

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1924

SPONSOR: Regulated Industries Committee, Banking and Insurance Committee and Senator Clary

SUBJECT: Financial Services

DATE: April 4, 2003                      REVISED: 04/04/03 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Office of Financial Institutions and Securities Regulation (office) within the Financial Services Commission administers the regulation of state-chartered financial institutions, mortgage brokers and lenders, consumer finance, retail installment sales, title loans, and securities.<sup>1</sup> A number of provisions under each of these areas of its jurisdiction have been identified by the office for clarification and revision for more efficient administration.

This bill revises a number of regulatory provisions in ch. 494, Florida Statutes, which governs mortgage brokers and lenders. These revisions include clarifying when a change in licensee control will trigger the need for a new license; providing authority to cancel new and renewal licenses due to any type of returned check; revising exemption requirements for financial institutions; requiring electronic filing of license renewals, revising testing procedures and fees; increasing the filing fee for license transfers from \$500 to \$575; revising the branch application approval process; and revising financial reporting standards.

The bill also expands the office’s rulemaking authority to include guidelines for the destruction as well as retention of certain records by mortgage brokers and lenders, retail installment sales, consumer finance transactions, title loans, and securities. The bill also authorizes the office to

<sup>1</sup> Effective January 7, 2003, the programs and activities of the Department of Banking and Finance and the Department of Insurance were transferred to the newly created Department of Financial Services and the Financial Services Commission. The Office of Financial Institutions and Securities Regulation and the Office of Insurance Regulation were created within the Financial Services Commission. The Office of Financial Institutions and Securities Regulation is responsible for all activities relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. (s. 8, ch. 2002-404, L.O.F.) The term “office” is used in this analysis, but the current statutes have not yet been amended to conform. Conforming changes are made in CS/SB 1712 by Banking and Insurance Committee.

adopt rules to require investment advisor firms and agents to deposit registration fees through a national database.

This bill substantially amends the following sections of the Florida Statutes: 494.0029, 494.00295, 494.003, 494.0031, 494.0032, 494.033, 494.034, 494.036, 494.006, 494.0061, 494.0062, 494.0064, 494.0065, 494.0066, 494.0067, 494.0016, 516.12, 520.997, 537.009, and 517.12.

## **II. Present Situation:**

The Office of Financial Institutions and Securities Regulation within the Financial Services Commission regulates state-chartered financial institutions, mortgage brokers and lenders, consumer finance, retail installment sales, title loans, and securities. There are three parts to ch. 494, F.S. Part I outlines the general powers and duties of the regulator, the Financial Services Commission and its Office of Financial Institutions and Securities Regulation, lists prohibited practices, and provides penalties for violations of the act. Part II provides the regulatory framework for mortgage brokerage businesses and mortgage brokers. Part III provides the same for mortgage lenders and correspondent mortgage lenders.<sup>2</sup>

### **Requirements for Mortgage Brokers and Mortgage Lenders**

#### **Education and Examination**

Under part I, persons, schools, and other institutions may apply for a permit from the office to offer mortgage brokerage training courses as a condition precedent to licensure. Accredited universities, community colleges, and technical schools that offer similar courses are exempted from the permitting process. Permitted schools must comply with guidelines and rules established by under ch. 494, F.S. Although the schools can offer the courses, there is no statutory authority for the office to permit a third party to administer and charge for the requisite examination. Currently, the office administers the pre-licensing mortgage brokerage and lending tests monthly through five locations statewide. Applicants are able to take the test up to three times without any testing fee.

Currently, part II requires lenders and correspondent lenders to designate a principal representative who will exercise control of the licensee's business. Since October 1, 2001, part II has also required each principal representative to pass a test which covers primary and subordinate mortgage financing transactions and the rules and laws of ch. 494, F.S. If a lender designates a new principal representative, the lender must notify the regulator of the name and address of the new representative and document that the person has completed the educational and testing requirements. Unless the new principal representative has had some reason (previous licensure) to have completed the educational and testing requirements, he or she may not be in compliance with the notification requirement.

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<sup>2</sup> The substantive difference between a mortgage lender and a correspondent mortgage lender is that the latter cannot service loans.

**Exemptions**

In parts II and III of ch. 494, F.S., certain financial entities (any bank, bank holding company, trust company, savings and loan association, savings bank, credit union, or consumer finance company licensed pursuant to ch. 516, F.S.) and certain federal associations are exempted from the licensure requirements for mortgage brokerage businesses, mortgage brokers, mortgage lenders and correspondent mortgage lenders. In general, these types of institutions are regulated by a federal or state regulatory agency. However, the office indicates that certain financial institutions and their subsidiaries from other countries have claimed this exemption, and the regulator has not been able to verify that a regulatory review of the institution has taken place.

**Change of Control**

In several sections of ch. 494, F.S., there is a prohibition against the transferring or assigning of licenses.<sup>3</sup> Based on these statutes, the office requires a new license application to be filed if there is a direct or indirect change of control for mortgage brokerage businesses, mortgage lenders, or correspondent mortgage lenders.

**License Cancellations**

Under parts II and III of the chapter, provisions are made for the cancellation of an initial license if the check written for that license is returned for non-sufficient funds only. The office does not have the authority to cancel the license if the checks are returned due to closure of the licensee's account and does not have the authority to cancel the permits of mortgage brokerage schools, or renewed licenses if the checks of the permit holders or licensees are returned.

**License Renewals**

The office accepts both paper form and electronically filed license renewals from mortgage brokerage businesses and their branch offices, mortgage brokers, mortgage lenders and their branch permit holders, and correspondent mortgage lenders, and their branch permit holders. The office reports that during the most recent business renewal period, 90 percent of the licensees chose to renew through the Internet. The office also reports that maintaining a dual system for only 10 percent of license renewal applicants is costly.

**Revised Accounting Standards**

Mortgage lenders and correspondent mortgage lenders are required under part III of ch. 494, F.S., to maintain a minimum net worth. Currently, the licensee's compliance with this requirement must be verified by audited financial statements that substantiate the net worth requirement in accordance with generally accepted accounting principles. The American Institute of Certified Public Accountants issued Statement of Accounting Standards number 93 which requires, that for audit reports issued or reissued on or after June 30, 2001, the auditor must reference the country of origin of the accounting principles used in the audit report and the auditing standards used by the auditor in performing the audit.

**Branch Office Applications**

Under parts II and III, mortgage brokerage businesses and mortgage lenders may acquire branch office licenses for their branch offices. The office indicates that it is unclear when the branch

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<sup>3</sup> S. 494.004(5), F.S. for part II license issued under ss. 494.003-494.0043, F.S., and s. 494.0061(5), F.S., for part III license issued under ss. 494.006-494.0077, F.S.

office license is valid. The language in the current statutes directs the office to issue such a license “upon receipt of a completed application.” The office maintains that the word “completed” in reference to the application indicates a certain standard for the application and consequently a review by the office for compliance with that standard before approval of the license is granted.

### **Saving Clause**

In 1991, the Legislature extensively revised ch. 494, F.S., and enacted a number of new requirements for mortgage lenders applying for licensure after the effective date of that act. Previously, licensed mortgage lenders were “grandfathered” into the 1991 act through a special mortgage lender business license pursuant to a savings clause (s. 464.0065, F.S.) enacted by the Legislature. In 1998, the Legislature codified rules adopted by the former Department of Banking and Finance that permitted the transfer or sale of the “grandfathered” licenses under certain conditions. Many of the provisions found in ch. 494, F.S., relating to mortgage lenders and correspondent mortgage lenders are reiterated under s. 494.0065, F.S., to apply to licensees governed by that section.

### **Records Retention**

The office has the statutory authority to require several entities under its jurisdiction to keep records for specified periods of time:

- Section 494.0016, F.S., authorizes the regulator to specify the minimum amount of information that mortgage brokers and lenders must show in their books, records and documents for compliance verification and requires such licensees to keep those records for 3 years.
- Section 516.12, F.S., generally requires licensed consumer finance institutions to keep books, accounts, and records for regulator verification of compliance with licensing requirements for 2 years.
- Section 520.97, F.S., authorizes the regulator to specify the minimum amount of information that retail installment sellers must show in their books, records, and documents for compliance verification and requires such licensees to keep those records for 2 years.
- Section 537.009, F.S., authorizes the regulator to specify the minimum amount of information that title loan lenders must show in their books, records, and documents for compliance verification and requires such licensees to keep those records for 2 years.

Many of these documents contain personal financial information on clients of the licensees. The proper disposal of records containing such information could help to prevent the possibility of identity theft. However, none of these sections authorize the regulator to specify how to dispose of these records once the retention period has been reached.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 494.0029, F.S., to require a new license application to be filed with the office if there is a direct or indirect change of control for a mortgage business school. The section requires any person who directly or indirectly seeks to own, control, or hold with power to vote, or holds proxies representing 50 percent or more of any class of equity securities or

ultimate equitable ownership of the licensed entity, to apply and be approved for a new license prior to the effective date of ownership of change in ownership or controlling interest.

This section also authorizes the office to cancel the permits of mortgage brokerage schools if the checks received for the initial or renewal permits is returned for any reason.

**Section 2** amends s. 494.00295, F.S., relating to mortgage broker, mortgage lender, and correspondent lender educational requirements. All applicants for licensure renewal under this chapter must certify to the office that they have completed a certain number of hours of professional educational programs within the 2 years prior to the renewal application. This provision clarifies that this requirement must be repeated within each 2-year licensing cycle.

**Section 3** amends s. 494.003, relating to the licensure of mortgage brokerage businesses and mortgage brokers. In parts II and III of ch. 494, F.S., certain financial entities (any bank, bank holding company, trust company, savings and loan association, savings bank, credit union, or consumer finance company licensed pursuant to ch. 516, F.S.) and certain federal associations are exempted from the licensure requirements for mortgage brokerage businesses, mortgage brokers, mortgage lenders and correspondent mortgage lenders. In general, these types of institutions are regulated or reviewed by a federal or state regulatory agency. However, the office indicates that certain financial institutions and their subsidiaries from other countries have claimed this exemption, and the regulator has not been able to verify that a regulatory review of the institution has taken place. This section would require an entity to be formed or regulated by a state or federal regulatory agency within the United States in order to claim the exemption from licensure by these parts.

**Sections 4** amends s. 494.0031, F.S., relating to licensure of a mortgage brokerage business or branch office, to authorize the office to require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. Current law requires the office to issue a mortgage brokerage license to each person who has submitted a completed application form and a fee.

This section authorizes the office to cancel the initial license of mortgage brokerage business or branch office if the check tendered for the respective license is returned for any reason. Currently, the section authorizes the office to cancel a license if the check is returned due to insufficient funds only.

The section also requires any person who directly or indirectly seeks to own, control, or hold with power to vote, or holds proxies representing 50 percent or more of any class of equity securities or ultimate equitable ownership of the licensed entity, to apply and be approved for a new license prior to the effective date of ownership of change in ownership or controlling interest.

**Section 5** amends s. 494.0032, F.S., to provide consistent application of law for a renewal license as it does for initial license with respect to returned checks. If a check is returned for any reason, the renewal license for a mortgage brokerage business or branch office is deemed canceled. The office does not currently have the authority to cancel the renewal licensee due to a returned check. The license would be reinstated if a certified check was received within 30 days

after the date of the returned check. This section also requires renewal application forms to be submitted electronically.

**Section 6** amends s. 494.0033, F.S., to revise mortgage broker's license requirements. Section 494.001(4), F.S., defines an associate as a person who is licensed as a mortgage broker under this chapter who is employed by or acting as an independent contractor for a mortgage brokerage business or a person acting as an independent contractor for a mortgage lender or correspondent mortgage lender. It is not clear in this current definition whether the "who is required to be licensed as a mortgage broker" is intended to apply only to the first "associate" identified. In an attempt to clarify who is required to be licensed as a mortgage broker, this section inserts references to those who act as associates for mortgage lenders or correspondence mortgage lenders into the section<sup>4</sup> regulating who is required to be licensed as a mortgage broker. This change would have the effect of requiring all persons who act as associates of mortgage lenders or correspondent mortgage lenders to be licensed as mortgage brokers. The commission or office is authorized to require each applicant to provide any information necessary to determine an applicant's eligibility for licensure.

Currently, the office administers the pre-licensing mortgage broker test monthly through five locations statewide. The applicants are able to take the test up to three times without incurring any testing fee. The current law authorizes the office to adopt reexamination fees. There is no statutory authority for the office to allow a third party to administer the examination. Under both parts II and III of ch. 494, sections (6) and (10) of this bill the office would be authorized to contract with a third party to administer the examination. The office may waive the examination requirement for an individual who has passed a comparable test offered by a national group of state mortgage regulators or a similar federal government agency. The section also provides rulemaking authority for establishing examination and reexamination fees.

This section authorizes the office to cancel the initial license of mortgage broker if the check tendered for the license is returned for any reason. Currently, the section authorizes the office to cancel a license if the check is returned due to insufficient funds only.

**Section 7** amends s. 494.0034, F.S., relating to the renewal of mortgage broker's license, to allow the office to require an electronically filed completed renewal form. The section also provides that if a renewal license has been issued and the check is returned for any reason, the license is deemed canceled.

**Section 8** amends s. 494.0036, F.S., relating to the licensure of mortgage brokerage business branch offices. The current statutory language provides that the office will issue a license for a branch office upon receipt of a fee and a completed branch application. This section provides that the office will issue a license once the office determines that the licensee has submitted a completed application and the license fee.

**Section 9** amends s. 494.006, F.S., relating to exemptions from ss. 494.006-494.0077, F.S., for mortgage lenders and correspondent mortgage lenders. Certain financial entities (any bank, bank holding company, trust company, savings and loan association, savings bank, credit union, or

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<sup>4</sup> Subsection (1) of s. 494.0033, F.S.

consumer finance company licensed pursuant to ch. 516, F.S.) and certain federal associations are exempted from the licensure requirements for mortgage brokerage businesses, mortgage brokers, mortgage lenders and correspondent mortgage lenders. In general, these types of institutions are regulated or reviewed by a federal or state regulatory agency. However, the office indicates that certain financial institutions and their subsidiaries from other countries have claimed this exemption, and the regulator has not been able to verify that a regulatory review of the institution has taken place. This section would require an entity to be formed or regulated by a state or federal regulatory agency within the United States in order to claim the exemption from licensure.

**Section 10** amends s. 494.0061, F.S., relating to mortgage lender requirements. Currently, the office administers the mortgage lender test monthly through five locations statewide. The applicants are able to take the test up to three times without incurring any testing fee. There is no statutory authority for the office to allow a third party to administer the examination. Under both parts II and III of ch. 494, sections (6) and (10) of this bill the office is authorized to contract with a third party vendor to administer the examination. Since there is interest in establishing a national test for mortgage brokers, these sections also provide that the office may waive the examination requirement for an individual who has passed a comparable test offered by a national group of state mortgage regulators or a similar federal government agency. The section also provides rulemaking authority for establishing examination and reexamination fees.

The section also requires any person, who directly or indirectly seeks to own, control, or hold with power to vote, or holds proxies representing 50 percent or more of any class of equity securities or ultimate equitable ownership of the mortgage lender, to apply and be approved for a new license prior to the effective date of ownership of change in ownership or controlling interest.

This section requires a newly designated principal representative to complete the education and testing requirements within 90 days after being designated rather than mandating that the requirements must be met upon the designation of a new principal representative. Under the current law, unless the new principal representative is already licensed in Florida, the new representative may not have completed the prerequisite education and testing requirements and could be in violation of the statutes.

The section is also amended to require a licensee to submit audited financial statements which documents a minimum net worth in accordance with “accounting principles generally accepted in the United States” rather than in accordance with “generally accepted accounting principles.” In October 2000, the American Institute of Certified Public Accountants issued Statement of Accounting Standards number 93 which requires, that for audit reports issued or reissued on or after to June 30, 2001, the auditor to reference the country of origin of the accounting principles used in the audit report and the auditing standards used by the auditor in performing the audit.

**Section 11** amends s. 494.0062, F.S., relating to correspondent mortgage lender’s license requirements to require any person, who directly or indirectly seeks to own, control, or hold with power to vote, or holds proxies representing 50 percent or more of any class of equity securities or ultimate equitable ownership of the correspondent mortgage lender, to apply and be approved

for a new license prior to the effective date of ownership of change in ownership or controlling interest.

This section authorizes the office to cancel the initial license of a correspondent mortgage lender or branch office if the check tendered for the license is returned for any reason. Currently, the section authorizes the office to cancel a license if the check is returned due to insufficient funds only.

The section is also amended to require licensee to submit audited financial statements which documents a minimum net worth in accordance with “accounting principles generally accepted in the United States” rather than in accordance with “generally accepted accounting principles.” In October 2000, the American Institute of Certified Public Accountants issued Statement of Accounting Standards number 93 which requires, that for audit reports issued or reissued on or after June 30, 2001, the auditor to reference the country of origin of the accounting principles used in the audit report and the auditing standards used by the auditor in performing the audit.

The office administers the pre-licensing mortgage broker test monthly through five locations statewide. The applicants are able to take the test up to three times without any testing fee. There is no statutory authority to authorize a third party vendor to administer the test. This section would authorize the office to contract with a third party to administer the examination. The examination requirement can be waived by the office for any person who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers certain transactions. The sections also provide rulemaking authority for establishing examination and re-examination fees.

This section requires a newly designated principal representative to complete the education and testing requirements within 90 days after being designated rather than mandating that the requirements must be met upon the designation of a new principal representative. Under the current law, unless the new principal representative is already licensed in Florida, the new representative may not have completed the prerequisite education and testing requirements and could be in violation of the statutes.

**Section 12** amends s. 494.0064, F.S., relating to renewal of mortgage lender’s license and branch office renewals. Renewal application forms would be required to be submitted through electronic means rather than a hard-copy format to the office. The section also clarifies that, as part of the renewal process, the licensee certify completion of continuing educational requirements for the preceding 2 years. The section also provides consistent application of law for a renewal license as it does for initial license with respect to returned checks. The section provides that if a check is returned for any reason, the license is deemed canceled.

**Section 13** amends s. 494.0065, F.S., relating to the Saving Clause, providing licensing requirements and clarifications that correspond to the same provisions for mortgage brokers and lenders. This section also increases the fee for license transfers authorized by s. 494.0065, F.S., from \$500 to \$575. This change makes the license transfer application fees for this section consistent with the license application fees for mortgage brokers and lenders in parts II and III, which were revised in 1999.



In 1991, the Legislature extensively revised ch. 494, F.S., and enacted a number of new requirements for mortgage lenders applying for licensure after the effective date of that act. Previously, licensed mortgage lenders were “grandfathered” into the 1991 act through a special mortgage lender business license pursuant to a savings clause (s. 464.0065, F.S.) enacted by the Legislature. In 1998, the Legislature codified rules adopted by the former Department of Banking and Finance that permitted the transfer or sale of the “grandfathered” licenses under certain conditions. Many of the provisions found in ch. 494, F.S., relating to mortgage lenders and correspondent mortgage lenders are reiterated under s. 494.0065, F.S., to apply to licensees governed by that section. This section reiterates in the Saving Clause the requirements for designation of principal representatives and the changes made to parts II and III, relating to the use of accounting principles generally accepted in the United States, continuing education requirements, testing requirements, and returned checks.

**Section 14** amends s. 494.0066, F.S., relating to branch office licenses for mortgage lenders. This section provides that the office will issue a license once the office determines that the licensee has submitted a completed application and the license fee. The current statutory language provides that the office will issue a license for a branch office upon receipt of a completed application form and fee.

The section also provides that if a check for an initial license is returned for any reason, the license is deemed canceled. A license would be reinstated if the office receives a certified check within 30 days after the date the check was returned.

**Section 15** amends s. 494.0067, F.S., relating to continuing education requirements of mortgage lenders and correspondent mortgage lender licensees. The section provides that each licensee is required to complete 14 hours of continuing education during each biennial license period.

**Section 16** amends s. 494.0016, F.S., relating to accounts and records of mortgage brokers and mortgage lenders, to authorize the commission to prescribe by rule the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the prescribed retention period.

**Section 17** amends s. 516.12, F.S., relating to records maintained by consumer finance licensee, to authorize the office to prescribe by rule the minimum information to be shown in the books, records, accounts, and documents of a licensee for purposes of enabling the office to determine compliance with statutory requirements. The commission is authorized to prescribe by rule the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the prescribed retention period.

**Section 18** amends s. 520.997, F.S., relating to records required to be maintained by retail installment licensee to authorize the commission to prescribe by rule the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the prescribed retention period.

**Section 19** amends s. 537.009, F.S., relating to records required to be maintained by title loan licensees to authorize the commission to prescribe by rule the requirements for the destruction of

books, accounts, records, and documents retained by the licensee after completion of the prescribed retention period.

**Section 20** amends s. 517.12, F.S., relating to the registration of securities dealers, associated persons, investment advisors, and branch offices, to provide authority for the office to establish procedures for the deposit of regulatory fees electronically by investment advisor firms and agents. Currently, the office has the authority to establish procedures for depositing brokerage firm fees in the National Securities Dealer's Central Registration Depository. Recently, the Investment Adviser Registration Depository was created as the Internet depository for electronic fee submission for investment advisor firms and agents. This section authorizes the office to establish fee deposit procedures to encompass this electronic depository.

**Section 21** provides that this act will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

##### **Mortgage Broker Examinations**

Currently, the Office of Financial Institutions and Securities Regulation administers the mortgage broker exams and allows applicants to retest up to three times at no charge. The tests are administered once a month at five locations in the state. The bill would allow the office to adopt rules to allow a third party vendor to administer the test via computer. The office estimates that examination fees for electronic testing, provided by a third party, will range from \$60-75 per test. Mortgage brokers and lenders presently taking the office-administrated test at no charge and will now be required to pay for such exams administered by a third party vendor.

In the last 3 years, an average of 8,137 applicants have sat for the examination each year; therefore, the estimated cost of the exams, based on a range of \$60-\$75 per test is

\$488,220-\$610,275. The bill authorizes the office to establish examination and re-examination fees.

The office contends that the increase in cost to the applicant could be offset by the convenience of being able to take the test on-line. Additionally, some applicants may be able to qualify and enter the market earlier because the on-line service will give them access to more expedited retesting.

**Investment Advisor Registration Depository**

Currently, brokerage firms register via the Central Registry Depository, a national database that processes applications for all 50 states. The Investment Advisor Registration Depository (IARD) is a similar system for investment advisor firms and agents. The IARD requires an initial set-up charge of \$150 per firm and \$45 per agent and annual fees of \$100 per firm and \$45 per agent. There are currently 976 covered advisers that would be impacted by this new registration requirement. This registration process would allow investment advisor firms and agents operating in more than one state to register in a more efficient manner through a centralized database. The total fiscal impact on investment advisors for fiscal year 2003-2004 is estimated by the office to be \$190,320.

**C. Government Sector Impact:**

The office estimates that the increase in license transfer fees from \$500 to \$575 a year will increase the office's revenues by \$525 a year. The office indicates that it receives an average of seven transfer requests annually.

The office will realize indeterminate administrative efficiencies by requiring all mortgage broker and lender renewal applications to be filed electronically.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.