

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: SB 1228

INTRODUCER: Senator Fasano

SUBJECT: Mortgage Guaranty Trust Fund

DATE: April 13, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Snider	Burgess	BI	Favorable
2.	Fournier	McKee	FT	Favorable
3.	Frederick	DeLoach	GA	Favorable
4.			WPSC	
5.				
6.				

I. Summary:

This bill creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation (office). The revenue source for the trust fund was authorized by the 2009 Legislature in s. 494.00172, F.S., and consists of an annual license fee on loan originators, mortgage brokers, and mortgage lenders. The revenue credited to the trust fund must be used to pay claims against loan originators, mortgage brokers, and mortgage lenders. Any balance in the trust fund at the end of the fiscal year will remain in the trust fund and be available for the payment of claims. The trust fund will terminate on July 1, 2014, pursuant to section 19(f)(2), Article III of the Florida Constitution. Prior to its termination, the trust fund must be reviewed pursuant to section 215.3206(1) and (2), Florida Statutes.

This bill substantially creates an undesignated section of the Florida Statutes.

II. Present Situation:

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.

¹ Pub. L. 110-289, 122 Stat. 2654 (2008).

- Providing increased accountability and tracking of loan originators.
- Enhancing consumer protections and supporting anti-fraud measures.
- 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 providing 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.

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 in order to establish financial responsibility for licensees. It also provides some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

Florida's Mortgage Broker and Mortgage Lender Licensing Requirements

In Florida, the Office of Financial Regulation is responsible for regulating mortgage brokers, mortgage lenders, and other specified financial entities.² Generally, mortgage brokers and mortgage lenders must comply with federal and state laws regulating the industry, unless they are exempt from such laws. 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. 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 individual licensure requirements.

Florida licenses three types of mortgage lender businesses: mortgage lender,³ correspondent mortgage lender,⁴ and saving clause mortgage lender.⁵ 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. In 2009, the Legislature enacted and the Governor approved legislation⁶ that brought the state into compliance with the S.A.F.E. Mortgage Licensing Act of 2008. The statutory provisions include a guaranty fund requirement to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders. Effective October 1, 2010, Florida Statutes provide for a recovery fund to be paid into by the loan originators and requires a loan originator to pay into a state guaranty fund.⁷ Funding

² The Office of Financial Regulation is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. [Section 20.121(3), F.S.]

³ 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.

⁴ A correspondent mortgage lender may perform the same function; however, it may only service a loan for a maximum of four months after closing.

⁵ 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.

⁶ Chapter 2009-241, Laws of Florida.

⁷ s. 494.00172, F.S.

is provided by fees 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 exceeds \$5 million. At that point, these assessments will discontinue until such time as the fund balance falls below \$1 million. When the balance falls below \$1 million, fees will be reinstated until the fund balance exceeds \$5 million.

Commencing October 1, 2010, the office will begin accepting and processing loan originator license applications. Nonrefundable fees will be deposited into the fund and will accompany those applications. Expected revenues from these fees are shown in the table below:

Recurring Trust Fund Revenue	Fiscal Year 2010-2011	Fiscal Year 2011-2012	Fiscal Year 2012-2013
Individuals \$20 x 40,000	\$800,000	\$608,000	\$462,080
Firms \$100 x 7,000	\$700,000	\$579,000	\$480,570
Total Revenues	\$1,500,000	\$1,187,000	\$942,650

Compensation for Consumers

Currently, states use a surety bond, net worth requirements, or a guaranty fund (or combination thereof) to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders. Senate professional staff conducted a limited review of the bonding, net worth, or guaranty fund requirements in other states and noted that the majority of the states have net worth and bonding requirements. A few states, such as California, Oklahoma, Texas, and Utah have a guaranty fund. Based on preliminary research, most states require a surety bond or fidelity bond for mortgage brokers, ranging in an amount from \$10,000 to \$500,000. S.A.F.E. requires loan originators, which include mortgage brokers and mortgage lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements.

Prior to 1992, Florida had a guaranty fund that compensated consumers who had suffered monetary losses resulting from a violation of ch. 494, F.S. committed by a licensed entity, as adjudged by a court of competent jurisdiction in Florida. 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.

As part of a sunset review of ch. 494, F.S., the Comptroller’s Mortgage Brokerage and Mortgage Lending Sunset Review Task Force reviewed the guaranty fund.⁸ The task force report noted that recovery from the prior guaranty fund took at least 2 years after the judgment. However, the average recovery time was 3 to 4 years. In almost all cases, a claimant retained an attorney. Concerning the compensation limits of the guaranty fund, the task force report stated that a guaranty fund “may provide an illusory protection” since many mortgage schemes involve millions of dollars. Payouts from this fund reached almost \$4 million during the period of 1978-

⁸ Department of Banking and Finance, December 1990. This task force was required pursuant to ch. 90-353, L.O.F. The law directed the Comptroller to create a task force to review ch. 494, F.S. and make recommendations to the Legislature.

1993. The funding mechanism did not adequately or timely fund all approved claims, resulting in delays in compensating victims. In 1991, the Legislature abolished the fund.

III. Effect of Proposed Changes:

Section 1 establishes the Mortgage Guaranty Trust Fund for the purpose of compensating persons who have suffered monetary damages due to a violation of ch. 494, F.S., by a licensed individual or business. The bill also requires that any unencumbered balance in the trust fund at the end of each fiscal year remain in the trust fund and be available for carrying out the intended purpose of the fund.

In accordance with Art. III of the State Constitution, the trust fund shall terminate on July 1, 2014, unless reenacted by the Legislature.

Section 2 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 19(f)(1), Art. III of the Florida Constitution specifies that 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The costs associated with administering the trust fund and paying claims are expected to be minimal. According to the Office of Financial Regulation, these costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
