

Comments on the 2010 Consumer Loan Act Rulemaking. Comment period: Beginning to 9/24/10. Most recent comments on top.

The most important issue for the members of the WSFSA is securing relief from the new Dishonored Check language that became effective 1/1/10 (WAC 208-620-560 (2)). Prior to 1/1/10 the WAC rules for the Consumer Loan Act permitted licensees to charge a \$25 dishonored check fee. The membership of the WSFSA considered that amount sufficient. Almost every business in the state that accepts checks charges a minimum of \$25 for a dishonored check, and many charge in excess of that, including state agencies. Even Payday Lenders are authorized to charge a \$25 fee for a dishonored check (WAC 208-630-549). The current language does not work because it has effectively limited the fee to far less than \$25 for many of the WSFSA members. If the new language was adopted because \$25 was not a sufficient amount due to some financial institutions charging licensees in excess of \$25, then WSFSA would support either of the following options: an increase in the dollar amount to a more sufficient level or reinstating the original \$25 fee as an option with wording such that a licensee may charge "\$25 or an amount not in excess of the actual amount charged by the financial institution, if greater than \$25."

With respect to the amendments to the CLA imposing a licensing obligation to service residential mortgage loans, I recognize that a licensing obligation would arise for an entity that actually conducts the activities that define servicing under the amended CLA, whether those servicing activities involve loans the entity (i) originated, (ii) purchased post-closing, or (iii) serviced for third parties.

From your email reply, I understand that an entity that purchases closed residential mortgage loans is not subject to licensing, regardless of whether the entity purchases and holds the loans with the servicing rights or without the servicing rights, provided this purchaser does not actually conduct the activities that define servicing, but contracts out such activities to mortgage loan servicers who are licensed under the CLA or, I would think, exempt from such licensing (such as a bank). Please correct my understanding if mistaken.

In addition to the scenario in my letter, we also have instances where an entity may (i) purchase mortgage loans with the servicing rights and sell the loans, but retain the servicing rights, or (ii) merely purchase and hold the servicing rights (i.e. acquire the contractual right to select third-party servicers), without actually servicing the mortgage loans. Given the definition of servicing under the amended CLA, and your email reply, I understand that an entity that merely acquires and holds servicing rights is not subject to licensing under the amended CLA, but if such entity actually services the mortgage loans for which it held the servicing rights, a CLA licensing obligation would arise.

I would appreciate confirmation that my understanding of the CLA's licensing obligations with respect to purchasers of mortgage loans and/or servicing rights who do not conduct the actual servicing activities is consistent with the position of the Department.

I was reading through the newly released CR-102 for the Consumer Loan Act and noticed this addition (page 18 & 19).

(d) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE and as a credit ("P.O.C. (borrower)") on line 808 of the HUD-1 to the left of the borrower column.

Our contact at HUD's Office of RESPA did say that the rate lock fee belongs in Block 2, as it is a charge for the interest rate chosen. So I am agreeing with that portion of the rule. However, if I understand this correctly, the HUD-1 part strikes me as counter to RESPA. I assume that the rate lock fee would be included in Line 802 as a charge, and then added to another blank line in the 800 series (line 808) as a counterbalancing P.O.C. credit.

However, this is the HUD RESPA FAQ that discuss 800 series credits and POC items. I know it discusses line 801, but I think it is applicable to 802 as well.

Q: If a borrower pays some of the origination charge prior to closing, how should it be disclosed on the HUD-1?

A: The full charge for origination, except for any charge for the specific interest rate chosen (points), must be shown on Line 801 of the HUD-1 to the left of the borrower's column. If the borrower pays some of the origination charge before settlement, an offsetting credit in that amount is shown on the first page of the HUD-1 in Lines 204 – 209. Lines 801, 802, and 803 of the HUD-1 may not contain any "Paid Outside of Closing" (P.O.C.) items.

This is a follow-up to the recent webinar conference regarding rulemaking pertaining to loan servicers for the Consumer Loan Act, Ch. 31.04 RCW:

These are comments that I had submitted earlier, which were not included in the posting on your Web site. I am resubmitting them in the hope that they will be addressed in the next iteration of the rules.

1. WAC 208-620-900(3)

This section requires that a loan servicer "must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed..."

This is, in fact, our practice except for the following circumstances:

- a. when making a payment that is substantially larger than the normal monthly payment on an account
- b. when making a pay-off of the remaining principal balance
- c. when a customer has a history of three (3) checks returned due to insufficient funds in a twelve month period

In those instances we have a policy that requires that the payment be made in the form of guaranteed funds such as wire transfer, cashier's check or money order. When payment is made in that manner, we credit the payment the day it's received. However, if the payment is made by personal check, we do not credit the payment until that check has cleared and we have received notice from the bank of the clearance.

We would like the rules to include a provision that allows for such a policy.

2. WAC 208-620-900(5)

This section states "if you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property you must collect and make all payments from the escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower."

Language should be added that states that we "must...make all payments from the escrow account" if sufficient amounts have been collected from the borrower.

When a reserve account is set up for a customer from which we will pay insurance, taxes or other payments, a schedule is prepared and provided to the borrower showing how much must be paid each month in order to accrue sufficient funds to make the expected payments when they are scheduled to occur. It is the borrower's responsibility to make those payments to us regularly and on time so that we can then make the payments for taxes, insurance, etc. We are acting as an intermediary in such cases and, if the funds have not been received from the borrower, we cannot make the payment as to do so would be advancing our own company funds to accomplish the payment.

Some comments received by the DFI on the 2010 CLA rule making process appear to suggest that all servicers track their collateral based on where the owner of the property physically resides, rather than the property itself. I would like to clarify that for most residential mortgage servicers, that is not the case. Rather, most servicers mortgage transactions are tracked by the location of the property. While the company would have a mailing address for the primary borrower, such an address may or may not be indicative of the state in which the borrower physically resides.

Thank you for your follow up. I presume that the purpose for the registration of a domain name is to give the consumer the ability to search for the name on the DFI or NMLS Consumer Access website in order to confirm with whom they are doing business and what entity they are employed by or affiliated with. I would think that usage of a licensed name (whether it be an individual's name on their MLO license or a company name on the CLA license) should allow the consumer enough information to find detailed information about the individual or entity (i.e., they can easily search for that person on either website). Also, in my comments to the 2010 CLA rulemaking process, I suggested that the DFI consider requiring statement on websites referring the

consumer to the NMLS Consumer Access website to obtain detailed information about the licensee. This statement along with the Company, Branch &/or MLO NMLS ID (as applicable) would be a more streamline approach to achieving [what I believe to be] the desired result. I like this idea because it never has to be changed or updated from my perspective and it gives the consumer even more information than they would be able to get from any disclosures on a website. Plus, just making the presence of that website known helps to increase awareness of its availability to consumers (hopefully it prompts them to think “hey, I can look up all the brokers & lenders I’ve been speaking with here.”)

I have been reviewing the proposed WAC 208-620 rules. I’m confused as to section WAC 620 420, 421 and 422. These sections appear to be mixing mortgage and non-mortgage rules. I see the DBA rules in section 420 can apply to both. I’m not sure about section 421. Section 422 refers to a Unique Identifier from NMLS and loan originators. I believe this section refers to mortgage lenders and mortgage loan originators, not the traditional non-mortgage consumer lender. But I could be wrong. What is it?

The mixing of mortgage rules with the traditional consumer rules in RCW 31.04 and the resulting changes in the administrative rules continues to get more confusing as to what rules apply to the licensed lenders. I’m not sure why the mortgage rules were included in RCW 31.04 but as we continue to modify RCW 31.04 and WAC 208-620 for mortgage rules the application of these rules gets more confusing. Has there been any thought to separate the mortgage rules from the consumer rules?

Thanks for your time. We will participate in the webinar, as it comes up, to see if we can figure out or identify more clearly, the licensee the proposed rules, noted above and maybe other rules, apply to.

1) WAC 208-620-250 If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington? (1) You are not required to maintain a physical presence in this state to get a license but any location doing business under the act, wherever located, must be licensed. (2) If you employ mortgage loan originators in Washington, those licensed employees must work from a licensed location in Washington. A licensed location can be a branch office in the state or an individual loan originator’s home.

2 As it relates to the newly added section (2), it’s unclear what this section is intended to require. It appears to require that a licensed loan officer must operate from a licensed location. However, it could also be interpreted to mean that a loan originator whose residence is in Washington must operate from a licensed location also in Washington (which would pose issues for loan officers that reside close to the Idaho or Oregon borders and operate from a branch that is near to them, but across state lines. It would be beneficial to provide more clarity in this statement.

2) WAC 208-620-422 (1) UNIQUE IDENTIFIER. The company’s NMLS unique identifier must be displayed on each of the licensee’s web pages including branches and individual loan originator webpages when those loan originators are sponsored by the company. Branch unique identifiers must be displayed for any branch that has a web page separate from the company web page (in addition to the company unique identifier). Individual loan originators must display their individual unique identifier and the company unique identifier, and if applicable any branch unique identifier.

The requirement that the company, branch, and loan originator’s unique identifier (as applicable) be required on every web **page** rather than every web **site** is an overly burdensome and unnecessarily redundant. The requirement should be revised to require that the company, branch

(when applicable), and loan originator unique identifier(s) appear in a conspicuous place on the website. The DFI also might consider requiring statement referring the consumer to the NMLS Consumer Access website to obtain detailed information about the licensee would be a more streamline approach to achieving the desired result.

3) WAC 208-620-422 (2) NAMES. The company's name and any dbas must be prominently displayed on the company's home page. Branch office home pages must display the main office company name. Requiring that all dba's used in Washington be reflected on the **homepage** of a company's website is an inflexible requirement that hinders the ability of a company to maintain a homepage that is visually pleasing in design and easy for a consumer to navigate. Guild requests that the DFI give consideration to the fact that the presence of large quantities of information on one webpage can be overwhelming and cause a consumer to be more confused than observant to the information contained therein. Further, given that the DFI considers dba's to include internet domain names that are not necessarily representative of a dba or trade name used by a company, this could easily be a significant disclosure requirement for a homepage. Rather than make this a requirement of the home page, the DFI should require that dba's be identified on a conspicuous place within the website. That would allow for such a disclosure to be on link from the homepage that navigates to a webpage that is primarily intended for licensing and disclosure purposes. Additionally, as previously mentioned, the DFI might consider requiring statement referring the consumer to the NMLS Consumer Access website to obtain detailed information about the licensee would be a more streamline approach to achieving the desired result.

4) WAC 208-620-422 (4) CONTACT LINKS. (i) The company name and dbas must be displayed on "contact us" page of any web site used to solicit Washington consumers, regardless of whether the web site was created at the main or branch office or loan originator level.

Given the fact that WAC 208-620-422(2) requires such information to be on the homepage, it appears that this requirement is redundant as it relates to websites "created at the main" office. Further, as it relates to the reference of websites created "**at the branch office or loan officer level**", this requirement should be clarified to state that for branch or loan originator websites, only dba's utilized by that branch or loan originator is required to be displayed. Otherwise, consumer confusion is bound to occur, particularly as it relates to a consumer attempting to determine which branch office of a company they are working with for their transaction. For example, Guild has several branches that operate under dba's and many that do not. Requiring the dba that is only used by one branch or individual on *all* websites in the state will cause confusion to customers and will be an administrative burden on companies to maintain such information on all sites. As previously mentioned, the DFI might consider requiring statement referring the consumer to the NMLS Consumer Access website to obtain detailed information about the licensee would be a more streamline approach to achieving the desired result.

5) WAC 208-620-422 (4) CONTACT LINKS. (ii) The company's main office physical and mailing addresses of record must be displayed on the "contact us" portion of every web site used to solicit Washington consumers, regardless of whether the website was created at the main or branch office or loan originator levels. (iii) The company contact person, telephone, FAX, and email (if any), as this information appears in the NMLS record must be displayed on the "contact us" page of every website used to solicit Washington consumers, regardless of whether the website was created at the main or branch office or loan originator levels.

Guild **strongly disagrees** with this requirement. Per the NMLS policy guidebook, "*The individual listed as the contact employee must be authorized to receive ALL compliance and licensing information, communications, and mailings regarding the entity, officers, directors and MLOs, and be responsible for disseminating it within the applicant's organization. The Contact Employee is for regulator use. The application is designed to have licensees identify a single person responsible for all licensing communications from all jurisdictions. This person need not be the decision-maker, but is expected to distribute communications from regulators to*

the correct party within the licensee's organization. The Contact Employee may or may not be the "Resident/Registered Agent" for service of process, as is required in certain jurisdictions." [Emphasis Added]. Further, displaying the company's NMLS record contact person on all the "contact us" web pages will cause consumers to contact this person about typical loan transaction matters that the contact person simply cannot assist them with. This will result in confusion and frustration on the part of the consumer. As previously mentioned, the DFI might consider requiring statement referring the consumer to the NMLS Consumer Access website to obtain detailed information about the licensee would be a more streamline approach to achieving the desired result.

6) WAC 208-620-440 (b) Calculation of the annual assessment for residential mortgages serviced. The servicing fee that a servicer such as Guild collects on FHA, VA, and FNMA mortgages is earned each time a borrower makes a mortgage payment (i.e., for delinquent loans or loans in foreclosure, Guild does not get paid after the borrower makes their last installment). The servicing fee Guild earns is based upon a servicing factor set by the purchaser of the Note that remains fixed for the life of the mortgage and payable only from the interest portion of each monthly installment of principal and interest actually collected by the servicer. While servicing fees can vary, generally speaking, the servicing fee on an FHA or VA mortgage sold to GNMA has a net value of 44 basis points (the fee is actually 50 basis points; however, Guild must pay a 6 basis point monthly guaranty fee to GNMA) while a conventional mortgage sold to FNMA has a factor of .25. Simplistically, the monthly servicing fee is calculated as follows:

**Interest Collected For the Reporting Month × Servicing Fee / Interest Rate
= Monthly Servicing Fee Calculation**

To provide an example, on a mortgage with an outstanding principal balance of \$165,000 and \$773.44 collected in the reporting month, an interest rate of 5.625%, and a servicing factor of .25, the calculation would be as follows: $773.44 \times .25 / 5.625 = \34.38 Monthly Servicing Fee

4 In light of the fact that the interest portion of the monthly payment generally decreases each month due to typical amortization, the servicer's monthly servicing fee decreases accordingly over the life of the mortgage. Using the same figures as above, the table below illustrates how the servicing fee decreases each month:

Payment #: Interest Payments Collected: Monthly Servicing Fee:

1	773.44	\$ 34.38
2	772.61	\$ 34.34
3	771.78	\$ 34.30
4	770.95	\$ 34.26
5	770.11	\$ 34.23
6	769.26	\$ 34.19
7	768.42	\$ 34.15
8	767.57	\$ 34.11
9	766.71	\$ 34.08
10	765.85	\$ 34.04
11	764.99	\$ 34.00
12	764.13	\$ 33.96

Total Fees Earned Over 12 Months: \$ 410.04

As you can see, as the loan reaches maturity, the servicing fee gets closer and closer to zero. This means that the servicer earns less on older loans as compared to newer loans. Also, because a servicer earns their fee monthly, if a mortgage is only serviced for a portion of the year due to the acquisition date, sale, early payoff, etc., fees will be earned only for those months that the servicer performed their duties on the mortgage. For example, on a mortgage that the company is performing interim servicing on (due to the transaction being sold service-released) only one to three payments would be received and the servicing fees collected on that transaction would be very minimal. Thus, a servicer's income on a transaction is affected by a combination of factors, least of which relate to the principal balance of the loans in the portfolio at a given time. The only

true method of achieving an accurate figure would be to base the annual assessment on the revenue of the monies earned by the servicer. If that is not possible, Guild requests that the DFI take special consideration of the following when determining the annual assessment imposed on servicers: 1) the fact that a servicer's income earned on mortgages serviced for a partial year will be minimal, if anything is earned at all (i.e., loans that payoff within 12 months or are sold service-released on the secondary market); 2) the age of mortgage and the fact that a servicer's income will decrease over time; 3) the fact that the servicing fee factor varies by loan type (i.e., generally 25 to 44 basis points for typical agency and government products); and 4) for companies that originate and service, they will often loan and retain the servicing rights and shouldn't be assessed for both the origination and the servicing functions in the same year.

7) WAC 208-620-900 (2) *You must assess fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee.* Guild requests that this section be clearer to define what constitutes a "fee". For example, is interest a "fee"?

8) WAC 208-620-900 (5) *If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property you must collect and make all payments from the escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower.*

This request is overly broad and vague. While the purpose is certainly understood and servicers do perform such functions to the best of their ability, a servicer can only do so to the extent that the information necessary to accomplish this is available to them. For example, a servicer must receive a bill from the hazard insurance company in order to make the premium payment. While this is generally not an issue, circumstances arise where the bill is not received. One reason that this may occur is if the hazard insurance company shows that the loan is not escrowed and sends the billing to the customer instead. The servicer will of course perform its best efforts to obtain the billing and make the payment timely, but circumstances could present themselves that make this impossible. This provision leaves no room for circumstances that are out of the servicer's control. Additionally, the use of the term "negative consequences" seems vague and overly broad.

9) WAC 208-620-900 (6) *You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to: (a) Maintaining written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied; (b) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.* RESPA already addresses this and provides for such a requirement but allows for a 20 business day timeframe to acknowledge receipt of the request and 60 business days to resolve the matter. It seems reasonable to make this section consistent with RESPA's provisions for Qualified Written Requests. It is also unclear whether the written statement in section (b) is an acknowledgement of receipt or a resolution.

10) WAC 208-620-900 (7) *You must provide at a minimum the following information to a borrower's request described in (6): (a) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default; (b) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer; (c) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and (d) The telephone number and mailing address of a servicer*

representative with the information and authority to answer questions and resolve disputes. (e) You may charge a fee for preparing and furnishing the statement described in this subsection not exceeding thirty dollars per statement. (f) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made. Again, RESPA addresses various requirements for handling borrower inquiries relating to their account. It is requested that the DFI look to RESPA and make the requirements consistent. Additionally, it is unclear if all of the items required in this proposed section would be provided in all cases. What if the borrower's request for information or dispute does not relate to any of these items? It seems that information that is not relevant to the concern at hand may cause further confusion.

11) **WAC 208-620-900 (8)** *In addition to the statement described in subsection (6) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must also include: (a) A copy of the original note, or if unavailable, an affidavit of lost note; and (b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any. (c) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period the servicer must provide the information going back to the date on which the servicer began servicing the home loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information. (d) You must provide one statement described in this subsection (8) to the borrower annually free of charge.*

This section needs further clarification. For starters, how does a servicer determine if the borrower has requested "**more detailed information**" as described in this section thereby warranting the need to provide this additional detail? As it relates to item b, "*A statement that identifies and itemizes all fees and charges assessed under the loan transaction...*" please clarify in the regulation whether this relates to the origination of the loan or just the servicing of the loan. With regards to item d, "**You must provide one statement described in this subsection (8) to the borrower annually free of charge.**" Please clarify if this is intended to mean that the statement must be sent to the borrower annually automatically and free of charge, or upon request? If they request it more than once annually, can the servicer then charge a fee? Is there a limit to that fee? Additionally, if this section does impose an annual requirement to send this statement, I assume that we don't have to send the borrower a copy of the Note annually. Lastly, with regards to the 15 business day timeframe, it is requested that this be extended to at least 20 business days.

I'd like to propose a couple changes in the WAC 208-620-510

3) "Within three days, including Saturdays, of receipt of loan application" to: "Within three business days of receipt of loan application"

3c) “within three days of rate lock” to: “within three business days of rate lock”

4) Do not delete the verbiage “within three business days following”

This would align Washington law with Federal RESPA guidelines for delivery of the Good Faith Estimate. Attached is an excerpt from the FDIC website see page 2 under the GFE Application Requirements Section “The loan originator must provide the standard GFE to the borrower within three business days of receipt of an application for a mortgage loan.”

Our company is not open for business on Saturday’s.

I can’t speak as to any specific clients, but generally, one might think of the type of servicing fees (that are not contemplated at loan origination) as falling into the following categories:

1. Payment convenience-type fees, such as pay-by-phone services;
2. Collateral control-type fees, such as a fee for considering and agreeing to a partial release of the collateral in response to a borrower’s request; others examples would be loan assumption fees, deed in lieu fee, or short sale fee.
3. Duplicate information or document-type fees, such as fees for providing second, third, ect. copies of loan payment histories that the borrower requests – after the lender has provided a copy of the information at no charge; another example would be loan payoff statement fees; and,
4. Default related fees, such as property inspection fees and foreclosure related costs.

These examples are by no means inclusive, but hopefully they provide an illustration of the type of additional services that might be provided. Except as to the fourth category, the servicer would provide the additional service upon a fee to which the borrower agrees. There is no requirement to use those added services and, if the borrower does not want the added service, no fee would be incurred.

As a follow-up to my question, as of today, is there any guidance on the permissibility of third party servicing type fees?

The following are some initial issues to be addressed as the Department develops rules to incorporate the regulation of loan servicing companies.

1. It should be understood that, even though we are to be licensed under the Consumer Loan Act as amended in 2010, we do not make, originate or broker loans in any way. As a loan servicing company, we service debt obligations, most of which are mortgages held on residential property and mobile homes that were

sold via seller financing contracts. The obligations we service are not even loans in a traditional sense in that no funds were paid by a lender to a seller of the property. Instead, credit was extended by the seller to the buyer. We have nothing at all to do with the transaction until it is fully consummated at which time one of the parties to the contract, usually the note holder (seller), contacts us to establish a servicing account. In other cases an existing note has been purchased by a third party and is then placed with us for servicing.

We also provide collections for rents and leases, and service loans that are not secured by real or personal property, such as loans between family members.

2. Annual assessment -

According to WAC 208-620-440 the annual assessment is based on the principle loan balance on Washington loans. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271. This methodology was devised for consumer loan companies that make the loans, service the loans and earn interest and loan origination fees on those same loans. As a loan servicing company, we do not originate loans nor do we earn any interest at all on the principle balances. Our earnings are drawn from servicing fees which are approximately \$100 per loan per year. Applying the loan assessment calculation in this manner to our business would take such a substantial portion of our receipts so as to be considered confiscatory.

Let's use a total principle balance of \$100,000,000 as an example. With an average balance of \$100,000 that would mean 1,000 loans being serviced. For illustration purposes, we'll assume an average interest rate of 6%. The annual assessment would then be \$18,027.10.

In this example, a consumer loan company with the described portfolio would earn \$6 million per year in interest, in addition to much more in loan origination fees. Paying an assessment of \$18,027 would be a noticeable, but minor amount.

At a loan servicing company such as Trust Accounting Center or AFTS the calculation is much different. On that same \$100 million portfolio we would earn approximately \$108,000 (1,000 loans X \$108 basic service fees). The \$18,027 assessment would be a very substantial portion of our gross revenues. Paying the same assessment on revenues that are more than 98% lower than that earned by a consumer loan company on the same principle loan balance can hardly be what is intended by your Department.

It's apparent that we need to develop a different calculation to apply to loan servicers who do not earn income based on the principal balance or the interest income stream. I don't know how the multiplier of .000180271 was developed or what it represents; however, a simple way to equalize the assessment's effect

would be to add two zeros after the decimal. That would make it .00000180271. Applying that to the theoretical \$100 million principle loan balance would result in an assessment of \$180.20. This would have our assessment be in a similar proportion to our earnings as the current assessment calculation is for a consumer loan company that earns interest on its loan portfolio.

One other issue, albeit a smaller one, has to do with what the definition is of “Washington loans”. In cases having to do with real estate, that usually means that it applies to loans on real estate located in Washington State. In other cases it would seem to apply to loans in which the buyer lives in Washington. As loan servicers we do not track the location of whatever serves as collateral for the loan. While that information is contained in the documents we receive, it is not entered into our database. In order to develop that information we would have to manually search thousands of files. It would be much simpler to be able to define Washington loans based on the location of either the buyer or the seller, whichever your Department deems appropriate.

3. In addition to the annual assessment addressed above, a similar problem exists with all other requirements based on loan origination volume and/or principle balance, such as bonding requirements. In these instances a different standard needs to be developed.

A consumer loan company that makes a loan of \$1 million will earn a loan origination fee of several thousand dollars plus the annual income stream from the interest on the loan. It will be responsible for holding and transferring the principle amount from one party to the other.

A loan servicing company such as ours, for that same \$1 million loan, will earn \$125 account set up fee and a \$108/year in basic service fees. The only monies transferred will be the monthly payments received from the buyer and paid to the note holder. It’s clear that we are dealing with much smaller revenues and funds in transition as a servicing company. The rules ought to reflect those differences.

4. Examination –

At whatever point in time DFI chooses to examine a loan servicing company, on what will the examination be based? Most of what is generally sought in the Department’s examination of a consumer loan licensee is not only not available to us as a servicer, but likely does not even exist due to the nature of seller financed contracting. For example, the GFE (Good Faith Estimate), loan application register information, and underwriting information are not generated as part of a seller financed contract. HUD settlement statements are done as part of the closings, but are not available to us as third party servicers.

It’s pretty clear that the examination will need to look at a different set of data points than what is currently utilized. This is illustrated by the Department’s

recent Survey of Licensee Technology Readiness. As a prospective licensee I intended to fill it out and submit it, but I could not do so. Except for being able to list the software that we use for servicing contracts (Lincoln Data) none of the other questions had any application to what we do.

5. A suggestion –

It's apparent that third party servicing of seller financed contracts is quite different in many fundamental ways from consumer lending. It follows that the rules to be developed and applied by DFI need to be different and specific to the nature of the business.