



ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

**Date: November 28, 2016**

**To: All FHA Approved Mortgagees  
All Direct Endorsement Underwriters  
All FHA Roster Appraisers  
All FHA Roster Inspectors  
All FHA Approved 203(k) Consultants  
All HUD Approved Housing Counselors  
All HUD Approved Nonprofit Organizations  
All Government Entity Participants  
All Real Estate Brokers  
All Closing Agents**

## **Mortgagee Letter 2016-18**

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<b>Subject</b>	Mortgagee Use of Professional Employer Organizations
<b>Purpose</b>	The purpose of this Mortgagee Letter is to clarify HUD requirements for Mortgagees that contract with professional employer organizations and similar entities for human resources services.
<b>Effective Date</b>	The guidance in this Mortgagee Letter is effective immediately.
<b>Affected Programs</b>	The guidance applies to all FHA Approved Mortgagees
<b>Affected Topics</b>	This guidance will affect Handbook 4000.1 sections I.A.3.c.iv(B)(3)(b)(ii) <i>Compensation</i> , I.A.6.j <i>Use of Contractors</i> .
<b>Background</b>	Certain requirements in HUD Handbook 4000.1 prevent FHA-approved Mortgagees from engaging in contractual arrangements with professional employer organizations or similar entities for human resources-related services such as payroll processing, payment of employment taxes, and/or the provision of employee benefits. Based on an analysis of relevant policies and potential risks, HUD believes that Mortgagees should be allowed to engage in contractual

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arrangements of this type, but only in cases where the Mortgagee retains full responsibility and legal liability for the actions of covered employees with respect to HUD regulations and requirements.

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**Summary of Changes**

Changes to HUD Handbook 4000.1 affected topics are as follows:

- *Compensation (I.A.3.c.iv(B)(3)(b)(ii))*, clarifies the standard for reporting compensation of employees covered by a contract for services related to human resources
- *Use of Contractors/Permissible Use (I.A.6.j.i)*, clarified contracts with human resources services provided by a professional employer organization or a similar entity
- *Use of Contractors/Standard (I.A.6.j.iii)*, added section and included relevant policy from *Permissible Use (I.a.6.j.i)* and standard for human resources services
- *Use of Contractors/Required Documentation (I.A.6.j.iv)*, added section, moved existing required documentation from *Permissible Use (I.A.6.j.i)* and clarified documentation applies to all permissible uses

The above mentioned policy changes will be incorporated into Handbook 4000.1 and appear as follows:

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**HUD Single Family Housing Policy Handbook 4000.1**

**Compensation (I.A.3.c.iv(B)(3)(b)(ii))**

The Mortgagee must not compensate employees who perform underwriting, Quality Control (QC), or mortgage servicing activities on a commission basis.

The Mortgagee or its permissible contractor must report all employee compensation on IRS Form W-2.

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**HUD Single Family Housing Policy Handbook 4000.1**

**Use of Contractors (I.A.6.j)**

**i. Permissible Use**

The Mortgagee may use contract support for administrative, human resources, and clerical functions that include:

- clerical assistance;
  - mortgage processing (typing of mortgage documents, mailing and collecting verification forms, ordering credit reports, and/or preparing for endorsement and shipping Mortgages to the Purchasing Mortgagee);
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- ministerial tasks in mortgage servicing (processing of a foreclosure action, preservation and protection, and/or tax services);
  - legal functions;
  - quality control; and
  - human resources services (payroll processing, payment of employment taxes and the provision of employee benefits) provided by a professional employer organization or a similar entity.

## **ii. Impermissible Use**

The Mortgagee may not contract with any Entity or person that is suspended, debarred, under a Limited Denial of Participation (LDP), or who is otherwise excluded from participation in FHA transactions.

A Mortgagee must not contract out management or underwriting functions.

## **iii. Standard**

The Mortgagee must ensure that the contracting out of certain functions does not and will not materially affect underwriting or servicing decisions or otherwise increase financial risk to FHA.

The Mortgagee remains responsible for the quality of its FHA-insured Mortgages and must ensure that its contractors fully comply with all applicable laws and FHA requirements.

The Mortgagee may own or have an ownership interest in a separate business Entity that offers such contract services.

Employees covered by a contract for human resources services described above must remain under the direct supervision and control of the Mortgagee. FHA considers the Mortgagee, the employer with respect to all activities related to FHA business, and the Mortgagee retains full responsibility and legal liability for the actions of employees covered by a contract for human resources services with regard to all HUD regulations and requirements.

## **iv. Required Documentation**

The Mortgagee and its contractor must have a valid contractual agreement in place that specifies the roles and responsibilities of each party.

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**Questions**

For additional information on this ML, please visit [www.hud.gov/answers](http://www.hud.gov/answers) or call the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

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**Signature**

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