

FLORIDA HOUSING FINANCE CORPORATION

RULE NO.: RULE TITLE:
67-48.004 Application and Selection
 Procedures for Developments

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 34, No. 28, July 11, 2008 issue of the Florida Administrative Weekly has been withdrawn.

**Section IV
Emergency Rules**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF MANAGEMENT SERVICES

Agency for Workforce Innovation

RULE NO.: RULE TITLE:
60BBER08-1 Emergency Unemployment
 Compensation

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The rate of unemployment in the State of Florida has risen dramatically since January 2007. Between January and May 2007, 245,653 individuals filed claims for unemployment benefits. During the same period in 2008, 346,202 individuals filed claims, representing an increase of 41%. Under Florida law, a claimant may receive up to 26 weeks of unemployment compensation within a one year period. Unfortunately, as many as 488,650 recipients of unemployment compensation have exhausted their regular benefits and may be eligible for additional benefits under recently enacted federal legislation. These figures are representative of the situation faced by other states nationwide. To address this situation and for other purposes, Congress passed a Supplemental Appropriations Act (Public Law 110-252). Title IV of the Act creates the Emergency Unemployment Compensation program, which authorizes states that enter into agreements with the United States Department of Labor to pay up to an additional 13 weeks of benefits to recipients of unemployment compensation who have exhausted all rights to regular compensation under state law. Florida has entered into such an agreement with the United States Department of Labor. In order to determine which individuals are eligible for benefits and provide compensation to them as quickly as possible, it is necessary that the use of the application forms incorporated by reference into this emergency rule be implemented immediately, without

the delay attendant with regular rulemaking procedures. The Agency will immediately begin the regular rulemaking process for incorporating these forms and procedures into its current claims rules, found in Chapter 60BB-3, Florida Administrative Code.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The forms incorporated by reference provide the most efficient means of providing unemployment benefits to those individuals that are entitled to them. In adopting these forms, the Agency has acted to ensure that all procedural remedies available to recipients of regular state unemployment compensation will be available to Emergency Unemployment Compensation program applicants under state law and under the terms of the governing agreement with the United States Department of Labor. The Agency modeled the proposed rule after existing rules, after giving due consideration to public comment received during the latest amendment to Chapter 60BB-3, Florida Administrative Code, regarding the best means of making the application process accessible to persons with Limited English Proficiency.

SUMMARY: This rule prescribes and incorporates by reference the forms to be used to apply for emergency unemployment compensation.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: John R. Perry, Assistant General Counsel, 107 East Madison Street, MSC 110, Tallahassee, Florida 32399-4128, (850)245-7150

THE FULL TEXT OF THE EMERGENCY RULE IS:

60BBER08-1 Emergency Unemployment Compensation.

(1) Individuals wishing to receive Extended Unemployment Compensation benefits must submit an application for benefits to the Agency for Workforce Innovation. An application may be submitted:

(a) Online, or

(b) In writing on one of the forms listed in subparagraphs (6)(a), (b), or (c) below.

(2) To apply online an individual must visit the website: http://www.floridajobs.org/unemployment/uc_emp_claims.html, click on the Emergency Unemployment Compensation (EUC) link, and follow the instructions provided in the Online Internet Unemployment Compensation Claim Application (Rev. 07/08) or Online Internet Unemployment Compensation Claim Application (Spanish Version) (Rev. 07/08).

(3) To submit a written application, the claimant must complete one of the forms listed in paragraph (6)(a),(b), or (c) below and either:

(a) Mail the completed form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, P. O. Drawer 5350, Tallahassee, Florida 32314-5350; or

(b) Fax the form to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, (850)921-3938.

(4) A copy of the application forms listed in subparagraphs (6)(a),(b), or (c) below may be obtained by:

(a) Mailing a written request to the Agency for Workforce Innovation, Unemployment Compensation Records Unit, P. O. Drawer 5750, Tallahassee, Florida 32314-5750;

(b) Faxing a written request to the Agency for Workforce Innovation, Unemployment Compensation Records Unit at (850)921-3912;

(c) Downloading from the Agency website at http://www.floridajobs.org/unemployment/uc_claims_app_for_ms.html; or

(d) Calling the Agency for Workforce Innovation, Unemployment Compensation Records Unit at (850)921-3470.

(5) Notice of the Agency’s determination of a claimant’s eligibility or ineligibility for Extended Unemployment Compensation will be mailed to the claimant on a Form AWI-UCB11 EUC (07/08). If, however, the claimant is deemed ineligible because his claim for regular unemployment benefits was filed on or after May 7, 2006, notice of this determination will be mailed to the claimant on a Form AWI-UCB11-1 EUC (07/08).

(6) The following forms are hereby incorporated by reference into this rule:

- (a) Form AWI-UC310EUC (Rev. 07/08).
- (b) Formulario AWI-UC310EUCS (Rev. 07/08).
- (c) Form AWI-UCB310EUC (Rev. 07/08).
- (d) Form AWI-UCB11 EUC (07/08).
- (e) Form AWI-UCB11-1 EUC (07/08).
- (f) Online Internet Unemployment Compensation Claim Application (Rev. 07/08).
- (g) Online Internet Unemployment Compensation Claim Application (Spanish version) (Rev. 07/08).

Specific Authority 443.1317(1)(b) FS. Law Implemented 443.091, 443.101, 443.111 FS. History—New 8-12-08.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: August 12, 2008

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled “Official Notices.”

FINANCIAL SERVICES COMMISSION

Finance

<p>RULE NOS.: 69VER08-1</p>	<p>RULE TITLES: Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure</p>
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<p>69VER08-2</p>	<p>Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure</p>
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<p>69VER08-3</p>	<p>Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure</p>
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SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: The Financial Services Commission and the Office of Financial Regulation hereby state that the following circumstances constitute an immediate danger to the public health, safety, or welfare:

Preserving the American dream of home ownership is vitally important to Floridians and Florida’s economy. The purchase of a home is the most important financial decision many Floridians will make in their lifetime. The current housing crisis that has swept across the nation has been the subject of daily reporting for the past several months. Foreclosures, mortgage fraud, and predatory lending have reached record levels.

For the past year, Congress has been working on legislation to strengthen the nation's housing industry and clean up the mortgage industry. On July 30, 2008, President George Bush signed into law major housing reform legislation (H.R. 3221) that includes a measure to establish minimum national licensing and oversight standards for America’s mortgage brokers and loan originators. This measure is titled “The Secure and Fair Enforcement in Mortgage Licensing Act of 2008,” or “The SAFE Mortgage Licensing Act of 2008.”

The SAFE Mortgage Licensing Act of 2008 is intended to eliminate those persons with a history of certain criminal activity or specific misconduct relating to loan origination from the mortgage industry and require mortgage brokers and loan originators to meet minimum national standards to ensure they are professional, competent and trustworthy. The broader legislation is designed to prevent foreclosures, stabilize the declining housing market, and reform the government-sponsored enterprises Fannie Mae and Freddie Mac.

The SAFE Mortgage Licensing Act of 2008 was introduced by Senator Feinstein of California and Senator Martinez of Florida in response to growing reports of abusive lending practices by unscrupulous persons in the mortgage lending industry in their states.

In a press release, Senators Feinstein and Martinez commented on the need for the legislation. Senator Feinstein stated: “America’s housing crisis has caused significant harm to our economy, and put millions of Americans at risk of losing their homes. This legislation will bring much-needed relief to millions of Americans, and will help clean up the mortgage industry.” She also stated: “The SAFE Mortgage Licensing Act will help restore confidence in the American Dream of home ownership, ensuring that all brokers and lenders meet basic standards and earn a license.”

Senator Martinez commented: "The current housing crisis has shown us that while some homeowners unfortunately made poor financial decisions, others were clearly taken advantage of by bad actors in the housing industry. National licensing standards will help decrease the number of unscrupulous loan originators and predatory mortgages. He also stated that "The SAFE Act will give home buyers added confidence at a time when they're making what is probably their most significant financial investment."

The press release provided further insight into the impetus for the legislation. The background information indicates that millions of Americans – including those with weak credit scores – have used sub-prime and exotic mortgages to purchase homes using adjustable-rate loans with low initial monthly payments. Some of these mortgages require little or no down payment.

Many mortgage lenders and brokers offering these mortgages act responsibly. However, some have used predatory lending tactics, resulting in unsuspecting borrowers assuming mortgages they cannot afford.

Also, the standards of accountability for mortgage brokers and loan originators have not kept pace with the increasing sophistication of the mortgage industry.

The FBI recently announced that between March 1 and June 18, 2008, 406 defendants were charged in 144 mortgage fraud-related cases. Mortgage fraud charges were brought in more than 50 judicial districts, and approximately \$1 billion in losses can be attributed to these mortgage fraud schemes.

Last year, more than 2.2 million foreclosures were filed in the United States, a jump of 75 percent over 2006, according to data released by RealtyTrac. Foreclosure rates are expected to remain high, as 1.8 million adjustable-rate mortgages across the nation will reset to higher rates in the next two years.

Florida has been especially hard hit by the housing crisis. According to the Mortgage Bankers Association, Florida accounts for a disproportionate share of the nation's foreclosures. Florida accounts for 8 percent of all U.S. mortgages and 15 percent of the nation's foreclosures. Florida also had the nation's second-highest number of homes in some state of foreclosure last year. There were 279,325 filings issued on 165,291 properties last year, a nearly 124 percent increase over the number of filings in 2006. More than 2 percent of Florida households entered some stage of foreclosure last year. In other reports, the Mortgage Asset Research Institute ranked Florida first in the United States last year for mortgage loans that contained alleged fraud against lenders. Fannie Mae reports that Florida ranks in the top 10 for states with mortgage loans that have significant misrepresentations. The FBI reports that suspicious activity reports filed by financial institutions concerning suspected mortgage fraud have increased from approximately 7,000 in fiscal year 2003 to over 46,000 in fiscal year 2007. And, recent new articles have indicated that persons

with prior criminal backgrounds who obtained licenses through the Office of Financial Regulation have subsequently committed mortgage fraud and other serious crimes.

The SAFE Mortgage Licensing Act of 2008 contains a number of important provisions that will assist regulators in preventing certain individuals from entering the mortgage industry. The law provides that a person is not eligible for licensure within 7-years of a felony conviction. If that felony involved fraud, dishonest dealing, breach of trust or money laundering, the federal law precludes that person from receiving a license.

Under Chapter 494, Florida Statutes, the Office may deny an applicant a license if the person has committed a crime involving fraud, dishonest dealing, or moral turpitude. The new federal legislation establishes strict minimum standards for licensure. A federal agency, the Department of Housing and Urban Development, is directed to establish a federal licensing regimen in any state that fails to adopt these standards within a prescribed period of time. Another reason why these stricter standards need to be applied in Florida is that studies conducted by the Florida Department of Corrections have shown that approximately 49 percent of inmates released from prison will commit new offenses within five years.

The Financial Services Commission and Office of Financial Regulation find that immediate action is needed to strengthen the implementing regulations adopted under Chapter 494, Florida Statutes, to better protect Floridians in the purchase of their most significant asset; and to the extent permissible under current Florida law, reflect the policies and intent of the new federal legislation. Such action also will assist in stabilizing the housing market in Florida by restoring confidence to borrowers when engaging in mortgage lending transactions.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Financial Services Commission believes adopting an emergency rule is the fairest method to protect the public under the current market conditions. Persons who have been previously convicted of financial crimes and other serious felonies have a high rate of recidivism. There is also ample evidence to show that crime in the mortgage lending industry has reached record levels. Based on increasing rates of foreclosures, increasing rates of reported mortgage fraud, and other negative indicators, the Financial Services Commission and the Office need to take immediate action to implement the federal "The SAFE Mortgage Licensing Act of 2008" to the maximum extent permitted under current Florida law. Concurrent with the filing of these emergency rules, the Financial Services Commission has authorized the Office of Financial Regulation to initiate the regular rulemaking process for the issues addressed in these emergency rules. This action will ensure that all persons affected by the emergency rules will be afforded the due process protections guaranteed through the regular rulemaking process. Furthermore, by and large, the standards set forth in

these rules, merely reflect the federal standards that have just been enacted to apply throughout the nation. Such standards will be imposed in Florida by a federal agency should Florida fail to implement them.

SUMMARY: The rules set forth the policies of the Office of Financial Regulation with respect to processing license applications for persons who have been found guilty of, or who have pled guilty or nolo contendere to, certain crimes. The policies address applications for licensure as mortgage brokers, mortgage lenders, correspondent lenders, and mortgage brokerage businesses. The rules provide that a person who has been found guilty of, or who has pled guilty or nolo contendere to, a felony involving fraud, dishonesty, breach of trust or money laundering is not eligible for licensure as a mortgage broker. These crimes are classified as Class "A" crimes under the rules. A person who has been found guilty of, or who has pled guilty or nolo contendere to, certain other felonies constituting moral turpitude, including but not limited to specified serious violent crimes (e.g. murder, rape, armed robbery, etc.) is not eligible for licensure as a mortgage broker until 15 years have passed. These crimes are classified as Class "B" crimes. A person who has been found guilty of, or who has pled guilty or nolo contendere to, a felony constituting an act of moral turpitude that is not addressed under Class "A" or "B" crimes is not eligible for licensure as mortgage broker until seven years have elapsed. These crimes are classified as Class "C" crimes. A person who has been found guilty of, or who has pled guilty or nolo contendere to, a misdemeanor involving fraud, dishonest dealing or moral turpitude, is not eligible for licensure as a mortgage broker until five years have elapsed. These crimes are classified as Class "D" crimes.

For applicants applying for licensure as a mortgage lender, correspondent lender, or mortgage brokerage business, the applicant is not eligible for licensure until 15 years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, a felony involving fraud, dishonesty, breach of trust or money laundering or certain other specified crimes constituting moral turpitude (e.g. murder, rape, armed robbery, etc.) These crimes are classified as Class "A" crimes under the rules. For applicants seeking licensure as a mortgage lender, correspondent lender, or mortgage brokerage business, the applicant is not eligible for licensure until seven years have elapsed, if a "relevant person" of the applicant has been found guilty of, or has pled guilty or nolo contendere to, any felony constituting moral turpitude that is not addressed under Class A crimes. These crimes are classified as Class "B" crimes. For "relevant persons" of the applicant who have been found guilty of, or who have pled guilty or nolo contendere to, a misdemeanor involving fraud, dishonest dealing or moral turpitude, the applicant is not eligible for licensure as a mortgage broker business, correspondent lender or mortgage lender until five years have elapsed. These crimes are classified as Class "C" crimes.

"Relevant persons" include each officer, director, control person, member, partner, or joint venturer of a mortgage brokerage business license applicant or of a mortgage lender of correspondent lender license applicant. The term also includes each ultimate equitable owner with a 10-percent or greater interest in the license applicant.

The rules provide for mitigating and aggravating factors that may lengthen or shorten the time periods discussed above for applicants for licensure as a mortgage broker, mortgage brokerage business, mortgage lender or correspondent mortgage lender.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Terry Straub, Director, Division of Finance, Office of Financial Regulation, The Fletcher Building, 200 East Gaines Street, Tallahassee, Florida 32399, (850)410-9805, terry.straub@flofr.com

THE FULL TEXT OF THE EMERGENCY RULE IS:

69VER08-1 Effect of Law Enforcement Records on Applications for Mortgage Broker Licensure.

(1) Statement of Policy Implementation of Federal Law. It is the policy of the Office that the licensing standards set forth in Chapter 494, Florida Statutes, be construed consistently with federal law as expressed in Title V of H.R. 3221 of the 110th Congress, i.e. the S.A.F.E. Mortgage Licensure Act of 2008. This rule is intended to encompass that policy. Under Chapter 494, Florida Statutes, the Office may deny an applicant a license if the person has committed a crime involving fraud, dishonest dealing, or moral turpitude. The new federal legislation establishes stricter minimum standards for licensure to attempt to enhance prevention against persons who may pose a threat to Florida consumers from entering the mortgage industry. These stricter standards need to be applied in Florida based on studies of recidivism conducted by the Florida Department of Corrections.

(2) General Procedure Regarding Law Enforcement Records. At the time of submitting a mortgage broker application, an applicant for a mortgage broker license shall supply the Office with required documentation, as specified in this rule, relating to: 1) all criminal matters in which the applicant has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime, 2) any pending criminal charges, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(3) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(b) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant.

(4) Classification of Crimes.

(a) The Office makes a general classification of crimes into four classes: A, B, C, and D as listed in subsections (16), (17), (18), and (19) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude, the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime, and the standards for licensure set forth in Title V of H.R. 3221 of the 110th Congress, the S.A.F.E. Mortgage Licensing Act of 2008.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(5) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant is not eligible for licensure.

(b) Class B Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 7 years have passed since the trigger date.

(d) Class D Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(6) Applicants With Multiple Crimes.

(a) The Office construes Section 494.0041, Florida Statutes, to require that an applicant whose law enforcement record includes multiple crimes wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such applicant's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the applicant has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(7) Mitigating Factors.

(a) The disqualifying period for a crime or crimes shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.

2. One year is deducted if restitution or settlement has been made for all crimes in which wherein restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state

licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) In no event shall the aggregate mitigation result in less than a seven (7) year disqualifying period where the underlying crime committed was a felony.

(c) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(8) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of plea, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results wherein the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(9) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(10) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any person who at time of application is participating in a pre-trial

intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(11) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally an applicant will have a matter sealed or expunged after submitting his or her application. In such situations the Office policy is as follows:

1. If the applicant properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(12) Effect of Restoration of Civil Rights.

(a) An applicant must disclose crimes even where civil rights have been restored.

(b) If a person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(13) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequere; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(14) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, Florida Statutes, while the applicant is imprisoned, under arrest, or serving a sentence for any crime. Further, the Office shall not license any applicant who has been released from imprisonment until the later of the period otherwise set out in these rules or five (5) years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least five (5) years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(15) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give a licensee a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(16) Class "A" Crimes include all felonies involving an act of fraud, dishonesty, or a breach of trust, or money laundering, and the Office finds that such crimes constitute crimes of moral turpitude. The Office finds the following list of crimes are Class "A" crimes. This list is representative only and shall not be construed to constitute a complete or exclusive list all crimes that are Class "A" crimes. No inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

- (b) Perjury.
- (c) Armed robbery.
- (d) Robbery.
- (e) Extortion.
- (f) Bribery.
- (g) Embezzlement.
- (h) Grand theft.
- (i) Larceny.
- (j) Burglary.
- (k) Breaking and entering.
- (l) Identity Theft.
- (m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(17) Class "B" Crimes include the following list of felonies, or similar felonies, and the Office finds that such crimes constitute crimes of moral turpitude.

(a) Murder in all degrees.

(b) Arson.

(c) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(d) Aggravated Assault (e.g., as with a deadly weapon).

(e) Aggravated Battery (e.g., as with a deadly weapon).

(f) Rape.

(g) Sexually molesting any minor.

(h) Sexual battery.

(i) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(j) Kidnapping.

(18) Class "C" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" or Class "B" crimes.

(19) Class "D" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(20) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0033, 494.0041 FS. History—New 8-12-08.

69VER08-2 Effect of Law Enforcement Records on Applications for Mortgage Lender and Correspondent Lender Licensure.

(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule each designated principal representative and each officer, director, control person, member, partner, or joint venturer of a Mortgage Lender or Correspondent Lender License applicant, and each ultimate equitable owner with a 10-percent or greater interest in the applicant shall be referred to collectively as "relevant persons."

At the time of submitting a Mortgage Lender or Correspondent Lender Application, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime, 2) any pending criminal charges for a relevant person, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (1) is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0072(2)(c), Florida Statutes.

(b) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16) and (17) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(4) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth elsewhere in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(5) Relevant Persons With Multiple Crimes.

(a) The Office construes Section 494.0072, Florida Statutes, to require that an applicant with relevant persons whose law enforcement record includes multiple Class B or Class C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors for Class "C" Crimes.

(a) The disqualifying period for a Class "C" crime shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or

consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(10) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before a licensing decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant's relevant person properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0072(2)(c), Florida Statutes.

(11) Effect of Restoration of Civil Rights.

(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.

(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with Section 112.011 and Chapter 494, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(12) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequi; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(13) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, Florida Statutes, while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5 years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give a applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(15) Class "A" Crimes include the following felonies which involve fraud, dishonest dealing, or moral turpitude. This list is representative only and shall not be construed to constitute a complete or exclusive list all of crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(16) Class "B" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" crimes.

(17) Class "C" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0061, 494.0062, 494.0072 FS. History--New 8-12-08.

69VER08-3 Effect of Law Enforcement Records on Applications for Mortgage Brokerage Business Licensure.

(1) General Procedure Regarding Law Enforcement Records. For purposes of this rule each officer, director, control person, member, partner, or joint venturer of a Mortgage Brokerage Business License applicant, and each ultimate equitable owner with a 10-percent or greater interest in the applicant shall be referred to collectively as "relevant persons." At the time of submitting a Mortgage Brokerage Business Application, the applicant shall supply the Office with required documentation for each relevant person, as specified in this rule, relating to: 1) all criminal matters in which the relevant person has pled guilty or nolo contendere to, or has been convicted or found guilty, regardless of whether adjudication was withheld, of a crime, 2) any pending criminal charges for a relevant person, or 3) shall supply evidence that such documentation cannot be obtained. Evidence that documentation cannot be obtained shall consist of a certified or sworn written statement on the letterhead of the agency that would be the custodian of the documents, signed by a representative of that agency, stating that they have no record of such matter, or that the record is lost or was damaged or destroyed, or otherwise stating why the document cannot be produced. The required documentation must be legible. Required documentation includes:

(a) A copy of the police arrest affidavit, arrest report or similar document.

(b) A certified copy of the charges.

(c) A certified copy of the plea, judgment, and sentence where applicable.

(d) A certified copy of an order of entry into pre-trial intervention, and the order of termination of pre-trial intervention showing dismissal of charges where applicable.

(e) A certified copy of an order of termination of probation or supervised release, if applicable.

(2) Effect of Failure to Fully Disclose Law Enforcement Record on Application.

(a) The omission of any part of a law enforcement record required to be disclosed pursuant to subsection (2) herein is a material misrepresentation or material misstatement on the application and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(b) If the Office discovers the applicant's failure to disclose after a license has been granted, the Office will suspend or revoke each license currently held by the applicant.

(3) Classification of Crimes.

(a) The Office makes a general classification of crimes into three classes: A, B and C, as listed in subsections (15), (16) and (17) of this rule.

(b) These classifications reflect the Office's evaluation of various crimes in terms of moral turpitude and the seriousness of the crime as such factors relate to the prospective threat to public welfare typically posed by a person who would commit such a crime.

(c) The names or descriptions of crimes, as set out in the classification of crimes, are intended to serve only as generic names or descriptions of crimes and shall not be read as legal titles of crimes, or as limiting the included crimes to crimes bearing the exact name or description stated.

(d) For purposes of this rule, "trigger date" means the date on which an applicant was found guilty, or pled guilty, or pled nolo contendere to a crime.

(e) A charge in the nature of attempt or intent to commit a crime, or conspiracy to commit a crime, is classified the same as the crime itself.

(4) Effect on Licensure of Commitment of Single Crime. The Office finds it necessary to implement the following standards for applicants with relevant persons whose law enforcement record includes a single crime, subject to the mitigating factors set forth in this rule before licensure. All disqualifying periods referenced in this rule run from the trigger date.

(a) Class A Crime. The applicant will not be granted a license until 15 years have passed since the trigger date.

(b) Class B Crime. The applicant will not be granted a license until 7 years have passed since the trigger date.

(c) Class C Crime. The applicant will not be granted licensure until 5 years have passed since the trigger date.

(5) Relevant Persons With Multiple Crimes.

(a) The Office construes Section 494.0041, Florida Statutes, to require that an applicant with relevant persons whose law enforcement record includes multiple Class B or Class C crimes, or any combination thereof, wait longer than those whose law enforcement record includes only a single crime before becoming eligible for licensure in order to assure

that such relevant person's greater inability or unwillingness to abide by the law has been overcome. Therefore, the Office finds it necessary that a longer disqualifying period be utilized in such instances, before licensure can safely be granted. Accordingly, where the relevant person has been found guilty or pled guilty or pled nolo contendere to more than one crime, the Office shall add 5 years to the disqualifying period for each additional crime.

(b) The additional periods are added to the basic disqualifying period for the one most serious crime, and the combined total disqualifying period then runs from the trigger date of the most recent crime.

(c) Classification as "Single Crime" versus "Multiple Crimes." For purposes of this rule, two (2) or more offenses are considered a single crime if they are triable in the same court and are based on the same act or transaction or on two (2) or more connected acts or transactions.

(6) Mitigating Factors.

(a) The disqualifying period based on a crime pursuant to this rule shall be shortened upon proof of one or more of the following factors. Where more than one factor is present the applicant is entitled to add together all the applicable mitigation amounts and deduct that total from the usual disqualifying period, provided that an applicant shall not be permitted an aggregate mitigation of more than three (3) years for the following factors:

1. One year is deducted if the probation officer or prosecuting attorney in the most recent crime states in a signed writing that the probation officer or prosecuting attorney believes the applicant would pose no significant threat to public welfare if licensed as a mortgage broker.

2. One year is deducted if restitution or settlement has been made for all crimes in which restitution or settlement was ordered by the court, and proof of such restitution or settlement is shown in official court documents or as verified in a signed writing by the prosecuting attorney or probation officer.

3. One year will be deducted if the applicant was under age 21 when the crime was committed and there is only one crime in the applicant's law enforcement record.

4. One year is deducted if the applicant furnishes proof that the applicant was at the time of the crime addicted to drugs or suffering active alcoholism. The proof must be accompanied by a written letter from a properly licensed doctor, psychologist, or therapist licensed by a duly constituted state licensing body stating that the licensed person has examined or treated the applicant and that in his or her professional opinion the addiction or alcoholism is currently in remission and has been in remission for the previous 12 months. The professional opinion shall be dated within 45 days of the time of application.

5. Other Mitigating Factors. An applicant is permitted to submit any other evidence of facts that the applicant believes should decrease the disqualifying period before licensure is

allowed and one additional year shall be deducted if the Office agrees the facts have a mitigating effect on the licensure decision.

(b) The burden is upon the applicant to establish these mitigating factors. Where the mitigating factor relates to or requires evidence of government agency or court action, it must be proved by a certified true copy of the agency or court document.

(7) Circumstances Not Constituting Mitigation. The Office finds that no mitigating weight exists, and none will be given, for the following factors:

(a) Type of Plea. The Office draws no distinction among types of pleas, i.e., found guilty; pled guilty; pled nolo contendere.

(b) Collateral Attack on Criminal Proceedings. The Office will not allow or give any weight to an attempt to re-litigate, impeach, or collaterally attack judicial criminal proceedings or their results in which the applicant was found guilty or pled guilty or nolo contendere. Thus the Office will not hear or consider arguments such as: the criminal proceedings were unfair; the judge was biased; the witnesses or prosecutor lied or acted improperly; the defendant only pled guilty due to financial or mental stress; the defendant was temporarily insane at the time of the crime; or the defendant had ineffective counsel.

(c) The Office finds that subjective factors involving state of mind have no mitigating weight.

(8) Effect of Pending Appeal in Criminal Proceedings; Reversal on Appeal.

(a) The Office interprets the statutory grounds for denial of licensure as arising immediately upon a finding of guilt, or a plea of guilty or nolo contendere, regardless of whether an appeal is or is not allowed to be taken. The Office will not wait for the outcome of an appeal to deny licensure, unless a Florida court specifically stays the Office's adverse action.

(b) If on appeal the conviction is reversed, the Office shall immediately drop the said crime as grounds for denial of license.

(9) Pre-Trial Intervention. The Office considers participation in a pre-trial intervention program to be a pending criminal enforcement action and will not grant licensure to any applicant with a relevant person who at time of application is participating in a pre-trial intervention program. The Office finds it necessary to the public welfare to wait until the pre-trial intervention is successfully completed before licensure may be considered.

(10) Effect of Sealing or Expunging of Criminal Record.

(a) An applicant is not required to disclose or acknowledge, and is permitted in fact to affirmatively deny, any arrest or criminal proceeding for a relevant person, the record of which has been legally and properly expunged or sealed by order of a court of competent jurisdiction prior to the time of application, and such denial or failure to disclose is not grounds for adverse action by the Office.

(b) Matters Sealed or Expunged Subsequent to Application. Occasionally a relevant person will have a matter sealed or expunged after the applicant submits an application, but before a licensing decision is made by the Office. In such situations the Office policy is as follows:

1. If the applicant's relevant person properly revealed the matter on the application, and thereafter has the record sealed or expunged, the Office will not consider the matter in the application decision.

2. However, if the applicant's relevant person did not reveal the matter on the application and the matter had not been sealed or expunged at the time of making the application, the Office will construe the failure to disclose the matter on the application as a material misrepresentation or material misstatement, and the application shall be denied pursuant to Section 494.0041(2)(c), Florida Statutes.

(11) Effect of Restoration of Civil Rights.

(a) An applicant's relevant person must disclose crimes even where civil rights have been restored.

(b) If a relevant person's civil rights have been restored, the crimes will be evaluated in the application process consistent with section 112.011 and Chapter 494, Florida Statutes, and the rules promulgated thereunder.

(c) The burden is upon the applicant to prove the restoration of their civil rights.

(12) Effect of Varying Terminology.

(a) With regard to the following six subparagraphs, the Office treats each phrase in a particular subparagraph as having the same effect as the other phrases in that same subparagraph:

1. Adjudicated guilty; convicted.

2. Found guilty; entered a finding of guilt.

3. Pled guilty; entered a plea of guilty; admitted guilt; admitted the charges.

4. Nolo contendere; no contest; did not contest; did not deny; no denial.

5. Adjudication of guilt withheld; adjudication withheld; no adjudication entered; entry of findings withheld; no official record to be entered; judgment withheld; judgment not entered.

6. Nolle prosequi; nolle prosequi; charges withdrawn; charges dismissed; charges dropped.

(b) In all other instances the Office will look to the substantive meaning of the terminology used in the context in which it was used under the law of the jurisdiction where it was used.

(13) Imprisoned Persons and Community Supervision.

(a) Imprisonment. Notwithstanding any provision to the contrary in this rule, the Office shall not license any applicant under Chapter 494, Florida Statutes, while any relevant person of the applicant is imprisoned or serving a sentence for any crime. Further, the Office shall not license any applicant with a relevant person who has been released from imprisonment until the later of the period otherwise set out in these rules or 5

years after the date of release. The Office finds it necessary that the person be released from imprisonment and thereafter demonstrate an ability to abide by the law by passage of at least 5 years on good behavior, before licensure can be granted without undue risk to the public welfare.

(b) Community Supervision. The Office shall not grant licensure to any person who at the time of application or at any time during the pendency of the application is serving term on community supervision for any felony crime, or any misdemeanor crime involving fraud, dishonest dealing, or moral turpitude. The Office shall not substantively consider an application until the applicant has successfully completed his or her probationary term.

(14) Effect of Disqualifying Periods. The disqualifying periods established in this rule do not give a applicant a right to licensure after any set period of time. Regardless of the expiration of any disqualifying period imposed by these rules, the burden to prove entitlement to licensure remains on the applicant.

(15) Class "A" Crimes include the following felonies which involve fraud, dishonest dealing, or moral turpitude. This list is representative only and shall not be construed to constitute a complete or exclusive list all of crimes that are Class "A" crimes. Crimes similar to the crimes on this list may also be considered Class "A" crimes, and no inference should be drawn from the absence of any crime from this list.

(a) Any type of fraud, including but limited to Fraud, Postal Fraud, Wire Fraud, Securities Fraud, Welfare Fraud, Defrauding the Government, Credit Card Fraud, Defrauding an Innkeeper, Passing worthless check(s) with intent to defraud.

(b) Perjury.

(c) Armed robbery.

(d) Robbery.

(e) Extortion.

(f) Bribery.

(g) Embezzlement.

(h) Grand theft.

(i) Larceny.

(j) Burglary.

(k) Breaking and entering.

(l) Identity Theft.

(m) Any type of forgery or uttering a forged instrument.

(n) Misuse of public office.

(o) Racketeering.

(p) Buying, receiving, concealing, possessing or otherwise dealing in stolen property.

(q) Treason against the United States, or a state, district, or territory thereof.

(r) Altering public documents.

(s) Witness tampering.

(t) Tax evasion.

(u) Impersonating or attempting to impersonate a law enforcement officer.

(v) Money laundering.

(w) Murder in all degrees.

(x) Arson.

(y) Sale, importation, or distribution of controlled substances (drugs); or possession for sale, importation or distribution.

(z) Aggravated Assault (e.g., as with a deadly weapon).

(aa) Aggravated Battery (e.g., as with a deadly weapon).

(bb) Rape.

(cc) Sexually molesting any minor.

(dd) Sexual battery.

(ee) Battery of or threatening a law enforcement officer or public official in the performance of his/her duties.

(ff) Kidnapping.

(16) Class "B" Crimes include all felonies that involve any other act of moral turpitude and are not Class "A" crimes.

(17) Class "C" Crimes include any misdemeanor that involves fraud, dishonest dealing or any other act of moral turpitude.

(18) Foreign Law Enforcement Records. If a law enforcement record includes convictions, charges, or arrests outside the United States, the Office shall consider the following factors to reduce, eliminate, or apply a disqualifying period:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Specific Authority 494.0011 FS. Law Implemented 112.011, 494.0031, 494.0041 FS. History—New 8-12-08.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: August 12, 2008

Section V

Petitions and Dispositions Regarding Rule Variance or Waiver

DEPARTMENT OF LAW ENFORCEMENT

NOTICE IS HEREBY GIVEN THAT on August 7, 2008, the Criminal Justice Standards and Training Commission has issued an order.

The Criminal Justice Standards and Training Commission (CJSTC) has granted the request for a waiver of paragraph 11B-20.0014(3)(b), F.A.C., by the Florida Highway Patrol at its regularly scheduled Business Agenda meeting held at Ponte Vedra Beach, Florida, August 7, 2008. The request for waiver was received on July 2, 2008. Notice of the waiver was given in the Florida Administrative Weekly Vol. 34, No. 28, July 18, 2008. The proposed waiver requested a permanent waiver of the requirement that Laser and Operator Certificates only be issued to students who have completed the course under the instruction of a certified instructor. The Petitioner's instructor had completed all of the requirements for becoming an instructor, and had an instructor certificate, however, an oversight prevented his certificate from becoming renewed in a timely manner. During the time that he was operating as an instructor, but unwittingly without a renewed certificate, Petitioner's instructor instructed a class of 15 students. If the proposed waiver were not granted, all 15 FHP troopers would have to be pulled off of Florida's highways to retake the course and any stops they made in the interim using laser or radar would be subject to review. The CJSTC found that this waiver would achieve the purposes of the underlying statute. Further, the CJSTC found that the petitioner adequately demonstrated that the application of the rule would create a substantial hardship to it or would violate the principles of fairness. The Petitioner is affected by the rule in a manner different from others similarly situated and subject to the rule.

A copy of the Order may be obtained by contacting: Grace A. Jaye, Assistant General Counsel, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302, (850)410-7676.

NOTICE IS HEREBY GIVEN THAT on August 7, 2008, the Criminal Justice Standards and Training Commission has issued an order.

The Criminal Justice Standards and Training Commission (CJSTC) has denied the request for a waiver of Rule 11B-27.002(4), F.A.C., by Daniel Santiago at its regularly scheduled Business Agenda meeting held at Ponte Vedra Beach, Florida, August 7, 2008. The request for waiver was received on July 31, 2008. Notice of the waiver was given in the Florida Administrative Weekly Vol. 34, No. 33, August 15, 2008. The proposed waiver requested a permanent waiver of the requirement that a recruit pass basic recruit training, pass the State Officer Certification Examination, and gain employment within four years of the starting date of that recruit's basic recruit class. The Petitioner proposed that he be granted an extra year to find work. The CJSTC found that this waiver would not achieve the purposes of the underlying statute. Further, the CJSTC did not find that the petitioner adequately demonstrated that the application of the rule would create a substantial hardship to him or would violate the