

**STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA**

August 12, 2003

POLICY NO. RML-01-03

EMPLOYEE DEFINED

PURPOSE:

To clarify who is an employee pursuant to LSA-R.S. 6:1083(6) definition of originator.

TO WHOM THIS POLICY APPLIES:

All natural persons who originate loans for a mortgage broker or a mortgage lender subject to the Residential Mortgage Lending Act (“RMLA”).

SPECIFICS:

Originator is defined, in part, by the RMLA as a natural person who is an employee of a mortgage broker or mortgage lender who is not acting as a mortgage broker or mortgage lender as defined in the RMLA. Employee is not defined in the RMLA, therefore, we look to other sources for guidance, including both the Internal Revenue Service (“IRS”) and the Louisiana Department of Labor (“LDL”).

The IRS considers the following three factors to determine if a person is an employee:

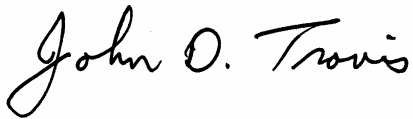
1. Behavioral Control – A worker is an employee when the business has the right to direct and control the worker. The company does not have to actually control the way the work is done as long as the company has the right to do so.
2. Financial Control – An employee would not normally have a significant investment in his work, incur high un-reimbursed business expenses, or realize a profit or incur a loss from the business.
3. Relationship of the Parties – How do the business and worker perceive their relationship?

The LDL defines an employee as an individual who performs services for wages under any written or oral contract and whose wages are subject to unemployment insurance taxes. An individual is **not** an employee if it can be shown that the individual:

1. has been and will continue to be free from any control or direction over the performance of such services both under his contract and in fact; and
2. such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of the enterprise for which such service is performed; and
3. such individual is customarily engaged in an independently established trade, occupation, profession, or business.

After taking the above factors into consideration, employee is hereby defined as a natural person who works under the direction and supervision of a mortgage broker or lender and is paid a salary or commission but does not realize a profit or incur a loss from the business. Said person must be under the exclusive control of only one mortgage broker or lender for the purposes of conducting residential mortgage lending activities and whose compensation is subject to withholding of federal and state taxes, unemployment insurance, and social security.

APPROVED BY:



John D. Travis
Commissioner

8/12/03

Date