 principal loan originator has knowledge of the violations.

156 (6) A branch manager is subject to the disciplinary actions
157 specified in subsection (2) for violations of subsection (1) by



594020

158 a loan originator or an in-house loan processor in the course of
159 an association with the mortgage broker or mortgage lender if
160 there is a pattern of repeated violations by the loan originator
161 or in-house loan processor or if the branch manager has
162 knowledge of the violations.

163 Section 4. Section 494.00331, Florida Statutes, is amended
164 to read:

165 494.00331 Loan originator and loan processor employment.—

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

171 (2) CONTRACT LOAN PROCESSORS.—~~Subsection (1) However, this~~
172 ~~provision~~ does not apply to a contract loan processor who has a
173 declaration of intent to act solely as a contract loan processor
174 on file with the office. The declaration of intent must be on a
175 form as prescribed by commission rule ~~any licensed loan~~
176 ~~originator who acts solely as a loan processor and contracts~~
177 ~~with more than one mortgage broker or mortgage lender, or either~~
178 ~~simultaneously.~~

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

182 (a) ~~The receipt, collection, distribution, and analysis of~~
183 ~~information common for the processing or underwriting of a~~
184 ~~residential mortgage loan; or~~

185 (b) ~~Communication with consumers to obtain the information~~
186 ~~necessary for the processing or underwriting of a loan, to the~~



594020

187 ~~extent that such communication does not include offering or~~
188 ~~negotiating loan rates or terms or does not include counseling~~
189 ~~consumers about residential mortgage loan rates or terms.~~

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

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

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

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

207 ~~(3) IN-HOUSE LOAN PROCESSORS.—An individual may not act as~~
208 ~~an in-house loan processor unless he or she is an employee of a~~
209 ~~mortgage broker or a mortgage lender and may not be employed by~~
210 ~~more than one mortgage broker or mortgage lender, or either,~~
211 ~~simultaneously. An in-house loan processor must work at the~~
212 ~~direction of and be subject to the supervision and instruction~~
213 ~~of a loan originator licensed under this part.~~

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



594020

216 494.0035 Principal loan originator and branch manager for
217 mortgage broker.—

218 (1) Each mortgage broker must be operated by a principal
219 loan originator who shall have full charge, control, and
220 supervision of the mortgage broker ~~business~~. The principal loan
221 originator must have been licensed as a loan originator for at
222 least 1 year before being designated as the principal loan
223 originator, or must demonstrate to the satisfaction of the
224 office that he or she has been actively engaged in a mortgage-
225 related ~~mortgage broker-related~~ business for at least 1 year
226 before being designated as a principal loan originator. Each
227 mortgage broker must keep the office informed of the person
228 designated as the principal loan originator as prescribed by
229 commission rule. If the designation is inaccurate, the mortgage
230 broker ~~business~~ shall be deemed to be operated under the full
231 charge, control, and supervision of each officer, director, or
232 ultimate equitable owner of a 10-percent or greater interest in
233 the mortgage broker, or any other person in a similar capacity.
234 A loan originator may not be a principal loan originator for
235 more than one mortgage broker at any given time.

236 Section 6. Paragraph (c) of subsection (3) of section
237 494.0038, Florida Statutes, is amended to read:

238 494.0038 Loan origination and mortgage broker fees and
239 disclosures.—

240 (3) At the time a written mortgage broker agreement is
241 signed by the borrower or forwarded to the borrower for
242 signature, or at the time the mortgage broker business accepts
243 an application fee, credit report fee, property appraisal fee,
244 or any other third-party fee, but at least 3 business days



594020

245 before execution of the closing or settlement statement, the
246 mortgage broker shall disclose in writing to any applicant for a
247 mortgage loan the following information:

248 (c) A good faith estimate that discloses settlement charges
249 and loan terms, ~~signed and dated by the borrower, which~~
250 ~~discloses the total amount of each of the fees the borrower may~~
251 ~~reasonably expect to pay if the loan is closed, including, but~~
252 ~~not limited to, fees earned by the mortgage broker, lender fees,~~
253 ~~third-party fees, and official fees, together with the terms and~~
254 ~~conditions for obtaining a refund of such fees, if any.~~

255 1. Any amount collected in excess of the actual cost shall
256 be returned within 60 days after rejection, withdrawal, or
257 closing.

258 2. At the time a good faith estimate is provided to the
259 borrower, the loan originator must identify in writing an
260 itemized list that provides the recipient of all payments
261 charged the borrower, which, except for all fees to be received
262 by the mortgage broker, may be disclosed in generic terms, such
263 as, but not limited to, paid to lender, appraiser, officials,
264 title company, or any other third-party service provider. This
265 requirement does not supplant or is not a substitute for the
266 written mortgage broker agreement described in subsection (1).
267 The disclosure required under this subparagraph must be signed
268 and dated by the borrower.

269 Section 7. Paragraph (a) of subsection (7) of section
270 494.00421, Florida Statutes, is amended to read:

271 494.00421 Fees earned upon obtaining a bona fide
272 commitment.—Notwithstanding the provisions of ss. 494.001-
273 494.0077, any mortgage broker which contracts to receive a loan



594020

274 origination fee from a borrower upon obtaining a bona fide
275 commitment shall accurately disclose in the mortgage broker
276 agreement:

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

280 "You are entering into a contract with a mortgage broker to
281 obtain a bona fide mortgage loan commitment under the same terms
282 and conditions as stated hereinabove or in a separate executed
283 good faith estimate form. If the mortgage broker obtains a bona
284 fide commitment under the same terms and conditions, you will be
285 obligated to pay the loan origination fees even if you choose
286 not to complete the loan transaction. If the provisions of s.
287 494.00421, Florida Statutes, are not met, the loan origination
288 fee can only be earned upon the funding of the mortgage loan.
289 The borrower may contact the Office of Financial Regulation
290 ~~Department of Financial Services~~, Tallahassee, Florida,
291 regarding any complaints that the borrower may have against the
292 loan originator. The telephone number of the office ~~department~~
293 is: ...(insert telephone number)...."

294 Section 8. Paragraph (e) of subsection (1) of section
295 494.00612, Florida Statutes, is amended to read:

296 494.00612 Mortgage lender license renewal.-

297 (1) In order to renew a mortgage lender license, a mortgage
298 lender must:

299 (e) Authorize the registry to obtain an independent credit
300 report on each of the mortgage lender's control persons ~~lender~~
301 from a consumer reporting agency, and transmit or provide access
302 to the report to the office. The cost of the credit report shall



594020

303 be borne by the licensee.

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

306 494.0067 Requirements of mortgage lenders.-

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

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

311
312 ===== T I T L E A M E N D M E N T =====

313 And the title is amended as follows:

314 Delete everything before the enacting clause
315 and insert:

316 A bill to be entitled
317 An act relating to loan processing; amending s.
318 494.001, F.S.; creating and revising definitions;
319 deleting a redundant definition; amending s. 494.0011,
320 F.S.; specifying rulemaking powers of the Financial
321 Services Commission; amending s. 494.00255, F.S.;
322 including in-house loan processors in disciplinary
323 provisions; amending s. 494.00331, F.S.; providing
324 that specified provisions do not apply to a licensed
325 contract loan processor who has on file with the
326 office a declaration of intent to act solely as a
327 contract loan processor; deleting a definition;
328 providing restrictions on employment of persons
329 licensed as in-house loan processors; amending s.
330 494.0035, F.S.; clarifying provisions concerning the
331 operation of mortgage brokers; amending s. 494.0038,



594020

332 F.S.; revising provisions relating to disclosure of
333 settlement charges and loan terms; amending s.
334 494.00421, F.S.; revising an agency reference in the
335 mortgage broker agreement; providing that a borrower
336 may contact the Office of Financial Regulation rather
337 than the Department of Financial Services regarding
338 any complaints against a loan originator; amending s.
339 494.00612, F.S.; requiring that in order to renew a
340 mortgage lender license a mortgage lender must
341 authorize the Nationwide Mortgage Licensing System and
342 Registry to obtain an independent credit report on
343 each of the mortgage lender's control persons;
344 amending s. 494.0067, F.S.; requiring each mortgage
345 lender to submit certain reports to the registry as
346 may be required; providing an effective date.