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HOLLY C. BAKKE
Commissioner

Bulletin No. 04-06

TO: All Entities Regulated by the Division of Banking
FROM: Holly C. Bakke, Commissioner, Department of Banking and Insurance
RE: Use of Independent Contractors in New Jersey by Financial Services Entities

The Department of Banking and Insurance (Department) is notifying all entities regulated by the Division of Banking regarding their use of independent contractors.

One of the factors that precipitated the issuance of this Bulletin is the increased level of activity in New Jersey of Employee Leasing Companies since the enactment in December, 2001 of P.L. 2001, c. 260 (N.J.S.A. 34:8-67, et seq.) Given that increased level of activity, the Department concluded that it was appropriate to review the general issue of the use of independent contractors by entities regulated by the Division of Banking.

Because of the wide range of entities that are regulated by the Division of Banking, the treatment of the use of independent contractors by the various types of regulated entities is addressed separately below. The three categories of regulated entities are: 1) licensees; 2) foreign depositories with no presence in New Jersey; and 3) New Jersey-chartered and foreign depositories having a presence in New Jersey.

Licensees

With regard to licensees, an independent contractor must be licensed or registered if an employee of a licensee would have to be licensed or registered to engage in the same activity in which the contractor will engage. This means, for example, that licensees may hire unlicensed or unregistered independent contractors to perform mortgage processing activities that involve no solicitation of loans but may not hire such independent contractors to solicit loans. For the activities that are subject to licensure or registration, consult the appropriate statute, e.g., the Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq. This requirement prevents licensees from circumventing the licensing laws enforced by the Division of Banking by placing some or all of their workers who are required to be licensed or registered in the status of an independent contractor.

Entities licensed by other jurisdictions (e.g., other states) may only conduct business in this state by complying with New Jersey's licensing statutes. Independent contractors hired by such entities have no special status and must be licensed or registered by this Department if their activities in this state would require licensure or registration under New Jersey's licensing statute.

This same analysis applies to mortgage bankers and brokers (and to independent contractors they may hire) who are unlicensed because the state in which they operate does not license those activities. They also must be licensed if their activities in this state would require licensure or registration under New Jersey's licensing statute.

Foreign Depositories With No Presence in New Jersey

With regard to foreign depositories that do not have a presence in New Jersey, an independent contractor must be licensed or registered if someone who is not an employee of a depository institution having a presence in New Jersey would have to be licensed or registered to engage in the same activity. Further, an independent contractor acting in the name of the foreign depository would, upon its adoption, have to comply with the Agents of Foreign Bank regulation that the Department intends to propose in the near future.

New Jersey-chartered and Foreign Depositories Having a Presence in New Jersey

New Jersey-chartered depositories and foreign depositories having a presence in New Jersey may hire an independent contractor to perform tasks that the depository is authorized to perform through its employees without having to license those employees. Such an independent contractor must represent themselves to the public as the depository, and the depository is fully responsible for the acts of the independent contractor. New Jersey-chartered depositories may not use independent contractors in senior management positions.

Lastly, any previous advisory opinion, letter, or statement by this Department, or by the former Department of Banking, in particular a January 12, 1994 letter addressed to the law firm of Hanoach Weisman from the former Department of Banking regarding employee leasing by licensed Mortgage Bankers/Brokers, is superseded by this Bulletin.

5/11/04
Date

/s/ Holly C. Bakke
Holly C. Bakke
Commissioner

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