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OFFICE OF FINANCIAL REGULATION

J. THOMAS CARDWELL  
COMMISSIONER

**Re: Request for Legal Opinion  
Loan Originator Licensure under Chapter 494, Florida Statutes**

I am in receipt of your letter in which you request the agency's clarification on the licensure requirements of loan originating employees of licensed mortgage lenders pursuant to the changes effected by Senate Bill 2226.

Under current Section 494.006(2)(a), Florida Statutes, natural persons *employed* by a mortgage lender or correspondent mortgage lender are exempt from the licensure requirements of ss.494.001-494.0077 when acting within the scope of employment with the licensee. Effective **January 1, 2010**, §41 of SB 2226 repeals this exemption.

However, you pointed to the definition of "*associate*" in Section 494.001(5), Fla. Stat., which SB 2226 does not repeal until **October 1, 2010**, parsed as below:

- (5) A person required to be licensed as a mortgage broker under this chapter who is...
- employed by...a mortgage brokerage business[,]
  - or acting as an independent contractor...for a mortgage brokerage business[,] or
  - ...acting as an independent contractor for a mortgage lender or correspondent mortgage lender.

The word "*associate*" appears in §494.0033(1), Fla. Stat., regarding mortgage broker licensure requirements. As you also pointed out, §29 of SB 2226 repeals this section on **October 1, 2010**. Parsed as below, it states:

- (1) Each natural person who...
- acts as a mortgage broker for a mortgage brokerage business or
  - acts as an **associate** for a mortgage lender or correspondent mortgage lender
- must be licensed under this section.

Thus, the question raised in your letter is whether the natural persons *employed* (cf. acting as independent contractors) by licensed mortgage lenders or licensed correspondent mortgage lenders must obtain licensure **(1)** as mortgage brokers effective January 1, 2010 and reapply for the new "loan originator" license between October 1, 2010 to December 31, 2010, or

(2) if they are only subject to the new “loan originator” licensure requirements effective October 1, 2010<sup>1</sup>. Based on the provisions above, you asserted the latter interpretation.

The undersigned does not dispute your interpretation. However, as a practical matter, the undersigned recommends that currently exempt loan originators obtain licensure as a mortgage broker well before October 1, 2010 for a number of reasons. Section 70 of the Act states, in relevant part:

(3) All mortgage broker licenses issued before October 1, 2010, pursuant to s. 494.0033 or s. 494.0034, Florida Statutes, expire on December 31, 2010. **However, if a person holding an active mortgage broker license issued before October 1, 2010, applies for a loan originator license through the Nationwide Mortgage Licensing System and Registry between October 1, 2010, and December 31, 2010, the mortgage broker license does not expire until the Office of Financial Regulation approves or denies the loan originator license application.** Notwithstanding s. 120.60, Florida Statutes, for mortgage broker applications submitted between July 1, 2009, and December 31, 2009, or loan originator applications submitted between October 1, 2010, and December 31, 2010, the office has 60 days to notify the applicant of any apparent errors or omissions in an application and to request any additional information that the office may require, and the office has 180 days to approve or deny a completed application. Application fees may not be prorated for partial years of licensure (emphasis added).

Some companies may be requiring their employees to be continuously licensed beginning October 1, 2010. However, the Nationwide Mortgage Licensing System will not be able to accept Florida loan originator applications until October 1, 2010, so it will not be possible for currently unlicensed individuals to apply for a loan originator license before that date. Under normal circumstances, the processing of these applications can take a number of months during which time the applicant would not be licensed and could not work in any capacity that would qualify as a loan originator. Moreover, the Office anticipates a large number of applications and it will take time to work through them all, which could impact someone’s ability to continue working if they do not have a license prior to October 1st. In fact, the new law anticipated the additional number of applications that the Office will receive during this transition and extended the deadlines for requesting information and the time allotted to the Office for approving or denying a loan originator license. The Office cannot expedite the processing of applications for unlicensed persons who wait until the new loan originator application becomes available on October 1, 2010, and it could conceivably be well into 2011 before the Office is ready to approve or deny such an application. The Office is encouraging unlicensed individuals to obtain a mortgage broker license to take advantage of the three-month window (of October to December 2010) that allows applicants already licensed with the Office to file the loan originator application and continue operating while the Office processes and considers the application, even if the final determination on the application does not occur until some time in 2011.

Finally, please note that this response is the informal opinion of the undersigned and is based only on the information that has been provided, and it is not binding upon the Office. Any additional information or specific authorities that may be relevant to this analysis is welcomed

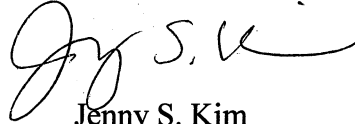
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<sup>1</sup> Section 494.00312, Fla. Stat. (Effective Oct. 1, 2010).

and will be taken into consideration. If you would like to request an opinion on a transaction that would be legally binding upon this Office, please review Section 120.565, Florida Statutes, and the applicable rules from the Florida Administrative Code for the procedures to request a declaratory statement.

Please feel free to contact me at (850) 410-9896 if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jenny S. Kim". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jenny S. Kim  
Assistant General Counsel

Copies: Terry Straub, Division Director, Finance  
Greg Oaks, Bureau Chief, Regulatory Review  
Andy Grosmaire, Bureau Chief, Finance Regulation  
Robert Beitler, General Counsel  
Gregg Morton, Chief Counsel, Finance