OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

FILED

07/27/2022 12:11 PM
ARCHIVES DIVISION
SECRETARY OF STATE

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILING CAPTION: Authorization to allow Oregon Licensed Loan Originators to Work Remotely

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/30/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Karen Winkel
503-947-7694
karen.j.winkel@dcbs.oregon.gov

350 Winter Street NE
Salem,OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/23/2022
TIME: 10:30 AM
OFFICER: Lauren Winters
ADDRESS: Labor & Industries Building
350 Winter St NE
Basement, Conference Room E
Salem, OR 97301
SPECIAL INSTRUCTIONS:
This is a hybrid meeting conducted in-person and virtually via Microsoft TEAMS.

Join by entering a meeting ID:
Meeting ID: 248 442 540 900
Passcode: jkGPDH

Or call in (audio only):
+1 503-446-4951,,986332449# United States, Portland
Phone Conference ID: 986 332 449#

NEED FOR THE RULE(S)

ORS 86A.136 and 86A.242 give the division authority to make, amend, and rescind such rules as are necessary to carry out the provisions of ORS 86A.095 to 86A.198. The rulemaking will permit residential mortgage loan activity to be conducted outside of an entity’s main place of business or branches. It allows licensed mortgage loan originators to work from their homes if they are adequately supervised by their employers and appropriate security measures are in place to protect consumers from harm. In short, the rulemaking will codify the Bulletin DFR 2020-6 regarding procedures that allow a mortgage loan originator to work from home without the home being licensed as a branch location.

Other state regulators and state legislatures have taken steps to update how the COVID-19 "work from home" mandates have reshaped the industry to reflect a mobile workforce and the new technologies that allow loan originators to work from their unlicensed homes without sacrificing consumer protection. For example, almost all documentation for consumer lending is digital and occurs without personal interaction. During the COVID-19 pandemic, the investment in technology and security procedures rapidly increased to allow for loan originators to work from unlicensed homes with minor disruptions in the mortgage lending industry. Regulators in a number of states such as Connecticut, Kansas, Maryland, Massachusetts, New Mexico, Vermont, and Washington now permanently allow licensees to originate residential mortgage loans from their home or other remote location without a branch office license.

The COVID-19 pandemic, which required many licensed loan originators to work from home regardless of whether the home was licensed as a branch, has caused state regulators and the residential mortgage lending industry to adjust their thinking as to whether it is permissible to allow loan origination activities from an unlicensed home location. The current issues before many states is whether licensing a home location should be required or whether licensed mortgage loan originators should be allowed to work from their unlicensed homes in a post-pandemic world; and, what conditions should be imposed if states allowed licensed loan originators to work from their unlicensed homes. For some states, an affirmative answer to the question of whether origination from a unlicensed home location is permissible will require a statutory amendment. Other states, like Oregon, have the statutory authority to promulgate rules allowing origination from an unlicensed home location.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website: https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

By allowing Oregon licensed loan originators to work from their homes or other unlicensed locations, the proposed changes to the branch licensing requirements are likely to assist in creating more diverse and inclusive companies providing residential mortgage lending services. Three particular groups are placed at a noticeable disadvantage when companies make "ability to travel daily to an office" a qualification for employment: (1) people with primary family care responsibilities (the majority of whom are women and in particular women of color); (2) people with physical disabilities; and (3) people commuting more than 90 minutes a day to work at a specific office location.

As they continue to make post-pandemic workforce decisions, mortgage bankers and mortgage brokers engaged in residential mortgage lending have the opportunity to use a variety of tools and options to promote a healthy and equal workforce, including creating job opportunities for communities of color who are less likely to be in remote-friendly jobs. The Rulemaking Advisory Committee (RAC) and the division looked at the racial equity impact of the proposed changes to the rules and answered the following questions: first, what are the racial equity impacts of this particular rule(s), policy, or decision; and, second, are there strategies to mitigate the unintended consequences.

What are the racial equity impacts of this particular rule(s), policy, or decision? In drafting the proposed changes to allow Oregon licensed loan originators to work from their homes, the division carefully considered how working remotely could cause any racial inequity. The first concern is whether working remotely could cause a "ZOOM" ceiling by preventing or making it difficult for Blacks, African Americans, Indigenous, Latin/o/a/x, Asians, Pacific Islanders, and other people of color by closing off opportunities for meeting people across the company, including exposure and visibility within the company. This could keep Black, African Americans, Indigenous, Latin/o/a/x, Asians, Pacific Islanders, and other people of color who work remotely from getting promotions and leadership positions in their organizations and the mortgage lending industry. For example, a U.K. government study found that those who worked from home were less than half as likely to get promoted than all other employees between 2012 and 2017. They were also 38% less likely on average to receive a bonus.

Are there strategies to mitigate the unintended consequences? To mitigate any unintended consequences for Blacks, African Americans, Indigenous, Latin/o/a/x, Asians, Pacific Islanders, and other people of color, the branch licensing rules give Oregon licensed mortgage bankers and mortgage brokers flexibility in developing a hybrid workplace that may increase employment opportunities for these groups. For example, there have been reports that remote work can, and has, supported diversity and inclusion in unexpected ways. Some Black employees have said that working from home has improved their day-to-day experiences, and that it is easier to focus without having to worry about casual racism that torpedoes their mental wellbeing and productivity.

Additionally, location bias and relocation costs can be eliminated when geographical barriers are removed; this allows companies to hire Blacks, African Americans, Indigenous, Latin/o/a/x, Asians, Pacific Islanders, and other people of color who have traditionally found it difficult to access mortgage lending jobs. Research shows that for some jobs, applicants who live even five to six miles away receive one-third fewer callbacks than those who live nearer the workplace, a location bias that researchers speculate is a result of the higher turnover rates associated with longer commutes. Research also suggests that for entry-level roles, Black candidates may be almost twice as likely as other candidates to be unwilling to relocate for a position if there is no stipend provided, since moving to a new city, especially one with a high cost of living, may not be financially viable. The proposed changes to the branch licensing rules may help lender initiatives to recruit and retain a more diverse workforce.

Further, according to information gathered by WorldBank.org, “increasing the presence of minority loan officers may improve credit access for Blacks, African Americans, Indigenous, Latin/o/a/x, Asians, Pacific Islanders, and other people of color. Minority loan applicants are 1.6% less likely to be rejected if their applications are handled by a minority loan officer than by a white loan officer. This reduction in rejection likelihood is most significant for Asian and Hispanic borrowers: Asian (Hispanic) borrowers are 4.2% (1.8%) less likely to be rejected if handled by a loan officer of the same race than by a white loan officer. The effect of racial proximity is more pronounced for lower-income borrowers.”

The WorldBank.org data also showed that “racial proximity increases the total loan volume provided to the same race borrowers. Within the same county and lending institution, minority loan officers originate 23.1% more loans to minority borrowers than do white loan officers over a half-year span. In addition to total volume, loan size dispersion is another important dimension to examine as the shortage of small mortgages has been a rising concern in many communities across the nation. We find that loans originated to minority borrowers from minority loan officers are more dispersed in size compared with those from white loan officers. On average, the loan size is 5.6% and 2.1% smaller at the 5th and 10th percentiles, respectively, but 4.1% and 5.8% larger at the 90th and 95th percentiles, respectively.”

FISCAL AND ECONOMIC IMPACT:

Based on information currently available to the division, it is unlikely that the proposed rules would have a fiscal or economic impact on state agencies, local government units, or the public. The proposed changes to the rules do not add any new requirements on public entities. Other state agencies and local governments are not involved in enforcing the licensing requirements contained in the Oregon Mortgage Lender Act and are not expected to incur any fiscal impact from the adoption of the proposed rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Based on information currently available to the division, it is unlikely that the proposed rules would have a fiscal or economic impact on state agencies, local government units, or the public. The proposed changes to the rules do not add any new requirements on public entities. Other state agencies and local governments are not involved in enforcing the licensing requirements contained in the Oregon Mortgage Lender Act and are not expected to incur any fiscal impact from the adoption of the proposed rules.

(2)(a) The department estimates that the majority of Oregon licensed mortgage companies that are responsible for supervising Oregon licensed mortgage loan originators meet the definition of “small business” under ORS 183.310. As of April 2022, the Nationwide Mortgage Multistate Licensing System and Registry (NMLS) database shows that 996 of the 1,028 Oregon licensed mortgage lending companies employ 50 or fewer Oregon licensed loan originators. Based on feedback from the RAC, none of the regulated entities will be adversely affected by the proposed changes to the rules because they give companies the option of allowing their sponsored loan originators to work from home or another unlicensed location.

(2)(b) Based on the available information and feedback from the RAC, it is unlikely that the proposed rule will require Oregon licensed mortgage lenders or loan originators to file additional reports, increase recordkeeping activities, or perform other administrative activities in order to comply with the proposed rule.

(2)(c) Based on available information and feedback from the RAC, the proposed rule will not require Oregon licensed mortgage lenders with fewer than 50 employees to acquire additional equipment or supplies or incur increased labor costs or administration in order to comply with the proposed rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Northwest Credit Union Association, whose membership includes Oregon chartered credit unions with fewer than 50 employees, as well as a licensed Oregon mortgage lender with fewer than 50 employees and two attorneys who represent mortgage lenders with less than 50 employees were consulted as part of the proposed rules’ development.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-860-0030, 441-860-0040

AMEND: 441-860-0030

RULE SUMMARY: Allows Oregon licensed loan originators and employees to work from home.

CHANGES TO RULE:

441-860-0030
Branch Office Licensing ¶

(1) If a mortgage banker or mortgage broker intends to operate a branch office, the mortgage banker or mortgage broker shall obtain a license for the branch office prior to originating loans from the branch office by submitting the licensing fee specified in OAR 441-860-0101 and submitting a Form MU3 to the Nationwide M~~ortgage~~

~~Licensing System and Registry~~ultistate Licensing System (NMLS).¶
(2) Upon satisfaction of the requirements listed in section (1), the director shall issue a separate branch office license.¶
(3) A licensed mortgage loan originator may originate loans from a location other than from a licensed branch office if the location is the licensed mortgage loan originator's home; the licensed mortgage loan originator is an employee of a mortgage banker or mortgage broker; and the mortgage banker or the mortgage broker complies with OAR 441-860-0040, as applicable.¶
(4) If a mortgage banker or mortgage broker intends to allow a licensed mortgage loan originator to originate loans from the licensed loan originator's home, the mortgage banker or mortgage broker shall:¶
(~~2~~a) ~~Upon satisfaction of the requirements listed in section (1), the director shall issue a separate branch office license~~Have appropriate policies and procedures in place to supervise the activities of loan originators and employees working from home including, but not limited to, data security measures to protect consumers' personal information and compliance with OAR 441-860-0040. ¶
(b) Upload a copy of the policies and procedures required by section (4)(a) to the NMLS to Document Uploads under Company Staffing and Internal Policies.¶
(c) Ensure that all underlying origination records can be made available at a licensed location in the United States. ¶
(5) Loan originators and employees who work from home are prohibited from keeping any physical business records at any location other than a licensed location. ¶
(6) Loan originators and employees who work from home may engage with consumers for loan origination purposes at the home of the loan originator or employee by means of conference telephone or similar communications equipment that allows all persons participating in the visitation to hear each other, provided that participation is controlled and limited to those entitled to attend, and the identity of participants is determinable and reasonably verifiable.¶
(7) Loan originators and employees who work from home are prohibited from engaging with consumers for loan origination purposes at the home of the loan originator or employee, unless the home is licensed as a branch.
Statutory/Other Authority: ORS 86A.1~~0~~36, 86A.~~136~~242
Statutes/Other Implemented: ORS 86A.1~~03~~66(1)

AMEND: 441-860-0040

RULE SUMMARY: Sets forth mortgage broker/mortgage bankers standards and oversight of loan originators and employees who work from home.

CHANGES TO RULE:

441-860-0040
Supervision of Branch Offices, Home Locations, and Mortgage Loan Originators ¶

(1) A mortgage banker or a mortgage broker must diligently supervise and control every mortgage loan originator employed by the mortgage banker or the mortgage broker in the mortgage banker or mortgage broker's principal place of business and at each branch office or mortgage loan originator's home, if the mortgage loan originator is permitted to work from home.¶
(2) A mortgage banker or mortgage broker must personally supervise or designate a control person to supervise ~~each branch offic~~every mortgage loan originator and each branch office or, if a mortgage loan originator is working from home, the mortgage loan originator's home to ensure compliance with ORS 86A.095 through 86A.242 and OAR chapter 441, divisions 850 through 885, as applicable.¶
(3) In order to diligently supervise and control a mortgage loan originator employed by the mortgage banker or the mortgage broker, the mortgage banker or mortgage broker shall:¶
(a) Ensure that mortgage loan originators, and persons required to be licensed as mortgage loan originators, employed by the mortgage banker or mortgage broker obtain and maintain a license under ORS 86A.200 through 86A.242 and OAR chapter 441, division 880.¶
(b) Establish, maintain and enforce written procedures to supervise the activities of mortgage loan originators employed by the mortgage banker or mortgage broker and other associated persons that are subject to its supervision and to supervise the operations of each office of the mortgage banker or mortgage broker transacting loans with Oregon consumers. The procedures shall be reasonably designed to achieve compliance with applicable Oregon and federal lending laws and rules, including ORS 86A.095 through 86A.198.¶
(c) Review the activities of each office transacting loans with Oregon consumers, which shall include the examination of customer loan files, including closed and opened files. The reviews shall be reasonably designed to assist in detecting violations of, preventing violations of and achieving compliance with applicable mortgage lending laws, regulations and rules, as well as detecting and preventing irregularities or abuses. Each mortgage broker shall retain a record of the dates and findings of each review. The duties of this rule may be delegated to a qualified supervisor.¶
(d) Provide a copy of the procedures required by this rule to every mortgage loan originator employed by the mortgage banker or mortgage broker in written or electronic format.¶
(e) Ensure that mortgage loan originators obtain training to address deficiencies identified by the mortgage banker or mortgage broker in loan file and operations reviews or make up deficiencies in continuing education as necessary.¶
(f) Establish procedures for handling consumer complaints and develop procedures to identify the types of consumer complaints that must be forwarded to a supervisor for review. Complaints that must be forwarded to a supervisor include complaints about material changes in loan terms, fees or expenses, or material omissions about loan terms, fees or expenses. The mortgage banker or mortgage broker shall also develop procedures for investigating, responding to and keeping a record of complaints forwarded to a supervisor.¶
(g) Visit at least annually each branch the mortgage banker or mortgage broker licenses in Oregon ~~to review compliance with the procedures listed in this section~~or the mortgage loan originator's home, if the mortgage loan originator is permitted to work from home, to review compliance with the procedures listed in this section. Annual visit of a home may be conducted by means of video or telephonic conference or similar communications equipment that allows all persons participating in the visitation to hear each other, provided that participation is controlled and limited to those entitled to attend, and the identity of participants is determinable and reasonably verifiable.¶
(4) In establishing the procedures in section (2) of this rule and in determining the frequency of office or home reviews, the mortgage banker or mortgage broker shall consider the following:¶
(a) The number of loan transactions made by the mortgage banker or mortgage broker;¶
(b) The number of office locations transacting loans with Oregon consumers;¶
(c) The number of affiliated persons assigned to each location;¶
(d) The nature and complexity of the loan transactions that the mortgage banker or mortgage broker predominantly makes;¶
(e) The number of mortgage loan originators assigned to a location;¶
(f) The number of mortgage loan originators assigned to the supervision of an individual supervisor; and¶

(g) The results of previous office reviews.¶
(5) In establishing the procedures in section (2) of this rule and in determining the number of files from each mortgage loan originator to be reviewed, the mortgage banker or mortgage broker shall consider the following:¶
(a) The knowledge and years of lending experience of a mortgage loan originator;¶
(b) The disciplinary history of and the number of complaints received about a mortgage loan originator;¶
(c) The experience and level of sophistication of the borrowers of a mortgage loan originator, if the mortgage banker, mortgage broker or mortgage loan originator predominantly serves specific segments of society;¶
(d) The nature and complexity of the loan transactions that the mortgage banker or mortgage broker predominantly makes; and¶
(e) The results of previous file reviews for a particular mortgage loan originator.¶
(6) The mortgage banker or mortgage broker is subject to disciplinary action of the director for any violation of ORS 86A.095 through 86A.198 or corresponding rules committed by a mortgage loan originator authorized to make or negotiate residential mortgage loans for the mortgage banker or mortgage broker, whether or not that accountability is documented in any written agreement.
Statutory/Other Authority: ORS 86A.136, 86A.242
Statutes/Other Implemented: ORS 86A.1~~15~~66(1)