

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 666

INTRODUCER: Senator Detert

SUBJECT: Loan Originators, Mortgage Brokers, and Mortgage Lenders

DATE: February 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 666 revises provisions governing non-depository loan originators, mortgage brokers, and lender businesses subject to regulation by the Office of Financial Regulation (OFR) pursuant to chapter 494, Florida Statutes. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the federal Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.¹ The Dodd-Frank Act also authorized the CFPB to enforce and adopt regulations relating to loan origination and lending and many other existing consumer protection laws, which has resulted in several inconsistencies or redundancies with ch. 494, F.S. The bill provides the following changes:

- Provides licensees an additional 2 months to renew their license; however, such licensees are subject to a reinstatement fee in addition to the registry fees due December 31 of each year.
- Revises provisions that conflict with the Dodd-Frank Act and CFPB regulations.
- Repeals provisions that are duplicative or redundant with federal provisions.
- Authorizes the OFR to conduct joint or concurrent examinations with any state or federal regulatory agency and to share examination reports.
- Provides technical and clarifying changes.

The bill has an indeterminate fiscal impact on state revenues and expenditures because the number of licensees that would use the late renewal process is indeterminate.

The bill has an effective date of July 1, 2014.

¹ Public Law No. 111-203.

II. Present Situation:

Federal Regulation

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.² Title V of this act is titled the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or the “S.A.F.E. Mortgage Licensing Act of 2008.” (S.A.F.E.) The act requires all states to adopt a system of licensure meeting national definitions and minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators.

Pursuant to S.A.F.E. states are required to participate in a national licensing registry, the National Mortgage Licensing System and Registry (registry), which contains employment history, as well as disciplinary and enforcement actions against loan originators. The registry was created by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and began operations in January 2008. The registry provides an internet-based licensing platform for the mortgage industry and regulators. The registry is the sole system of licensure for mortgage companies for 54 state agencies and the sole system of licensure for loan originators for 58 state and territorial agencies. The registry itself does not grant or deny license authority. Applicants are subject to licensure by the state regulator.³

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the federal Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws. The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. These consumer laws include the Truth in Lending Act (TILA)⁴ and the Real Estate Settlement Procedures Act (RESPA)⁵. The CFPB was granted rulemaking authority pursuant to the Mortgage Reform and Anti-Predatory Lending Act, which revises provisions relating to loan origination and lending standards.⁶ Regulations adopted by the CFPB relating to loan origination and lending have resulted in several inconsistencies with ch. 494, F.S., relating to loan originators and mortgage brokers.

The Dodd-Frank Act provides that for purposes of residential mortgages, creditors must make a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan and establishes certain protections from liability under the requirement for “qualified mortgages.” The rule, amending Regulation Z, establishes product-feature prerequisites and affordability underwriting requirements for

² Public Law 110-289.

³ NLMS Resource Center, at <http://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx> (last visited February 14, 2014).

⁴ 15 U.S.C. s. 1601, *et. seq.*

⁵ 15 U.S.C. s. 2601, *et. seq.*

⁶ Enacted as Title XIV of the Dodd-Frank Act s. 1400.

qualified mortgages and provides a safe harbor for loans that satisfy the definition of a qualified mortgage and are not higher-priced mortgages.⁷ The rule implements the statutory criteria, which generally prohibits loans with negative amortization, interest-only payments, balloon payments, or terms exceeding 30 years from being qualified mortgages. Finally, a loan generally cannot be a qualified mortgage if the points and fees paid by the consumer exceed 3 percent of the total loan amount, with exceptions. This rule is effective January 1, 2014.

The Real Estate Settlement Procedures Act of 1974 (RESPA)⁸ requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. It also prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts. In 2013, the CFPB issued rules, effective January 2014, amending Regulation X,⁹ that include new provisions related to escrow payments, force-placed insurance, general servicing policies, procedures, and requirements, early intervention, continuity of contact, and loss mitigation.

The Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 as an amendment to TILA to address abusive practices in refinances and closed-end home equity loans with high interest rates or high fees. Since HOEPA's enactment, refinances or home equity mortgage loans meeting any of HOEPA's high-cost coverage tests have been subject to special disclosure requirements and restrictions on loan terms, and consumers with high-cost mortgages have had enhanced remedies for violations of the law. In 2010, the Dodd-Frank Act amended TILA by expanding the scope of HOEPA coverage to include purchase-money mortgages and open-end credit plans (i.e., home equity lines of credit) and amended HOEPA's coverage tests. The Dodd-Frank Act also added new protections for high-cost mortgages, including a requirement that consumers receive homeownership counseling before obtaining a high-cost mortgage.

Florida Regulation

The OFR regulates a wide range of financial enterprises, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of S.A.F.E., which increased licensure requirements and required licensure through the registry.¹⁰ Pursuant to s. 494.00255(1)(m), F.S., the OFR may take disciplinary action against a person licensed or subject to licensure under ch. 494, F.S., if the person violates any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.

Licensure of Loan Originators, Mortgage Brokers Business, and Mortgage Brokers Lenders

Licensure as a loan originator is required for an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;

⁷ 24 C.F.R. Part 1026. Regulation Z implements TILA.

⁸ 12 U.S.C. s. 2601, *et. seq.*

⁹ 24 C.F.R. Part 1024. Regulation X implements RESPA.

¹⁰ Chapter 2009-241, Laws of Fla.

- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

The term, “loan originator,” includes an individual who is required to be licensed as a loan originator under S.A.F.E. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.¹¹

Each individual is required to apply for a loan originator license through the registry and submit registry fees of \$329.50. An applicant also must meet certain education and testing requirements. An applicant must complete 20 hours of registry approved pre-licensure education courses and have a passing score on the standard test.

A mortgage broker license is required for an entity conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker.¹² A branch office license is required for mortgage broker licensees who conduct business at locations other than their principal place of business. A business is required to submit \$680.50 in registry fees plus a credit report fee of \$15 for each control person. The registry fee for each branch office is \$245.

A mortgage lender license is required for an entity making a mortgage loan for compensation or gain, directly or indirectly, or selling or offering to sell a mortgage loan to a noninstitutional investor.¹³ “Making a mortgage loan” means closing a mortgage loan in a person’s name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.¹⁴ The registry fee for each mortgage lender or mortgage-servicer branch office is \$245. A mortgage lender-servicing license is required for any mortgage lender licensee who services a mortgage loan. The term, “servicing a mortgage loan” means to receive, cause to be received, or transferred for another, installment payments of principal, interest, or other payments pursuant to a mortgage loan.¹⁵ Each mortgage lender or mortgage servicer business is required to remit a registry fee of \$755.50 and a credit report fee of \$15 for each control person.

III. Effect of Proposed Changes:

Licensure Renewals (Loan Originator, Mortgage Broker, and Mortgage Lender)

The bill provides an additional 2 months (January 1-February 28) for all license types to renew their annual licenses if they are unable to renew by the deadline of December 31. The bill provides, that, if the licensee fails to meet the renewal requirements by December 31, the licensee would have a status as “fails to renew” pending review by the OFR. If a licensee fails to

¹¹ Section 494.001(16), F.S.

¹² Section 494.001(21), F.S.

¹³ Section 494.001(22), F.S.

¹⁴ See Section 494.001(19), F.S.

¹⁵ See Section 494.001(34), F.S.

renew by February 28 and pay the applicable reinstatement fee, the license expires and the applicant must apply for a new license and comply with the applicable licensing requirements for the license category.

The reinstatement fees for licenses renewed after December 31 deadline and before February 28 are \$150 for loan originators, \$250 for mortgage brokers, \$225 for branch offices of mortgage brokers or mortgage lenders, and \$475 for mortgage lenders. The reinstatement fee would be in addition to the annual registry fees applicable for the respective licensure category.

Fees and Disclosures

The bill eliminates certain requirements relating to mortgage broker agreements, currently provided in ss. 494.0038 and 494.004, F.S., because licensees are subject to these disclosures under RESPA and the CFPB regulations, which provide for simplified disclosures effective August 1, 2015, and notification when certain events occur. Specifically, the bill deletes provisions related to the written disclosure of loan origination fees and other disclosures between a borrower to a mortgage broker; the requirement for a written mortgage broker agreement describing the services to be provided by the broker; and the execution requirements for such an agreement. Rules currently prescribe the form of disclosure used. This section also removes the requirement that a written disclosure must be provided at the time an adjustable rate mortgage loan is offered to the borrower, and when the terms of the adjustable rate mortgage loan offered materially changes prior to closing. Current law prohibits the payment of a loan origination fee except pursuant to a written agreement between a borrower and a mortgage broker. Current law requires a mortgage broker to disclose any payment from the mortgage lender in a written agreement within 3 days of such notification. The bill also amends s. 494.004, F.S., by removing certain notification requirements relating to mortgage loan transactions; specifically, it removes the requirement that each mortgage broker must notify a borrower of any material change in the terms of a loan previously offered to the borrower within 3 business days of being made aware of the change by the mortgage lender. The bill also removes a provision authorizing the borrower the ability to waive the right to receive such a notice under certain circumstances.

The bill repeals s. 494.00421, F.S., relating to mortgage broker fees earned upon obtaining a bona fide commitment. New federal laws and regulations do not allow most fees before closing to be charged or collected from the borrower, including a commitment fee. Industry advocates support the removal of the requirement for a mortgage broker to issue a mortgage broker agreement to a borrower. They note that under TILA's requirements for the compensation of a loan originator, a mortgage broker is not allowed to receive a fee for services rendered prior to the culmination of a transaction. Due to this statutory requirement, advocates of the bill contend that a contract between a mortgage broker and a borrower is weakened since federal requirements do not permit fees to be obtained if a transaction fails to close.¹⁶

The bill amends s. 494.0067, F.S., relating to requirements of mortgage lenders, to remove language that is required under federal regulations (24 C.F.R. s. 3500.7 and 12 C.F.R. s. 1026.19). The bill removes the requirement that a mortgage lender provide an applicant for a

¹⁶ Florida Association of Mortgage Professionals, *Analysis of Ch. 494, F.S. Changes*, (on file with Senate Committee on Banking and Insurance).

mortgage loan a good faith estimate of the costs the applicant can expect to pay in obtaining a mortgage loan and the delivery requirements of the documents associated with this estimate. The bill removes the requirement that a disclosure relating to an adjustable rate mortgage loan and any changes associated with the terms of such loan occurring prior to closing be provided to the applicant by the mortgage lender, as well as the process for which such notification is furnished by the lender. The bill also removes the requirement that a mortgage lender, in every mortgage transaction, notify the borrower of any material changes in the terms of a mortgage loan previously offered to the borrower as well as the process for which such notification is furnished. The bill removes the requirement that a licensee bears the burden of proof that a notification was provided to and accepted by the borrower. The bill also removes the right of a borrower to waive receipt of the notice of a material change.

The bill repeals s. 494.0068, F.S., relating to loan application process, which sets forth required disclosures for mortgage lenders. Mandatory disclosures are required under Regulation X.

The bill amends s. 494.007, F.S., relating to the commitment process. The bill removes a provision related to the amount of the commitment fee from the written disclosure a mortgage lender must issue if a commitment is issued. This change would align with the federal requirements.

Examinations

The bill authorizes the OFR to conduct a joint or concurrent examination with any state or federal regulatory agency and to share examinations with an appropriate regulator if the recipient agrees to abide by the confidentiality provisions of chs. 119 and 494, F.S.

Violations of Chapter 494, F.S.

The bill authorizes the OFR to take disciplinary action against a person licensed or subject to licensure under part II or III ch. 494, F.S., if the person violates the registry's Rules of Conduct for Test Takers in connection with a pre-licensing test. Currently, all loan originator applicants seeking licensure must abide by the registry Rules of Conduct for Test Takers, which prohibits misconduct, assistance, and the use of study materials during pre-licensure examinations.¹⁷ This provision will clarify the OFR's authority to deny applicants who have been found to be cheating on the pre-licensing examination.

Definitions

The bill creates a definition of "indirect owner" to mean 25 percent or more ownership. Pursuant to s. 494.001(6), F.S., a "control person" must meet a 10 percent indirect or direct ownership threshold. The registry requires a disclosure by an applicant of all "indirect owners of 25 percent or more of an entity, regardless of the applicant's business structure. However, ch. 494, F.S., does not define the term, "indirect owner." This change clarifies the term, "indirect owners," for purposes of completing the registry application and complying with regulatory requirements.

¹⁷ Registry Rules of Conduct for Test Takers, at <http://mortgage.nationwidelicencingsystem.org/profreq/Documents/Test%20Taker%20Rules%20of%20Conduct.pdf> (last accessed February 14, 2014).

The bill revises the definition of the term, “loan origination fee,” to exclude any payment for processing mortgage loan applications.¹⁸ The Dodd-Frank Act and CFPB regulations prohibit loan originators from receiving compensation that varies based on the terms of a loan (other than the amount of principal), and provides for certain exceptions.¹⁹ This provision is intended to prohibit yield spread premiums or other similar compensation based on terms (including rate) that would cause a loan originator to “steer” borrowers to particular mortgage products. The Dodd-Frank Act defines a “qualified mortgage” as a loan for which, among other things, the total points and fees do not exceed 3 percent of the total loan amount. Due to Florida’s current requirement for the processing fee to be part of the origination fee, mortgage broker businesses must include this fee towards the 3 percent cap. According to industry proponents,²⁰ if this processing fee was not required to be part of the origination fee, it would not have to be included unless the processing company being used was affiliated with the creditor and/or mortgage broker. The industry advocates suggest that the inclusion of processing fees, more than likely from contract processing companies, may result in mortgage broker businesses no longer utilizing the services of a contract processor and attempting to process files on their own. The unintended consequence of this decision may result in a loss of checks and balances on a file and potential harm to the consumer. A consumer advocacy group suggests that the removal of the requirement to include the payment of processing a loan in the fee potentially increases the fee charged to the consumers, in some instances.

Mortgage Call Reports

The bill authorizes the Financial Services Commission to adopt by rule the deadline for mortgage brokers and mortgage lenders to file a report of condition also known as the registry’s Mortgage Call Report. This provision would give the OFR flexibility to change the filing deadline in the event the registry revises the deadline. All state mortgage licensees are required to submit a mortgage call report, which includes financial condition information and loan activity, to the registry within 45 days of the end of every calendar quarter.

Mortgage Lender Loan Application Requirements

The bill repeals s. 494.0068, F.S., relating to the loan application process. This provision is required under federal regulation (12 CFR s. 1026.4).

Arbitration

The bill repeals the provision relating to arbitration, which is included in certain agreements. Amendments to Regulation Z, effective June 1, 2013, prohibit the inclusion of clauses requiring the consumer to submit disputes concerning a residential mortgage loan or home equity line of credit to binding arbitration.²¹

¹⁸ Section 494.001(15), F.S.

¹⁹ Section 1403 of the Dodd-Frank Act, effective January 1, 2014.

²⁰ Florida Association of Mortgage Professionals, *Analysis of Ch. 494 Changes*, (on file with Senate Committee on Banking and Insurance).

²¹ 12 C.F.R. s. 1026.36(h).

Florida Fair Lending Act

The bill repeals part IV, ch. 494, F.S., entitled “The Florida Fair Lending Act (act)” which places restrictions on high-cost home loans. The act imposes requirements on high cost mortgage loans that mirror the requirements of the federal Home Ownership and Equity Protection Act (HOEPA), but adds other restrictions and enforcement provisions, such as a right to cure²² and forfeiture of the entire interest charged in the high-cost loan.²³ The Office of Financial Regulation is responsible for enforcing this part. Subsequent to the enactment of this act, the Dodd-Frank Act amended TILA by expanding the scope of HOEPA coverage to include purchase-money mortgages and open-end credit plans (i.e., home equity lines of credit) and amended HOEPA’s coverage tests. The Dodd-Frank Act also added new protections for high-cost mortgages, including a requirement that consumers receive homeownership counseling before obtaining a high-cost mortgage.²⁴ Advocates of the bill contend that the Dodd-Frank Act and the implementing regulations are more restrictive than Florida’s law and, therefore, this act would no longer be used.

Loans Under Florida Uniform Land Sales Practices Law

The bill repeals part V, of ch. 494, F.S., entitled “Loans Under Florida Uniform Land Sales Practices Law,” which prescribes terms and conditions for mortgage loans of \$35,000 or less that are secured by vacant land and sold to a mortgagee, excluding a financial institution. The statutory cite for penalties, s. 494.05, F.S., was repealed in 1986.²⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

Currently, section 494.00255(1)(m), F.S., provides the OFR the authority to enforce the federal RESPA and TILA and regulations adopted thereunder. However, in light of the significant changes to these federal laws, reenactment of this provision is necessary for

²² Section 494.00794, F.S.

²³ Section 494.00796, F.S.

²⁴ 15 U.S.C. s. 1639.

²⁵ Chapter 86-68, s. 9, Laws of Fla.

the OFR to enforce these federal changes that have been adopted after the last time the Florida Legislature reenacted s. 494.00255(1)(m), F.S.²⁶

As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed *at the time* the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.²⁷ The Legislature may adopt provisions of federal statutes and administrative rules made by a federal administrative body “that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.”²⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows licensees to renew late if they submit a reinstatement fee for the applicable licensure category and comply with other statutory requirements. This fee would be in addition to the current, statutory renewal fee.

B. Private Sector Impact:

Licensees who fail to renew before the December 31 deadline will have an additional 2 months to renew. However, the licensee must pay the reinstatement fee and registry fees, meet other statutory requirements, and obtain approval by the OFR. Currently, if a licensee fails to renew by December 31, the licensee must file an application and remit fees for a new license to obtain licensure approval from the OIR, which could delay the licensure process.

A consumer advocacy group has suggested that the removal of the requirement under s. 494.001(15), F.S., which provides that any payment for processing mortgage loan applications must be included in the fee, potentially increases the fee charged to the consumer in some instances.²⁹ According to the proponents³⁰ of this bill, if this fee were required to be part of the origination fee, it would not have to be included unless the processing company was affiliated with the creditor and/or mortgage broker. The inclusion of processing fees, more than likely from contract processing companies, may result in mortgage broker businesses no longer utilizing the services of a contract processor and attempting to process files on their own. The unintended consequence of

²⁶ It appears that the last time the Act readopted RESPA and TILA was in the 2011 legislative session (s. 14 of ch. 2011-071, L.O.F.).

²⁷ See *Overstreet v. Blum*, 227 So. 2d 197 (Fla. 1969); *Hecht v. Shaw*, 151 So. 333 (1933).

²⁸ *Florida Industrial Commission v. State*, 155 Fla. 772, 21 So.2d 599 (1945). See also *Freimuth v. State*, 272 So.2d 473 (Fla.1972); *State v. Camil*, 279 So.2d 832 (Fla.1973).

²⁹ Florida Alliance for Consumer Protection, *White Paper: HB 631/SB 666 Loan Originators, Mortgage Brokers, and Mortgage Lenders* February 2014) (on file with the Senate Committee on Banking and Insurance)

³⁰ Florida Association of Mortgage Professionals, *FS 494 Changes* (January 29, 2014) on file with Senate Committee n Banking and Insurance.

this decision may result in a loss of checks and balances on a file and potential harm to the consumer.

C. Government Sector Impact:

According to the Office of Financial Regulation, the late renewal process, which requires the payment of a reinstatement fee, could generate additional revenues. However, the fiscal impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 494.001, 494.0012, 494.00255, 494.00313, 494.00322, 494.0036, 494.0038, 494.004, 494.0042, 494.00421, 494.00611, 494.00612, 494.0066, 494.0067, , 494.007, and 494.0073.

This bill repeals the following sections of the Florida Statutes: 494.0028, 494.0068, 494.0078, 494.0079, 494.00791, 494.00792, 494.00793, 494.00794, 494.00795, 494.00796, 494.00797, and 494.008.

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.