

August 21, 2020

Matthew Lynch
Chief Legal Counsel
Wisconsin Department of Financial Institutions
4822 Madison Yards Way, North Tower
Madison, WI 53705

Re: Licensee operations conducted via telework

Dear Mr. Lynch:

We are writing on the behalves of the American Financial Services Association (AFSA)¹ and the Wisconsin Financial Services Association (WFSA) regarding the ability of licensees to conduct operational and licensable activities remotely through a licensed business location without being physically present at that location. We appreciate your department's no-action position concerning the ability of employees of licensed mortgage loan originators to work from a location that is not a licensed or registered office or branch office. We also appreciate your willingness to work with other consumer credit licensees under the Licensed Financial Services Division and accept requests involving the relocation of employees or licensable activities. It will continue to be in the best interest of consumers and employees to continue remote work well beyond the initial phases of reopening. As licensees have conducted these activities safely and effectively at home during the crisis, we request that you permanently extend your authorization beyond the pandemic and allow employees of all license types to work from home without the need to obtain branch licenses for employee homes.

Preliminary comments.

AFSA's 350+ member companies provide consumers with many types of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, leases and payment cards. They serve the entire credit spectrum, from non-prime to super-prime consumers. Among your state's licensees, AFSA members include traditional installment lenders licensed under Wis. Stat. § 138.09, sales finance companies and lessors licensed under Wis. Stat. § 218.0114, and mortgage lenders and servicers licensed under Wis. Stat. § 224.72.

AFSA and WFSA members remain committed to safeguarding employees and customers, mitigating risks to the continuity of operations, and ensuring credit remains available to consumers who need it, and this must continue to be accomplished through remote work. Technology advancements have made working remotely more effective than ever and mostly indistinguishable from on-site operations. For instance, loans may be closed remotely with electronic signatures and employees have secure remote access to company systems through virtual private networks (VPNs). Prior to the pandemic, many of our members had already

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice.

implemented the ability to use these technologies and then increased their capabilities to safely continue operations during the pandemic-related state of emergency. For many members, adopting these new technologies has been a costly and time-consuming endeavor, but customers have greatly appreciated both the convenience and health benefits of remote operations. And, licensees have demonstrated—out of necessity—that nearly all critical operational functions can take place through teleworking, and it is of critical importance that they be able to do so. Protection of sensitive information remains a priority for our members, and the pandemic provided an opportunity for financial institutions to successfully test the use of technology to ensure data protection and transition to remote work. Our members are prepared and desire to continue work from home strategies to optimize future operations.

Remote work is the best way to maintain continuity of operations for customers and ensure the safety of employees and customers. With states reopening at different paces, companies face a patchwork of state and local laws affecting in-person interactions, which may mean significant differences in operational guidelines between locations. Moreover, companies are taking steps to implement facility changes necessary to create workspaces that meet new health guidelines to allow for increased spacing between employees. Not only do these changes take time to implement, but they also include key recommendations for limiting in-person operations, with telework available where feasible. Most importantly, remote work allows businesses to make critical safety accommodations for employees who may be higher-risk or those who care for higher-risk individuals.

Wisconsin law allows teleworking from licensed locations.

We believe that employees should be allowed to permanently continue to telework through a licensed location of the financial institution without being physically present at that location and that applicable licensing statutes permit the Department to allow such teleworking through a licensed location.

Significantly, employees working from home are not setting up a separate place of business or location, and there is no representation to the public or customers that their home is a separate place of business or location of the licensee. These employees are not meeting customers in their homes. They are not keeping records in their homes. They are performing the same telephone/internet-based functions they would have performed if they were sitting in the licensed location. Importantly, employees are supervised as they would be at the licensed location, and the licensee's records are not kept at the remote location. Allowing employees to perform telephone/internet-based functions from home merely allows a licensee to be more flexible in its employment practices (expected by most employees in the 21st century), while still providing the same secure services to the public. That is, all necessary infrastructure to operate will continue to reside in and be maintained by a licensed location.

Sales Finance Companies. The applicable licensing statutes permit teleworking through a licensed location. First, with respect to sales finance companies, Wis. Stat. § 218.0114(17) requires only that a sales finance company license “specify the location of the office or

branch . . .” As indicated above, in the case of employee telework, the “office” or “branch” remains the licensed location – that is, the bricks and mortar office that houses the company’s operational infrastructure and records, including, from time to time, its employees. Furthermore and importantly, from the standpoint of the Wisconsin consumer, all evidence of the transaction (*e.g.* retail installment sales contract, correspondence, etc.) will continue to showcase operation out of the licensed location. All licensable activity will continue to arise through the licensed office or branch, and, as required by the applicable statutes, those offices and branches will be properly licensed.

The physical location of employees is not the dispositive factor in the determination of the “office” or “branch” location. To render the employee’s physical location the dispositive factor in the determination of the location of the “office” or “branch” is to overlook the existing and ever-changing employment landscape and remote capabilities of this century. Furthermore, if physical location was determinative of “office” or “branch” location, that would require each employee’s physical location to serve as an “office” or a “branch” of the sales finance company. This would be impractical. For example, one licensee would be responsible for managing an extraordinary number of offices or branches in different (and possibly changing) locales. Furthermore, management of such offices or branches would be onerous when employees leave the employ of the company. Certainly, in addition to support derived from the plain language of the statute, policy supports continued telework through the licensed location.

Mortgage bankers. With respect to mortgage bankers (*i.e.*, mortgage lenders and servicers), by way of background, Wis. Stat. § 224.72(2m) requires a license for a principal office and a separate license for each branch office. A branch office, which may be a residence, is an office or place of business where a mortgage lender or servicer “engages in the mortgage loan business.” Wis. Stat. §§ 224.72(2m) & 224.71(1c). A mortgage loan originator—an individual who is involved in the origination of the loan—“shall be assigned to and work out of a” licensed office or branch, which “shall either be the mortgage loan originator’s residence or be within 100 miles of the mortgage loan originator’s residence.” Wis. Stat. § 224.73(5).

Mortgage loan originator employees who are teleworking will still be assigned to and will remotely work out of their designated (bricks and mortar) branch office, and, as noted above, all mortgage loan business will be conducted through the licensed location. No customer would visit the remote location and all corporate infrastructure and records will be maintained at the licensed location and remain accessible to the Department as required by law. Finally, the mortgage banker will continue to be responsible for, and supervise the acts of, any employee working for it, including a mortgage loan originator, consistent with Wis. Stat. § 224.73(1). Allowing employees to telework on a permanent basis from their designated “branch office” is permissible under the plain language of the statutes, as the branch office – where the company infrastructure and records are maintained – is where mortgage loan originators will “engage[] in the mortgage loan business.” As further described above, the physical location of the individual employee is not dispositive in this determination. Any interpretation to the contrary would be incompatible with the existing employer landscape and remote capabilities of our time, and simply impractical, as delineated herein. To the extent the mortgage banker desired to convert

the employee's home into a licensed branch so that the licensable activities can take place directly in that location, a mortgage banker will seek and obtain the proper license.

Traditional Installment Loan Companies. Finally, Wis. Stat. § 138.09, governing our traditional installment loan company members, provides that a company's "license shall not be assignable and shall permit operation under it only at or from the location specified in the license at which location all loans shall be consummated . . ." Wis. Stat. § 138.09(3)(c). As noted above, a company with an employee teleworking from a licensed location continues to *operate* and *consummate loans* under its license from the licensed location. The loan company's operational infrastructure and records are maintained at a licensed location and, therefore, any work performed under that license is performed at the licensed location. As further described in detail above, the employee's physical location is not dispositive in determining the location out of which the company operates and any interpretation to the contrary is not tenable.

Alternatively, Wis. Stat. § 138.09(3)(c) provides that "this provision shall not prevent the licensee from making loans under this section which are not initiated or consummated by face to face contact away from the licensed location if permitted by the division in writing or by rule or at an auction sale conducted or clerked by a licensee." *Id.* Thus, to the extent teleworking could be considered making loans away from the licensed location, the statute expressly gives the Department authority to permit licensees the right to do so without any temporal restrictions.

Teleworking as outlined above is not only permitted under the law but also satisfies the spirit of the law. The historical purpose for licensing a lender's place of business was to ensure records were maintained in a location to which DFI had access and to prohibit the peddling of loans to people in public away from the lender's place of business. Allowing employees to work from home through a licensed location will not defeat these twin aims of licensing; as noted, records will be maintained only at the licensed location and no loan or other extension of credit will be consummated away from a licensed location.

Conclusion.

Therefore, licensees should be permitted to conduct operational and licensable activities—including loan servicing, credit decisioning, funding and collections—via telework, as these activities can be safely accomplished in this manner, provided that the licensee fulfills certain conditions to ensure the protection of consumers and to preserve regulatory supervisory authority. We believe the following best practices would achieve these goals and allow licensees to maintain operations:

- 1) In-person customer interactions will not be conducted at the remote location;
- 2) Sensitive customer information will be protected consistent with the licensee's existing cybersecurity protocols for on-site operations;
- 3) Risk-based monitoring and oversight processes will be followed; and

- 4) Physical records will not be maintained at the remote location; and information regarding the specific activities conducted via telework will be maintained and available upon request.

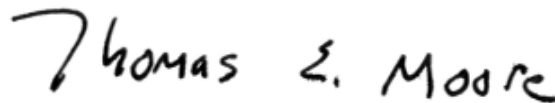
With that in mind, we respectfully request confirmation that employees of licensees may permanently continue to utilize the technology investments made to support telework during the pandemic so long as the standards outlined above are followed. We also request approval that licensable activities—including, but not limited to, loan servicing, credit decisioning, and collections—can permanently take place remotely under the applicable laws and regulations with appropriate safeguards.

Thank you for your attention to this matter. If you have any questions about how AFSA or WFSA can be of any further assistance to you as you move forward, please do not hesitate to contact us.

Sincerely,



Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006
dfagre@afsamail.org



Thomas Moore
Executive Director
Wisconsin Financial Services Association
22 East Mifflin, Suite 1010
Madison, WI 53703
wfsa@wicable.net