White Paper: HB 631/SB 666 Loan Originators, Mortgage Brokers, & Mortgage Lenders

I. Overview

The explosion in subprime lending was a major factor that led to the Great Recession from 2007 to 2009. The housing turmoil from the bursting of the U.S. housing bubble during the Great Recession led to the federal Housing and Economic Recovery Act of July 30, 2008. This Act included "The Secure and Fair Enforcement for Mortgage Licensing Act of 2008," commonly called the SAFE Act. The intention of the SAFE Act was to provide better control of loan originators and strengthen consumer protections against certain predatory loan practices. It was mandated that states enact the provisions of the SAFE Act, which Florida did during the 2009 legislative session.

In further response to the Great Recession, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed July 21, 2010. Included in Dodd-Frank is Title XIV, Mortgage Reform and Anti-Predatory Lending Act, which provides laws further addressing standards for mortgage lending and consumer protection. The Consumer Financial Protection Bureau, tasked with implementing Title XIV of Dodd-Frank, has recently enacted changes to the Mortgage Servicing Rules, the Ability to Repay and Qualified Mortgage Rule, the HOEPA Rule, Truth in

Lending Higher-Priced Mortgage Loans Appraisal and Escrow Rules and the Loan Originator Rules.

II. Changes Proposed

A. Regulatory Streamlining and Coordinating with Mortgage Licensing System and Registry

The Nationwide Mortgage Licensing System & Registry (NMLS) grew out of the 2008 SAFE Act as a way for providing uniformity among the states for state-licensed loan originators and to enhance consumer protection. Though there is not uniformity among state law applying the NMLS requirements, some changes to HB 631 are meant to further align Florida law with these requirements and avoid duplication. Whether these goals are achieved is not clear, but they do not have noticeable direct impact on the consumer. (Section 1, definition of indirect owner; Section 2; Section 3; Section 9, lines 336 to 340; Section 15, lines 475 to 479.)

B. Ability to Repay and Qualified Mortgage Rule

The rules implementing the Title XIV of Dodd-Frank create a qualified mortgage rule and create point and fee caps for a loan to be considered a qualified mortgage, effective January 10, 2014. See sec. 1026.32(b)(1) and sec. 1026.43(e)(3). Under the rule loans of $100,000 or more have a points and fee cap of 3%; loans of less than $100,000 have a higher cap. This cap only applies to a qualified mortgage; not all loans will be qualified mortgages, for example loans that are kept in the lenders portfolio and not resold. Compensation for bona fide third-party charges is included in the cap, as long as the creditor, loan originator, or an affiliate of either does not retain them. See sec. 1026.32(b)(1)(D). Removing a requirement under

state law that any payment for processing mortgage loan applications must be included in the fee potentially increases the fee charge to the consumer in some circumstances. (Section 1, line 96 to 98)

C. Arbitration

Regulation Z sec. 1026.36(h)(1) implements provisions in Dodd-Frank limiting the use of mandatory arbitration agreements in a contract for a consumer credit transaction (residential mortgage loan or home equity line of credit) secured by a dwelling, effective June 1, 2013. Sec. 494.0028, Florida Statutes, provides specific requirements for arbitration agreements in a mortgage broker agreement, servicing agreement, loan application or purchase agreement. HB 631 would delete these requirements. Deleting the requirements governing arbitration agreements in state law will potentially remove protections for consumers in certain situations not covered by Regulation Z resulting in a loss of consumer protection.

D. Licensing Renewal

Sections 5, 6, 7, 13 and 14 of HB 631 address timeframes for licensing renewal for loan originators, mortgage brokers, mortgage broker branch offices, mortgage lenders and mortgage lenders branch offices. The reinstatement fees should be increased to encourage timely compliance with the annual registration requirements. These changes have no direct adverse impact on consumers, however, it is important to consumers that only properly licensed originators, brokers and lenders be allowed to transact business.

E. Disclosures By Loan Originators and Other Licensees

Florida provides extensive protections for consumers who are contemplating entering into an agreement with a loan originator for a mortgage loan, as broadly defined at sec. 494.001(23). Though there is some overlap with the newly created Loan Estimate form and Closing Disclosure form provided in the rules on Integrating Truth-in-Lending and the Real Estate Settlement Procedures Act, Florida provides enhanced protections not in the act.

Further, the new rules are not effective until August 1, 2015, to provide industry ample implementation opportunity. Deleting the requirements now will place consumers at a disadvantage without the new rules having been implemented. This delayed implementation provides the state an opportunity to review the federal rules and determine where the state may provide duplicate requirements or where Florida may want to maintain enhanced protections. Florida maintains its rank as number one in mortgage fraud in the nation with the Miami-Fort Lauderdale-Pompano Beach ranking 5th in the nation for fraud for mortgages originating in 2012. Now is not the time to reduce consumer protections.

F. Placing Federal Requirements in State Law

To the extent any provisions in Florida law related to loan originators, mortgage brokers, and mortgage lenders replicate federal law, and in some cases provide enhanced protections, is no reason to excise the provisions from state law. Florida provides these protections to consumers regardless of what the federal law provides. To the extent it may be duplicative, it places no burden on industry to follow both state and federal requirements.

G. Repeal of the Florida Fair Lending Act

The Florida Fair Lending Act was added to Florida law in 2002. The intent of the act is to provide protection to consumers against predatory loans. In light of the housing crisis growing out of the Great Recession, the Consumer Financial Protection Bureau is tasked with creating additional protections for consumers. Most states, however, also provided state law protections to their consumers that build on the provisions in federal law. Given the impact the housing crisis and predatory lending has had on Florida's economy and its families, particularly the elderly and communities of color, the more prudent course is to enhance the Florida Fair Lending Act, not delete it completely.

Our state act does provide a right to cure the default for high-cost home loans, for example, that is not provided in the federal law. See sec. 494.00794. Our act also provides that any material violation of the act shall result in the forfeiture of the entire interest charged in the high cost home loan. See sec. 494.00796. These are strong consumer protections that we do not want to lose. Further, state law provides protection against changes in Federal law.

III. Conclusion – HB 631 (SB 666) Provides Little Protection to the Consumer

HB 631 makes some commonsense changes to Florida's oversight of loan originators, mortgage brokers and mortgage lenders. However, the overwhelming provisions of the bill simply delete large swaths of current law, relying on the federal law to provide adequate protection to consumers engaged in the largest financial transaction most will finance within their lifetimes. The FBI reports that

mortgage fraud is perpetuated by licensed and non-licensed "mortgage brokers, lenders, appraisers, underwriters, accountants, real estate agents, settlement attorneys, land developers, investors, builders, bank account representatives and trust account representatives."[1] Before taking away consumer protections, the legislature needs to take time to ensure Florida citizens remain protected when buying their family home. HB 631 must be amended to ensure protection for consumers are, if not enhanced, at least not diminished.

Prepared by
Alice Vickers, Esq.
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[1] The FBI, Mortgage Fraud, http://www.fbi.gov/about-us/investigate/white_collar/mortgage-fraud