The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL:	CS/SB 2526
INTRODUCER:	Banking and Insurance Committee and Senator Bennett
SUBJECT:	Mortgage Brokers - License Exception
DATE:	April 16, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	**Fav/CS**
2.			CM	
3.			GA	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 2526 provides an exemption from the mortgage broker licensure requirements under Part II of ch. 494, F.S., to persons who are under an exclusive contract with a mortgage lender licensed under Part III of ch. 494, F.S. In order to obtain this exemption, the licensed mortgage lender ('licensee') must meet the following requirements:

- Originate or broker mortgage loans only with mortgage lenders affiliated with the licensee by way of common ownership;
- Provide the Office of Financial Regulation (OFR or office) with evidence of accountability wherein the licensee undertakes financial responsibility for the acts of its agents and agrees to regulatory action against the lender's license if such agents violate mortgage regulatory statutes or rules.
- Secure a $5 million dollar surety bond, to guarantee the obligations of the licensee. This provision is not a limit on any recovery against the licensee based on mortgage brokerage or lending activities conducted by the person exempted. The OFR or any claimant may bring suit on the bond after securing an unpaid judgment. Written notice by certified mail is required before cancellation of the bond and for any payments made under the bond. The bond is to be maintained in the principal amount as claims may be paid out and shall remain in place for five years after the licensee ceases operation. If the OFR determines that the bond is deficient, a new or supplemental bond may be required.
- Implement a business plan to provide for: 1) the education of the exempted persons that is commensurate with their duties, 2) the handling of consumer complaints, 3) the

supervision of the mortgage-related activities of the exempt persons. The business plan is to be designed to prevent and detect violations of Chapter 494, Florida Statutes.

- Conduct a national background check on each person exempted and agree to not contract with persons who have been the subject of any disciplinary action for mortgage brokers specified under ch. 494, F.S., without the prior written consent of the OFR.

This bill amends the following section of the Florida Statutes: 494.006.

II. Present Situation:

Office of Financial Regulation

The Office of Financial Regulation (OFR or office) licenses and regulates state chartered financial institutions in Florida.[1] Specifically, the office has regulatory authority over state-chartered commercial banks, credit unions, savings associations, non-deposit trust companies, as well as companies and individuals involved in mortgage brokering, consumer finance, securities, motor vehicle retail financing, title loans, and transmitting money. A variety of functions are performed by the office, including processing applications for new banks, acquisitions, mergers, changes of control, and applications for licensing. The office does not have regulatory authority over financial institutions that are chartered and regulated by the Federal Government.

Mortgage Brokers and Mortgage Lenders

Chapter 494, F.S., contains regulations governing mortgage brokerage and mortgage lending including licensure requirements, provisions regarding the fees brokers can charge, and requirements for brokering loans to investors.[2] A “mortgage broker” is a person who for compensation or gain, accepts applications for a mortgage loan, solicits a mortgage loan on behalf of a borrower, negotiates the terms or conditions of a mortgage loan on behalf of a lender, or negotiates the sale of an existing mortgage loan to a noninstitutional investor.[3] To obtain a mortgage broker license, a person must complete 24 hours of classroom education on primary and subordinate financing transactions, the provisions under ch. 494, F.S., and rules thereunder; pass a written test as to knowledge of mortgage financing transactions; file fingerprints for criminal background screening with the Florida Department of Law Enforcement; and pay a fee to OFR of $200.[4]

Entities that are exempt from the mortgage brokerage licensure and regulatory requirements under s. 494.003, F.S., include persons licensed as mortgage lenders; state or federal chartered banks, trust companies, savings and loan associations, credit unions, bank holding companies, or consumer finance companies; wholly owned bank holding company subsidiaries or wholly owned savings and loan association holding company subsidiaries regulated under the laws of any state or the U.S. that are approved by specified federal agencies; agencies of the federal

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[1] Chapter 20.121(3), F.S.

[2] Part I of ch. 494, F.S., provides definitions and provisions that apply generally to the mortgage brokerage and mortgage lending industry and outlines the general powers and duties of the OFR. Part II regulates the licensure and eligibility requirements for mortgage brokers and Part III regulates mortgage lenders.

[3] Section 494.001(3), F.S. A “mortgage brokerage business” means a person acting as a mortgage broker under s. 494.001(19), F.S. To qualify to operate a mortgage brokerage business, a mortgage broker must be licensed by the OFR, pay an application fee of $425, have a qualified principal broker, and meet other criteria as specified under s. 494.0031, F.S.

[4] Section 494.0033, F.S. To maintain a license as a mortgage broker, an individual must pay a $150 fee every two years and complete 14 hours of continuing education.

government; persons licensed to practice law in Florida, who are not actively engaged in securing real property; insurance companies; federally licensed small business investment companies; securities dealers; persons acting in a fiduciary capacity conferred by a court; and, wholly owned subsidiaries of a state or federal charted bank or savings and loan association which distributes the lending programs of states or federal chartered banks to persons who arrange loans or make loans to borrowers.

"Mortgage lenders" are persons who make mortgage loans or service mortgage loans for others or for compensation sell a mortgage loan to a noninstitutional investor.[5] Persons licensed as mortgage lenders must complete 24 hours of classroom education on primary and subordinate financing transactions, the provisions under ch. 494, F.S., and rules thereunder; submit an audited financial statement to the OFR which documents that the applicant has a net worth of $250,000; offer a $10,000 surety bond; provide documentation of incorporation or specified form of organization; file fingerprints for criminal background screening with the Florida Department of Law Enforcement; and pay a fee to the OFR of $575.[6]

There are many types of entities that are exempt from the mortgage lender licensure provisions which range from state or federal chartered banks, trust companies, savings and loan associations and insurers to persons selling their own real property.[7]

According to OFR officials, there is one large publically traded bank holding company (Citigroup Inc.) which is proposing this change in the law. Citigroup has a wholly owned subsidiary (Primerica Financial Services Home Mortgages, Inc.), currently licensed in Florida as a mortgage brokerage business,[8] that originates mortgage loans only for affiliated lenders through a network of exclusive independent contractors who only market financial services products (i.e., term life insurance, investments and loans) for Primerica and who can only originate Citigroup mortgage loan products. There are approximately 2,015 Primerica independent contractors which are currently licensed as mortgage brokers in Florida.

A representative with Citigroup asserts that these independent contractors should be exempt from mortgage broker licensure because they perform functions similar to loan officers who do not have to be licensed in Florida. No Primerica independent contractor can perform mortgage loan functions for any company other than Primerica and Primerica only originates mortgage loans for banks owned by Citicorp. Primerica provides financial services to an underserved target market: middle to lower middle income individuals. Using these contractors allows Primerica to provide financial services to customers who typically cannot afford the large amounts of insurance, savings or loans demanded by mainstream financial companies.

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[5] Section 494.001(4), F.S.

[6] Section 494.0033, F.S.

[7] Under s. 494.006, F.S., the exemptions also include persons acting in a fiduciary capacity conferred by a court; wholly owned bank holding company subsidiaries or wholly owned savings and loan association holding company subsidiaries regulated under the laws of any state or the U.S. that is approved by the Dept. of Housing and Urban Development, Veterans Admin., Gov't., National Mortgage Assn., the Federal National Mortgage Assn., or Federal Home Loan Mortgage Corp.; and specified persons who sell their own real property, receive a mortgage as security for an obligation, make nonresidential loans, etc.

[8] Under the bill, Primerica would have to obtain a mortgage lender's license under ch. 494, F.S.

Under current law, these independent contractors would not have to be licensed as mortgage brokers if they became actual employees of Primerica. However, Primerica wants to keep their status as independent contractors because they work part-time and there would be costs associated with their status as employees, including paying withholding and other related costs.

Officials with the Florida Association of Mortgage Brokers oppose this legislation believing that these independent contractors should continue to be licensed as mortgage brokers so that they can be held accountable to the OFR should they violate the provisions of their license. These officials argue that by exempting these independent contractors from regulation, they would not have to obtain the necessary education or pass the criminal background screenings currently required for licensees.

There is some dispute as to how many states currently license Primerica independent contractors as mortgage brokers. Representatives with Citigroup state that Florida is only one of four states (the others being North Carolina, Pennsylvania and Missouri) that license Primerica's contractors as mortgage brokers. However, officials with the Mortgage Association differ with that estimate asserting that many states do not regulate or license individual mortgage brokers, but rather license the brokerage business. Officials with the OFR were unable to confirm how many states either exempt or require licensure for independent contractors under the Primerica business model.

III. Effect of Proposed Changes:

Section 1. Amends s. 494.006, F.S., pertaining to exemptions from the mortgage broker licensure requirements. The bill would exempt from licensure as a mortgage broker an individual who is under exclusive contract with an entity licensed as a mortgage lender to perform services within the scope of the exclusive contract. It would require the licensed mortgage lender to:

- Originate or broker mortgage loans only with mortgage lenders affiliated with it through common ownership;
- Provide the OFR with evidence of an undertaking of accountability in a prescribed form for the exempted individual; the form requires that the mortgage lender:
  - Assume full and direct financial responsibility for all acts as a loan originator or acts as a licensed mortgage broker regulated under the mortgage brokerage and mortgage lending law, and any rules adopted thereunder;
  - Authorizes the OFR to take regulatory action against the mortgage lender for unlawful acts as loan originators or acts as mortgage brokers of such representatives, which acts are not in compliance with the mortgage brokerage and mortgage lending law, and rules adopted thereunder.
- Provide a $5 million surety bond to guarantee the obligations under the prescribed form detailed above; this provision is not a limit on any recovery against the licensee based on mortgage brokerage or lending activities conducted by the person exempted under this section;
  - The surety bond must be in a form satisfactory to the OFR and shall run to the state for the benefit of any claimant against the licensee or any person exempted by this provision. A claimant may bring suit on the bond (or the OFR may on behalf of the claimant) after securing an unpaid judgment. Written notice by

registered or certified mail to the OFR is required before cancellation of the bond and for any payments made under the bond. And such cancellation may not take effect less than 30 days after the OFR receives the notice.
    - Written notice to the OFR by registered or certified mail is required within 10 days after a claim is paid;
    - The bond is to be maintained in the principal amount ($5 million) as claims may be paid out and shall remain in place for five years after the licensee ceases operation. If the Office determines that the bond is deficient, a new or supplemental bond may be required.
- The licensee must implement a business plan to provide for:
    - The initial and continuing education of the exempted persons which is commensurate with their duties and shall, as appropriate, cover a broad range of topics including:
        - Equal Credit Opportunity Act; federal and state Fair Housing Acts; Home Mortgage Disclosure Act of 1975; federal and Florida laws and policies relating to real estate, mortgages and investments, fair lending, consumer privacy protection, prohibited practices, disclosures, fraud recognition and prevention;
    - The handling of consumer complaints and the supervision of mortgage-related activities of the persons exempted;
    - Ensuring that the persons exempted deliver disclosures required by law and ensure the prevention and detection of specified violations; and,
- The licensee must conduct a national background check on each person exempted and the licensee agrees not to contract with any person who has been the subject of any action specified in s. 494.00041(2)(a), (t) or (u), F.S.,[9] without the prior written consent of the OFR.

Section 2. Provides that the act shall take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[9] Section 494.0041(2), F.S., specifies grounds for disciplinary action against licensees under the mortgage broker law by the OFR. The sanction listed under s. (2)(a), involves persons who plead nolo contendere, are convicted or found guilty, regardless of adjudication, of a crime involving fraud, dishonest dealing or any act of moral turpitude; the sanction listed under s. (2)(t), involves having a final judgment entered against the applicant or licensee in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; and, the sanction listed under s. (2)(u), involves persons having been the subject of specified decisions by any court of competent jurisdiction, state or federal agency, or specified national securities entity involving a violation of any rule or regulation of any national securities, commodities, or options exchange or associations or having been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or similar subjects. This provision also specifies which entities are subject to disciplinary actions.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Primerica independent contractors would benefit by not having to obtain (or maintain) licensure as mortgage brokers.

The OFR offered the following:

Passage of the bill would result in savings in licensing fees to mortgage lenders who elect to utilize the exemption for their independent contractors ($200 mortgage broker application fee and $150 biennial mortgage broker license renewal fee times the number of individuals exempted). In addition, each mortgage broker applicant must pay a fee to take the mortgage broker examination ($43 per exam) and a fee of $23 to process fingerprint images (neither of these items are revenues to the OFR). There are also costs associated with the 24-hour pre-licensure course that applicants for a mortgage license must take, and 14 hours of continuing education biennially. The savings would be offset, in part or in full, by the cost of obtaining and maintaining a $5 million surety bond. The cost of such a bond is indeterminate as it would be based on a number of factors related to the individual lender.

C. Government Sector Impact:

The OFR offered the following: There would be a *net loss in revenue* to the office of ($545,875) over the next three years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.