Legislative Analysis

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EXTEND MORTGAGE ACT LICENSING EXEMPTION TO P.E.O. EMPLOYEES FOR SINGLE BROKER/LENDER

Senate Bill 540 as passed by the Senate
Sponsor: Sen. Alan Sanborn
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

First Analysis (8-8-05)

BRIEF SUMMARY: Senate Bill 540 would exempt from licensure under the Mortgage Brokers, Lenders, and Servicers Licensing Act an individual who is an employee of a Professional Employer Organization (PEO) and is solely acting as a residential mortgage originator for only one mortgage broker or lender.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Many small businesses find it beneficial to lease employees from professional employer organizations (PEOs) rather than hiring workers outright. This can free a company from having to manage directly such administrative tasks as employee payroll, health benefits, workers' compensation claims, and unemployment insurance. Small mortgage brokerage operations are said to be effectively prevented from leasing employees from a PEO, however, due to the licensure and registration requirements of the Mortgage Brokers, Lenders, and Servicers Licensing Act. Although those requirements do not apply to a person who is an employee of only one licensee or registrant, a person leased from a PEO is an employee of the PEO and is not eligible for the exemption. To address this situation, some people believe a PEO employee working solely for one mortgage broker, lender, or servicer should also be exempt from the act's licensure and registration requirements.

THE CONTENT OF THE BILL:

The Mortgage Brokers, Lenders, and Servicers Licensing Act (MCL 445.1652) prohibits a person from acting as a mortgage broker, lender, or servicer without first obtaining a license or registering under the act. The act contains several exceptions, including when a person is solely performing services as an employee of only one mortgage broker, lender, or servicer; a person is a class I licensee under the Consumer Financial Services Act; or the act otherwise specifically exempts the person from licensure or registration. <u>Senate Bill 540 would also exempt an individual who was an employee of a professional employer organization (PEO) solely acting as a residential mortgage originator of only one mortgage broker or lender.</u> The bill specifies that the mortgage broker or lender would have to direct and control the activities of the individual and be responsible for all of the individual's activities and assume responsibility for the individual's actions covered by the proof of financial responsibility deposit required under the act.

[Note: "Professional Employer Organization" would mean that term as defined in the Single Business Tax Act (MCL 208.4) — 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: maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity; paying the employees' wages and employment taxes out of its own accounts; reporting, collecting, and depositing state and federal employment taxes for the employees; and retaining the right to hire and fire employees.]

HOUSE COMMITTEE ACTION:

The House Committee on Banking and Financial Services reported the bill out of committee without any amendments. Some of the information in this analysis is derived from the analysis of the bill by the Senate Fiscal Agency dated 6-28-05.

BACKGROUND INFORMATION:

Currently, the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA) and the Secondary Mortgage Loan Act (SMLA) require individual loan officers to be licensed unless they are working as an employee of another licensed or registered entity. Neither the MBLSLA nor the SMLA defines "employee." The Office of Financial and Insurance Services (OFIS) issued a bulletin in November 2003 in which it maintains that an employee is one who is issued a W-2 and who receives compensation from and is under the general control of a licensed or registered mortgage company. In the bulletin, OFIS stated that a loan officer that is leased by a mortgage company and paid by the leasing company is not an employee of the mortgage company.

ARGUMENTS:

For:

The bill would treat a PEO employee acting as a residential mortgage originator for a mortgage broker or lender in the same manner as the act currently treats a direct employee of the firm. To ensure that the public is protected, the bill requires the mortgage broker or lender to direct and control the activities of the PEO employee for the purposes of the licensing act. Supporters believe that professional employer organizations (PEO) can serve a useful purpose for lenders and brokers. The relationship between a PEO and a licensed (or registered) mortgage company typically involve the PEO being responsible for certain human resource or personnel tasks. The PEO arrangement can also result in employees receiving benefits that a licensee or registrant otherwise could not provide. However, mortgage brokers and lenders cannot use the PEO option at present because it would require PEO employees to be licensed in circumstances in which the firm's direct employees would be exempt from licensure.

Against:

State regulators, while neutral, have expressed concern that a mortgage company using PEO employees could argue that it was not responsible for the actions of the leased loan officers and also that consumers would not be protected under the mortgage company's bond if a leased loan officer violated the law.

Response:

The bill as currently drafted requires a licensee or registrant to assume responsibility for an individual who is an employee of a PEO and who is exempt under this new provision. Therefore, the consumer should be protected under the mortgage company's bond should a leased loan officer violate the law.

POSITIONS:

ADP Total Source supports the bill. (7-13-05)

Administaff supports the bill. (7-13-05)

Michigan Mortgage Lenders Association supports the bill. (7-13-05)

Office of Financial and Insurance Services is neutral on the bill. (7-13-05)

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