

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: CS/SB 514

INTRODUCER: Senate Committee on Banking and Insurance and Senator Boyd

SUBJECT: Mortgage Brokering

DATE: January 18, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Moody | Knudson | BI | Fav/CS |
| 2. | | | FP | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 514 expands the list of loan originators, mortgage brokers, and mortgage lenders who are exempted from regulation under ch. 494, F.S., to include a bona fide nonprofit organization and its employees in certain circumstances.

The bill provides that for an organization to be a “bona fide nonprofit organization,” the Office of Financial Regulation (“OFR”) must apply criteria and processes established by rule to determine whether the organization satisfies a list of factors that must be met, including that the organization that is exempt from federal income tax under s. 501(c)(3), I.R.C., promotes affordable housing or provides homeownership education or similar services, conducts its activities in a manner that serves public or charitable purposes, and that meets other specified criteria.

The OFR must determine whether the loan terms are consistent with loan origination in a public or charitable context, rather than a commercial context. The OFR must periodically examine the books and activities of the organization and revoke its status as a bona fide nonprofit organization if the specified criteria do not continue to be met.

The bill provides the Financial Services Commission (“Commission”) with rulemaking authority to prescribe criteria and processes for the OFR to determine whether an organization satisfies the requirements of a bona fide nonprofit organization.

The bill is effective July 1, 2024.

II. Present Situation:

The 2008 financial crisis began when losses on mortgage-related financial assets caused large financial firms to experience financial distress, ultimately resulting in significant decreases in the value of the United States housing market and the United States economy entering into a severe recession that would ultimately be labeled the “Great Recession.”¹ In response, the United States Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) (12 U.S.C. s. 5101-5116), to reduce fraud and regulatory burden, enhance consumer protection, and increase uniformity.²

The S.A.F.E. Act

Enacted on July 30, 2008, the S.A.F.E. Act establishes minimum standards for the licensing and registration of state-licensed mortgage loan originators, and mandates a nationwide licensing and registration system for residential mortgage loan originators. In 2009, Florida adopted this requirement for loan originators in s. 494.00312, F.S.³ Florida also adopted parallel requirements for persons (employers, businesses, and individuals) who are applicants for licenses as mortgage brokers and mortgage lenders, exceeding the federal requirement. States are allowed to provide for exemptions from the S.A.F.E. Act to bona fide nonprofit organization or its employees if, under criteria and pursuant to processes established by the state, the state supervisory authority determines that the organization:⁴

- Has the status of a tax-exempt organization under s. 501(c)(3) of the Internal Revenue Code of 1986;
- Promotes affordable housing or provides homeownership education, or similar services;
- Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
- Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower⁵ and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
- Meets other standards that the state determines are appropriate.

¹John Weinberg, *The Great Recession and Its Aftermath*, Federal Reserve History (Nov. 22, 2013).

<https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath> (last visited January 10, 2024).

² 12 U.S.C. s. 5101.

³ See Ch. 2009-241, L.O.F.

⁴ 18 C.F.R. s. 1008.103(e)(7)(ii).

⁵ A state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context, for residential mortgage loans to have terms that are favorable to the borrower. 12 C.F.R. 1008.103(e)(7)(iv).

Under the S.A.F.E. Act, the state must periodically review the books and activities of the bona fide nonprofit organization it determines is a bona fide nonprofit organization and revoke its status if the organization does not continue to meet the above criteria.⁶

State Regulation of Non-Depository Mortgage Business

The OFR regulates state-chartered banks, credit unions, other financial institutions, as well as finance companies, and the securities industry.⁷ The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses:

- A **loan originator**, who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, 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 includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Act. 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.⁸
- A **mortgage broker**, who conducts loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.⁹
- A **mortgage lender**, who makes a mortgage loan or services a mortgage loan for others, or, for compensation or gain, directly or indirectly, sells or offers to sell a mortgage loan to a noninstitutional investor.¹⁰ A mortgage lender may act as a mortgage broker.¹¹

Exemptions

The following persons are exempt from loan originator, mortgage broker and mortgage lender regulations under ch. 494, F.S.:¹²

- Any person operating exclusively as a registered loan originator¹³ in accordance with the S.A.F.E. Act.

⁶ 12 C.F.R. s. 1008.103(e)(7)(iii).

⁷ Section 20.121(3)(a)2. and (d), F.S. The OFR is housed within the Financial Services Commission (commission). The commission, comprised of the Governor and Cabinet, appoints the OFR Commissioner. The commission is a separate budget entity under the Department of Financial Services (DFS), and is not subject to the control or supervision by the DFS.

⁸ Section 494.001(18), F.S.

⁹ Section 494.001(23), F.S.

¹⁰ Section 494.001(24), F.S.

¹¹ Section 494.0073, F.S.

¹² Section 494.00115(1), F.S.

¹³ Section 494.001(31), F.S., defines a "registered loan originator" as "a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the [Nationwide Mortgage Licensing System and Registry]." A registered loan originator must comply with federal registration requirements rather than the loan originator licensing requirements under ch. 494, F.S.

- A depository institution; certain regulated subsidiaries owned and controlled by a depository institution; or institutions regulated by the Farm Credit Administration.
- The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.
- An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.
- A person involved solely in the extension of credit relating to the purchase of a timeshare plan.
- A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of ch. 475, F.S., unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator.

The following persons are exempt from the mortgage lender licensing requirements of ch. 494, F.S.:¹⁴

- A person acting in a fiduciary capacity conferred by the authority of a court.
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.
- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

A securities dealer, investment advisor, or associated person registered under ch. 517, F.S., is exempt from regulation as a loan originator or mortgage broker under ch. 494, F.S., if specified criteria are met.¹⁵

There is no exemption under current Florida law for bona fide nonprofit organizations and its employees. However, there are a few jurisdictions that have adopted exemptions for nonprofit organizations.¹⁶

¹⁴ Section 494.00115(3), F.S.

¹⁵ Section 494.00115(2), F.S.

¹⁶ Examples of other jurisdictions that have an exemption relating to nonprofit organizations include Ohio, Georgia, and Indiana. *See* Ohio Rev. Code s. 1322.01(AA)(2)(g); O.C.G.A. s. 7-1-1001(a)(18); and IN Code s. 24-4.4-1-202. Colorado exempts mortgage loan originators of self-help housing organizations, or employees or volunteers of self-help housing organizations, from licensing and other regulatory requirements. C.R.S. s. 12-10-709.

Powers and Duties of the Commission and OFR

The OFR is responsible for the administration and enforcement of ch. 494., F.S., relating to loan originators and mortgage brokers.¹⁷ The Commission has discretion to adopt rules to administer the chapter, including, but not limited to, rules relating to compliance with specified requirements of the S.A.F.E. Mortgage Licensing Act of 2008.¹⁸ Current law does not specifically authorize the Commission to adopt rules to prescribe the criteria and processes that must be used by the OFR to determine whether an organization is and remains a bona fide nonprofit organization.

Licensing

Under ch. 494, F.S., these licensees are subject to:

- Requirements for the maintenance of books and records relating to the licensee's compliance with the chapter, with regard to expenses paid by the licensee on behalf of the borrower, and relating to its advertisements.¹⁹
- Investigations and examinations by the OFR.²⁰
- The OFR's enforcement authority, such as injunctions, cease and desist orders, suspension or revocation of licensure, and administrative fines.²¹

In order to obtain a license as a mortgage loan originator, an individual must:²²

- Be at least 18 years of age and have a high school diploma or its equivalent;
- Complete a 20-hour prelicensing class;²³
- Pass a written test;²⁴
- Submit an application form;
- Submit nonrefundable application fees totaling \$215;
- Submit fingerprints, the cost of which is borne by the applicant; and
- Authorize access to his or her credit report, the cost of which is borne by the applicant.

In order to obtain a license as a mortgage broker, a person must:²⁵

- Submit an application form, which must designate a qualified principal loan originator;
- Submit nonrefundable application fees totaling \$525;
- Submit fingerprints for each of the applicant's control persons,²⁶ the cost of which is borne by the person subject to the background check; and

¹⁷ Section 494.0011(1), F.S.

¹⁸ Section 494.0011(2), F.S.

¹⁹ Sections 494.0016 and 494.00165(2), F.S.

²⁰ Section 494.0012, F.S.

²¹ Sections 494.0013, 494.0014, and 494.00255, F.S.

²² Section 494.00312, F.S.

²³ The cost of prelicensing courses may vary by course provider, but one such course provider charges \$349 for the required 20-hour course. See MortgageEducation.com, Mortgage Loan Originator Courses, <https://www.mortgage-education.com/StatePage.aspx?StateCode=FL> (last visited December 20, 2023).

²⁴ The cost of written test is \$110. See Nationwide Multistate Licensing System & Registry, Uniform State Test (UST) Implementation Information, [Public - SAFE MLO Testing FAQ \(csbs.org\)](https://www.nmls.org/public-safemlo-testing-faq) (last visited December 20, 2023).

²⁵ Section 494.00321, F.S.

²⁶ "Control persons" is defined in s. 494.001(7), F.S., to mean, in part, "an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise."

- Authorize access to the credit reports on each of the applicant's control persons, the cost of which is borne by the applicant.

In order to obtain licensure as a mortgage lender, a person must:²⁷

- Submit an application form, which must designate a qualified principal loan originator;
- Submit nonrefundable application fees totaling \$600;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check;
- Submit a copy of the applicant's financial audit report for the most recent fiscal year, which must document that the applicant has a net worth of at least \$63,000 if the applicant is not seeking a servicing endorsement, or at least \$250,000 if the applicant is seeking a servicing endorsement; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

A mortgage loan originator, broker, and lender license is subject to annual renewal by December 31, and must meet specified criteria to be eligible for renewal.²⁸

Examinations and Investigations

The OFR has the authority to conduct an investigation of any person who the OFR has reason to believe has violated or is about to violate ch. 494, F.S.²⁹ The OFR also has authority to conduct intermittent examinations of any licensee or other person under the provisions of ch. 494, F.S.

Violations

The OFR has statutory authority to impose disciplinary actions against any person who engages in specified conduct,³⁰ such as:

- Failure to disburse funds in compliance with agreements;³¹
- Fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction;³² and
- Consistently and materially underestimating maximum closing costs.³³

The disciplinary actions the OFR may take include, for instance, suspension, revocation, or denial of a license, or the imposition of a fine of up to \$25,000 for each count or separate offense.³⁴

²⁷ Section 494.00611, F.S.

²⁸ Sections 494.00312(7), 494.00321(7), and 494.00611(10), F.S.

²⁹ Section 494.0012, F.S.

³⁰ Section 494.00255(2), F.S.

³¹ Section 494.00255(1)(c), F.S.

³² Section 494.00255(1)(d), F.S.

³³ Section 494.00255(1)(e), F.S.

³⁴ Section 494.00255(2), F.S.

Any person who knowingly acts as a loan originator, mortgage broker, or mortgage lender without a current and active license issued pursuant to ch. 494, F.S., commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.³⁵

Any person who violates any provisions of ch. 494, F.S., in which the total value of money and property unlawfully obtained exceeds \$50,000 and there are five or more victims, commits a felony of the first degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.³⁶

Habitat for Humanity, a Florida Nonprofit Organization

Habitat for Humanity of Florida (“Habitat”) was incorporated in 2009 as a nonprofit organization and provides affordable housing for communities in Florida.³⁷ Individuals who purchase homes built through Habitat must comply with a rigorous qualification process, complete financial and homeowner education courses, contribute physically to the construction of the home, undergo background screening, and meet minimum financial requirements (e.g. monthly mortgage payments may not be greater than thirty percent of the borrower’s monthly income).³⁸ Habitat staff are not compensated to incentivize them to refer any borrowers to lenders or loan products that are not affordable or in the borrower’s best interests.³⁹ A summary comparing current Florida law requirements and the Habitat qualified loan originator requirements are below:⁴⁰

| <u>State of Florida</u> <u>Mortgage Loan Originator</u> | <u>Habitat Qualified Loan Originator</u> |
|--|---|
| Complete 20 hours of approved education courses, of which a minimum of 2 hours must cover the provisions of Florida law and rules. ⁴¹ | Complete 17 courses provided in partnership by Habitat, the American Bankers Association, and an additional Florida-specific course which covers Florida law and rules. |
| Pass national and state testing requirements. ⁴² | Testing not required. |
| Pass state and federal background checks. ⁴³ | Pass state and federal background checks. |
| Authorize and pass a credit check. ⁴⁴ | Authorize and pass a credit check. |

On August 12, 2010, the OFR issued a nonbinding informal legal opinion to Habitat which concludes that the organization’s affiliates and their staff are outside the scope of the S.A.F.E.

³⁵ Section 494.0018(1), F.S.

³⁶ Section 494.0018(2), F.S.

³⁷ Habitat, *Habitat for Humanity of Florida Milestones*, available at: [Florida History — Habitat for Humanity Florida \(habitatflorida.org\)](https://floridahistory.org/habitat-for-humanity-florida) (last visited Jan. 2, 2024); Habitat, *How Habitat Works*, available at: [How Habitat Works — Habitat for Humanity Florida \(habitatflorida.org\)](https://habitatflorida.org/how-habitat-works) (last visited Jan. 2, 2024).

³⁸ Habitat for Humanity of Florida White Paper, *Habitat for Humanity & the SAFE Act Exemption* (on file with the Senate Committee on Banking and Insurance).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Section 494.00312(2)(b), F.S.

⁴² Section 494.00312(2)(c), F.S.

⁴³ Section 494.00312(2)(f), F.S.

⁴⁴ Section 494.00312(2)(g).

Act definition of loan originator that has been codified in Florida law.⁴⁵ The OFR determined that Habitat's employees are not acting for "compensation or gain" based largely on Habitat's requirement of "no profit mortgages" and on several factors relating to its pricing and fees policies.⁴⁶

III. Effect of Proposed Changes:

Section 2 of the bill adds s. 494.00115(g) to exempt a bona fide nonprofit organization and its employees from the regulations under ch. 494, F.S. This exemption is substantially similar to the exemption permitted under the S.A.F.E. Act except that the exemption in the bill also covers the bona fide organization (not only the employee of such organization).

The bill establishes an exemption from regulation under ch. 494, F.S., for:

- A bona fide nonprofit organization; and
- An employee of the bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

For an organization to be a "bona fide nonprofit organization," the OFR must determine, pursuant to criteria and processes established by rule, whether the organization satisfies all of the following factors:

- Has the status of a tax-exempt organization under s. 501(c)(3), I.R.C.
- Promotes affordable housing or provides homeownership education or similar services.
- Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes.
- Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients.
- Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients.
- Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. For residential mortgage loans to be deemed to have terms that are favorable to the borrower, the OFR must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

This exemption provides the OFR with authority to periodically examine the books and activities of an organization it determines is a bona fide nonprofit organization and allows the OFR to revoke its status as a bona fide organization if it does not continue to meet the specified criteria set out in the paragraph above.

⁴⁵ Letter from the OFR to Lori Harris, Executive Director, Habitat for Humanity of Florida, *Habitat for Humanity of Florida – Request for Legal Opinion OFR Case No. 0868-FR-3/10* (on file with the Senate Committee on Banking and Insurance).

⁴⁶ *Id.*

Section 1 of the bill expands the Commission’s rulemaking authority under s. 494.0011(2)(b), F.S., relating to compliance with the S.A.F.E. Act, to prescribe criteria and processes for determining whether an organization is and remains a bona fide nonprofit organization for the purpose of determining whether the organization and its employees acting as loan originators may be exempt from regulation under ch. 494, F.S.

Section 3 of the bill provides for an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employees of entities that meet the criteria for the exemption under SB 542 should benefit financially by not having to pay costs associated with licensure requirements under ch. 494.0115, F.S. The total number of nonprofit organizations that are eligible for the exemption is unclear.

C. Government Sector Impact:

The OFR reports that it has not identified any fiscal impact that would result from the proposed legislation.⁴⁷

⁴⁷ The OFR, *2024 Agency Legislative Bill Analysis Florida Office of Financial Regulation*, Dec. 22, 2023, (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:**VII. Related Issues:**

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.0011 and 49400115.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance Committee on January 16, 2024:**

- Confirms the provisions of the bill to the S.A.F.E. Act exemption for bona fide nonprofit organizations' employees from loan originator and mortgage broker regulation;
- Clarifies the conditions under which an employee may be exempt from the S.A.F.E. Act regulations adopted in Florida law;
- Provides that the OFR must determine whether an organization is a bona fide nonprofit organization based on specified factors;
- Requires the OFR to determine that the terms of the loan are consistent with loan origination in public or charitable context, rather than a commercial context;
- Requires the OFR to periodically examine the books and activities of the organization and revoke its status if the organization does not continue to meet the requirements; and
- Provides the Commission with rulemaking authority to prescribe criteria and processes required for the OFR to make the determinations regarding bona fide nonprofit organizations.

B. Amendments:

None.