



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF CONSUMER SERVICES

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December 17, 2008

Concise Explanatory Statement

Pursuant to RCW 34.05.325(6)

Rule Amendments to the Consumer Loan Act (chapter 31.04 RCW), chapter 208-620 WAC

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

The rules must be amended, including amendments to reflect the passage of SHB 2770, codified at chapter 19.144 RCW, specifically, implementation of RCW 19.144.030 and 040. The bonding requirements are further amended to maintain adequate consumer protection while better reflecting the changing mortgage lending market, and are consistent with bonding requirements in other states. Other amendments are made for clarity and consistency.

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)).

1. 208-620-560(6). The CR-103 version includes a new section (6) that describes the circumstances under which a discount fee may be charged.

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

The comment period on the amended rules ran from the publication of the proposed rules in the Washington Register on October 22, 2008, until the close of the comment period, December 12, 2008. DFI often solicits comments before the filing of the CR-102 to better facilitate the negotiated rulemaking process. DFI received several comments before the filing of the CR-102 and those comments and disposition are also summarized below:

1. Matt Dawson, Paramount Equity, email dated April 14, 2008. Mr. Dawson comments on the detrimental effect of licensees not being able to charge loan processing or underwriting fees in addition to the loan origination fee.

The proposed rules clarify that the fee restrictions of WAC 208-620-560 apply to junior lien loans made by lenders or correspondent lenders under the act.

2. Bruce Fine, Aiken & Fine, P.S., Memorandum dated April 16, 2008. Mr. Fine comments on the importance of continuing to exempt commercial and business lenders from the act.

DFI will seek a statutory amendment to the act exempting commercial and business lending from the act.

3. Michael Healy, Healy Mortgage, email dated April 24, 2008. Mr. Healy likewise suggests that business, investment and agricultural purpose loans be exempt from the act. In addition, Mr. Healy suggests an exemption for private lenders. Mr. Healy suggests changing the statutory interest rate allowed under the act from 25 percent to 25 percent calculated by the APR. Finally, Mr. Healy suggests a change to the definition of "person."

DFI will seek a statutory amendment to the act for certain exemptions, including those expressed by Mr. Healy. No other changes based on Mr. Healy's comments were made.

4. Irwin Holzman, Reliable Credit Association, letter dated June 2, 2008. Mr. Holzman suggests changes to the bonding alternative allowed under the act.

DFI did not take any action on the proposed rules based on this comment.

5. Bob Hefty, Pacific Residential Mortgage, email dated June 4, 2008. Mr. Hefty seeks confirmation that the fee restrictions of WAC 208-620-560 apply only to junior lien mortgages.

The proposed rules clarify that the fee restrictions of WAC 208-620-560 apply to junior lien loans made by lenders or correspondent lenders under the act.

6. Derek Bolls, Cornerstone Mortgage Company, email dated June 18, 2008. Mr. Bolls seeks clarification that while the rules do not restrict the charging of discount points, discount points can be charged.

The proposed rules clarify that licensees acting as brokers under the act may not charge or receive discount fees.

7. James Brodsky, Weiner Brodsky Sidman Kider, letter dated June 24, 2008. Mr. Brodsky's extensive comment is about the impact of SB 6471 on licensees' ability to lend reverse mortgages. Mr. Brodsky seeks redress via rulemaking.

DFI, with input from the National Reverse Mortgage Lenders Association (NRMLA), is seeking a statutory amendment to the act to address reverse mortgages.

8. Rebecca Myers, CitiFinancial, email dated November 20, 2008. Ms. Myers suggests the following: (i) Strike the following sentence from WAC 208-620-230: “. . . to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change.” (ii) Add the following language to WAC 208-620-560(2). “A licensee may charge dishonored check fees in compliance with this subsection (2) on first lien loans.”

DFI did not take any action on the proposed rules based on this comment.

All comments are available in their entirety for review.

Oral comments received during the public hearing held November 25, 2008: None.

CONCLUSION

The proposed amendments reflect necessary amendments due to the passage of SHB 2770 and provide clarification and consistency to the rules. The bonding requirements are further amended and maintain adequate consumer protection while better reflecting the changing mortgage lending market. DFI made the proposed rules available to all interested parties, put the proposed amendments on the department website, and considered all comments received. The final proposed rules are the product of an open, deliberative process.