

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill requires mortgage brokers and lenders to provide borrowers with detailed disclosures regarding certain loan products. Provisions in the bill require borrowers be informed about the risks associate with these loan products as well as any changes in loan terms. Moreover the burden of proving that certain notice requirements have been provided to the borrower is incumbent upon the lender (licensee).

Provide limited government – The bill increases the enforcement authority of OFR against mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act. Additionally, OFR will be authorized to take action against the principal representative of a lender based on the actions the lender's associates or employees. Rulemaking authority is also granted to Financial Services Commission to implement the provisions of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

There is no requirement under Chapter 494, F.S., for lenders or mortgage brokers to provide consumers with information on variable rate loan products. Also, lenders and brokers are not required to promptly notify buyers of changes in the terms of previously offered loan products. In some cases, borrowers learn of these changes at closing. Moreover, OFR lacks the authority to enforce federal laws and regulations governing such lending processes.

Additionally, there is no provision in current law that allows the OFR to impose a fee if an applicant requests to review his or her mortgage broker test. However, when OFR has contracted with a vendor to administer the mortgage broker test, the vendor, if requested by an applicant, imposes a test review fee for an applicant to review his or her test. In such a scenario of a review fee charged by the vendor, OFR absorbs that cost.

Proposed Changes

Sections 1-4, of the bill provide amendments to Part I, Chapter 494, F.S., General Provisions.

Section 1: The bill amends s. 494.001, F.S., relating to definitions.

The bill revises the definition of the term "act as a loan originator." The definition is clarified to include the act of assisting any licensed or exempt entity in negotiating the making of a mortgage loan, including working with a licensed or exempt entity to structure a loan or discussing the terms and conditions necessary for the delivery of the loan product. The revised definition is intended to clarify that an employee of a licensed mortgage lender or correspondent lender who acts as a wholesale account representative is considered a loan originator. By revising the definition, these persons will be required to complete 14 hours of continuing education every two years and the lender will be required to list these individuals on the quarterly report filed with OFR under s. 494.0067(9), F.S.

The bill adds a definition for the term "mortgage loan application", which is defined as: "a submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan."

A definition for the term "mortgage brokerage fee" is added which is defined as: "the total compensation to be received by a mortgage business for acting as a mortgage broker."

Also, the bill adds a definition for the term "business day" which is defined as: "all calendar days except Sundays and legal public holidays."

Section 2: The bill amends s. 494.0014, F.S. relating to cease and desist; and refund orders.

This section is amended to allow OFR to impose a fine of up to \$5,000 for each separate count of violations of Part I of Chapter 494, F.S., relating to General Provisions. Currently, the Office has the authority to impose fines under Parts II and III of Chapter 494, F.S., relating to the regulation of mortgage brokers and mortgage lenders, respectively. The bill will allow OFR to additionally impose fines against natural persons, entities, and mortgage business schools that violate the general provisions of the chapter.

Section 3: HB 1125 amends s. 494.0029, F.S., relating to mortgage business schools.

The bill authorizes OFR to take disciplinary actions against a permitted mortgage business school. The OFR may revoke, suspend or place on probation the permit of a mortgage business school that fails to comply with Chapter 494, F.S.

The bill provides that permitted mortgage business schools must conduct classes on the basis of a 50-minute classroom hour in accordance with the requirements of Chapter 494, F.S., and the rules of the Financial Services Commission. This provision ensures that individuals are spending the required number of hours in classroom instruction.

Further, the bill requires permitted mortgage business schools to develop procedures for actually confirming the identity of each student attending course offerings.

Section 4: The bill amends s. 494.00295, F.S., relating to professional continuing education.

Current law requires mortgage brokers, the principal representatives and loan originators of a mortgage lender, correspondent lenders, or mortgage lenders pursuant to the savings clause, to successfully complete 14 hours of professional continuing education every two years. Although the instructional materials address the requirements of Chapter 494, F.S., there are no minimum number of hours required that specifically speaks to the chapter and its rules. Of the 14 hours of continuing education, the bill requires that at least 4 hours address Chapter 494, F.S., and the rules adopted under that chapter.

The bill amends the section to reduce the time period for the waiver provision that is applicable to continuing education requirements for mortgage brokers who are renewing their licenses for the first time. Currently, the waiver applies to the biennial license period immediately following the period in which the broker first became licensed. The bill limits the waiver to those brokers who have completed the 24-hour pre-licensure course within 90 days of the biennial renewal period.

The bill also authorizes OFR to conduct professional continuing education programs. Currently, the statute only lists permitted mortgage business schools and entities specifically exempted from permitting as mortgage business schools (e.g., community colleges, universities, etc.) as those entities authorized to conduct the programs.

Further, the bill creates additional requirements for electronically transmitted courses (i.e., courses taken via the internet). The bill requires that all electronically transmitted courses shall require that the time spent attending Internet course is equal to the number of qualifying hours awarded an course attending participants. Before a participant receives a certificate of course completion, the course providers shall: 1) ensure that the number of hours that a participant spends attending the course online is equal to the number of statutorily required hours; 2) require participants to complete a test that comprehensively covers the course content for the particular timed module; and 3) require participants to correctly answer all test questions for the timed module.

Additional requirements are imposed by the bill upon course providers for distance education courses (i.e., course taken via the mail). The bill requires that the course participants successfully complete a test that covers the course content. The test must consist of at least 100 questions, and the participant must successfully answer at least 75% of the test questions in order to be awarded a certificate of course completion. There is a prohibition provision to keep the course provider from providing the test answers to course participants.

Sections 5-8 of the bill provide amendments to Part II, Chapter 494, F.S., Mortgage Brokers

Section 5: The bill amends s. 494.0033, F.S., relating to mortgage broker's license.

The bill requires a person seeking a mortgage broker license to have a high school diploma or its equivalent. Currently, this is not a requirement of licensure.

The bill authorizes the Financial Services Commission to adopt rules authorizing the collection of a fee, not to exceed \$50, from an applicant in order to review his or her graded mortgage broker test. The OFR plans to contract with a vendor to administer the mortgage broker test. Authority to collect a "review fee" is a standard provision of most vendor contracts.

The bill also authorizes the Financial Services Commission to adopt rules regarding the administration of the mortgage broker test (e.g., rule governing pre-registration requirements, security measures, scoring, re-test procedures, etc.)

Section 6: The bill amends s. 494.0038, F.S., relating to mortgage broker disclosures.

The bill provides that no person may receive a mortgage brokerage fee except pursuant a written mortgage brokerage agreement executed by the mortgage broker and the borrower. Execution of such agreement is to occur within 3 days after accepting a "mortgage loan application." Clarification is provided in the bill relating to fees received by the mortgage brokerage business from the lender (e.g., a yield spread premium). The business must disclose to the borrower the maximum amount of the fee payment to be received from the lender in the mortgage brokerage agreement.

In the mortgage brokerage agreement, it is to state the nature of the relationship between the business and the lender, describe how compensation is paid by the lender, and describe how the interest rate affects the compensation paid to the mortgage brokerage business. The Financial Services Commission may adopt, by rule, an acceptable form for disclosure of the brokerage fees received from the lender. Currently, fees are disclosed in terms of a range of points (percentages), not a dollar amount. Disclosing the fees in terms of dollars is intended to be more informative to consumers.

Currently, unless a loan application fee or other third party fee is accepted by the mortgage brokerage business, the business is not required to disclose the exact amount of the fee that it is to receive from the lender until closing. Provisions are included in the bill that require it be disclosed to the borrower the exact amount of any payment that is to be made by the lender to the mortgage brokerage business for brokering the loan within 3 business days of the business being made aware of the exact amount, but no later than 3 business days before the execution of the closing or settlement statement. The mortgage brokerage business bears the burden of proving the notification was provided to the borrower.

Additionally, OFR has shared with staff that it has seen a variety of fees on mortgage brokerage agreements and/or the closing statements that are fees payable to the mortgage brokerage business, but are not disclosed as such (e.g., processing fees, handling fees, loan origination fees, discount fees, etc.). The bill authorizes the Financial Services Commission to prescribe by rule what constitutes a mortgage brokerage fee.

The bill requires that the good faith estimate be signed and dated by the borrower. It also clarifies and provides more detail about the disclosures that must be made to the borrower on the good faith

estimate. The bill requires that the good faith estimate state the total amount of each of the fees that the borrower may reasonably expect to pay if the loan is closed, including, but not limited to, fees earned by the mortgage brokerage business, lender fees, third party fees, and official fees.

The bill also requires the good faith estimate to identify the recipient of all payments charged to the borrower, and they may be disclosed in generic terms, such as paid to lender, appraiser, officials, title company, or any other third party service provider, except for all fees to be received by the mortgage brokerage business. The bill specifies that this requirement is not a substitute a written mortgage brokerage agreement.

Added bill provisions address disclosure requirements for adjustable rate loans. At the time an adjustable rate mortgage loan is offered to a borrower and whenever the terms of an adjustable rate mortgage offered have a material change prior to closing, the broker must furnish the disclosures that are required under sections 226.18 and 226.19 of Regulation Z (12 C.F.R. ss. 226.18 and 226.19) adopted under the federal Truth in Lending Act, along with the Consumer Handbook on Adjustable Rate Mortgages, which is published by the Federal Reserve Board and the Federal Home Loan Bank Board.

The bill authorizes the Financial Services Commission to adopt, by rule, a suitable substitute for the Consumer Handbook on Adjustable Rate Mortgages. The bill also authorizes the Commission to establish by rule criteria as to what constitutes a material change in loan terms.

Section 7: The bill amends s. 494.004, F.S., relating to requirements of licensees (mortgage brokers and mortgage brokerage businesses).

The bill requires mortgage brokers and mortgage brokerage businesses to notify the borrower when material changes to the terms of the offered mortgage loan occur. This notification must be provided to the borrower within 3 business days after the licensee is made aware of the changes, but not less than 3 business days before closing. The licensee bears the burden of proving the notification was provided and accepted by the borrower. The Financial Services Commission may adopt rules providing guidance regarding what constitutes a material change.

Section 8: The bill amends s. 494.0041, F.S., relating to administrative penalties and fines; license violations.

The bill authorizes the OFR to enforce the provisions of the federal Real Estate Procedures Act and federal Truth in Lending Act, and any regulations adopted under those acts. Currently, the Office lacks the authority to enforce these federal regulations.

Sections 9-12 of the bill provide amendments to Part III, Chapter 494, F.S., Lenders

Section 9: The bill amends s. 494.0064, F.S., relating to renewal of mortgage lender's license; branch office license renewal.

As part of the license renewal process, lenders must certify that they meet the minimum net worth requirements under the chapter. Currently, such certification is not required.

Section 10: The bill amends s. 494.0067, F.S., relating to requirements of licensees (mortgage lenders) under ss. 494.006-494.007.

The bill requires the good faith estimate to identify the recipient of all payments charged to the borrower and, except for the fees to be received by the mortgage brokerage business and the mortgage lender or correspondent mortgage lender, may be disclosed in generic terms such as paid to appraiser, officials, title company, or any other third-party service provider. The lender bears the burden of proving such disclosures were provided to the borrower.

The bill requires disclosures for adjustable rate loans. At the time an adjustable rate mortgage loan is offered to a borrower and whenever the terms of an adjustable rate mortgage offered have a material change prior to closing, the broker must furnish the disclosures that are required under sections 226.18 and 226.19 of Regulation Z (12 C.F.R. ss. 226.18 and 226.19) adopted under the federal Truth in Lending Act, along with the Consumer Handbook on Adjustable Rate Mortgages, which is published by the Federal Reserve Board and the federal Home Loan Bank Board. The Financial Services Commission may adopt rules establishing what constitutes a material change and what constitutes a suitable substitute for the handbook. The lender bears the burden of providing the disclosures were provided to the borrower. See also section six of the bill, which requires mortgage brokers to also provide these disclosures.

Moreover, the bill requires lenders to notify a borrower of any material changes in the terms of a mortgage loan previously offered to a borrower. This notification must be provided within 3 business days after the lender is aware of the changes, but not less than three business days before the borrower signs the settlement or closing statement. The lender bears the burden of proving such notification was provided and accepted by the borrower. The Financial Services Commission may adopt rules establishing criteria as to what constitutes a material change.

Section 11: The bill amends s. 494.0072, F.S., relating to administrative penalties and fines; license violations.

The OFR is authorized by the bill to enforce the provisions of the federal Real Estate Procedures Act and federal Truth in Lending Act, and any regulations adopted under those acts. Currently, the Office lacks the authority to enforce these federal regulations.

Authorization is also given to the OFR to take disciplinary action against a principal representative of a mortgage lender or correspondent lender based on the actions of the lender's associates or employees. The principal representative is only subject to suspension or revocation for an associate or employee's actions if there is a pattern of repeated violations by associates or employees or if the principal broker or principal representative had knowledge of the violations.

Section 12: The bill amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.

The bill subjects a mortgage lender or a correspondent lender, when acting as a mortgage brokerage business, to the provision of new subsection 494.004(8), F.S., which requires a borrower to be notified of any material changes in the loan terms within 3 business days after the mortgage brokerage business is made aware of such changes, but not less than three business days before closing.

Section 13: This act takes effect October 1, 2007.

C. SECTION DIRECTORY:

- Section 1: The bill amends s. 494.001, F.S., relating to definitions.
- Section 2: The bill amends s. 494.0014, F.S. relating to cease and desist; and refund orders.
- Section 3: HB 1125 amends s. 494.0029, F.S., relating to mortgage business schools.
- Section 4: The bill amends s. 494.00295, F.S., relating to professional continuing education.
- Section 5: The bill amends s. 494.0033, F.S., relating to mortgage broker's license.
- Section 6: The bill amends s. 494.0038, F.S., relating to mortgage broker disclosures.
- Section 7: The bill amends s. 494.004, F.S., relating to requirements of licensees (mortgage brokers and mortgage brokerage businesses).
- Section 8: The bill amends s. 494.0041, F.S., relating to administrative penalties and fines; license violations.
- Section 9: The bill amends s. 494.0064, F.S., relating to renewal of mortgage lender's license; branch office license renewal.
- Section 10: The bill amends s. 494.0067, F.S., relating to requirements of licensees (mortgage lenders) under ss. 494.006-494.007.

- Section 11: The bill amends s. 494.0072, F.S., relating to administrative penalties and fines; license violations.
- Section 12: The bill amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.
- Section 13: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Minimal

2. Expenditures:

Minimal

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Minimal

2. Expenditures:

Minimal

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Minimal Impact

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to provide clear powers and duties to the Financial Services Commission to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Mortgage and property transfer fraud have become a serious and destructive cottage industry in our state. Its ramifications and scope are well described in this staff analysis. This bill will provide well-focused ammunition in the arsenal of law enforcement to bring these practices to a halt.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES