



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF CONSUMER SERVICES

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November 21, 2022

Concise Explanatory Statement

Pursuant to RCW 34.05.325(6)

Rule Amendments to the Mortgage Broker Practices Act (MBPA), chapter 19.146 RCW and chapter 208-660 WAC.

Agency reasons for adopting the rules. (RCW 34.05.325(6)(a)(i))

The rules must be amended to implement amendments of the Mortgage Broker Practices Act (SB 5077, Ch. 15, Laws of 2021) which provides authority, under certain circumstances, for licensed companies to allow licensed mortgage loan originators to work from their residences without the company licensing the residence as a branch office.

Other amendments include, but are not limited to, technical and clarifying changes. The anticipated effect is clear and consistent rules for the regulated industry.

Describe differences between the text of the proposed rules as published in the Washington State Register and the text of the rules as adopted, other than editing changes, stating the reasons for differences. (RCW 34.05.325(6)(a) (ii))

No changes.

Summary of comments received by DFI during the rulemaking process, and DFI's responses to the comments. (RCW 34.05.325(6)(a) (iii))

I. Written comments received. See attachment 1.

II. Oral comments received during the public hearing held November 16, 2022, at the Department's location in Tumwater, Washington (and via Teams): We received three comments during the hearing. Both Bill Kidwell and Michael Patterson followed up their oral testimony with written comments. The third person, Tony Cole, did not provide written testimony but his

oral testimony was that most mortgage loan originators prefer to work from home as clients expect them to be available at the client's convenience.

The written comments in their entirety and the hearing audio are available on our website: <https://dfi.wa.gov/rulemaking/mortgage-broker-practices-act-allowing-mortgage-loan-originators-work-their-residences-0>.

CONCLUSION

DFI made the proposed rule amendments available to all interested parties by notifying potential new licensees, the licensed industry, and other interested persons through GovDelivery notifications and publishing the proposed amendments to the department website along with all rulemaking notices, documents, and the audio of the public meeting. The final proposed rule is the product of an open, deliberative process with stakeholder input.

Attachment 1 to Concise Explanatory Statement
Pursuant to RCW 34.05.325(6)

Summary of written comments received by DFI during the rulemaking process, and DFI’s responses to the comments. (RCW 34.05.325(6)(a) (iii))

See the DFI rulemaking web page for this program for the complete text of the comments submitted.

Comment	DFI response
Mobile phones	
Please reconsider proposal to require company-issued mobile devices. Requiring companies to supply devices would place a significant burden on businesses large and small.	We considered this comment before we wrote any rules. The rulemaking does not include a requirement for company-issued mobile devices.
Provided Idaho’s policy about phone(s) – Idaho does not permit MLOs to use personal cell phones	No change made to the rules. See above.
Working in locations other than licensed locations	
Provided Kentucky’s language about alternate work location, which allows MLOs to meet in person at the convenience of the borrower on an infrequent or as-needed basis in order to complete the mortgage lending process.	No changes made to the rules. Statutory language requires all activity to be done from a licensed location or the MLO’s residence. However, DFI does allow MLOs to meet borrowers on an infrequent basis for the convenience of the borrower.
Request to provide guidance on what constitutes “work from any location” and provide a clear meaning of the intent of the phrase.	No changes made to the rules. The statute and rules already include the activities that, when conducted, require an individual to have a mortgage loan originator license. If an individual is conducting any of those activities, they need to do it from a licensed location or their residence.
WAC 208-660-006(25): definition of “residence”	
Support for the proposed use of permanent or temporary residences so long as specific security protocols have been met.	No changes made to the rules. The rules allow the loan originator to work from their primary or secondary residence located in the U.S.
Support for including primary or secondary residences	No changes made to the rules based on this comment.

WAC 208-660-505: risk-based monitoring	
<p>Support written policies & procedures, risk-based monitoring, and company platform access to safeguard customers’ non-public information but technology expenses continue to be highly inflationary. Companies may also need to outsource to 3rd party vendors to ensure their policies line up with what DFI determines to be appropriate when overseeing a remote workforce. Audit & exam benchmarks can quickly become very detailed and highly complex. Inflationary expenses ultimately result in a higher cost per loan, which is often passed on to consumers. Ongoing clarity on DFI’s interpretation of what will be deemed “appropriate” safeguards in relation to a company’s size is needed to educate and assess potential economic impact.</p>	<p>No changes made to rules based on these comments. The rules did not add additional compliance requirements. WAC 208-660-460 already required an information security program appropriate to the company’s size and complexity, activity conducted, and sensitivity of information at issue.</p>
<p>DFI provided links to various resources with guidance related to safeguards, but it is all directed at companies which are larger and more complex than over 80% of the traditional mortgage companies in WA. The FTC exempted companies with fewer than 5,000 customers from some requirements. Will DFI provide the latitude for the small company owner managers to rely on their risk-assessments without being held to a standard intended for much larger, more complex organizations? Additionally, DFI should structure guidance that is specific to such small operations (in concert with representatives from this population)</p>	<p>No changes to the rules based on this comment. Information security and examination policies are already based on what is “appropriate” to the company’s size, complexity, and activity conducted. In addition, the managers’ questionnaire provided at the start of every exam asks 12 questions about information security that provides a good guideline as to the types of topics a licensee should cover.</p>