

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1569 Exemption from Regulation for Bona Fide Nonprofit Organizations

SPONSOR(S): Grant

TIED BILLS: IDEN./SIM. BILLS: CS/SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fletcher	Lloyd
2) Commerce Committee			

SUMMARY ANALYSIS

In response to the 2008 financial crisis, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act and the regulations promulgated thereunder set forth the minimum standards for the state licensing and registration of residential mortgage loan originators (MLOs). The SAFE Act also requires that federal and state licensing and registration of residential MLOs be accomplished through the same online registration system.

Florida adopted its registration requirements for MLOs in 2009. Florida has also adopted similar requirements for the licensure and registration of mortgage brokers and mortgage lenders, exceeding the federal requirements.

States are permitted to provide an exemption from the SAFE Act registration requirements to a bona fide nonprofit organization and its employees if the state determines that the organization meets certain criteria. Florida law does not currently provide an exemption from regulation for bona fide nonprofit organizations, but does provide exemptions for certain other entities consistent with federal law.

The bill provides an exemption from Florida’s SAFE Act regulation to a bona fide nonprofit organization and the employees of such organization, provided the organization:

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

The bill has no fiscal impact on local government. It has an indeterminable fiscal impact on state government revenues but no fiscal impact on state government expenses. The bill has an indeterminable positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The S.A.F.E Act

The U.S. financial crisis of 2008 began as a housing crisis that first seemed to be localized in certain states and in the subprime mortgage market.¹ Eventually, however, the seemingly localized housing collapse spread to the entire U.S. housing market, as house prices declined nationwide.²

Because the financial system was integral to the housing boom, the system was highly exposed to the housing market, whose downturn would prove to be so severe that it threatened to bring down the entire financial system with it in the absence of significant government intervention.³ The 2008 financial crisis, known as the “Great Recession,” became the most severe financial crisis since the Great Depression, and its effects spread throughout the global economy.⁴

In response to the housing crisis, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).⁵ The SAFE Act and the regulations promulgated thereunder:

- Set forth the minimum standards for the state licensing and registration of residential mortgage loan originators (MLOs);⁶
- Prohibit individuals from engaging in the business of a residential MLO without first obtaining and maintaining annually certain licensure and registration requirements;⁷ and
- Require that federal and state licensing and registration of residential MLOs be accomplished through the same online registration system, known as the Nationwide Mortgage Licensing System and Registry (NMLSR).⁸

The objectives of the NMLSR under the SAFE Act include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of MLOs; enhancing consumer protections by supporting anti-fraud measures; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, MLOs.⁹

¹ Cynthia Angell and Krishna Patel, *Crisis and Response: An FDIC History, 2008-2013*, Federal Deposit Insurance Corporation (last updated June 12, 2023), at xiv. Available at <https://www.fdic.gov/bank/historical/crisis/chap1.pdf> (last visited Jan. 20, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See 12 U.S.C. Sec. 5101–5116, Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 et seq.) as amended by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. No. 111–203, 124 Stat. 1376).

⁶ A mortgage loan originator is an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. See 12 C.F.R. Sec. 1007.102.

⁷ For an individual who is an employee of a covered financial institution, the individual must obtain and annually maintain registration as a registered mortgage loan originator and a unique identifier (federal registration). For all other individuals, they must obtain and annually maintain a state license and registration as a state-licensed mortgage loan originator, and a unique identifier (state licensing/registration). See Consumer Financial Protection Bureau, *Secure and Fair Enforcement for Mortgage Licensing Act: Manual V.2*, CFPB Laws and Regulation (Oct. 1, 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_secure-fair-enforcement-for-mortgage-licensing-safe-act_procedures.pdf (last visited Jan. 20, 2024).

⁸ Consumer Financial Protection Bureau, *Secure and Fair Enforcement for Mortgage Licensing Act: Manual V.2*, CFPB Laws and Regulation (Oct. 1, 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_secure-fair-enforcement-for-mortgage-licensing-safe-act_procedures.pdf (last visited Jan. 20, 2024).

⁹ 12 U.S.C. Sec. 5101.

State Regulation of Loan Originators, Mortgage Brokers, and Mortgage Lenders

Soon after the enactment of the SAFE Act, states began adopting licensure and registration requirements for residential MLOs pursuant to the requirements of the SAFE Act.¹⁰ Florida adopted its requirements for MLOs¹¹ in 2009 with the enactment of s. 494.00312, F.S.¹² In addition to MLOs, however, Florida also adopted similar requirements for the licensure and registration of mortgage brokers¹³ and mortgage lenders,¹⁴ exceeding the federal requirements.

The Office of Financial Regulation (OFR) regulates state-chartered banks, credit unions, other financial institutions, finance companies, and the securities industry.¹⁵ 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.¹⁶ Specifically, under ch. 494, F.S., OFR licenses and regulates MLOs, mortgage brokers, and mortgage lenders.

An individual or entity applying for licensure under ch. 494, F.S., is required to meet certain conditions and pay a nonrefundable application fee in the following amounts:

- For a mortgage broker license, an applicant must submit a nonrefundable application fee of \$425, and an additional \$100 nonrefundable fee if the applicant meets certain other criteria;¹⁷
- For a loan originator license, an applicant must submit a nonrefundable application fee of \$195, and an additional \$20 nonrefundable fee if the applicant meets certain other criteria;¹⁸ and
- For a mortgage lender license, an applicant must submit a nonrefundable application fee of \$500, and an additional \$100 nonrefundable fee if the applicant meets certain other criteria.¹⁹

¹⁰ National Reverse Mortgage Lenders Association, *States Move Aggressively to Implement SAFE Act and Improve Mortgage Supervision*, https://www.nrmlaonline.org/app_assets/public/ef8c2414-00da-4cff-8c69-e45d2ca45a82/SAFE%20Act%20Update.pdf (last visited Jan. 20, 2024).

¹¹ Florida statute defines "loan originator" as 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, 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 SAFE 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. See s. 494.001(18), F.S.

¹² See ch. 2009-241, L.O.F.

¹³ Florida statute defines "mortgage broker" as a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker. See s. 494.001(23), F.S.

¹⁴ Florida statute defines "mortgage lender" as a person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. See s. 494.001(24), F.S.

¹⁵ S. 20.121(3)(a)2. and (d), F.S. OFR is housed within the Financial Services Commission (Commission). The Commission, comprised of the Governor and Cabinet, appoints OFR's Commissioner.

¹⁶ Office of Financial Regulation, *Division of Consumer Finance*, <https://fiofr.gov/sitePages/DivisionOfConsumerFinance.htm#:~:text=The%20Division%20of%20Consumer%20Finance,dermine%20compliance%20with%20Florida%20law>. (last visited Jan. 20, 2024).

¹⁷ S. 494.00321(1)(c), F.S.

¹⁸ S. 494.00312(2)(e), F.S.

¹⁹ S. 494.00611(2)(c), F.S.

Exemption from Regulation: Bona Fide Nonprofit Organizations

Notwithstanding the policies of the SAFE Act, federal regulations provide that a state is not required to impose registration requirements on certain individuals.²⁰ Among those exemptions, states are permitted to provide an exemption from registration requirements under the SAFE Act to a bona fide nonprofit organization and its employees if, under criteria and pursuant to processes established by the state, the state supervisory authority determines that the organization:

- Has the status of a tax-exempt organization under section 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 borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
- Meets other standards that the state determines are appropriate.²¹

A state must periodically examine the books and activities of an organization it classifies as a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria described above.²² Moreover, for residential mortgage loans to have terms that are favorable to the borrower, a state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.²³

Florida law does not currently provide an exemption from regulation for bona fide nonprofit organizations, but does provide exemptions for certain other individuals and entities consistent with federal law, provided certain criteria are met.²⁴

Effect of the Bill

The bill provides an exemption from regulation under ch. 494, F.S., for a bona fide nonprofit organization and the employees of such organization, provided that the organization meets all of the following conditions:

- Has the status of a tax-exempt organization under s. 501(c)(3) of the Internal Revenue Code;
- Promotes affordable housing or provides homeownership education or similar services;
- Conducts the organization's 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 the organization or the organization's employees to act other than in the best interests of the organization's clients;
- Compensates the organization's employees in a manner that does not incentivize the employees to act other than in the best interests of the organization's clients;
- Provides to or identifies for a borrower any residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under any federal, state, and local housing assistance programs.

B. SECTION DIRECTORY:

²⁰ See 12 C.F.R. Sec. 1008.103(e) for a full list of exempt individuals.

²¹ 12 U.S.C. Sec. 1008.103(e)(7)(ii).

²² 12 U.S.C. Sec. 1008.103(e)(7)(iii).

²³ 12 U.S.C. Sec. 1008.103(e)(7)(iv).

²⁴ See s. 494.00115, F.S., for a full list of individuals and entities exempt from regulation under ch. 494, F.S.

Section 1. Amends s. 494.00115, F.S., relating to exemptions.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminable negative fiscal impact on OFR to the extent that entities and employees of entities that qualify for the proposed exemption will no longer pay application fees associated with licensure requirements under ch. 494, F.S. The total number of nonprofit organizations that are eligible for the exemption, however, is unclear.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities and employees of entities that meet the criteria for the proposed exemption will likely benefit financially by not having to pay costs associated with licensure requirements under ch. 494, F.S. The total number of nonprofit organizations that are eligible for the exemption is unclear.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

See "Drafting Issues or Other Comments."

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules. However, if the bill is amended as suggested in "Drafting Issues or Other Comments," the Commission's rulemaking authority under s. 494.0011(2)(b), F.S., relating to compliance with the SAFE Act, will likely need to be expanded to prescribe criteria and processes for determining whether an organization qualifies for the proposed exemption.

C. DRAFTING ISSUES OR OTHER COMMENTS:

To ensure compliance with federal law, the following amendments to the bill are suggested:

- Conform the provisions of the bill to the SAFE Act exemption for bona fide nonprofit organizations' employees from loan originator and mortgage broker regulation;
- Clarify the conditions under which an employee may be exempt from the SAFE Act regulations provided in Florida statute;
- Provide that OFR must determine whether an organization is a bona fide nonprofit organization based on specified factors;
- Require OFR to determine that the terms of the loan are consistent with loan origination in public or charitable context, rather than a commercial context; and
- Require 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES