

## **Attachment 2. to Concise Explanatory Statement (Pursuant to RCW 34.05.325(6))**

### **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 during rulemaking. DFI began soliciting comments very early in the rulemaking process and considered all comments throughout the process. Each draft of the proposed rules reflected consideration of the comments received during the time between drafts. All written comments are available in their entirety on DFI's rulemaking website and upon request. The following summaries are brief excerpts of the comments along with DFI's response. The comments and response may not be complete on any given topic; please review the comments and rules in their entirety.

1. **Comment:** Phil Dryden, EAW. The EAW raised a number of concerns about the trust accounting procedures and the degree to which escrow agents would be required to use specified forms and types of receipts that do not reflect current practices of the best available technology. **RESPONSE:** DFI incorporated many of their suggestions into the rules.

The EAW raised concerns about the lack of "good funds" language in the WAC. **RESPONSE:** "Good funds" language was added to the WAC.

The EAW also raised concerns regarding the section of the WAC that authorizes DFI to hire outside professionals to conduct exams and investigations. **RESPONSE:** This section has been in the WAC for a number of years, so it was not changed.

2. **Comment:** Phil Dryden, EAW. The comment asked DFI to authorize conversion to electronic format after a file is closed and the trust account balance is zero. **RESPONSE:** DFI incorporated the language into the WAC.

The comment asked for more clarity regarding "stale dated" checks. **RESPONSE:** DFI clarified its rules regarding stale dated checks.

3. **Comment:** Jennifer Newland. These comments echoed many of Phil's points from the EAW. Specifically, it raised concerns about the trust accounting sections, wanted broader signatory authority, and wanted the ability to use Micr toner on blank check stock. **RESPONSE:** DFI accepted and incorporated these comments.

The comment also asked to be able to convert files into an electronic format at any time. **RESPONSE:** Because DFI has concerns about active files being scanned and retained electronically, files cannot be scanned and electronically stored until they are completed and the trust account balance is zero.

4. **Comment:** Stan Pilon. This comment contained suggestions to a number of defined or undefined terms, both in the definitions section and in other sections.

**RESPONSE:** Many of the definitions mentioned were not substantively changed from the existing WAC, or had not previously been defined. Absent a compelling reason to change the definitions, DFI opted to leave the majority of the definitions intact and did not add some of the requested definitions.

The comment also raised concerns about the lack of definition for “satisfactory proof of your character and credit rating,” and felt that leaving this undefined would lead to an abuse of power by DFI. **RESPONSE:** Creating bright line rules for character and credit may provide more predictability to potential applicants, but it would also remove DFI’s discretion to do a case-by-case examination of applicants. Particularly in rough economic times, some otherwise qualified applicants may have negative credit marks based on events that are beyond their control. Leaving the rules as they are allows DFI to be flexible and respond to changing economic conditions and unexpected factual situations.

The comment pointed out that one of the application sections referred to DFI-provided fingerprint cardstock, while the others discussed FBI cardstock. **RESPONSE:** DFI accepted and incorporated this change.

The comment also raised a concern about the language in -210 referencing a location where an escrow agent holds him- or herself out to the public as being able to perform escrow services. **RESPONSE:** This section only addresses the need for an escrow agent to display its name in each of its offices. Absent a compelling reason for a change, DFI did not change the language.

The comment raised similar concerns to the trust accounting procedures as the first three commenters. **RESPONSE:** DFI incorporated the majority of these suggestions.

5. **Comment:** Joe Sargent. This comment raised some objections to the previous comment’s suggestions for amending definitions. **RESPONSE:** This comment was considered in determining whether or not to implement the changes suggested by the previous commenter.

6. **Comment:** Kevin Plachy. This comment raised a concern about the limitations on signatory authority over trust accounts. **RESPONSE:** DFI significantly broadened the availability of signatory authority.

7. **Comment:** Phil Dryden, EAW. The comment objects to requiring an operations report in quarterly reports. **RESPONSE:** This is a new requirement, as previously it was an optional section of the quarterly report. However, it is information that is necessary for DFI to make informed decisions about the escrow industry in Washington. All of Consumer Services’ other licensees currently provide this information, so DFI does not believe it is overly burdensome.

The comment asks that escrow instructions only state that a fee for closing services will be charged, with an itemized list of charges only provided in a closing statement.

**RESPONSE:** DFI does not believe the draft rule requires an itemized list of charges to be provided with the escrow instructions. The rule requires such an itemization only with the closing statement. Escrow agents were required to disclose any fees in writing under the old version of the WAC, so this does not represent a substantive change.

The comment suggested that original signatures of the parties should not be required where the escrow instructions do not require them. **RESPONSE:** DFI agrees, and incorporated this change.

Finally, the comment again raised concerns regarding the ability of DFI to hire outside professionals for examinations. **RESPONSE:** As discussed above, this language has existed in this form for a number of years without abuse.

8. **Comment:** Joe Sargent. The comment raised concerns about the fact that the HUD-1A doesn't require signatures, and about definitions of "closing date," "closing statement," and whether or not closing statements should reflect the actual date of a closing. **RESPONSE:** Some of these issues are driven by federal law. As for the others, absent a compelling reason to make changes, DFI elected to retain current definitions.