

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBFA 09-02 Mortgage Guaranty TF/Financial Regulation Office [CPSC]
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee
TIED BILLS: PCB IBFA 09-01 **IDEN./SIM. BILLS:** SB 1940

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	<u>Insurance, Business & Financial Affairs Policy Committee</u>	<u>18 Y, 0 N</u>	<u>Barnum</u>	<u>Cooper</u>
1)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
2)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
3)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
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5)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

SUMMARY ANALYSIS

PCB IBAF 09-02 creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation (OFR). The OFR is the administrator of the trust fund.

Funds credited to the trust fund must be used to pay claims against loan originators, mortgage brokers, and mortgage lenders pursuant to s. 494.00172, F.S.

The trust fund's assets consist of an annual fee imposed on Florida-licensed loan originators, mortgage brokers, and mortgage lenders.

Any balance in the trust fund at the end of fiscal year shall remain in the trust fund and be available for the payment of claims.

The trust fund shall be terminated on July 1, 2013 pursuant to s. 19(f)(2), Article III of the Florida Constitution. Prior to its termination, the trust fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S.

The bill takes effect on the same date as PCB IBFA 09-01 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Generally mortgage brokers and mortgage lenders must comply with federal as well as state laws regulating the industry, unless they are exempt from such laws. In Florida, the Office of Financial Regulation (OFR) is responsible for regulation of mortgage brokers, mortgage lenders, and other specified financial entities. Florida requires licensure of individual mortgage brokers, mortgage broker businesses, mortgage broker schools, and non-depository mortgage lenders. Loan originators employed by licensed lenders are exempt from licensure requirements. State and federally chartered depository institutions and other entities are exempt from state licensure as a mortgage broker and as a mortgage lender under ch. 494, F.S.

The Housing and Economic Recovery Act of 2008¹ was enacted on July 30, 2008. Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E. Mortgage Licensing Act of 2008". (S.A.F.E.) The intent of S.A.F.E. is to provide greater accountability and regulation of loan originators, defined to include mortgage brokers and lenders, and enhance consumer protections by:

- Providing uniform license applications and reporting requirements for State-licensed loan originators.
- Providing a comprehensive licensing and supervisory database.
- Aggregating and improving the flow of information to and between regulators.
- Providing increased accountability and tracking of loan originators.
- Streamlining the licensing process and reduces the regulatory burden.
- Enhancing consumer protections and supporting anti-fraud measures.
- Providing consumers with easily accessible information, offered at no charge, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- Facilitating responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.

¹ H.R. 3221, Public Law 110-289

- Facilitating the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.²

S.A.F.E requires loan originators, which include mortgage brokers and lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

Within the provisions of S.A.F.E. it is stipulated that, if a state does not adopt the minimum licensure requirements mandated within two years after the enactment, the United States Department of Housing and Urban Development (HUD) will preempt state regulation of mortgage brokers and loan originators and assume the authority to regulate these persons in the state. The Secretary of HUD is authorized to extend this deadline for no more than 24 months in any state if the Secretary determines that the state is making a good faith effort to establish a state licensing law that meets the minimum requirements. Recently, HUD issued an interpretative letter, which authorizes states to delay implementation of the licensure requirements until July 1, 2010, for individuals who do not possess a valid loan originator license. Considering the education, testing, and background check standards that an applicant must meet, HUD views this as a reasonable delay to ensure an orderly transition in the marketplace. For individuals who possess a license prior to the enactment of S.A.F.E., HUD views a reasonable delay for current licensees as a date that does not extend past December 31, 2010.³

Pursuant to section 19(f), Article III of the Florida Constitution a trust fund of the State of Florida or other public body may only be created or re-created by law in a separate bill. The bill creating or re-creating the trust fund must pass with a three-fifths vote of the membership of each house of the legislature. A state trust fund generally terminates not more than four years after the effective date of the act authorizing the initial creation of the trust fund.

Current Situation:

At the present time Florida does not meet the minimum requirements specified in S.A.F.E. Florida licenses three types of mortgage lender businesses: mortgage lender,⁴ correspondent mortgage lender,⁵ and saving clause mortgage lender⁶. Currently, there is no net worth or surety bond requirement for an individual mortgage broker or mortgage broker business, while licensed mortgage lenders are required to maintain a \$250,000 net worth and a \$10,000 surety bond.

PCB IBAF 09-01, which is the companion legislation to this bill, implements the minimum standards of S.A.F.E. and provides increased licensure and enforcement authority for the OFR to regulate loan originators, mortgage broker businesses, and non-depository, mortgage lender businesses. The bill provides the following significant changes in the licensure and regulation of mortgage brokers and mortgage lenders:

- Requires state licensure and annual renewal of individual loan originators, including employees of mortgage broker and mortgage lender businesses. Presently, Florida requires licensure of individual mortgage brokers, mortgage broker and mortgage lender businesses, however employees of those businesses are not separately licensed.
- Requires submission of fingerprints to OFR and the Registry.

² H.R. 3221, Public Law 110-289, Title V, sec. 1502

³ <http://www.hud.gov/offices/hsg/sfh/mps/smlifact.cfm>

⁴ A mortgage lender business closes a mortgage loan in its name or advance funds to an applicant for a mortgage and may also service mortgage loans for another without limitation and sell the loan to a non-institutional lender.

⁵ A correspondent mortgage lender may perform the same function; however, it may only service a loan for a maximum of four months after closing.

⁶ The saving clause mortgage lender category was created in 1991 because of statutory changes which required a mortgage lender to apply for the new mortgage lender license which required a surety bond of \$25,000 and a net worth of \$250,000. Existing mortgage broker businesses that were acting as a lender were allowed to be "grandfathered" under the old licensure requirements. They were exempt from the surety bond requirement and subject to a net worth requirement of \$25,000 rather than \$250,000.

- Requires authorization for an independent annual credit report to be reviewed by OFR and the Registry. There is no current requirement for a credit report.
- Requires license renewal annually vs. the current biennial requirement.
- Requires a background check, and credit check as part of the annual license renewal. Currently, Florida has no such requirement as part of license renewal.
- Modifies education requirements.
- Restructures fees.
- Provides for a recovery fund paid into by the loan originators.
- Requires a loan originator to pay into a state guaranty fund.

PCB IBAF 09-01 authorizes a recovery fund, the Mortgage Guaranty Trust Fund, for compensating persons who have suffered monetary damages because of a violation of ch. 494, F.S., by a licensed individual or business. Funding would be provided by an annual assessment of \$20 per loan originator and \$100 per mortgage broker and lender until the fund balance reaches \$5 million. The fund would allow for payments of up to \$50,000 per borrower, with a maximum aggregate recovery of \$250,000 against a licensee. It specifies that fees will be paid upon initial licensure and upon annual renewal at the rate of \$20 per licensed individual or \$100 per licensed business until the Mortgage Guaranty Trust Fund balance reaches \$5 million, at which point those fees will be discontinued until such time as the Fund balance falls below \$1 million. When the balance falls below \$1 million, fees will again be instituted until the Fund balance again reaches \$5 million.

Effect of Proposed Change:

PCB IBFA 09-02 creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation. Funds credited to the trust fund must be used to pay claims against loan originators, mortgage brokers, and mortgage lenders pursuant to s. 494.00172, F.S. The trust fund’s assets consist of an annual fee imposed on Florida-licensed loan originators, mortgage brokers, and mortgage lenders. Any balance in the trust fund at the end of fiscal year shall remain in the trust fund and be available for the payment of claims, notwithstanding the provisions of s. 216.301, F.S., and s. 216.351, F.S. The trust fund shall be terminated on July 1, 2013 pursuant to s. 19(f)(2), Article III of the Florida Constitution. Prior to its termination, the trust fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S. The OFR is charged with administering the trust fund.

B. SECTION DIRECTORY:

Section 1. Creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation.

Section 2. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:⁷

	(FY 09-10) Amount	(FY 10-11) Amount	(FY 11-12) Amount
Recurring – Mortgage Guaranty Trust Fund*			
Individuals \$20 x 49,000		\$ 980,000	\$ 750,600
Firms \$100 x 7,000		\$ 700,000	\$ 579,000
Total Revenue – Mortgage Guaranty Trust Fund		\$ 1,680,000	\$ 1,329,600

* Fees will be paid until the Fund balance reaches \$5 million, at which point those fees will be discontinued until such time as the Mortgage Guaranty Trust Fund balance falls below \$1 million.

⁷ Office of Financial Regulation Fiscal Impact Statement dated March 21, 2009 on file with the Insurance, Business and Financial Affairs Policy Committee.

When the balance falls below \$1 million, fees will again be instituted until the Fund balance again reaches \$5 million.

2. Expenditures:

The Office of Financial Regulation anticipates the costs of administering the fund will be nominal and the cost of paying claims minimal.⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Creates a trust fund pursuant to section 19(f), Article III of the Florida Constitution

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁸ Id.