

**Mortgage Broker Practices Act Rulemaking**  
**Panel Meeting Minutes**  
June 29, 2006

Panel members present: Chuck Cross, Catherine Mele-Hetter, Laura Kiel, Jeff Berglund, and Adam Stein

Absent: Rich Bennion and Jeffrey Lorsch

**1. Welcome and Introductions**

Chuck introduced the Panel.

**2. Meeting Format and Protocols**

Chuck skipped.

**3. Document Status Report**

Changes since the last meeting are highlighted in yellow.

**4. Reading and Assignment of Public Comments to Date – Chuck Cross**

One substantial public comment was made directly to Chuck. It has to do with an exemption, and is mostly legal, so the Misc. Sub-Panel will work on that.

One other comment was made about how to license loan originators. That information can be found on our website, but there is not a study guide yet.

**5. Sub-Panel Reports**

Skipped Sub-Panel reports.

**6. Work Session with latest WAC version – MBWACv20060629**

Chuck – Page 1- **What is the difference between the Mortgage Broker Practices Act and the Mortgage Broker rules?**

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Page 2 of 16

Answer – Correct the spelling of “group” in the sixth line down.

Page 4 – Definition of “Application deposit” is okay, but we should be calling this “application deposit fee” or “application fee deposit.” Also in the table of fees.

Page 6 – (10) – Branch office certificate – Add “at the branch office location” before “indicated in the certificate” in the third line down.

Page 7 (21) – Need to define “Division” as the “Division of Consumer Services.” It also shows up in other areas, such as good standing.

Page 7 (22) (a) – Change “Protection” to “Parity” in two places.

Page 8 – (e) – Double check the name of the Act, “Home Equity Loan Consumer Protection Act.”

Page 9 – (27 (b) - Need “a” before “person performing purely administrative . . .” in the next to the last line on the page.

Page 10 – (29) - yellow highlight – This is the definition that the Licensing Sub-Panel has struggled with so much. The Licensing Sub-Panel wants to refer us back to the statutory language. These pieces come from the end of the statutory language for loan originator. The Sub-Panel can rework after looking at this statutory language.

Chuck and Adam agree that this language is okay.

Remove Cindy’s bracketed notes.

Page 11 - (32) (b) - yellow highlight in middle of page – Chuck said we should have the code citation after the Regulation X reference (24 CFR, part 3500.2).

End of that highlighted section - Correct spelling of “stationery” in the last line.

(34) – Change “location” to “person.”

Page 12 – (36) – We need consistency. We use different terminology in other places. Cindy will you double-check?

Page 12 – middle of page – “For purposes of this definition . . .” - Add beginning quotation marks before “a loan primarily. . . “

Page 13 – We need a definition for “course provider” and “professional organization.”

Catherine – Usually if the word is only used once, you put the definition with it. Otherwise, you put the definition in the definition section in the beginning.

Chuck – We need to do some clean-up on that. Maybe “table funding” doesn’t need to be in the definitions.

Page 14 – **C. GOOD STANDING**

Page 14 - **What does good standing mean?**

Deb – answer - Change “shall” to “will” in the eighth line down.

Page 14 – 3. – Add “or” after “required surety bond” in the second line.

Page 15 - (9) and (10) – We still have comments that they need more work.

Chuck – We don’t want to issue a branch license if a company is about to file bankruptcy. Our intent is to keep someone from further extending the corporate body out into the public when they can’t sustain.

Laura – What this says is we’re going to slow down and take a closer look.

Chuck – This is the same standard we use to decide if we’re going to give you a license in the first place.

Page 15 – 10. Jeff – Take the example out for now. “For example, the licensee is insolvent . . . records or judgments.” Leave in the comment that the Panel has concerns.

Page 16 – 1-5 – Chuck – Can we compress these by saying you can challenge everything in 9-12 in the prior WAC?

Page 17 – second question – **Who conducts the brief adjudicative proceeding?**

Page 17 – answer - Here is the “Division” definition again.

Page 18 – first question – **If I am licensed as an insurance agent under RCW 48.17.060, do I need a separate license to act as a mortgage broker or loan originator?**

Answer - Add assist information from the original definition of the statute.

Page 18 – last question – **If I am an exempt mortgage broker because my business has been approved and is subject to audit by Fannie Mae or Freddie Mac, are my loan originators subject to licensing or any other sections of the act?**

Answer – Add “and the associated rules” after RCW 19.146.080 in the second line.

Page 19 – first question – **If I am an exempt mortgage broker because my business has been approved and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the act?**

Page 19 – answer - Add “and the associated rules” again after RCW 19.146.080.

Page 20 – first question – **Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?**

Answer – Beginning of (a) – The affiliate “maintains a license and.”

Whittier – The Licensing Sub-Panel is considering calling them “exclusive agents” instead of “loan originators.” Whittier will work with Catherine on modifying this section.

Page 22 – **E. 1 Mortgage Brokers – Licensing**

(3) **Pay an application fee.** Add “deposit” before “fee.”

(5) **Provide a bond.** Add “surety” before “bond” at the end of the first sentence.

Page 23 – **What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(3) – Delete “good standing” at the end. Replace it with something else.

Page 24 – first question – **What are my rights if the director denies my application for a mortgage broker license?**

Chuck - “Upon denial of your . . .” If a company has been doing unlicensed activity for a period of time, do we really want to give their bond back?

Suggested language – “Provided there has been no unlicensed activity, . . . the department must return your bond . . . “

Check on bond requirements. It may only be good from the point you get your license.

Page 24 – second question – **What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?**

Answer - Cindy will do a search for administrative procedures act. Sometimes it says “procedure,” and sometimes “procedures.” Change it to always say “procedures.”

Catherine – There should always be an administrative procedures act cite whenever we talk about hearings.

Page 24 – third question – **When may the department issue interim mortgage broker licenses?**

Chuck – answer – Add “To prevent an undue delay,” before “The director may issue . . .”

Page 25 – second question - Chuck – **When does a mortgage broker license expire?**

Answer – Maybe change “expiration date listed on the license” to “date of issuance.” The Licensing Sub-Panel will finalize.

Page 25 – third question – **How do I renew my mortgage broker license?**

(1) (a) – What does “and any other required notices” mean?

Change of location notice, change of personnel, closing a branch, etc.

Page 25 – second question - **If I let my mortgage broker license expire do I have to reapply to get a new license?**

Chuck – Should we charge an additional fee if people renew their license late?

Catherine – The bar fee doubles after a period of time.

Chuck – Charge a 50% additional late fee of the normal licensing fee if paid 1-45 days after expiration. After 45 days, they have to reapply. Use the postmark date.

Page 26 – first question – **What actions may the director take relating to mortgage broker licensing?**

(4) – Change “of” to “from” in the first line.

Duplicate this question for loan originators, designated brokers, owners, principals, exempts, etc. Reference the enforcement section WAC also.

Page 26 – second question – **What should I do if I wish to close my mortgage broker business?**

Chuck – Answer - We need to add a sentence saying that you try to find the person prior to sending the money to Unclaimed Property.

Page 27 – (2) – Change “to” to “and” in the first line.

Page 27 – second question - **What do I do with the bond once I receive it from my insurance company?**

Whittier – We need to tell them to sign the bond, and send the original signed bond to DFI.

Page 28 – **E.4 Mortgage Brokers – Main Office**

**How many designated brokers may a mortgage broker have?**

Answer - Change “your” to “the” in the third line down.

Page 28 – last question - **Where must my designated broker be when representing the mortgage broker?**

Delete this question and answer.

Page 29 – first question – **If my designated broker leaves, may I continue to operate my mortgage broker business?**

Chuck – We would have to do this through an administrative action, equal to a cease and desist order.

Whittier and Adam – Maybe we could borrow some language from the Escrow rules.

Answer – Delete “You must not originate or assist in the making of new loans.”

Suggested language (concepts) - If you lose your designated broker, you must notify DFI within 5 days, and must replace the designated broker within 30 days. Continue business as usual in the interim. You would be subject to enforcement if you don’t follow those steps. It may be a prudent business practice to have another designated broker that can take over.

Page 29 - third question - **How soon must I replace my designated broker?**

Answer - Add “and the good standing criteria” at the end of the last sentence.

Page 29 – fourth question - **What happens if I sell all or part of my mortgage broker company?**

Answer – (1) (a) and (b) – The answer isn’t a notification, (a) is a must do list. (b) is talking about ownership. What is “substantially?” The Licensing Sub-Panel will work on this one.

Page 29 – answer (2) (b) – Adam – Everyone is a “potential borrower.” Can we use “applicant?” Use “anyone who has applied for a loan.”

Page 31 – top of page – Change the semi colon after “of your choosing” at the end of the sentence to a period.

Page 32 – second question - **What does the department consider when reviewing an application for a branch office license?**

Add “(3) verification of the existence of a physical location.”

Page 32 – fifth question - **Does my branch office license expire?**

Make the answer consistent with the mortgage broker answer on page 25.

Page 33 – first question - **If my mortgage broker branch office license expires, must I apply for a new license?**

Make the answer consistent with the mortgage broker answer on page 25.

Page 33 – second question - **May I still conduct my mortgage broker business from that location if my mortgage broker branch license has expired?**

Answer – (3) Change “location’s” to “of the branch license.”

Page 33 – third question - **May I add a trade name (or “DBA”) to my mortgage broker branch office license?**

Answer - Change “legal” to “license” name in the fifth line down.

Chuck – Answer - What is the difference between (1) and (2)?

Whittier – Change “branch office trade name” to “branch name.”

Page 34 – second question - **Do I have to have a branch manager?**

Answer – Change “department” to “act” in the first line.

Page 34 – third question - **Do I have to have a designated broker at each branch?**

Answer – Change “who works out of the main office” to “who is responsible” or something similar.

### **F.1 Designated Brokers – General**

Page 34 – yellow highlight – **How do I become a designated broker?**

Answer - (3) (a) (iii) – Delete Chuck’s comment.

Page 35 – (3) (a) (v) – Delete.

Page 35 – yellow highlight – Chuck’s comments. Other examples - Delete “or other professional” before “whose primary function . . . “ Add “or” before “auditor.” Chuck wants the “examples” to be bulleted items.

Page 35 – (4) – This has good standing in it. Good standing only applies when you are changing a designated broker, but not the first time around. We need to change that language.

Page 35 – first question, at bottom of page - **What must I do to remain a company’s designated broker?**

Delete question and answer, except (2) the continuing education part. We need a question about continuing education and use (2) for the answer. Suggested question – “Do I have to do any continuing education as a designated broker?” Answer “Yes” and add (2). We may already have that question.

Page 36 - first question – **Must the designated broker also hold a loan originator’s license?**

Chuck is okay with the designated broker automatically getting a free loan originator license only if they are originating loans for the company they are the designated broker for. If they originate loans for another company, they need a loan originator license for that company.

Page 36 – second question – **May I work as a designated broker for more than one company?**

Answer – It’s too restrictive. The companies don’t have to be co-located.

Page 36 – third question – **May I work as the designated broker for one company and a licensed loan originator for another company?**

Answer – Change “provided that the locations from which you work are co-located” to “provided you have a loan originator license for that other company.”

Page 36 – last question – **May a designated broker have clerical or administrative personnel?**

Section .245 of the Act says the mortgage broker is responsible for its employees’ violations of the Act. Loan originator - The loan originator doesn’t have a bond, so there would be no bonding coverage for anything these people did against the consumers. There is no accountability and no bond coverage.

Catherine, Deb, and Joe Vincent will look at this.

Chuck is only concerned when the personnel commits some crime, and who is held responsible. He's not concerned about them doing clerical work.

Page 37 – first question – **As a designated broker, what reporting requirements do I have?**

Answer - Double-check reporting requirements for designated brokers.

Page 37 - **F.2 Designated Brokers – Testing**

Third question - **What topics may be covered in the designated broker's test?**

Page 39 - Chuck – We should move (8), Ethics in the mortgage industry, to the top.

The Licensing Sub-Panel still needs to come up with a list for continuing education.

Page 39 – Whittier's comment asking if sections (4), (5), and (6) are necessary - Chuck thought Whittier was saying to summarize these lists. These things will change over a period of time.

Adam – Add including, but not limited to.

Page 40 – second question - **How soon after failing the designated broker test, may I take it again?**

Answer - Change “ten business days” to “fourteen calendar days.”

Page 40 – **F.3 Designated Brokers – Continuing Education**

Page 40 – third question – **Where may I get information about continuing education?**

Answer – Add “and independent course providers” after “professional organizations” in two places IF we accept the new rule.

Chuck – Are we requiring them to take an ethics course every two years?

Adam – The intent was to have a requirement to take an ethics course in the first year.

Chuck – We need to put that first year requirement in the rules then.

Page 41 – **G.1 Loan Originators – General**

Page 41 - second question – **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?**

Answer - Delete “licensed or exempt” in the fifth line down.

Page 42 – third question - **May I work as a licensed loan originator for a mortgage broker located out of the state?**

Answer - Add “as long as the mortgage broker is licensed under Washington law” and “provided that the loan originator is affiliated with that licensee.”

Page 43 – first question - **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

Answer – (2) **License Suspensions or Revocations.** Add “or has been found to be” or something similar before “in violation of the act or the rules” on the second and third lines down.

Answer - (3) **Criminal History.** Double check “within seven years from the date of application.” Is it “within seven years prior to application?”

Page 43 – second question - **May I originate residential mortgage loans in Washington without a loan originator license?**

Answer – Add “employed by a company” before “exempt from licensure” at the beginning of the second line.

We need a question about 1099s of exempts. Only employees of exempts are actually exempt, not 1099 contract employees. Cindy will add a question.

Page 43 – last question – **When may the department issue interim loan originator licenses?**

Chuck didn't see the same question for mortgage brokers. Add a question in if there isn't already one.

Add “as determined by the director” before “to receive an interim license” at the end of the paragraph.

Page 46 – first question - **When does my loan originator license expire?**

We also need to talk about how a license becomes inactive. Add a question and answer.

Page 46 – third question - **If I let my loan originator's license expire do I have to apply to get a new license?**

The answer is not consistent. It talks about one month and during this 30-day window. Months aren't always 30 days. We changed that to 45 days. We need to be consistent.

Catherine – We have the expiration date issue here also.

Page 47 – second question – **Must I display my loan originators license where I work as a loan originator?**

Answer – Put an “s” on “who requests it” at the end of the last sentence.

Page 47 – third question - **Must I include my loan originator license number on any documents?**

Answer - Include on business cards too.

Laura – Did we decide they have to call themselves loan originators?

It doesn't matter.

Insert a question on transferring loans from one mortgage broker to another. How may I transfer loans?

The loan could be transferred under written request of the borrower. We might already have that question.

Cindy – She thinks we took that question out. She will check.

Page 48 – **G.3 Loan Originators – Testing**

Make appropriate changes to be consistent with the designated broker testing.

Page 51 – **G.4 Loan Originators – Continuing Education**

Page 51 - **Where may I get information about continuing education for loan originators?**

The same language needs to be brought forward. Import the same answer as we have under designated brokers.

Page 54 – first question - **As a designated broker or loan originator, must I notify the department if I change my residential information (telephone, address, email)?**

Adam – Why do we need that for residential information?

Chuck – No. Not their residential email. Telephone and address is okay. Delete “email.”

Page 55 – first question - **What are my responsibilities when I sell my business?**

Answer – Change “insurance” to “bond” in the last sentence at the end of the paragraph.

## **6.a. Professional Organizations and Course Providers - handout –**

There was a lot of controversy over the last few weeks relating to forcing everything under professional organizations. Chuck reconsidered his position and decided we have room for compromise. Catherine rewrote the language to allow us to have two tiers now:

1. Follow what we set up for professional organizations.
2. Allow DFI to approve separate courses of education outside of professional organizations.

We will not approve course providers independently, but we will approve courses of education independently. If a course provider wants to come under a professional organization, and we've approved the professional organization, it will be up to the professional organization and the course provider to determine what courses will be taught. All of those courses are automatically accepted if the professional organization says they meet the criteria. If a course provider wants to go on their own outside the professional organization, we will only approve each individual course of education, not the course provider and every course they may teach.

Caution – If we get flooded with requests to approve the courses of education, it might take 6-9 months to approve these courses. The first thing we will do is approve the professional organizations, because that is the more efficient way to go.

Chuck reviewed the handout. Many of the questions and answers are the same. Others have been modified because of DFI's new two tier approach.

Page 2 – first question – **What standards will the department use to review and approve courses of education provided by course providers not affiliated with professional organizations?**

Catherine asked Whittier to think if there are other things we need to add.

Page 2 – second question - Catherine – **Can the department remove a course provider from providing continuing education under the Act and rules?**

Add “a course of education and/or” before “a course provider.”

Page 2 – third question – **What action must a course provider take if notified by the department that its course of education has been rescinded?**

Deb – Laura made a point. We should add a 4. “refund all the fees.”

Chuck – Add that in two places.

Chuck - Add something about code of conduct and ethics.

## 7. Public Comments

### John Long –

He would like the opportunity to look more closely at this document and will send in written comments.

Second question – They had a concern about competitors approving each others' courses.

John wanted to compliment all of the Panel and especially Mr. Cross on finding some middle ground.

Chuck – We considered whether or not professional organizations should be able to teach. We are not as concerned with the anti-competitive issue as the members are.

Chuck - We will roll this up into the rules. The entire document content will be highlighted in yellow for the July 13 Panel meeting.

Catherine – We will take this to the Code Reviser's Office to start typing for rulemaking. The licensing sections are almost done. The licensing major issues will be completed after the July 13 meeting. Once we file the CR-102, proposed rulemaking form, we can't make substantive changes. We will continue to discuss examination and enforcement issues.

John Long – Was it determined about how many clock hours would be required?

Chuck – It is three courses per year for designated brokers and two courses per year for loan originators. We didn't say specifically how many hours, but the courses need to be approved.

### Page 57 – I. TRUST ACCOUNTING

Page 59 – Adam – He still has concerns about how a check can be split. There are cases when we instruct others not to send trust account funds to us, and the money is sent anyway.

Page 59 – third question – **If a mortgage broker receives funds from a third-party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party services, are these funds considered trust funds?**

Chuck - .050 is crystal clear on this. All funds paid on behalf of someone else for the payment of third party services must be deposited in a trust account.

Adam – Can you bundle fees as origination fees?

Chuck – He doesn't have an answer off the top of his head.

Adam – He would like a letter of opinion on that.

Chuck – He will talk to DFI’s general counsel and senior examiners.

Page 72 – **PROPOSED APPENDIX TO THE RULES**

Catherine – Is this part of the law? Or is this just a list on the back of the WACs?

It is just an attachment at the end. It is not part of the rules.

Adam – RCW 191.146.0201(1) - Example 1. - What is the context for the preceding factor that it is tied into a significant loan fee?

Chuck – It shouldn’t have anything to do with that amount. Fraud is fraud.

Adam and Chuck will review all of these (page 72-79) and get back to the Panel. They will make comments in writing.

Page 79 – **P. DEPARTMENT FEES AND COSTS**

Chuck - We know we are going to add in the following language:

“mortgage broker license application deposit”

“branch application deposit”

“loan originator license application deposit”

“late filing fee” or “annual assessment fee for renewals after 45 days”

Catherine – Comment on rounding fees up? The fee has to be what it is in the law.

Deb – It has to be what it is in the previous rules. We rounded down.

Adam – How did we get to a \$150 fee for loan originator license application?

Cindy – These are just placeholder fees for now.

Adam – Please change that one to \$125 for now.

Laura – Is there a renewal fee for the second or third license? It should be \$75.

Chuck – We need another box for additional licenses.

Page 80 – (2) Outside of Washington - Deb asked Chuck if he’d seen the examination fee increase.

Chuck – That is not authorized. He thought we weren't going to charge an hourly fee. Page 30 of the pink, yellow, and blue document says "The director may establish by rule travel costs for examination of out-of-state entities." It should only be the travel to get there, not an hourly fee.

Delete (2) under Examinations.

Chuck – (1) - The \$47 per hour for investigations should increase to \$70 per hour.

Catherine - We need to check the fiscal growth factor to see how much we can increase the fee.

Chuck - The Office of Financial Management has artificially imposed a two-month reserve of fund balances for us. That is not enough. Let us talk about this at DFI. It is a determinable number.

Page 81 – middle of page - Kae's comment. She would rather have a set fee instead of keeping track of hours. DFI needs to discuss internally.

## **6.b. Small Business Economic Impact Statement (SBEIS)**

We have had good results so far by receiving 42 responses in the first few days. We encourage people to continue to send in their responses.

We are not going to do an SBEIS for the course providers now, because of the changes we have made. There is the ability for there to be no impact.

### **John Wilde –**

Chuck said the Misc. Sub-Panel discussed John's comments on "taking a residential mortgage loan application" from the last meeting.

John is still caught up on page 10. - "For the purpose of this definition . . ."

Chuck said this is only for the purposes of this definition. We're not determining when an application is being taken.

Deb – We wrote a new question to clarify this. See page 68 - **When I advertise, or present a business card to a potential borrower, must I make the disclosures required in RCW 19.146.030?**

Answer – No. Although the definition of "taking a residential mortgage loan application" includes soliciting, you are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

Page 36 – fourth question - **May a designated broker have clerical or administrative personnel?**

He would never hire an independent contractor that hired anyone. His mortgage broker independent contract says you can't.

How can DFI say that is okay?

Chuck – He is having trouble with that also.

Adam – Someone could hire clerical help to do their phone calls, keep their calendar, etc. He would have a hard time telling someone they can't hire clerical help only. Adam would rather put sidebars on what the clerical help can do.

Chuck will continue to make the same arguments John is making.

John – He has a comment on having a designated broker working for more than one company as a loan originator. Would he have to take the test again?

Chuck – No. You would have to pay the fee to become a loan originator for more than one company, but you would not have to take the test again.

Ethics – Does a mortgage broker who passes the test need to continually take ethics courses?

Chuck – No. Chuck suggested taking an ethics course every year, but that was not adopted.

John – Shouldn't we attach the questionnaire to the SBEIS survey?

Chuck said we didn't attach the questionnaire, because we don't know exactly what the final questionnaire will look like.

Adam is pushing getting the Excel sheets out to people early, so those who are examined will be able to start using the Excel spreadsheets early.

Chuck – He intended to put the Examination Manual up on the web by now, but he has some changes to give to the Examination Unit first.

Meeting called to order 1:00 p.m.

Adjourned 4:35 p.m.