

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 PCB IBFA 09-01 Mortgage Brokering and Lending
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Patterson and others
TIED BILLS: HB 7101 and HB 7115 **IDEN./SIM. BILLS:** CS/HB 2226

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Insurance, Business & Financial Affairs Policy Committee	17 Y, 0 N	Barnum	Cooper
1)	Government Operations Appropriations Committee		Fox	Topp
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Housing and Economic Recovery Act of 2008 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.) It requires all states have a system of licensure meeting national definitions and minimum standards for mortgage loan originators by August 1, 2009. If the U.S. Department of Housing and Urban Development (HUD) determines a state is not in compliance, HUD must implement a system for all mortgage loan originators in that state. The August 1, 2009 deadline can be extended by up to 24 months if HUD determines a state is proceeding in good faith.

S.A.F.E. was enacted to provide greater accountability and regulation of loan originators and enhance consumer protections. It establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. It requires that states participate in a national licensing registry, the National Mortgage Licensing System and Registry (Registry) which will contain employment history, as well as disciplinary and enforcement actions against loan originators. The consumer will have access to this information.

There are a number of significant differences between the minimum licensing requirements under S.A.F.E. and current Florida requirements. In addition to satisfying other minimum requirements, the bill:

- 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.
- 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 and also provides for a recovery fund paid into by the loan originators.
- Provides for a transition from the current licensure system and categories of licenses to a system meeting minimum federal requirements.

An increase of \$5.0 million in revenue to OFR is estimated based on the restructured fee schedule contained in the bill. The House Proposed General Appropriations Act for FY 2009-10 (House Bill 5101) includes five positions and \$933,219 in budget authority to assist OFR with the workload associated with implementation of the S.A.F.E.

Except as otherwise expressly provided, the bill has an effective date of January 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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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.

In August 2008 the Financial Services Commission adopted emergency rules to address the processing of license applications under chapter 494, F.S., for persons found guilty of, or who have pled guilty or nolo contendere to certain crimes, such as a felony involving fraud, dishonesty, breach of trust, or money laundering. The Rules adopted August 12, 2008 provide that such license applicants are not eligible for licensure. Until the adoption of the emergency rules, the OFR did not have written guidelines to ensure consistency in the determination of disqualifying criminal offenses, such as moral turpitude.

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. 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.

¹ H.R. 3221, Public Law 110-289

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

S.A.F.E. establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. It defines the term, "loan originator," to mean an individual who takes loan applications and offers or negotiates terms of a loan for compensation. S.A.F.E. makes a distinction for the regulation of loan originators based on whether or not they are employees of a depository institution or its subsidiaries. Mortgage brokers or non-depository mortgage lenders are subject to the minimum state licensure requirements of S.A.F.E. and registration with the national registry as a "state-licensed loan originator." A loan originator who is an employee of a depository institution or its subsidiary, that is, a loan officer or lender, is subject to certain S.A.F.E. provisions and registration requirements by the primary federal regulator as a "registered loan originator."

S.A.F.E. requires that states participate in a national licensing registry, the Registry, which has been developed by the Conference of State Bank Supervisors (CSBS) and American Association of Residential Mortgage Regulators (AARMR). It will contain employment history, as well as disciplinary and enforcement actions against loan originators, and provide for free consumer access to this information.

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 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

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. Pre-licensing and post-licensing courses must be offered through a mortgage

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

³ <http://www.hud.gov/offices/hsg/sfh/mps/smllicact.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

business school permitted through OFR, or through an accredited college or university.⁷ Required testing is administered by OFR.⁸ Chapter 494, Florida Statutes and Florida Administrative Code provide licensing requirements and guidelines regarding grounds for denial of licensure. The law authorizes, but does not require, the OFR to deny a license if the applicant has had her or his license revoked by a licensing agency in any state for the following acts: fraud, dishonest dealing, or any other act of moral turpitude. Furthermore, the law authorizes, but does not require, OFR to deny a license if the applicant has committed any violation specified in statute which include fraud, dishonest dealing, embezzlement, misrepresentation, an act of moral turpitude.⁹ An applicant or licensee may be placed on probation for such violations, or OFR may impose revocation or suspension of a license for such violations. There is no requirement to report actions taken against licensees to other states or to a national database.

Effect of Proposed Changes:

Licensure: Consistent with S.A.F.E. compliance, the bill requires state licensure and annual renewal of individual loan originators. It defines the term “loan originator” to mean an individual who takes loan applications and offers or negotiates terms of a loan for compensation. For regulation of loan originators, S.A.F.E. makes a distinction based upon whether or not individuals are employees of a depository institution or its subsidiaries. Mortgage brokers or non-depository mortgage lenders are subject to the minimum state licensure requirements of S.A.F.E., and registration with the national registry as a “state-licensed loan originator” is required. The focus on individuals who are employees is different than current Florida law. Presently, Florida requires licensure of individual mortgage brokers, mortgage broker businesses, and mortgage lender (non-depository) businesses. Employees of these businesses are not separately licensed. The bill provides for continuation of licensing mortgage broker and mortgage lender businesses. Loan originators employed by or contracting with a mortgage lender will be subject to licensure. The correspondent mortgage lender license and savings clause lender license will be eliminated effective October 1, 2010 and replaced with the mortgage lender license. As required by S.A.F.E., the bill requires annual license renewal vs. the current requirement for biennial renewal.

Education: To comply with S.A.F.E., the bill requires 20 hours of pre-licensure education through Registry authorized providers and satisfactory completion of a test authorized by the Registry. The course content is to be as specified by the Registry. This replaces the state’s 24 hour course offered through colleges, universities or mortgage broker schools which have been permitted and accredited by OFR. S.A.F.E. requires 8 hours of prescribed Continuing Education Units (CEUs) every year through Registry authorized providers. This replaces the state’s requirement for 14 hours of CEUs every two years. Because the Registry, rather than the OFR, is responsible for approving providers of education and testing services, OFR’s permitting, accreditation, and oversight of mortgage broker schools, courses, and testing are eliminated effective September 30, 2010.

Background Check:

Fingerprints: While potential licensees are currently required to submit fingerprints to OFR upon initial application, in order to comply with S.A.F.E. requirements, the bill specifies that applicants are required to submit fingerprints to OFR and the Registry. The costs associated with fingerprinting continue to be the responsibility of the individual.

Credit check: Consistent with S.A.F.E., the bill requires an independent credit report on each applicant to be reviewed by the Registry and OFR. Previously, applicants for initial licensing or renewal were not required to provide a credit report to OFR. The costs associated with the credit report are the responsibility of the individual.

Criminal activity:

- Felony conviction – In order to comply with S.A.F.E., the bill specifies that applicants are prohibited a person from becoming licensed or registered if the person has been convicted of, or pled guilty or nolo contendere to, a felony during the 7-year period preceding the date of the

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.

⁷ s. 494.0029, F.S.

⁸ s. 494.0033(2)(b), F.S.

⁹ s. 494.0041, F.S.

application. The bill prohibits a person from becoming licensed or registered if the person has been convicted of, or pled guilty or nolo contendere to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering. Florida has adopted emergency rules, which provide more restrictive eligibility requirements than S.A.F.E. These rules require rather than authorize the OFR to deny a license if an applicant has had a criminal conviction. The bill codifies these rules.

Revoked license: The bill prohibits a person from becoming licensed or registered if the individual has ever had a license as a loan originator revoked, while current Florida law authorizes, but does not require the OFR to deny a license if the applicant has had his or her license revoked in any state for the following acts: fraud, dishonest dealing, or any other act of moral turpitude.

Financial responsibility and general fitness: Consistent with S.A.F.E. requirements, the bill requires the applicant to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently. No similar requirement is contained within current law.

Consumer Compensation: The bill authorizes a recovery fund, the Mortgage Guaranty Trust Fund¹⁰, 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. 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.

Enforcement Authority: The bill authorizes the OFR to impose an administrative fine of \$1,000 per day, or \$25,000 cumulatively, on unlicensed persons acting as a loan originator, mortgage broker business, or mortgage lender business. Currently, ch 494, F.S., does not have such an administrative fine. The bill also increases administrative fines the OFR may impose for each separate violation of any provision of ss. 494.001-494.0077, F.S., from \$5,000 to \$25,000. This is consistent with the \$25,000 fine per violation in states where H.U.D. has S.A.F.E. enforcement responsibility.

Fees: With changes in licensure categories and transition to annual vs. biennial renewal, the bill reflects revised fees. The following table summarizes the current and proposed fee schedule for ch. 494, F.S. licensees:

Licensure/Permit Fee Category	Current State Fee New/Renewal Biannually	Proposed State Fee New/Renewal Annually
Mortgage Broker Individual--Loan Originators	\$195/\$150	\$195/\$150
Mortgage Broker Business	\$425/\$375	\$425/\$375
Mortgage Lender	\$575/\$475	\$500/\$475 (all lenders)
Correspondent Lender	\$500/\$475	
Mortgage Broker Business Branch Office	\$225/\$225	\$225/\$225 (all branch offices)
Mortgage Lender Business Branch Office	\$325/\$325	
Mortgage Broker Schools	\$900	\$900
Mortgage Guaranty Trust Fund (Annual assessment by the OFR until fund reaches \$5 million). The assessment is effective 10/1/2010.		
Individual	None.	\$20
Business	None.	\$100

The bill requires applicants and licensees to submit an annual fee for funding the Mortgage Guaranty Trust Fund until the fund balance reaches \$5 million. Thereafter, licensees and applicants would be subject to an

¹⁰ The Mortgage Guaranty Trust Fund is the subject of HB 7101.

assessment when the Trust Fund balance drops below \$1 million. As a condition of using the licensure and renewal functions of the Registry, an applicant must pay processing fees to the Registry.

In addition to the fees imposed by the OFR, the Registry assesses the following processing fees:

- Initial set-up fee charged each time a company (\$100), branch (\$20), or loan officer (\$30) applies to a state through the Registry for a license.
- Annual processing fee, typically at the time of renewal. (company \$100, branch \$20, and loan officer \$30)
- Loan officer sponsorship transfer fee (\$30) charged each time the Registry processes a company request to establish a relationship with a loan officer and sponsor that loan officer's existing license.

B. SECTION DIRECTORY:

- Section 1. Amends s. 494.001, F.S., by deleting, revising and expanding definitions.
- Section 2. Amends s. 494.0011, F.S., by revising the duties and powers of the Financial Services Commission and Office of Financial Regulation.
- Section 3. Creates s. 494.00121, F.S., specifying subpoena powers and processes.
- Section 4. Amends s. 494.0014, F.S., by removing the provision for administrative fines.
- Section 5. Amends s. 494.00165, F.S., by expanding prohibited advertising.
- Section 6. Repeals s. 494.0017, F.S. (Regulatory Trust Fund)
- Section 7. Creates s. 494.00172, F.S. effective October 1, 2010, providing for the Mortgage Guaranty Trust Fund, its funding and administration.
- Section 8. Amends s. 494.0018, F.S., by updating penalties.
- Section 9. Amends s. 494.0019, F.S., by conforming language.
- Section 10. Amends s. 494.002, F.S., by conforming language.
- Section 11. Amends s. 494.0023, F.S., by revising and expanding parameters defining conflict of interest and notification requirements.
- Section 12. Amends s. 494.0025, F.S., by expanding prohibited practices and conforming language.
- Section 13. Creates s. 494.00255, F.S., providing for license violation administrative penalties and fines.
- Section 14. Amends s. 494.0028, F.S., by conforming language.
- Section 15. Repeals ss. 494.0029, F.S. (Mortgage business schools) and 494.00295, F.S. (Professional continuing education) effective October 1, 2010.
- Section 16. Creates s. 494.00296, F.S., providing requirements for loan modification agreements, prohibited acts, and remedies.
- Section 17. Requests the Division of Statutory Revision rename Part II of Chapter 494, Florida Statutes.
- Section 18. Amends s. 494.003, F.S., by revising and clarifying exemptions.
- Section 19. Repeals s. 494.0031, F.S. effective October 1, 2010. (Licensure as a mortgage broker business)

- Section 20. Creates s. 494.00312, F.S. effective October 1, 2010, providing application and processing requirements for a loan originator license.
- Section 21. Creates s. 494.00313, F.S. effective October 1, 2010, providing application and processing requirements for a loan originator license renewal.
- Section 22. Repeals s. 494.0032, F.S. effective October 1, 2010. (Renewal of mortgage broker business licenses or branch office licenses)
- Section 23. Creates s. 494.00321, F.S. effective October 1, 2010, providing application and processing requirements for a mortgage broker license.
- Section 24. Creates s. 494.00322, F.S. effective October 1, 2010, providing application and processing requirements for a mortgage broker license renewal.
- Section 25. Repeals s. 494.0033, F.S. effective October 1, 2010. (Mortgage broker's license)
- Section 26. Amends s. 494.00331, F.S., by conforming language.
- Section 27. Repeals s. 494.0034, F.S. effective October 1, 2010. (Renewal of mortgage broker's license)
- Section 28. Amends s. 494.0035, F.S., by conforming language and expanding principal loan originator and branch manager requirements.
- Section 29. Amends s. 494.0036, F.S., by conforming language and clarifying the branch office licensing fee requirement.
- Section 30. Amends s. 494.0038, F.S., by conforming language and expanding loan origination and mortgage broker fee and disclosure requirements.
- Section 31. Amends s. 494.0039, F.S., by conforming language.
- Section 32. Amends s. 494.004, F.S., by conforming language and revising requirements of licensees.
- Section 33. Repeals s. 494.0041, F.S. (Administrative penalties and fines; license violations)
- Section 34. Amends s. 494.0042, F.S., by conforming language.
- Section 35. Amends s. 494.00421, F.S., by conforming language.
- Section 36. Amends s. 494.0043, F.S., by conforming language.
- Section 37. Amends s. 494.006, F.S., by revising and clarifying exemptions.
- Section 38. Repeals s. 494.0061, F.S. effective October 1, 2010. (Mortgage lender's license requirements)
- Section 39. Creates s. 494.00611, F.S. effective October 1, 2010, providing application and processing requirements for a mortgage lender license.
- Section 40. Creates s. 494.00612, F.S. effective October 1, 2010, providing application and processing requirements for a mortgage lender license renewal.

- Section 41. Repeals s. 494.0062, F.S. effective October 1, 2010. (Correspondent mortgage lender's license requirements)
- Section 42. Amends s. 494.0063, F.S., by providing specifics regarding the annual financial audit report required of a mortgage lender.
- Section 43. Repeals s. 494.0064, F.S. effective October 1, 2010. (Renewal of mortgage lender's license; branch office license renewal)
- Section 44. Repeals s. 494.0065, F.S. effective October 1, 2010. (Saving clause)
- Section 45. Amends s. 494.0066, F.S., by conforming language and revising branch office licensing and fee requirements.
- Section 46. Creates s. 494.00665, F.S., providing each mortgage lender business must be operated by a licensed principal loan originator and each branch office of a mortgage lender must be operated by a branch manager who is a licensed loan originator.
- Section 47. Amends s. 494.0067, F.S., by conforming language and mortgage lender requirements.
- Section 48. Amends s. 494.0068, F.S., by conforming language.
- Section 49. Amends s. 494.0069, F.S., by conforming language.
- Section 50. Amends s. 494.007, F.S., by conforming language.
- Section 51. Amends s. 494.0071, F.S., by conforming language.
- Section 52. Repeals s. 494.0072, F.S. (Administrative penalties and fines; license violations)
- Section 53. Amends s. 494.00721, F.S., by conforming language.
- Section 54. Amends s. 494.0073, F.S., by conforming language.
- Section 55. Amends s. 494.0075, F.S., by conforming language.
- Section 56. Amends s. 494.0077, F.S., by conforming language.
- Section 57. Amends s. 501.1377, F.S., by removing content related to "foreclosure rescue consultant", "foreclosure rescue services", and "Foreclosure Related Rescue Services Written Agreement".
- Section 58. Provides for expiration of mortgage broker, mortgage broker business, mortgage lender, correspondent mortgage lender licenses, expiration of mortgage business school permits, and transition activities.
- Section 59. Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:¹¹

¹¹ Office of Financial Regulation Fiscal Impact Statement dated March 22, 2009 on file with the Government Operations Appropriations Committee.

	(FY 2009-10) Amount	(FY 2010-11) Amount	(FY 2011-12) Amount
Recurring – Regulatory Trust Fund			
Licenses – 26,000 currently exempt loan originators at \$195	\$ 5,070,000		
Waive 8/31/10 renewal fees for firms and branches-will file new application for mortgage lender/mortgage broker license through NMLS		\$(3,026,783)	
Eliminate mortgage broker schools		\$ (90,000)	\$ (90,000)
Application fee for new loan originator license - 49,000 at \$195		\$ 9,555,000	
Application fee for new mortgage broker license - 3761 x \$425		\$ 1,598,425	
Application fee for new mortgage lender license - 2465 x \$500		\$ 1,232,500	
Application fee for branch office license - 3076 x \$225		\$ 692,100	
Renewals - loan originators (70% renewal)			\$ 5,344,500
Renewals - mortgage brokers (70%)			\$ 1,906,013
Renewals - mortgage lenders (70%)			\$ 1,035,738
Renewals – branch offices (70%)			\$ 609,840
Total Recurring – Regulatory Trust Fund	\$ 5,070,000	\$ 9,961,242	\$ 8,806,091
Non-Recurring– Regulatory Trust Fund	\$ 0	\$ 0	\$ 0
Total Change to Revenue – Regulatory Trust Fund	\$ 5,070,000	\$ 9,961,242	\$ 8,806,091

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 into the Mortgage Guaranty Trust Fund until the 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 fund balance again reaches \$5 million.

B. Expenditures - Regulatory Trust Fund (2573) – Does not include existing expenditures, only new resources being requested.

	(FY 2009-10) Amount	(FY 2010-11) Amount	(FY 2011-12) Amount
Recurring			
Salaries (5 FTE)	\$ 291,422	\$ 291,422	\$ 291,422
Expense	\$ 33,500	\$ 33,500	\$ 33,500
Transfer to DMS	\$ 2,807	\$ 2,807	\$ 2,807
Total Recurring	\$ 327,729	\$ 327,729	\$ 327,729
Non-Recurring			
Other Personal Services	\$ 83,430		
Expense	\$ 17,060		
Operating Capital Outlay	\$ 5,000		
Fee to CSBS to join NMLS	\$ 500,000		
Total Non-recurring	\$ 605,490		
Total Expenditures	\$ 933,219	\$ 327,729	\$ 327,729

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, all licenses of mortgage broker businesses, mortgage lenders, and branch offices are valid from the date of issuance until August 31 of each “even” year. An individual mortgage broker license is valid from the date of issuance until August 31 of every “odd” year and a renewal license is valid until August 31 of the next “odd” year. The fees reflected under “Effect of Proposed Changes” will be applicable, to include those paid annually to OFR, the Registry processing fee, and the Mortgage Guaranty Trust Fund assessment, if required.

The bill eliminates the exemption for non-depository loan originators (individuals), effective January 1, 2010, and requires these loan originators to become licensed as a mortgage broker by that date. OFR estimates that approximately 46,000 individuals will be required to be licensed for the first time.¹² Currently licensed mortgage brokers (individuals) are required to renew their license by August 31, 2009, and their licenses will be valid until December 31, 2010, rather than a 2-year period. The fees reflected under “Effect of Proposed Changes” will be applicable, to include those paid annually to OFR, the Registry processing fee, and the Mortgage Guaranty Trust Fund assessment, if required.

Currently licensed mortgage brokers (individuals) will be required to obtain licensure renewals through the Registry, effective January 1, 2011. Currently licensed mortgage broker and mortgage lender businesses and branches that are subject to renewal by August 31, 2010, will have their renewal deadline extended until December 31, 2010. Effective January 1, 2011, they will be subject to licensure through the Registry. The fees reflected under “Effect of Proposed Changes” will be applicable, to include those paid annually to OFR, the Registry processing fee, and the Mortgage Guaranty Trust Fund assessment, if required.

D. FISCAL COMMENTS:

An increase of \$5.0 million in revenue to OFR is estimated based on the restructured fee schedule contained in the bill. The House General Appropriations Act for FY 2009-10 (House Bill 5101) includes five positions and \$933,219 in budget authority to assist OFR with the workload associated with implementation of the S.A.F.E. In addition, OFR will have expenditures of approximately \$1.4 million related to the updating of the Regulatory Enforcement and Licensing System (REAL) for S.A.F.E. implementation.

The Florida Department of Law Enforcement has indicated the potential need for up to three positions and \$167,440 to process the fingerprints and criminal background checks as required by S.A.F.E.

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

¹² Id.

to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Financial Services Commission to adopt rules relating to: compliance with the S.A.F.E. Mortgage Licensing Act of 2008; establishing time periods for barring licensure for certain misdemeanors and felonies; requiring electronic submission of any forms; administration of disclosure requirements; and guidance on what constitutes a material benefit to the borrower.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Prior to 1992, Florida had a guaranty fund that compensated consumers who had suffered monetary losses as a result of any violation of ch. 494, F.S. The law limited the total recovery for all persons defrauded by one licensee to \$100,000 and to \$20,000 per claimant. Revenues derived from mortgage broker and lender license and renewal fees funded the payment of claims. In 1991, the Legislature abolished the fund because the funding mechanism did not adequately or timely fund all approved claims, which resulted in delays in compensating victims.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES