

Committee on Regulated Industries

CS/CS/HB 747 — Mortgage Regulation

by Commerce Committee; Insurance and Banking Subcommittee; and Rep. Stark (CS/CS/SB 830 by Banking and Insurance Committee; Regulated Industries Committee; and Senator Baxley)

The bill exempts a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to an entity exempt from regulation under parts I or II of ch. 494, F.S., pursuant to s. 494.00115, F.S., a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept a mortgage loan application, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any referral or solicitation made under this exemption must comply with the provisions of ch. 517, F.S., the federal Real Estate Settlement Procedures Act, and any applicable federal law or general law of this state.

Additionally, the bill revises the definition of “mortgage loan” to include residential mortgage loans made for business purposes by deleting the condition that a residential mortgage is a loan primarily for personal, family, or household use. As a result, the bill allows residential loans made for a business purpose to fall under the definition of a “mortgage loan” and to be subject to regulation by the OFR. The bill requires persons originating, brokering, or lending such loans to obtain licensure under ch. 494, F.S., unless they fall within an exemption in s. 494.00115, F.S. At present ch. 494, F.S., only requires licensure by the Office of Financial Regulation (OFR) if a person participates in making residential mortgage loans, which required such loans be made primarily for personal, family, or household use.

Chapter 494, F.S., provides two exemptions that permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell a mortgage loan, without being licensed as a mortgage lender, if the individual does not “hold himself or herself out to the public as being in the mortgage lending business.” However, this phrase was undefined in current law. The bill defines that phrase as any of the following:

- Representing to the public, through advertising or other means of communicating, information that such individual can or will perform the activities described in s. 494.001(23), F.S. (mortgage lender);
- Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities of a mortgage lender;

- Maintaining a commercial business establishment where such individual regularly performs the activities of a mortgage lender, or regularly meets with current or prospective borrowers;
- Advertising, soliciting, or conducting business through use of a name, trademark, service mark, trade name, Internet address, or logo which indicates or reasonably implies the business is that of a licensed mortgage lender; and
- Using any federally authorized forms while performing the activities of a mortgage lender.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 113-1