

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBFA 10-02 SAFE Trust Fund
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Insurance, Business & Financial Affairs Policy Committee, Barnum, Cooper. Rows 2-6 are numbered 1) through 5) with blank entries.

SUMMARY ANALYSIS

PCB IBAF 10-02 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.

Article III, s. 19(f)(1) of the State 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. Thus, this bill requires a three-fifths vote for passage.

The trust fund shall be terminated on July 1, 2014 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 provides for a July 1, 2010 effective date.

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. Currently, loan originators employed by licensed lenders are exempt from licensure requirements; however, licensure will be required as of January 1, 2011. 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 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 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. 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

¹ H.R. 3221, Public Law 110-289

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

licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

Pursuant to section 19(f)(1), 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:

Florida licenses three types of mortgage lender businesses: mortgage lender,³ correspondent mortgage lender,⁴ and saving clause mortgage lender⁵. 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 bringing 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 paid into by the loan originators and requires a loan originator to pay into a state guaranty fund.⁷ Commencing October 1, 2010, the OFR will begin accepting and processing loan originator license applications. Nonrefundable fees to be deposited into the fund will accompany those applications.

The Mortgage Guaranty Trust Fund is established for the purpose of compensating persons who have suffered monetary damages because of a violation of ch. 494, F.S., by a licensed individual or business. The fund allows for payments of up to \$50,000 per borrower, with a maximum aggregate recovery of \$250,000 against a licensee. Funding will be provided by fees which 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 exceeds \$5 million. At that 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 exceeds \$5 million.

Effect of Bill:

PCB IBFA 10-02 creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation (OFR). 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 paying claims, notwithstanding the provisions of s. 216.301, F.S., and pursuant to s. 216.351, F.S. The trust fund shall be terminated on July 1, 2014 pursuant to s. 19(f)(2), Article III of the Florida Constitution. Prior to its

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.

termination, the trust fund shall 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 a July 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:⁸

	(FY 10-11)	(FY 11-12)	(FY 12-13)
	Amount	Amount	Amount
Recurring – Mortgage Guaranty Trust Fund*			
Individuals \$20 x 40,000	\$ 800,000	\$ 608,000	\$ 462,080
Firms \$100 x 7,000	\$ 700,000	\$ 579,000	\$ 480,570
Total Revenue – Mortgage Guaranty Trust Fund	\$ 1,500,000	\$ 1,187,000	\$ 942,650

* Fees will be paid until the Fund balance exceeds \$5 million, at which point those fees will be discontinued until such time as the Mortgage Guaranty Trust Fund balance falls below \$1 million. When the balance falls below \$1 million, fees will again be instituted until the Fund balance again exceeds \$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.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁸ Office of Financial Regulation Fiscal Impact Statement dated January 25, 2010 on file with the Insurance, Business and Financial Affairs Policy Committee.

⁹ Id.

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 Article III, s. 19(f) of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES