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Sara Rietcheck
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Re: Comments in response to proposed rulemaking to modify the definitions of "mortgage loan originator" and "loan originator" in Chapter 208-620 WAC (<http://www.dfi.wa.gov/documents/rulemaking/consumer-loans/2015/cla-proposed-rules.pdf>)

Dear Ms. Rietcheck:

The following comments are submitted on behalf of one or more clients of ours who operate digital advertising media (herein, "Advertiser" clients), in response to the above-referenced rulemaking currently underway.

Our Advertiser clients are not themselves in the business of making, negotiating, brokering, underwriting or assisting with loan transactions, nor processing loan applications. Instead, like newspapers, billboards, television networks, radio stations and myriad others whose basic business is to operate an advertising platform, our Advertiser clients operate platforms (such as websites and mobile apps) that may be used by businesses who genuinely are in the mortgage loan business to advertise their loan-related services. But the Advertiser clients have reason to be concerned that the interpretation and application of 208-620-010 WAC, as it would be modified by the proposed rule changes, could have the peculiar and unsettling effect of including Advertisers within the definition of "mortgage loan originators" or "loan originators," thereby unnecessarily requiring them to become licensed simply because they operate advertising platforms that sometimes are used by mortgage businesses to advertise their services.

To date, it has been troubling enough that Chapter 208-620 WAC, in defining "mortgage loan originator" and "loan originator," has departed from the corresponding definition applicable to

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the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the “SAFE Act”), by substituting “or” for the “and” of the SAFE Act regulation,* thus significantly broadening Washington’s “loan originator” and “mortgage loan originator” definitions and causing a material departure from the regulatory scheme of the SAFE Act and the goal of regulatory consistency.

* The Washington Administrative Code defines “mortgage loan originator” and “loan originator” as an individual who “. . . takes a residential mortgage application **OR** . . . offers or negotiates terms of a residential mortgage loan . . .” 208-620-010 WAC (emphasis added);

however,

the SAFE Act regulation’s corresponding definition (of a person engaged in the business of a loan originator) specifies an individual who “takes a residential mortgage application **AND** . . . offers or negotiates terms of a residential mortgage loan . . .” 12 C.F.R. 1007.102 (emphasis added).

The proposed change to 208-620-010 WAC, in attempting to clarify what conduct constitutes “offer[ing] or negotiate[ing] terms of a residential mortgage loan,” tracks similar language in the SAFE Act regulation—but without making any adjustment for the critical departure already effected when 208-620-010 WAC substituted “or” for the “and” of the SAFE Act regulation.

Rather than exacerbating this condition, 208-620-010 WAC should, at a minimum, include clarifications that persons operating advertising media -- insofar as so operating such media (*e.g.*, serving as a platform to carry advertisements) or essentially providing factual information – do not otherwise fall within the definition of a “mortgage loan originator” or “loan originator.”

As indicated above, the newly proposed definition for “offers or negotiates terms of a residential mortgage loan for compensation or gain” expands the scope of the Washington Consumer Loans Act, and, when taken together with the *existing* regulations under the Act, may result in bringing more individuals into the definition of “mortgage loan originator” or “loan originator” than is necessary or intended. This result would not further regulatory consistency and it would not be prudent, healthy, or appropriate for non-mortgage businesses.

On behalf of our Advertiser clients, we respectfully urge the Department of Financial Institutions to consider how broadly this proposed definition could be applied and all the different groups who could be adversely affected by a new and ill-fitting licensure requirement, and to at minimum exclude from the definition (of a “mortgage loan originator” or “loan originator”) individuals and groups insofar as they primarily operate advertising or informational platforms (whether digital or not) but otherwise are not substantively involved in the business of mortgage loans. As presently proposed, the amendment of 208-620-010 WAC could cause non-mortgage businesses concerned about such a licensing requirement, so awkward to and ill-fitted to their

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business and operations, to avoid doing business in the State of Washington and providing valuable services to its residents.

We respectfully request this proposed change to be omitted from the final rule, or tailored with a minimum requirement to establish a proper framework to allow consistent application across the mortgage marketplace and avoid unintended scope of coverage.

Sincerely,

A handwritten signature in black ink that reads "Jay N. Varon". The signature is written in a cursive, slightly slanted style.

Jay N. Varon

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