

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

BULLETIN 2007-02-CF

In the matter of

Interpretive Informational Professional Employer
Organization (PEO)

Issued and entered
this 12th day of February 2007
by Linda A. Watters
Commissioner

Effective September 27, 2005, Section 2 of the Michigan Mortgage Brokers, Lenders, and Servicers Licensing Act ("Act") was amended by 2005 PA 113 (hereinafter, "the amendment") to allow for the exemption of individuals that are dual employees of a professional employer organization ("PEO") and licensed or registered mortgage company ("mortgage company").

Specifically, the amendment provides, in pertinent part, as follows (emphasis added to amendatory language):

Sec. 2. (1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act, unless 1 or more of the following apply:

(d) The individual is an employee of a professional employer organization, as that term is defined in section 4 of the single business tax act, 1975 PA 228, MCL 208.4, solely acting as a residential mortgage originator of only 1 mortgage broker or mortgage lender. The mortgage broker or mortgage lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 4.

The Commissioner of the Office of Financial and Insurance Services (“Commissioner”) is statutorily charged with the responsibility and authority to implement and administer the Act. Further, the Commissioner is responsible for general supervision and oversight of all mortgage companies licensed or registered under the Act.

Pursuant to, and consistent with, this statutory responsibility and authority, the Commissioner offers the following interpretation of the amendment, as well as guidance to mortgage companies that may intend to utilize a PEO in relation to its mortgage operations.

The amendment exempts from licensure an individual who is an employee of a PEO provided that the individual is solely acting as a residential mortgage originator of only one mortgage broker or mortgage lender.

The amendment identifies PEO as that term is defined in the Single Business Tax Act, MCL 208.4, which provides, in pertinent part:

“professional employer organization” means an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

- (a) Maintaining the right of direction and control of employees’ work, although this responsibility may be shared with the other entity.
- (b) Paying wages and employment taxes of the employees out of its own accounts.
- (c) Reporting, collecting, and depositing state and federal employment taxes for the employees.
- (d) Retaining the right to hire and fire employees.

In addition to the above definition, the amendment requires that the mortgage company direct and control all activity that the PEO employee engages in that is regulated by the Act. Further, the mortgage company must assume responsibility of the PEO employee and all actions by the PEO employee must be covered by any applicable proof of financial responsibility deposit that a licensee has filed with the commissioner pursuant to Section 4 of the Act, MCL 445.1654. In effect, the individual loan originator is simultaneously employed by both the PEO and the mortgage company.

In the course of performing its statutorily authorized mortgage company examination duties, OFIS Staff will closely scrutinize any such relationships that they encounter to determine whether the following are present:

1. There is a written contract between the PEO and mortgage company which clearly provides the rights, duties, and responsibilities of each in a manner consistent with the Act.
2. The PEO is a bona fide PEO that is established, designed, and has the capability to perform those responsibilities and duties which a PEO is intended.
3. The mortgage company has the exclusive authority, and clearly exercises that authority, to direct and control all of the individual's activities that are regulated by the Act.
4. The mortgage company clearly assumes responsibility for all actions that the individual engages in during the course of that individual's employment.
5. The mortgage company clearly provides that the applicable proof of financial responsibility deposit filed with the commissioner covers the individual.

Mortgage companies should understand that the statutory amendment permitting PEOs only affect the Mortgage Brokers, Lenders, and Servicers Licensing Act, which regulates first lien mortgages on residential 1- 4 family dwellings. The amendment does not apply to mortgages regulated the Secondary Mortgage Loan Act, MCL 493.51 *et seq.* Consequently, mortgage companies that provide both first and second mortgages may not be unable to utilize a PEO, as described above.

Any questions regarding this bulletin should be directed to:

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