

From: [William Kidwell](#)
To: [Sutherland, Ashley S \(DFI\)](#); [Phelps, Devon P \(DFI\)](#)
Subject: WA-DFI Rulemaking Hearing Comments
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External Email

Ashely, Devon:

Thank you for the effort on operationalizing the law and for allowing me to comment on the proposed rule.

IMMAAG, Inc. provides compliance services to hundreds of small traditional mortgage companies around the country including several licensed by WA-DFI.

My comments regarding the rule relate to two aspects:

1. The application of the safeguards requirements related to operating from a residence and
2. What the definition of “work” is as it relates to the prohibition to work from an unlicensed location unless it is a residence.

1. New Section

WAC 208-620-660 What is required for a Washington licensed loan originator to work from their residence without licensing the residence as a branch location? A licensed company may permit a sponsored and licensed loan originator to work from the loan originator's residence without licensing it as a branch location under RCW 31.04.075 and subject to the following conditions:

(1) The company must have written policies and procedures that include **appropriate risk-based monitoring and oversight processes** for the supervision of loan originators working from their residence without licensing it as a branch location. The loan originator must comply with the licensee's policies and procedures.

The DFI has provided links to various resources with guidance related to safeguards.

Question #5 of the FAQ's includes guidance from the FTC, MBA, CSBS and FIST. It is noteworthy that this guidance is directed (including the small entity guidance) at companies which are larger and more complex than over 80% of the traditional mortgage companies in the country and in Washington state. Nationally, and evidence indicates Washington's distribution of company size is similar, 53% of the non-depository, state licensed mortgage companies are one MLO shops and 84% that have 5 or fewer MLO's. This characteristic has been somewhat recognized by the FTC in its December 2021 Safeguard Rule amendment where it exempts companies with fewer than 5,000 customers from some requirements including penetration testing.

Experience indicates that interpreting federal requirements such as AML monitoring may affect how DFI interprets what constitutes “appropriate risk-based monitoring and oversight processes” and IMMAAG suggests that 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 and suggests that in concert with representatives from this population (IMMAAG volunteers to participate) that DFI structure guidance that is specific to such small (micro) operations.

2. Defining “work” in the context of prohibited and allowable activities of an MLO outside of a licensed or controlled residential environment.

WAC 208-620-700 Mortgage loan originator—General. (1) May I **work from any location** when I am a licensed loan originator? No. You can only work from a licensed location ((. ~~The licensed location can be the main office, or any licensed branch~~)) unless you conduct activity under the act from your residence pursuant to WAC 208-620-660.

IMMAAG requests that WA-DFI provide actionable guidance on what constitutes “work from any location” and provide a clear meaning of the intent of the phrase. mean? E.g., would an MLO meeting a client at a retail location to interview the applicant be considered prohibited under the agency’s interpretation? Or, would performing functions related to work such as reviewing information etc. in an alternative location which is not a licensed location or controlled residence be prohibited? IMMAAG asks the DFI to provide examples of what would or would not be allowed or a more precise definition of “work”.

Regards,

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2007 President – Colorado Association of Mortgage Brokers
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