



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF CONSUMER SERVICES

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February 22, 2008

**Concise Explanatory Statement**

Pursuant to RCW 34.05.325(6)

Mortgage Broker Practices Act (MBPA) Rule Amendments  
chapter 31.45 RCW and chapter 208-630 WAC

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

The proposed amendments are necessary to clarify the department's interpretation of the Mortgage Broker Practices Act, to provide guidance to the regulated industry for certain industry practices, and to provide technical information to license applicants and other subject to the Mortgage Broker Practices Act .

**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))

The following sections of the proposed rules were changed due to comments and discussion during the public comment period.

WAC 208-660-250: Designated brokers -- General.

At (1)(b), the designated broker appointee must have two years additional experience instead of three years.

At (1)(e)(ii)(C), a corporate officer may sign corporate tax returns.

At (1)(g), you may not be eligible to become a designated broker if you have a history of unpaid debts.

WAC 208-660-300: Loan originators -- Licensing.

At (8)(a), the mortgage broker demand must authorize the loan originator to receive payment at closing.

At (8)(b), the loan originator must provide a copy of the settlement statement to the mortgage broker within 24 hours of receiving funds from closing.

At (2)(d), a loan originator is not eligible to receive a loan originator license if they have a certain amount of tax lien debt. A loan originator may not be eligible to receive a loan originator license if their financial history shows unpaid debt.

WAC 208-660-400: Reporting requirements and notices to the department.

At (13), the mortgage broker must give notice of a sale of the business to borrowers whose loans are in process, and to third party service providers who have or will provide services for loans in process, and third parties the mortgage broker owes money to.

WAC 208-660-430: Disclosure requirements.

At (5)(a), the YSP should be disclosed in the 800 series of lines on the GFE.

At (5)(b), the mortgage broker must direct the settlement service provider how to disclose the YSP.

**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 January 2, 2008 (WSR 08-01-038), until the close of the comment period, February 8, 2008.

**Written comments received at the Department of Financial Institutions, Tumwater, Washington.**

The following are excerpts. The full text of the comments are available for public inspection as part of the rulemaking file.

1. Regarding 208-660-440[sic](13): the reference to borrowers and third party providers in (c) and (d) are very broad terms and need more definition. Which borrowers, those who have closed loans in the past month or five years? Any who has applied for a loan is understandable as their loan is presumably in process, so there would be an infinite number of them. But which third party providers? All of them in my city, all with whom I've done business over the past ten years or just those to whom I owe money?

RESPONSE: The correct reference is 208-660-400(13). The proposed rule was changed based on this comment. See WAC 208-660-400 above.

2.1. Pages 35-36, WAC 208-660-250 (1) (e) (ii) (C) - I suggest that we permit a Corporate officer to sign the corporate tax returns in lieu of the DB. "(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company((-)); or"

RESPONSE: The proposed rule was changed based on this comment. See WAC 208-660-250(1)(e)(ii)(C) above.

2.2. Page 65, WAC 208-660-430, (5) Thank you for clarifying this. However, when it comes to the HUD-1 or equivalent settlement statement brokers can merely request (we've previously used the word "direct") the settlement agent to use the words "yield spread premium" and expressed as a dollar amount or dollar amount range. As the MB/LO does not prepare the HUD-1, the MB/LO cannot be held liable or accountable for such action.

RESPONSE: The proposed rules were not changed based on this comment.

2.3. Page 69, WAC 208-660-430, (15) I understood that the words "to you in excess of the amounts initially disclosed" were to be retained.

RESPONSE: The proposed rules were not changed based on this comment.

3. Regarding the proposed revision of WAC 208-660-008(5).

#### **The Amendment Would Effectively Repeal a Statutory Exemption**

The Companies believe that the proposed amendment to WAC 208-660-008(5) is inconsistent with the scope of the exemption provision in the Act. The language of RCW 19.146.120(1)(g) requires only that a lender be "*approved and subject to auditing*" by one or both of the Agencies. It in no way suggests that this exemption is restricted to "Agency only" sellers. However, the proposed amendment would unnecessarily and inappropriately narrow the statutory exemption in exactly that manner. As explained below, the Companies believe the effect of this change will be equivalent to a repeal of RCW 19.146.120(1)(g).

#### **The Amendment Is Unnecessary**

The implication in the proposed amendment is that the Agencies' oversight of approved lenders is limited to those aspects of the lender's operations that pertain solely to conforming loans. The Companies respectfully submit that this is an inaccurate perception.

### **The Division Already Has Substantial Authority Over Exempt Lenders**

In addition to the incorrect implication that oversight of the Agencies is ineffective, the proposed amendment also suggests a belief that the Division is unable to act against such misconduct. Nothing could be further from the truth.

Both the Act and WAC 208-660-008(5) *expressly provide* that an “Agency-exempt” lender must still comply with RCW 19.146.020 through 19.146.080, and the associated Division rules. These provisions define and regulate in detail acceptable practices for Washington mortgage lenders. The Act and the existing rule also clearly state that an Agency-exempt lender is also subject to the full investigation and enforcement authority of the director.

Adding a licensing requirement to this authority would do little to enhance it but would create a substantial administrative and financial burden on the Companies and, the Companies believe, many other similarly-situated lenders.

### **Conclusion**

The Companies respectfully urge the Department to consider the negative consequences of the proposed amendment to WAC 208-660-008(5) and delete the amendment from the final rules.

**RESPONSE:** The proposed rules were not changed based on this comment.

4. Regarding 208-660-250(1)(b): Is 5 years experience required? To me it reads that way; 3 in the industry plus 2 originating. Should it be 3 years... 2 of which...

**RESPONSE:** The proposed rules were changed based on this comment. See 208-660-250(1)(b) above.

4.1. Regarding 208-660-300(8)(b): I think it should be deleted altogether. I don't think we need to mandate internal business practices.

**RESPONSE:** The proposed rules were not changed based on this comment.

4.2 Regarding 208-660- 430(5): I'm in agreement with the way it is written. Most systems allow for the manual input of descriptions and amounts in the 800 series.

**RESPONSE:** The proposed rules were not changed based on this comment.

5. Regarding the proposed revision of WAC 208-660-008(5).

The mortgage Brokers practices Act, 19.146.020 (g) provided for an exemption from licensing for “any mortgage broker approved and subject to audit by the federal national mortgage association or the federal home loan mortgage corporation.. This exemption, if memory serves me correctly, was an acknowledgment of the addition financial strength and internal procedures and controls required to become an approved FNMA/FHLMC seller. To be approved the broker is required to have a \$250,000 net worth, written policies and procedure, written audit and

quality control procedure, fidelity bond of at least \$300,000 and experienced personnel with at least three years experience in origination and servicing. The exemption was not predicated on selling loans directly to either enterprise. I agree with the intent of the change. I have been a proponent of loan originator licensing since 1994. I do not feel this is an appropriate clarification or interpretation of the exemption.

RESPONSE: The proposed rules were not changed based on this comment.

Oral comments received during the public hearing held January 30, 2008, at Renton City Hall

1. Adam Stein, Commission Chair. Regarding 208-660-250 and the corresponding paragraph in 300 (financial background of designated brokers and loan originators). Make the section on unpaid debts discretionary. Use “may not” be eligible instead of “are not” eligible.

RESPONSE: The proposed rules were changed based on this comment. See WAC 208-660-250(1)(g) and 208-660-300(2)(d) above.

2. General discussion regarding loan originators being paid at closing (WAC 208-660-300(8)(a) and (b)). Suggest the mortgage broker must direct the settlement services provider to pay loan originators at closing.

RESPONSE: The proposed rules were changed based on this discussion. See WAC 208-660-300(8)(a) and (b) above.

3. Continuing discussion on this topic. Anne Pulitano, Commissioner. The loan originator should provide the copies of the settlement statements within twenty-four hours of receiving funds from closing.

RESPONSE: The proposed rules were changed based on this discussion. See WAC 208-660-300(8)(a) and (b) above.

4. Discussion of section on criminal background that was not included in the proposed rules and suggestions to put alternative language in the proposed rules.

RESPONSE: The proposed rules were not changed based on this discussion.

5. General discussion on proposed WAC 208-660-430(5), yield spread premium disclosure. Suggestions for new language to accommodate software capabilities and the Task Force legislation on this topic.

RESPONSE: The proposed rules were changed based on this discussion. See WAC 208-660-430(5) above.

6. John Long, attorney. I have concerns about WAC 208-660-530(8). Having these policies and procedures in place and in writing may cause other state agencies to make a determination that independent contractors working for the mortgage broker are actually employees, and penalize the mortgage broker accordingly. Suggestions for word changes to “quality control” not “supervision.”

RESPONSE: The proposed rules were not changed based on this comment.

6.1 Regarding WAC 208-660-250 and 300, financial background. How was the threshold amount determined? What that amount? Individual facts and circumstances should be considered, not just dollar amounts.

RESPONSE: General discussion on this topic. The proposed rules were not changed based on this discussion.

7. Mark Swanson, Avenue Mortgage. Regarding the yield spread premium requirement in WAC 208-660-430(5), brokers do not control the lender and may not have control over this issue. How does DFI deal with that?

RESPONSE: Deb Bortner, document your file. Adam Stein, include it in your broker’s demand. See WAC 208-660-430(5) above.

8. Shemariah Rice, Lakewood Processing. Regarding 208-660-300(8), I suggest the loan originator provide notice to the mortgage broker in advance of closing.

RESPONSE: The proposed rules were not changed based on this comment.

9. Jim Blodgett, Network Mortgage. Comments, and discussion of concerns about the licensing requirements with the changes to the exemption for Consumer Loan Act license holders (See WAC 208-660-008(3) and (4).

RESPONSE: The proposed rules were not changed based on this comment.

## **CONCLUSION**

The final proposed rules are appropriate and necessary, and provide clarification and consistency to the rules. DFI made the proposed rules available to all interested parties and the proposed rules were discussed at three separate commission meetings in addition to the hearing on the rules. The final proposed rules are the product of an open, deliberative process.