

sions of this section, all devices must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

- (1) Conformance to Federal Motor Vehicle Safety Standards, or, if none,
- (2) Conformance to current standards and specifications of the Society of Automotive Engineers, or, if none,
- (3) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

[Statutory Authority: RCW 46.61.688, 01-11-118, § 204-38-050, filed 5/22/01, effective 6/22/01. Statutory Authority: RCW 46.37.005, 46.37.280, 00-03-023, § 204-38-050, filed 1/10/00, effective 2/10/00. Statutory Authority: RCW 46.37.320, 88-15-055 (Order 88-02-ESR), § 204-38-050, filed 7/18/88. Statutory Authority: RCW 46.37.280, 81-10-038 (Order 81-04-01), § 204-38-050, filed 4/30/81; 80-06-083 (Order 80-05-2), § 204-38-050, filed 5/28/80.]

## Chapter 204-96 WAC VEHICLE IMPOUNDS

### WAC

204-96-010

Vehicle impounds.

**WAC 204-96-010 Vehicle impounds.** When a driver of a vehicle is arrested for a violation of:

RCW 46.61.502	Driving under the influence,
RCW 46.61.504	Physical control of vehicle under the influence,
RCW 46.20.342	Driving while license suspended or revoked,
	Operation of motor vehicle under other license/permit prohibited while suspended or revoked,

the arresting officer shall cause the vehicle to be impounded.

If the driver is arrested for a violation of RCW 46.20.342 (1)(c) (3rd degree suspended/revoked) and has no convictions for violations of RCW 46.20.342 in the past five years, the vehicle shall be impounded, but no suspended driver hold shall be placed on the vehicle. If the driver is also the registered owner then the vehicle shall be held until all outstanding penalties, fines, and forfeitures owed by him/her are satisfied. The driver/registered owner must present proof from a court of law that he/she has no outstanding penalties, fines, or forfeitures.

If the driver is arrested for a violation of RCW 46.20.342 (1)(c) (3rd degree suspended/revoked) and has any prior convictions for violations of RCW 46.20.342 in the past five years, the vehicle shall be held for thirty days.

If the driver of the vehicle is arrested for a violation of RCW 46.20.342 (1)(a) or (b) (1st or 2nd degree suspended/revoked) and has no convictions for violations of RCW 46.20.342 in the past five years, the vehicle shall be held for thirty days.

If the driver of the vehicle is arrested for a violation of RCW 46.20.342 (1)(a) or (b) (1st or 2nd degree suspended/revoked) and has been convicted of a violation of

RCW 46.20.342 (1)(a) or (b) in the past five years, the vehicle shall be held for sixty days.

If the driver of the vehicle is arrested for a violation of RCW 46.20.342 (1)(a) or (b) (1st or 2nd degree suspended/revoked) and has been convicted of a violation of RCW 46.20.342 (1)(a) or (b) two or more times in the past five years, the vehicle shall be held for ninety days.

The release of all vehicles impounded under this WAC shall be governed by RCW 46.55.120. Commercially rented vehicles may be impounded, however no suspended driver holds shall be placed upon the vehicle. The rental company shall be notified by phone.

A vehicle may be released prior to the mandated hold period if the employer or spouse of the arrested driver establishes significant economic or personal hardship with the district commander of the district in which the vehicle was impounded. In making a hardship determination, the district commander shall consider public safety factors, including the driver's criminal history and driving record. All hardship release requests shall be in writing. Any denial or approval of a hardship release shall be in writing and shall include factors considered by the district commander in reaching the decision.

A vehicle may be released prior to the mandated hold period if the registered owner of a vehicle loaned to another person is able to demonstrate to the district commander of the district in which the vehicle was impounded that he/she had no knowledge that the person to whom the vehicle was loaned did not have valid driving privileges within the state of Washington, is willing to swear to this lack of knowledge under penalty of the perjury laws of the state of Washington and further agrees that this hardship determination, if allowed, is available only one time in the state of Washington. The registered owner of the loaned vehicle also agrees that he/she shall pay any and all towing fees, storage fees and administrative fees to the towing company before the vehicle is released. In addition, in the event a hardship is granted, the registered owner of the loaned vehicle agrees that he/she will comply with the conditions set forth on the form(s) provided by the Washington state patrol prior to loaning the vehicle to any individual in the future.

[Statutory Authority: RCW 46.55.113 and 46.55.120, 01-05-098, § 204-96-010, filed 2/20/01, effective 3/23/01; 00-18-006, § 204-96-010, filed 8/24/00, effective 8/24/00; 99-18-026, § 204-96-010, filed 8/24/99, effective 9/24/99.]

## Title 208 WAC FINANCIAL INSTITUTIONS, DEPARTMENT OF

### Chapters 208-418

**Fees charged to credit unions and other persons.**

### 208-460

**Member business loans.**

### 208-512

**Banks and trust companies.**

### 208-514

**Mutual savings banks.**

### 208-528

**New state banks and trust companies—  
Application and investigation.**

208-532	Establishment of alien banks in Washington—Procedure.
208-544	Schedule of costs of examinations.
208-556	Small business administration 7(A) loan guaranty program nondepository lenders—Licensing and regulation.
208-586	Examination and supervision fees for savings and loan associations.
208-620	Washington Consumer Loan Act.
208-630	Check cashers and sellers—Regulation of.
208-660	Mortgage brokers and loan originators—Licensing.
208-680A	Escrow—Organization and administration.
208-680B	Escrow—Licensing and examination.
208-680C	Escrow—Escrow agent office.
208-680D	Escrow—Records and responsibilities.
208-680F	Escrow—Financial responsibility.
208-680G	Examinations, investigations, enforcement, sanctions, and costs.

### Chapter 208-418 WAC

### FEES CHARGED TO CREDIT UNIONS AND OTHER PERSONS

(Formerly chapter 419-18 WAC)

#### WAC

208-418-010	Definitions.
208-418-020	Collection of fees.
208-418-040	Quarterly asset assessments.
208-418-050	Pass through of attorney general costs.
208-418-060	Repealed.
208-418-070	Other fees.
208-418-090	Rate increase.
208-418-100	Waiver of fees.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-418-060	One-time special assessment for fiscal 1997. [Statutory Authority: 1996 c 274, 96-12-058, § 208-418-060, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-060, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-060, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-060, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-060, filed 9/26/83.] Repealed by 01-12-004, filed 5/23/01, effective 6/23/01. Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.]
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**WAC 208-418-010 Definitions.** Unless the context clearly requires otherwise, as used in this chapter:

(1) "Credit union" includes a Washington credit union, an out-of-state credit union and a foreign credit union.

(2) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction, that is operating a branch in Washington in accordance with RCW 31.12.471.

(3) "Hourly fee" means a fee of \$57.42 per hour per examiner or other staff person of the division.

(4) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or U.S. territory or possession, that is operating a branch in Washington in accordance with RCW 31.12.471.

(5)(a) "Total assets" of a Washington credit union includes all assets of the credit union as reported on the credit union's most recent form 5300 or similar financial report.

(b) "Total assets" of an out-of-state or foreign credit union is derived from the following fraction:

$$\frac{\text{Total assets} \times \text{in-state branch shares and deposits}}{\text{Total shares and deposits}}$$

"Total assets" and "shares and deposits" include respectively all assets and shares and deposits as reported on the credit union's most recent form 5300 or similar financial report.

(6) "Washington credit union" means a credit union organized and operating under chapter 31.12 RCW.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-010, filed 5/23/01, effective 6/23/01.]

**WAC 208-418-020 Collection of fees.** Chapter 31.12 RCW authorizes the director to charge fees to credit unions and certain other persons in order to cover the costs of the operation of the division of credit unions and to establish a reasonable reserve for the division. As set forth in more detail in this chapter, the fees for this purpose shall consist of:

(1) Quarterly asset assessments charged to credit unions;

(2) Charges to a credit union for costs incurred by the division for certain types of attorney general or special counsel assistance in regard to the credit union; and

(3) Certain other fees charged by the director.

The director may waive all or any portion of any fee payable by a credit union or other person.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-020, filed 5/23/01, effective 6/23/01. Statutory Authority: 1996 c 274, 96-12-058, § 208-418-020, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-020, filed 2/28/95, effective 3/31/95. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-020, filed 9/26/83; 82-13-016 (Order 82-5), § 419-18-020, filed 6/7/82.]

### WAC 208-418-040 Quarterly asset assessments. (1)

The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments.

(2)	Credit Union's Total Assets	Quarterly Asset Assessment
over \$500M		\$18,883 + 0.00001543 x total assets over \$500M
over \$100M up to \$500M		\$5,250 + 0.00003408 x total assets over \$100M
over \$25M up to \$100M		0.00005250 x total assets
over \$10M up to \$25M		\$1,157
over \$2M up to \$10M		\$771
over \$500K up to \$2M		\$514
up to \$500K		\$0
M = Million K = Thousand		

(3) Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter. A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

(4) From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, off-site monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-040, filed 5/23/01, effective 6/23/01. Statutory Authority: 1996 c 274. 96-12-058, § 208-418-040, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-040, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-040, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-040, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-040, filed 9/26/83; 82-13-016 (Order 82-5), § 419-18-040, filed 6/7/82.]

**WAC 208-418-050 Pass through of attorney general costs.** (1) The director will charge each credit union the actual cost incurred by the division of credit unions for certain legal assistance rendered by an assistant attorney general or special counsel in regard to the credit union. Legal assistance includes legal assistance rendered in connection with: Supervisory committee meetings and board meetings; receiverships, conservatorships, liquidations and declarations of insolvency; enforcement agreements or actions; collection actions; administrative hearings; and opinions requested by a credit union or the division of credit unions. Charges are due upon receipt of billing from the division.

(2) The division will notify a credit union before the division incurs expense for legal assistance which may be charged to the credit union under this section.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-050, filed 5/23/01, effective 6/23/01. Statutory Authority: 1996 c 274. 96-12-058, § 208-418-050, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-050, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-050, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-050, filed 9/26/83.]

**WAC 208-418-060 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 208-418-070 Other fees.** (1) The director will charge hourly fees as follows:

(a) An hourly fee will be charged to a person other than a credit union or a subsidiary of one or more credit unions for each electronic data processing examination of the person by the division of credit unions.

(b) An hourly fee will be charged to a credit union for the processing of the credit union's application to add a community group to its field of membership.

[2002 WAC Supp.—page 514]

(c) An hourly fee will be charged to a credit union for a fraud investigation of the credit union and/or persons involved with the credit union by the division.

(d) An hourly fee will be charged to an out-of-state or foreign credit union for examination and supervision by the division under WAC 208-418-040(4).

(e) An hourly fee will be charged to an out-of-state or foreign credit union for the processing of the credit union's application to operate a branch in this state.

(f) An hourly fee will be charged to other divisions or agencies for examinations, investigations, or similar undertakings performed on their behalf by the division.

(2) In addition, the director will charge a credit union or other person for the actual cost incurred by the division for an examination or investigation of the credit union or person performed under personal services contract by third parties.

(3) Charges under this section are due upon receipt of billing from the division.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-070, filed 5/23/01, effective 6/23/01. Statutory Authority: 1996 c 274. 96-12-058, § 208-418-070, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-070, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-070, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-070, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-070, filed 9/26/83.]

**WAC 208-418-090 Rate increase.** The division intends to increase its assessment and fee rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of assessments and fees each fiscal year during the 2001-03 biennium.

(1) On July 1, 2001, and July 1, 2002, the fee and assessment rates under WAC 208-418-010(3) and 208-418-040, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-090, filed 5/23/01, effective 6/23/01.]

**WAC 208-418-100 Waiver of fees.** The director may waive any or all of the fees and assessments imposed under WAC 208-418-040 and 208-418-070, in whole or in part, when he or she determines that both of the following factors are present:

(1) The credit union program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-100, filed 5/23/01, effective 6/23/01.]

**Chapter 208-460 WAC**  
**MEMBER BUSINESS LOANS**

**WAC**

208-460-010	What is a member business loan?
208-460-020	What member business loans are prohibited?
208-460-030	What are the requirements for MBL development and construction lending?
208-460-040	How do you implement a member business loan program?
208-460-050	What must your member business loan policy address?
208-460-060	What are the collateral and security requirements?
208-460-070	How much may a member or associated members borrow?
208-460-080	How do you calculate the aggregate fifteen percent limit?
208-460-090	What waivers are available?
208-460-100	How do you obtain a waiver?
208-460-110	How do I classify member business loans so as to reserve for potential losses?
208-460-120	How much must I reserve for potential losses?
208-460-130	What is the aggregate member business loan limit?
208-460-140	Are there any exceptions to the aggregate MBL limit?
208-460-150	How do I obtain an exception?
208-460-160	What are the recordkeeping requirements?
208-460-170	Definitions.

**WAC 208-460-010 What is a member business loan?**

(1) **Definition of MBL.** "Member business loan" or "MBL" includes any loan, line of credit, letter of credit, or any unfunded commitment to make a loan, where the borrower intends to use the proceeds for any of the following purposes:

- (a) Commercial;
- (b) Corporate;
- (c) Investment property;
- (d) Business venture; or
- (e) Agricultural.

(2) **Exemptions.** The following are not member business loans:

(a) A business purpose loan fully secured by a lien on a one to four family dwelling that is the member's primary residence;

(b) A business purpose loan fully secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions;

(c) One or more business purpose loans to a member or any associated member which in the aggregate do not exceed the amount of 49,999 dollars. The entire amount of such a loan that exceeds this figure, or that causes the aggregate to exceed this figure, is a MBL;

(d) A business purpose loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or

(e) A loan granted by a corporate credit union to another credit union.

(3) **Other definitions.** Certain other terms used in this chapter are defined in WAC 208-460-170.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-010, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-020 What member business loans are prohibited? (1) Who is ineligible to receive a member business loan?** You may not grant a member business loan to the following:

(a) Your chief executive officer (typically this individual holds the title of president or treasurer/manager);

(b) Any assistant chief executive officers (e.g., assistant president, vice-president, or assistant treasurer/manager);

(c) Your chief financial officer (comptroller); or

(d) Any associated member or immediate family member of anyone listed in (a) through (c) of this subsection.

(2) **Equity agreements/joint ventures.** You may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(3) **Loans to directors.** A credit union may not grant a member business loan to a director unless the board of directors approves granting the loan and the director is recused from the decision-making process.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-020, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-030 What are the requirements for MBL development and construction lending?** Unless the director grants a waiver, a credit union that makes MBL development or construction loans is subject to the following requirements:

(1) The aggregate of all such loans may not exceed fifteen percent of net worth. To determine the aggregate, you may exclude any portion of a loan that is:

(a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, and by deposits in other financial institutions; or

(b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state);

(2) The borrower on such loans must have a minimum of:

(a) Thirty percent equity interest in the project being financed if the loan is for land development; and

(b) Twenty-five percent equity interest in the project being financed if the loan is for construction or for a combination of development and construction;

(3) The funds for such loans may be released only after on-site inspections, documented in writing, by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation; and

(4) The credit union may not make such loans unless it utilizes the services of an individual with at least five years direct experience in development and construction lending.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-030, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-040 How do you implement a member business loan program?** The board of directors must adopt specific member business loan policies and review them at least annually. The credit union must utilize the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in, except as required by WAC 208-460-030(4).

Credit unions do not have to hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-040, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-050 What must your member business loan policy address?** At a minimum, your member business loan policy must address the following:

- (1) The types of MBL you will make;
- (2) Your trade area;
- (3) The maximum amount of your assets, in relation to net worth, that you will invest in MBL;
- (4) The maximum amount of your assets, in relation to net worth, that you will invest in a given type of MBL;
- (5) The maximum amount of your assets, in relation to net worth, that you will loan to a member or associated members, subject to WAC 208-460-070;
- (6) The qualifications and experience of personnel (minimum of two years) involved in making and administering the loans;
- (7) A requirement for analysis and documentation of the ability of the borrower to repay the loan;
- (8) Receipt and periodic updating of financial statements and other documentation, including tax returns;
- (9) Documentation sufficient to support each request to extend credit, or increase an existing loan or line of credit, except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the documentation must include the following:
  - (a) Balance sheet;
  - (b) Cash flow analysis;
  - (c) Income statement;
  - (d) Tax data;
  - (e) Analysis of leveraging; and
  - (f) Comparison with industry average or similar analysis;
- (10) Collateral requirements, including:
  - (a) Loan-to-value ratios;
  - (b) Determination of value;
  - (c) Determination of ownership;
  - (d) Steps to secure various types of collateral; and
  - (e) How often the credit union will reevaluate the value and marketability of collateral;
- (11) The interest rates and maturities of the loans;
- (12) General MBL procedures which include:
  - (a) Loan monitoring;
  - (b) Servicing and follow-up; and
  - (c) Collection;
- (13) Identification of those individuals prohibited from receiving member business loans; and

(14) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

The division recognizes that all of the provisions of the policy may not apply to every MBL.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-050, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-060 What are the collateral and security requirements?** Unless the director grants a waiver:

(1) All member business loans must be secured by collateral in accordance with this section, except the following:

(a) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and

(b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:

(i) The amount of the loan does not exceed one hundred thousand dollars;

(ii) The aggregate of unsecured MBL under (b) of this subsection does not exceed ten percent of the credit union's net worth;

(iii) The credit union has a net worth of at least seven percent; and

(iv) The credit union submits reports to the division of credit unions with its NCUA 5300 reports, providing figures and other detail as may be requested by the director to demonstrate compliance with (b) of this subsection;

(2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, you may grant the loan with a LTV ratio in excess of eighty percent only where the value in excess of eighty percent is:

(a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or

(b) Insured or guaranteed, or subject to advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).

In no case may the LTV ratio exceed ninety-five percent;

(3) In the case of a member business loan secured by collateral on which the credit union will have a second or lesser priority lien, you may not grant the loan with a LTV ratio in excess of eighty percent; and

(4) In the case of member business loans secured by the same collateral:

(a) On which the credit union will have a first lien as well as other lesser priority liens, you may grant the loans with a LTV ratio in excess of eighty percent only if subsection (2)(a) or (b) of this section is satisfied. In no case may the LTV ratio exceed ninety-five percent; and

(b) On which the credit union will have lesser priority liens but no first lien, you may not grant the loans with a LTV ratio in excess of eighty percent.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-060, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-070 How much may a member or associated members borrow?** Unless the director grants a waiver for a higher amount, the aggregate amount of member

business loans to a member or associated members may not exceed the greater of:

- (1) Fifteen percent of the credit union's net worth; or
- (2) One hundred thousand dollars.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-070, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-080 How do you calculate the aggregate fifteen percent limit?** (1) Step 1. Calculate the numerator by adding together the amount of the member business loans to the member and associated members (if any). From this amount, subtract any portion:

- (a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions; or
- (b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).

(2) Step 2. Divide the numerator by net worth.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-080, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-090 What waivers are available?** You may seek a waiver for a type of member business loan in the following areas:

- (1) Development and construction loan requirements under WAC 208-460-030;
- (2) Loan-to-value ratios under WAC 208-460-060;
- (3) Maximum loan amount to a member or associated members under WAC 208-460-070; and
- (4) Appraisal requirements under Section 722.3 of NCUA rules.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-090, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-100 How do you obtain a waiver?** (1) To obtain a waiver under WAC 208-460-090, a credit union must submit its request to the director. The waiver request must contain the following:

- (a) A copy of your member business loan policy;
- (b) The higher limit sought (if applicable);
- (c) An explanation of the need to raise the limit (if applicable);
- (d) Documentation supporting your ability to manage this activity; and
- (e) An analysis of the credit union's prior experience making member business loans, including, as a minimum:
  - (i) The history of loan losses and loan delinquency;
  - (ii) Volume and cyclical or seasonal patterns;
  - (iii) Diversification;
  - (iv) Concentrations of credit to a member and associated members in excess of fifteen percent of net worth;
  - (v) Underwriting standards and practices;
  - (vi) Types of loans grouped by purpose and collateral; and
  - (vii) The qualifications of personnel responsible for underwriting and administering member business loans.
- (2) The director will:
  - (a) Review the information you provided in your request;

- (b) Evaluate the level of risk to your credit union;
- (c) Consider your credit union's historical CAMEL composite and component ratings;
- (d) Notify you whenever your waiver request is deemed complete; and

(e) Notify you of the action taken within forty-five calendar days of receiving a complete request.

(3) In connection with a waiver request under WAC 208-460-090 (1) through (3):

(a) The director will provide a copy of the waiver request to Region VI of the NCUA and will consult and seek to work cooperatively with Region VI in making his or her decision on the request;

(b) The waiver is not effective until the director approves it;

(c) If you do not receive notification within forty-five calendar days after the date the complete request was received by the director, the waiver request is deemed approved by the director; and

(d) The director will promptly notify Region VI of the NCUA of his or her decision on the request.

(4) In connection with a waiver request under WAC 208-460-090(4):

(a) If the director approves the request, the director will promptly forward the request to Region VI of the NCUA for decision under NCUA rules at 12 C.F.R. 723.12;

(b) The waiver is not effective until the regional director of the NCUA approves it in accordance with NCUA rules at 12 C.F.R. 723.12; and

(c) The credit union may appeal the regional director's decision in accordance with NCUA rules at 12 C.F.R. 723.13.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-100, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-110 How do I classify member business loans so as to reserve for potential losses?** Nondelinquent member business loans may be classified based on factors such as the adequacy of analysis and supporting documentation. You must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(1) **Substandard.** A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. It is characterized by the distinct possibility that the credit union will sustain some loss if the deficiency is not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard;

(2) **Doubtful.** A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: Pro-



posed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans; and

(3) **Loss.** A loan classified loss is considered uncollectible and of such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-110, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-120 How much must I reserve for potential losses?** The following schedule sets the minimum amount you must reserve for classified member business loans:

Classification	Amount Required
Substandard	10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.
Doubtful	50% of the outstanding balance.
Loss	100% of the outstanding balance.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-120, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-130 What is the aggregate member business loan limit?** The aggregate limit on the amount of a credit union's member business loans is the lesser of:

(1) One and three quarters times the credit union's net worth; or

(2) Twelve and one quarter percent of the credit union's total assets.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-130, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-140 Are there any exceptions to the aggregate MBL limit?** (1) Credit unions that meet any one of the following four criteria qualify for an exception from the aggregate member business loan limit in WAC 208-460-130:

- (a) Credit unions that have a low-income designation;
- (b) Credit unions that participate in the Community Development Financial Institutions program;
- (c) Credit unions that are chartered for the purpose of making member business loans, as supported by documentary evidence, such as the credit union's charter, bylaws, business plan, field of membership, board minutes and loan portfolio; and

(d) Credit unions that have a recent history of primarily making member business loans, established by the fact that the outstanding balance of member business loans comprises:

- (i) At least twenty-five percent of the outstanding balance of the credit union's loans; or
- (ii) The largest portion of the outstanding balance of the credit union's loans.

Such facts must be evidenced in an NCUA call report or any equivalent documentation, such as financial statements,

for a period within two years before the date of application. For example, a credit union qualifies for the exception under (d)(ii) of this subsection if, based on the outstanding balance of a credit union's loans, the credit union's loan portfolio is comprised of twenty-three percent member business loans, twenty-two percent first mortgage loans, twenty-two percent new automobile loans, twenty percent credit card loans, and thirteen percent total other real estate loans.

(2) Unless the director gives his or her prior consent, a credit union granted an exception from the aggregate MBL limit may not make MBL in excess of the greater of:

(a) Twelve and one quarter percent of the credit union's total assets; or

(b) Three times the credit union's net worth.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-140, filed 5/1/01, effective 6/1/01.]

#### **WAC 208-460-150 How do I obtain an exception? (1)**

The exception under WAC 208-460-140 (1)(a) and (b) is effective upon written notice to the director of such designation or participation.

(2) To obtain an exception under WAC 208-460-140 (1)(c) or (d), a credit union must submit its request to the director. An exception is not effective until it is approved by the director. The exception request must include documentation demonstrating that the credit union meets the criteria for one of the exceptions. The exception does not expire unless revoked for safety and soundness reasons by the director.

(3) The director will promptly notify Region VI of the NCUA of his or her decision on the request.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-150, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-160 What are the recordkeeping requirements?** You must separately identify member business loans in your records and in the aggregate on your financial reports.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-160, filed 5/1/01, effective 6/1/01.]

**WAC 208-460-170 Definitions.** For purposes of this chapter, the following definitions apply:

(1) The "amount" of a MBL includes:

- (a) Any unfunded commitment to make the loan;
- (b) The outstanding balance of the loan; and
- (c) Any undisbursed proceeds of the loan.

(2) A person is "associated" with another if they have a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor.

(3) A "business purpose" loan means a loan where the borrower intends to use the proceeds for any of the purposes listed in WAC 208-460-010(1).

(4) "Development or construction loan" is a financing arrangement for acquiring real property or rights to real property, including land or structures, with the intent to develop or improve it for:

- (a) Residential housing for sale;
- (b) Income property;
- (c) Commercial use;

- (d) Industrial use; or
- (e) Similar uses.
- (3) "Immediate family member" is a spouse or other family member living in the same household.
- (4) "Loan-to-value ratio" or "LTV ratio" is derived by dividing:
  - (a) The amount of all member business loans by the credit union and loans by other lenders secured by an item of collateral, by
  - (b) The market value of the item of collateral.
- (5) "Member business loan" or "MBL" is defined in WAC 208-460-010.
- (6) "NCUA" means the National Credit Union Administration.
- (7) "Net worth" is retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease losses.

[Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-10-084, § 208-460-170, filed 5/1/01, effective 6/1/01.]

### Chapter 208-512 WAC

## BANKS AND TRUST COMPANIES

(Formerly chapter 50-12 WAC)

#### WAC

208-512-045	Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.
208-512-110	Investment securities—Permissible investments.
208-512-115	Investment securities—Proper management.
208-512-116	Investment securities—Investment in investment companies.
208-512-117	Investments in corporations.
208-512-240	General limitations.
208-512-280	Loans to partnerships, joint ventures, and associations.
208-512-300	Transitional rules.

**WAC 208-512-045 Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.** (1) The director shall collect the following fees:

- (a) Hourly charges for services plus actual expenses for review of application and attendant investigation for:
  - (i) New bank or trust company;
  - (ii) Conversion to a state chartered institution;
  - (iii) Alien bank to establish and operate an office or bureau in the state;
  - (iv) Certificate conferring trust powers;
  - (v) Branch;
  - (vi) Merger, consolidation, or reorganizational agreement;
  - (vii) Relocation of main office or branch;
  - (viii) An out-of-state bank holding company acquisition and control of more than five percent of the shares of voting stock or substantially all of the assets of a bank, trust company, national banking association or bank holding company, the principal operations of which are conducted within this state;
  - (ix) The purchase or sale of a branch;

(x) Voluntary or involuntary liquidation of a bank or trust company pursuant to chapter 30.44 RCW or for acting as conservator of a bank or trust company pursuant to chapter 30.46 RCW;

(xi) Conversion from a mutual savings bank to a stock savings bank;

(xii) Notice of change of control.

(b) Hourly charges for opinions rendered regarding interpretations of statutes and rules.

(c) \$100.00 for issuing the following certificates:

(i) Branch certificate;

(ii) Increase or decrease of capital stock certificate;

(iii) Certificate of authority;

(iv) Certificate of good standing;

(v) Other.

(d) \$100.00 for filing articles of incorporation, or amendments thereof, or other certificates required to be filed with the director.

(e) Fifty cents per page for furnishing copies of papers filed with the director.

(2) The hourly fee for services shall be \$90.00 per employee hour expended. The director may require a lump sum payment in advance to cover the anticipated cost of review and investigation of the activities described in subsection (1)(a) and (b) of this section. In no event shall the lump sum payment required under this section exceed actual amounts derived in subsection (1)(a) and (b) of this section.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-045, filed 2/27/01, effective 3/30/01; 00-17-141, amended and recodified as § 208-512-045, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.095. 91-18-055, § 50-12-045, filed 8/30/91, effective 9/30/91; 90-12-008, § 50-12-045, filed 5/25/90, effective 6/25/90.]

**WAC 208-512-110 Investment securities—Permissible investments.** A bank or trust company may purchase or hold obligations of a single obligor which are "investment securities," as defined below, and meet the following guidelines for proper "investment security" management. The term "investment security" shall mean a marketable obligation evidencing indebtedness of any person, copartnership, association, or corporation; of the government of the United States or any agency thereof; of any state, or political subdivision thereof; or of any publicly-owned entity that is an instrumentality of a state or municipal corporation in the form of bonds, notes, and/or debentures. They exclude investments which are predominately speculative but shall include:

(1) Type I securities which a bank may deal in, purchase, and sell for its own account without limitation. These securities include:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or agency of the United States, including obligations of such departments or agencies representing an interest in a loan or pool of loans;

(c) General obligations of a state or political subdivision including but not limited to obligations of a county, city, town, municipal corporation, or any publicly-owned entity that is an instrumentality of a state or municipal corporation;

(d) Obligations of any state or political subdivision of a state if a state or political subdivision of a state having gen-



eral powers of taxation has unconditionally promised to make sufficient funds available for full repayment of the obligation; and

(e) Revenue bonds issued by public improvement agencies.

(2) Type II securities which a bank may deal in, purchase and sell for its own account subject to a twenty percent of capital and surplus limitation and any limitation set forth in WAC 50-12-115 (2)(c). These include obligations issued by any state or political subdivision, or any agency of a state or political subdivision for housing, university or dormitory purposes. Such obligations include:

(a) Obligations issued by any state or a political subdivision for the purpose of financing the construction or improvement of facilities at or used by a university or a degree-granting college-level institution, or financing loans for studies at such institutions; and

(b) Obligations which finance the construction or improvement of facilities used by a hospital, provided that the hospital is a department or a division of a university, or otherwise provides a sufficient nexus with university purposes.

(3) Type III securities which a bank may purchase and sell for its own account with a twenty percent of capital and surplus limitation and any limitation set forth in WAC 208-512-115 (2)(c), but may not deal in. These include investment securities issued by corporations, provided that such securities have received in the most recent edition one of the four highest rating grades by Standard and Poor's, Moodys, or equivalent rating service. Unrated securities must be investment grade and be of equivalent quality to the four highest rating grades and where the investment characteristics are distinctly or predominately not speculative.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-110, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-110, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-20-036 (Order 70), § 50-12-110, filed 9/30/87. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-110, filed 9/13/85.]

**WAC 208-512-115 Investment securities—Proper management.** (1) A bank may purchase a Type I security for its own account, provided it is permissible under the provisions of Title 30 RCW and this regulation, if through prudent banking judgment it determines there is adequate evidence that the obligor will be able to perform all necessary undertakings in connection with the security, including all debt service requirements.

(2)(a) A bank may purchase a Type II or III security for its own account when through prudent banking judgment (which may be based in part upon estimates which it believes to be reliable), it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with the security, including all debt service requirements, and that the security is marketable so that it can be sold with relative promptness at a fair market value.

(b) A bank may, subject to the limitations set forth in (c) of this subsection, purchase a security of Type II or III for its own account although its judgment with respect to the obligor's ability to perform is based predominantly upon esti-

mates it believes to be reliable. This subsection permits a bank to exercise a somewhat broader range of judgment with respect to a more restricted portion of its investment portfolio.

(c) If a bank holds at any time Type II or III securities which would not be eligible for purchase pursuant to (a) of this subsection in a total amount in excess of five percent of the bank's capital and surplus, they are to be charged down to market value or a specific reserve is to be established within ninety days.

(3) Each bank shall maintain in its files credit information adequate to demonstrate that it has exercised prudence in making the determinations and carrying out the transactions involving underwriting, dealing in, and purchase and sale of investment securities. This information shall be retained:

(a) When securities are purchased for the bank's own portfolio, as long as the security remains in the portfolio;

(b) When securities are underwritten by the bank, for the maturity or the life of the security; and

(c) With regard to dealer activities, for periods set forth in the relevant rules of the municipal securities rule-making board.

(4) When a bank purchases an investment security convertible into stock or with stock purchase warrants attached, entries must be made by the bank at the time of purchase to write down the cost of such security to an amount which represents the investment value of the security considered independently of the conversion feature or attached stock purchase warrants. Purchase of securities convertible into stock at the option of the issuer is prohibited.

(5) When an investment security is purchased at a price exceeding par or face value, the bank shall:

(a) Charge off the entire premium at the time of purchase; or

(b) Provide for a program to amortize the premium paid or that portion of premium remaining after the write-down subject to subsection (2) of this section so that such premium or portion thereof shall be entirely extinguished at or before the maturity of the security.

(6) Each bank shall take measures to insure the cumulative investment holdings do not exceed the limitations for a specific investment set forth in Title 30 RCW.

(7) The board of directors, a committee thereof, or a duly appointed committee of senior level management shall review at least quarterly the bank's investment portfolio to insure compliance with the provisions contained in WAC 208-512-110 through 208-512-116.

(8) The restrictions and limitations set forth in this section do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avoid a loss in connection with a debt previously contracted.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-115, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-115, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-20-036 (Order 70), § 50-12-115, filed 9/30/87.]

**WAC 208-512-116 Investment securities—Investment in investment companies.** A bank or trust company

may invest in shares of an investment company provided that all of the following conditions are met:

(1) The investment company must be registered with Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933 or be a privately offered fund sponsored by an affiliated commercial bank.

(2) The shareholder has a fair and equal proportionate undivided interest in the underlying assets of the investment company calculated pursuant to the Investment Company Act of 1940.

(3) When an investment company's assets consist solely of and are expressly limited to obligations that are eligible for unlimited investment (Type I) as described in WAC 208-512-100, there is no limit on the bank's investment. However, where the investment companies portfolio contains, or is permitted to contain, securities subject to the bank's investment or lending limitations, investment by the bank shall be subject to a twenty percent of capital and surplus limitation.

(4) The shareholders are protected against personal liability for acts or obligations of the investment company.

(5) The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific investment companies and recorded in the official board minutes; and procedures, standards, and controls for managing such investments are implemented prior to acquirement of these investments.

(6) If the investment company makes use of futures, forwards, options, repurchase agreements and securities lending arrangements, their use must be consistent with standards adopted for use of such instruments in the bank's portfolio.

(7) Regulatory reporting of holdings in investment companies is consistent with established standards for "marketable equity securities."

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-116, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-116, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140(7), 92-04-027, § 50-12-116, filed 1/28/92, effective 2/28/92. Statutory Authority: RCW 30.08.140. 87-20-036 (Order 70), § 50-12-116, filed 9/30/87.]

**WAC 208-512-117 Investments in corporations.** Nothing in WAC 208-512-110, 208-512-115, or 208-512-116 shall limit the authority of a bank or trust company to invest in corporations or entities, with the prior authorization of the director, pursuant to RCW 30.04.127, (section 1, chapter 498, Laws of 1987).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-117, filed 2/27/01, effective 3/30/01; 00-17-141, amended and recodified as § 208-512-117, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-24-042 (Order 71), § 50-12-117, filed 11/25/87.]

**WAC 208-512-240 General limitations.** The total loans and extensions of credit by a state bank or trust company to a person outstanding at one time and not fully secured by collateral in a manner defined in WAC 208-512-250 shall not exceed twenty percent of the capital and surplus of the bank or trust company.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-240, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-240, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-240, filed 9/30/87.]

**WAC 208-512-280 Loans to partnerships, joint ventures, and associations.** (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of WAC 208-512-210 through 208-512-300, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association are considered loans or extensions of credit to the partnership, joint venture, or association if one or more of the tests presented in WAC 208-512-260(1) is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture or association will not be attributed to other members of the partnership, joint venture, or association unless one or more of the tests set forth in WAC 208-512-260(1) is satisfied with respect to such other members. The tests set forth in WAC 208-512-260(1) shall be deemed satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in subsection (1) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the partnership or membership agreement are not to be held liable for the debts or actions of the partnerships, joint venture, or association. However, the rules set forth in WAC 280-512-260(1) are applicable to such partners or members.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-280, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-280, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-280, filed 9/30/87.]

**WAC 208-512-300 Transitional rules.** (1) Loans or extensions of credit which were in violation of RCW 30.04.111 prior to the relevant effective dates of WAC 208-512-210 through this section will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in WAC 208-512-210 through this section. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A state bank which has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 as of the relevant effective dates of WAC 208-512-210 through this section may make additional advances to such person after those dates if the additional advances are permitted under WAC 208-512-210 through this section. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 prior to the relevant effective dates of WAC 208-512-210 through this section but are not in conformance with the rules established in WAC 208-512-210 through this section will not be considered to be violations of

law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with WAC 208-512-210 through this section may be made on or after the effective dates of WAC 208-512-210 through this section, if the nonconformity is caused by the amendments to Title 30 RCW contained in ESSB 4917; however, all loans or extensions of credit made under such renewals or extensions must conform with WAC 208-512-210 through this section no later than April 1, 1988. Loans or extensions of credit which are not in conformance with WAC 208-512-210 through this section for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a state bank, prior to the relevant effective dates of WAC 208-512-210 through this section, entered into a legally binding commitment to advance funds on or after those dates, and such commitment was in conformance with RCW 30.04.111, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with WAC 208-512-210 through this section. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation. Advances under renewals or extensions of such extension of the commitment is made on or after the relevant effective dates of WAC 208-512-210 through this section.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-300, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-300, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-300, filed 9/30/87.]

#### **Chapter 208-514 WAC** **MUTUAL SAVINGS BANKS** (Formerly chapter 50-14 WAC)

**WAC**  
208-514-140 Construction.

**WAC 208-514-140 Construction.** Nothing contained in chapter 208-514 WAC shall be construed to prohibit the de novo chartering of a stock savings bank not intended to be in holding company form.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-514-140, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-514-140, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34.]050. 92-06-041, § 50-14-140, filed 2/28/92, effective 3/30/92.]

#### **Chapter 208-528 WAC** **NEW STATE BANKS AND TRUST COMPANIES—** **APPLICATION AND INVESTIGATION** (Formerly chapter 50-28 WAC)

**WAC**  
208-528-040 Fees.

**WAC 208-528-040 Fees.** The filing fee to accompany the notice of intention to organize a bank or trust company shall be that established by WAC 208-512-045, as now or

hereafter amended. If the application is withdrawn by applicants before a field investigation is undertaken a refund will be made based upon retention of that portion deemed adequate to cover processing and preliminary investigation costs. The retained portion shall be the greater of:

(1) \$500.00, or

(2) Estimated number of hours times the current hourly rate as established by WAC 208-512-045 as devoted to processing and preliminary review and investigation.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-528-040, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-528-040, filed 8/22/00, effective 9/22/00; Order 21, § 50-28-040, filed 8/6/73.]

#### **Chapter 208-532 WAC** **ESTABLISHMENT OF ALIEN BANKS IN** **WASHINGTON—PROCEDURE** (Formerly chapter 50-32 WAC)

**WAC**  
208-532-050 Fees.

**WAC 208-532-050 Fees.** (1) The fees to accompany the filing of an application and attendant investigation are prescribed in WAC 208-512-045, as now or hereafter amended.

(2) Cost of examination. The examination fees charged to an alien bank for the examination of an office or bureau shall be the estimated actual cost of each examination calculated under the same terms and conditions as for state chartered banks and trust companies.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-532-050, filed 2/27/01, effective 3/30/01; 00-18-103, recodified as § 208-532-050, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-050, filed 8/14/73.]

#### **Chapter 208-544 WAC** **SCHEDULE OF COSTS OF EXAMINATIONS** (Formerly chapter 50-44 WAC)

**WAC**  
208-544-025 Fees paid by interstate banks.  
208-544-037 Repealed.  
208-544-039 Charges and fees effective July 1, 2001.  
208-544-050 Repealed.

#### **DISPOSITION OF SECTIONS FORMERLY** **CODIFIED IN THIS CHAPTER**

208-544-037 Charges and fees effective June 25, 1999. [Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-544-037, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-544-037, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025 and 43.320.040. 99-10-024, § 50-44-037, filed 4/28/99, effective 6/25/99.] Repealed by 01-12-003, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040.

208-544-050 Limitations on assessments. [Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-050, filed 8/30/91, effective 9/30/91; 90-12-007, § 50-44-050, filed 5/25/90, effective 6/25/90.] Repealed by 01-12-003, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040.

**WAC 208-544-025 Fees paid by interstate banks. (1) Semiannual asset charge.** The semiannual asset charge established in WAC 208-544-020 shall be assessed against any state-chartered bank, as defined in 12 U.S.C. sec. 1813(a), that operates branches in Washington and any other state. The assets subject to assessment under WAC 208-544-020(1) shall be determined as follows: Divide the number of branches in Washington by the total number of branches in all states including Washington and multiply the result by the asset value reflected in the most recent report of condition.

(2) **Other fees.** All other fees that normally apply to Washington-chartered banks under WAC 208-544-030 and 208-512-045 shall also be paid by banks chartered in other states.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-544-025, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-544-025, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 96-04-022, § 50-44-025, filed 1/30/96, effective 3/1/96.]

**WAC 208-544-037 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 208-544-039 Charges and fees effective July 1, 2001.** The division intends to increase the rate of its charges and fees each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of charges and fees each fiscal year during the 2001-03 biennium.

(1) Effective July 1, 2001, the rate of charges and fees under WAC 208-512-045, 208-544-020 and 208-544-030 shall be as follows:

(a) WAC 208-512-045 (1)(c) and (d) - The fee shall be \$100.00 for the issuance and filing of certificates.

(b) WAC 208-512-045 (1)(e) - The fee shall be 50 cents per page.

(c) WAC 208-512-045(2) - The fee shall be \$102.43 per employee hour expended.

(d) WAC 208-544-020(1) - The rates shall be the following:

If total assets are:		The assessment is:		
Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	0.000016022	0
500	1,000	8,011	0.000015364	500
1,000	10,000	15,693	0.000015134	1,000
10,000	—	151,899	.000	10,000

(e) WAC 208-544-020(2) - The rate shall be 0.04005.

(f) WAC 208-544-030(1) - The fee shall be \$73.95 per hour.

(g) WAC 208-544-030(2) - The fee shall be \$102.43 per hour.

(2)(a) On July 1, 2002, the rate of charges and fees under subsection (1)(c), (d), (e), (f), and (g) of this section, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(b) The director may round off a rate increase under this subsection. However, no rate increase may exceed the applicable fiscal growth factor.

(c) By June 1 of each year the director will make available a chart of the new rates that will take effect on the immediately following July 1.

(3) The director may waive any or all of the charges and/or fees imposed under this section, in whole or in part, when he or she determines that both of the following factors are present:

(a) The banking program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management (OFM); and

(b) That such course of action would be fiscally prudent.

(4)(a) If the charges and fees assessed under WAC 208-544-020(1) relating to a semiannual asset charge and WAC 208-544-030(1) relating to the hourly examination fee exceed ninety-five percent of the charges and fees applicable for a two-year period of the comparable federal chartering regulator (CFRCR) or its successor then the charges and fees paid in excess of such amount shall be rebated to the institution pursuant to (d) of this subsection unless abated by the director as provided in (e) of this subsection.

(b) For purposes of determining rebate entitlement, the total of semiannual asset charges and examination fees will be determined by adding the monthly average semiannual asset charge and the monthly average examination fee for any twenty-four month period beginning on or after July 1, 2000. The monthly average semiannual asset charge is determined by dividing the semiannual asset charges by six and applying the monthly average to the previous six months. The monthly average examination fee is determined by dividing the examination fee for each examination during the averaging period by the number of months between each such examination and the previous examination as determined by the date of the examinations and applying the monthly average to those months. The CFRCR charge is determined in the same manner. Under no circumstances will an institution be permitted to calculate a rebate based on a period of time that was included, in whole or in part, in the calculation of another rebate under this section.

(c) The rebate is determined by the difference between the sum of the applicable monthly average state charges and fees for the twenty-four month period minus ninety-five percent of the sum of the applicable monthly average CFRCR charges and fees for the same period, as each are determined in (b) of this subsection.

(d) Entitlement of the rebate will occur only upon petition and satisfactory proof to the director.

(e) Rebate abatement. At the discretion of the director, all or part of the rebate determined under (d) of this subsection may be denied if the director determines that:

(i) The institution required a substantially greater than average amount of supervisory time for reasons other than as a result of economic, legal, regulatory, or other conditions beyond the control of competent management;

(ii) The institution required a substantially greater than average amount of examination time for an institution of its size for reasons other than as a result of economic, legal, reg-

ulatory, or other conditions beyond the control of competent management;

(iii) Examinations or investigations were performed by third parties under personal services contracts;

(iv) The banking program fund does not exceed the projected acceptable minimum fund balance level approved by OFM or is insufficient to satisfy the rebates under this subsection and still maintain the operations of the department at a fiscally prudent level;

(v) The institution maintained a composite uniform financial institution rating (CAMELS) of 3, 4 or 5 during any time during the rebate period; or

(vi) Such other factors as the director may deem equitable or relevant.

(f) Institutions may become eligible to receive a rebate after June 30, 2002, for amounts paid on or after July 1, 2000.

[Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040. 01-12-003 and 01-20-086, § 208-544-039, filed 5/23/01 and 10/2/01, effective 7/1/01 and 11/2/01. Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-544-039, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-544-039, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025 and 43.320.040. 99-10-024, § 50-44-039, filed 4/28/99, effective 6/25/99.]

**WAC 208-544-050 Repealed.** See Disposition Table at beginning of this chapter.

#### Chapter 208-556 WAC

##### SMALL BUSINESS ADMINISTRATION 7(A) LOAN GUARANTY PROGRAM NONDEPOSITORY LENDERS—LICENSING AND REGULATION (Formerly chapter 50-56 WAC)

#### WAC

208-556-080 Fees.

**WAC 208-556-080 Fees.** The cost of regulation of non-depository lenders licensed under Title 31 RCW, shall be borne by the licensees under the following schedule:

(1) Application fee. A fee of two thousand dollars must accompany an application for this license to cover the cost of investigation.

(2) Acquisition of control approval fee. A fee of two thousand dollars must accompany any request for acquisition of control of a licensee to cover the cost of investigation which will be conducted to the same degree as an initial application approval.

(3) Business combination fee. Other business combinations must be approved by the director. Costs of investigation will be borne by the licensee and will be based on actual staff costs of the division of banks, which are fifty dollars per hour per examiner assigned.

(4) Examination and supervision fees. Examination and supervision fees shall be billed based on rates charged commercial banks for examination costs and semiannual asset charges in chapter 208-544 WAC.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-556-080, filed 2/27/01, effective 3/30/01; 00-17-141, amended and recodified as § 208-556-080, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-080, filed 12/7/89, effective 1/7/90.]

#### Chapter 208-586 WAC

##### EXAMINATION AND SUPERVISION FEES FOR SAVINGS AND LOAN ASSOCIATIONS (Formerly chapter 419-14 WAC)

#### WAC

208-586-135

Repealed.

208-586-140

Charges and fees effective July 1, 2001.

#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-586-135

Charges and fees effective June 25, 1999. [Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-586-135, filed 2/27/01, effective 3/30/01. Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-135, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025 and 43.320.040. 99-10-024, § 419-14-135, filed 4/28/99, effective 6/25/99.] Repealed by 01-12-003, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040.

**WAC 208-586-135 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 208-586-140 Charges and fees effective July 1, 2001.** The division intends to increase the rate of its charges and fees each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of charges and fees each fiscal year during the 2001-03 biennium.

(1) Effective July 1, 2001, the rate of charges and fees under chapters 208-586 and 208-594 WAC shall be as follows:

(a) WAC 208-586-030(1) - The fee shall be \$45.51 per hour.

(b) WAC 208-586-030(2) - The fee shall be \$51.19 per hour.

(c) WAC 208-586-030(3) - The fee shall be \$56.89 per hour.

(d) WAC 208-586-040 - The asset charge shall be 0.0348046 per thousand dollars of assets.

(e) WAC 208-586-075 - The fee shall be \$2,500.00 for the first branch and \$500.00 for each additional branch.

(f) WAC 208-586-080 - The fee shall be \$50.00 for the home office and each branch.

(g) WAC 208-586-090 - The fee shall be \$68.27 per hour.

(h) WAC 208-586-100 - The fee shall be \$56.89 per hour.

(i) WAC 208-586-110 - The fee shall be \$56.89 per hour.

(j) WAC 208-586-120 - The fee shall be \$5,000.00.

(k) WAC 208-594-070 - The fee shall be \$1,000.00.

(2)(a) On July 1, 2002, the rate of charges and fees under subsection (1)(a), (b), (c), (d), (g), (h), and (i) of this section, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(b) The director may round off a rate increase under this subsection. However, no rate increase may exceed the applicable fiscal growth factor.

(c) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

(3) The director may waive any or all of the charges and/or fees imposed under this section, in whole or in part, when he or she determines that both of the following factors are present:

(a) The banking program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(b) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040. 01-12-003, § 208-586-140, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-586-140, filed 2/27/01, effective 3/30/01. Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-140, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025 and 43.320.040. 99-10-024, § 419-14-140, filed 4/28/99, effective 6/25/99.]

### Chapter 208-620 WAC

#### WASHINGTON CONSUMER LOAN ACT

(Formerly chapter 50-20 WAC)

#### WAC

208-620-190	Schedule of fees.
208-620-191	Fee increase.
208-620-192	Waiver of fees.

**WAC 208-620-190 Schedule of fees.** The director shall collect fees for services as specified below:

##### (1) Applications and certificates.

(a) A charge of \$92.51 per hour for services plus actual expenses for review of application and attendant investigation for:

(i) New consumer loan company certificate of authority or licensed location certificate;

(ii) Branch licensed locations certificate;

(iii) Relocation of main office or branch;

(iv) Notice of change of control;

(v) Opinions rendered regarding interpretations of statutes and rules.

(b) A fee of \$102.79 for issuing the following certificates:

(i) Certificate of authority;

(ii) Licensed location certificate;

(iii) Certificate of good standing.

(2) **Examinations.** A charge of \$66.81 per hour for regular and special examinations of the licensee's records. The director will submit a statement for the charges following the completion of any applicable examination. The charges must be paid within thirty days after the statement is submitted to the licensee.

##### (3) Annual assessment fee.

(a) An annual assessment fee based on adjusted total loan value as defined in (b) of this subsection. The amount of the annual assessment fee is 0.000174529 multiplied by the adjusted total loan value as calculated from the consolidated annual report for the previous calendar year.

(b) The "adjusted total loan value" is the sum of:

(i) The total unpaid balance of loans originated subject to the act that were retained or purchased by the licensee; and

(ii) The total unpaid balance of loans originated subject to the act that were sold by the licensee with servicing retained (if any); and

(iii) The total amount of loans originated subject to the act that were sold by the licensee during the previous calendar year with servicing released (if any).

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-620-190, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-190, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-190, filed 10/30/91, effective 1/1/92.]

**WAC 208-620-191 Fee increase.** The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-620-190, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-620-191, filed 5/29/01, effective 7/1/01.]

**WAC 208-620-192 Waiver of fees.** The director may waive any or all of the fees and assessments imposed under WAC 208-620-190, in whole or in part, when he or she determines that both of the following factors are present:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-620-192, filed 5/29/01, effective 7/1/01.]

### Chapter 208-630 WAC

#### CHECK CASHERS AND SELLERS—REGULATION OF

(Formerly chapter 50-30 WAC)

#### WAC

208-630-021	Application review and investigation fee.
208-630-022	Annual assessment charge.
208-630-023	Examination fees.
208-630-02303	Fee increase.
208-630-02305	Waiver of fees.



**WAC 208-630-021 Application review and investigation fee.** (1) The director shall collect a fee of \$66.81 per employee hour expended for services, plus actual expenses, for review of application and investigation of:

- (a) New license applications;
- (b) Additional locations;
- (c) Change of control;
- (d) Relocation of office;
- (e) Voluntary or involuntary liquidation of licensee; and
- (f) Small loan endorsement applications.

(2) The director may require a lump sum payment in advance to cover the anticipated cost of review and investigation of the activities described in this section. If the lump sum payment required exceeds the actual amount derived in subsection (1) of this section, the amount in excess shall be refunded.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-630-021, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-021, filed 4/11/97, effective 5/12/97.]

**WAC 208-630-022 Annual assessment charge.** (1) The director will charge each licensee an annual assessment at the rate set forth in subsection (2) of this section. Assessments for a calendar year will be computed on total volume of transactions as of December 31 of the previous calendar year. For licensees with a fiscal year of January through December, annual assessments are due on or before April 15. For licensees with a fiscal year other than that stated above, annual assessments are due one hundred five days after the close of the licensee's fiscal year.

(2) The annual assessment rate is:

- (a) For check cashers:
  - (i) If the volume of checks cashed is one million dollars or less, there is no annual assessment;
  - (ii) If the volume of checks cashed is over one million dollars, the annual assessment is \$513.95 per licensed location.
- (b) For check sellers:
  - (i) If the volume of checks sold is one million dollars or less, there is no annual assessment;
  - (ii) If the volume of checks sold is over one million dollars, the annual assessment is \$513.95 per licensed location.
- (c) For licensees with small loan endorsements, in addition to (a) and/or (b) of this subsection:
  - (i) If the volume of small loans made is one million dollars or less, there is no annual assessment;
  - (ii) If the volume of small loans made is over one million dollars, the annual assessment is \$513.95 per licensed location.

(3) For purposes of this section, "volume" includes all transactions made under this chapter and chapter 31.45 RCW by a Washington licensed check casher or check seller at all licensed locations.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-630-022, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-022, filed 4/11/97, effective 5/12/97.]

**WAC 208-630-023 Examination fees.** The fee for examinations described in WAC 208-630-015 shall be \$66.81 per employee hour expended.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-630-023, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-023, filed 4/11/97, effective 5/12/97.]

**WAC 208-630-02303 Fee increase.** The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-630-021, 208-630-022, and 208-630-023, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025. However, there will be no rate increase under this subsection (1) for assessments described in WAC 208-630-022 (2)(a)(i), (b)(i) and (c)(i).

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-630-02303, filed 5/29/01, effective 7/1/01.]

**WAC 208-630-02305 Waiver of fees.** The director may waive any or all of the fees and assessments imposed under WAC 208-630-021, 208-630-022, and 208-630-023, in whole or in part, when he or she determines that both of the following factors are present:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-630-02305, filed 5/29/01, effective 7/1/01.]

## Chapter 208-660 WAC

### MORTGAGE BROKERS AND LOAN ORIGINATORS—LICENSING

(Formerly chapter 50-60 WAC)

#### WAC

208-660-010	Definitions.
208-660-060	Department's fees and assessments.
208-660-061	Fee increase.
208-660-062	Waiver of fees.

**WAC 208-660-010 Definitions.** As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) "Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

(2) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person.

(3) "Application deposit" means a deposit in immediately available funds consisting of the equivalent of ten hours investigation fees under WAC 208-660-060 for each license applied for and the equivalent of five hours investigation fees under WAC 208-660-060 for each branch office certificate applied for.

(4) "Approved examination" means a written examination approved by the director.

(5) "Approved licensing or continuing education course" means a licensing or continuing education course approved by the director.

(6) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(7) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(8) "Branch office certificate" means a branch office license issued by the director to engage in the mortgage broker business as the branch office indicated in the certificate, pursuant to RCW 19.146.265.

(9) "Certificate of passing an approved examination" means a certificate signed by the examination administrator verifying that the individual performed with a satisfactory score or higher on an approved licensing examination.

(10) "Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

(11) "Certificate of satisfactory completion of an approved licensing course" means a certificate signed by the course provider verifying that the individual has attended at least forty hours of class of an approved licensing course.

(12) "Consumer Protection Act" means chapter 19.86 RCW.

(13) A person "controls" an entity if the person, directly or indirectly through one or more intermediaries, alone or in concert with others, owns, controls, or holds the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity.

(14) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person:

- Is convicted of the crime in any jurisdiction;
- Is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;
- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

• Has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

(15) "Department" means the department of financial institutions.

(16) "Designated broker" means a natural person designated by the applicant for a license or licensee who meets the experience, education, and examination requirements set forth in RCW 19.146.210(e).

(17) "Director" means the director of financial institutions.

(18) "Employee" means any natural person who:

- Has an employment relationship, acknowledged by both the employee and the mortgage broker; and
- Is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(19) "Financial institution" means a federally insured bank, savings bank, savings and loan association, or credit union, whether state or federally chartered, authorized to conduct business in this state.

(20) "Financial misconduct" means without limitation:

- Any conduct prohibited by the Mortgage Broker Practices Act;
- Any similar conduct prohibited by statutes governing mortgage brokers in other states; and
- Any similar conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers.

(21) A person "holds oneself out" by advertising or otherwise informing the public that the person engages in any of the activities indicated, including without limit through the use of business cards, stationery, brochures, rate lists or other promotional items.

(22) "Independent contractor" or "person who independently contracts" means any person that:

- Expressly or impliedly contracts to perform mortgage broker activities for a licensee;
- With respect to its manner or means of performing the activities, is not subject to the licensee's right of control; and
- Is not treated as an employee by the licensee for purposes of compliance with federal income tax laws.

(23) "Investigation" means an examination undertaken for the purpose of detection of violations of this chapter or securing information lawfully required under this chapter.

(24) "License" means a license issued by the director to engage in the mortgage broker business.

(25) "Licensee" or "licensed mortgage broker" means:

- A mortgage broker licensed by the director; and
- Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

(26) "Loan originator" means a natural person:

- Who is a mortgage broker employee who performs any mortgage broker activities; or
- Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the performance of any mortgage broker activities.

(27) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms upon which it will make a loan available to the borrower.

(28) "Material litigation" means any conviction in the prior seven years for a felony, or for a gross misdemeanor involving dishonesty or financial misconduct, and any litigation pending at any time during the prior seven years that would be relevant to the director's ruling on an application for a license, including but not limited to, the following types of litigation:

- Criminal actions involving felony charges.
- Criminal or civil actions involving dishonesty or financial misconduct.

(29) "Mortgage broker" means any person that for compensation or gain, or in the expectation of compensation or gain:

- Makes a residential mortgage loan or assists a person in obtaining a residential mortgage loan; or
- Holds himself or herself out as being able to do so.

(30) "Mortgage Broker Practices Act" means chapter 19.146 RCW and chapter 208-660 WAC.

(31) "Out-of-state applicant or licensee" means an applicant for a license or licensee that does not maintain a physical office within this state.

(32) "Person" means a natural person, corporation, company, partnership, limited liability company, or association.

(33) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(5), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the security property.

(34) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership, company, association or corporation, and the owner of a sole proprietorship.

(35) "RCW" means the *Revised Code of Washington*.

(36) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act, 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

(37) "Registered agent" means a person or persons located within this state that is appointed to accept service of process for an out-of-state licensee.

(38) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

(39) "Subsidiary" means a corporation, company, partnership, or association that is controlled by another.

(40) "Third-party provider" means any third party, other than a mortgage broker or lender, that provides goods or services to the mortgage broker in connection with the preparation of a borrower's loan and includes, but is not limited to, credit reporting agencies, title insurance companies, appraisers, structural and pest inspectors, or escrow companies. However, "third-party provider" does include a third-party

lender, to the extent it provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(41) "Transfer" means a sale, transfer, assignment, or other disposition, whether by operation of law in a merger or otherwise.

(42) "Truth in Lending Act" means the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-010, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-010, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-010, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-010, filed 1/7/94, effective 2/7/94.]

**WAC 208-660-060 Department's fees and assessments.** (1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

**WAC 208-660-061 Fee increase.** The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.]

**WAC 208-660-062 Waiver of fees.** The director may waive any or all of the fees and assessments imposed under WAC 208-660-060, in whole or in part, when he or she determines that both of the following factors are present:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-062, filed 5/29/01, effective 7/1/01.]

## Chapter 208-680A WAC

### ESCROW—ORGANIZATION AND ADMINISTRATION

(Formerly chapter 308-128A WAC)

**WAC**  
208-680A-040 Definitions.

**WAC 208-680A-040 Definitions.** The terms and definitions used in chapter 18.44 RCW have the same meanings given therein when used in these rules.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow. "Third party to the transaction" includes, but is not limited to: Real estate brokers, lenders, mortgage brokers, attorneys engaged to review the escrow, tax facilitators or underlying lien holders.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or designated branch escrow officer.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained

separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal parties to the transaction. This includes obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal parties in the escrow instructions or on the settlement form (such as HUD1 or HUD1A).

"Conversion" means an unauthorized assumption and exercise of the right of ownership over moneys, property, or things of value belonging to another, to the alteration of the condition of, or the exclusion of the owner's rights to such moneys, property, or things of value. It includes any unauthorized act which deprives an owner of his/her property permanently or for an indefinite time, including but not limited to theft, embezzlement, forgery, swindling, and unauthorized control.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Investigation" means an examination undertaken for the purpose of detection of violations of chapter 18.44 RCW, and these rules or securing information lawfully required under chapter 18.44 RCW, and these rules. The director or his or her designee may make private or public investigations.

"Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other persons with control over management decisions of the escrow agent.

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower in a refinance transaction.

"Reconveyance" means an instrument used to transfer title from an individual holding such title in trust to the equitable owner of real estate, when title is held as collateral security for a debt.

"Securities" means any stock, treasury bill, bond, debenture or collateral-trust certificate tendered in lieu of an errors and omissions policy. It does not mean or include any insurance or endowment policy, annuity contract or letter of credit.

"Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" or "trust bank account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680A-040, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680A-040, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680A-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128A-040, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128A-040, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128A-040, filed 6/7/79; Order RE 122, § 308-128A-040, filed 9/21/77.]

## Chapter 208-680B WAC

### ESCROW—LICENSING AND EXAMINATION

(Formerly chapter 308-128B WAC)

#### WAC

208-680B-010	Credit and character report.
208-680B-015	License not transferable—Notice of change in principal officer or controlling person.
208-680B-020	Fingerprint identification.
208-680B-030	Escrow officer examination.
208-680B-050	Successful applicants must apply for license.
208-680B-070	Misuse of escrow officer license prohibited.
208-680B-080	Escrow officer and agent fees.
208-680B-081	Fee increase.
208-680B-082	Waiver of fees.
208-680B-090	Dishonored checks and insufficient payment of fees.
208-680B-100	Number of locations directly supervised by escrow officers simultaneously.
208-680B-110	Escrow officers may only be designated to one company.
208-680B-120	Escrow agent's prohibition of designated escrow officer.

#### WAC 208-680B-010 Credit and character report.

Any person making application for an escrow officer license after passing an examination, or making application to be a designated escrow officer, shall, as an integral part of the application, supply the director with satisfactory proof of applicant's character and credit rating. Such proof shall be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

Any person making application for an escrow agent license shall, as an integral part of the application, supply the director with satisfactory proof of character and credit rating for the natural person making the application, principal officers, designated escrow officer, controlling persons and partners. Such proof shall be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-010, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-010, filed 9/9/88; Order RE 122, § 308-128B-010, filed 9/21/77.]

#### WAC 208-680B-015 License not transferable—Notice of change in principal officer or controlling person.

(1) An escrow agent license may not be transferred.

(2) An escrow officer's license may not be transferred.

(3) Whenever a licensed escrow agent contemplates a transfer involving all or substantially all of its assets, the licensee shall provide written notice to the director at least thirty days prior to the effective date of the transfer. This notice must include a copy of the signed agreement between the parties, which provides in part:

(a) A stipulation that the transferee is responsible for obtaining a license prior to completion of the transfer;

(b) A stipulation that the transferee shall obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 prior to completion of the transfer;

(c) A stipulation indicating which of the parties shall:

(i) Make all payments due to principal parties on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 18.44.400 and WAC 208-680D-020 and 208-680D-030;

(iii) Provide notice of the transfer to all principal parties who have pending escrows, or who have deposited funds with the escrow agent, or who have executed some other form of written agreement with the escrow agent; and

(d) A stipulation that the transferee is either restricted from using or authorized to use, the escrow agent's business name, unless waived by the director.

(4) At least thirty days prior to a change in a principal officer or controlling person of a licensed escrow agent, the licensee shall provide the director with all information required of a principal officer or controlling person when an application is made for a license. The director shall make a determination prior to completion of the change, whether the proposed new principal officer or controlling person meets the requirements for licensing.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-015, filed 4/2/01, effective 5/3/01.]

#### WAC 208-680B-020 Fingerprint identification.

(1) Any person making application for an escrow officer license after passing an examination, or to be a designated escrow officer, shall, as an integral part of the application, submit fingerprint identification on a form provided by the department.

(2) Any person making application for an escrow agent license shall, as an integral part of the application, submit fingerprint identification of the natural person making the application, principal officers, designated escrow officer and controlling persons on a form provided by the department.

(3) The director or his/her designee may, at his/her discretion, request additional background information to ascertain an applicant's honesty, truthfulness, and good reputation including but not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director or his/her designee may deem appropriate under RCW 18.44.031(2). The department may require of any applicant,

principal officer, designated escrow officer, controlling persons, and partners, such information as is deemed necessary to satisfy the director or his/her designee that the requirements set forth in RCW 18.44.031(2) have been met. The director may require that such information be reported in writing and signed by the reporting individuals.

(4) In the event that an escrow agent experiences a change in any principal officer(s) or controlling person(s), the escrow agent shall submit fingerprints and such other information as the director may request under subsection (3) of this section to the department thirty days prior to the effective date of the change in principal officer(s) or controlling person(s).

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-020, filed 9/9/88; Order RE 122, § 308-128B-020, filed 9/21/77.]

#### **WAC 208-680B-030 Escrow officer examination. (1)**

Any person desiring to take an examination for an escrow officer license must file a completed application together with the correct fee, and supporting documents with the department. Dishonored checks will be considered as an incomplete application. The applicant will be assigned to the first available examination subsequent to determination of eligibility. The cutoff date for submission of a completed application for any specific examination is available upon request. An applicant shall forfeit all examination fees for any examination or examinations for which the applicant has applied and does not take for any reason, other than through the fault or mistake of the department.

(2) The escrow officer examination shall test the applicant's knowledge of the following:

- (a) An appropriate knowledge of the English language;
- (b) An understanding of the obligations between principal and agent;
- (c) An understanding of the meaning and nature of encumbrances upon real property, including an understanding of the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and option agreements, leases, earnest money agreements, personal property transfers, encumbrances, and other escrow documents;
- (d) An understanding of arithmetic and the principles and practices of trust accounting; and
- (e) An understanding of the Escrow Agent Registration Act and other applicable law such as the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Part 3500.

(3) For purposes of this section, "an appropriate knowledge of the English language" is defined as a demonstrated ability to read and understand the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and option agreements, leases, earnest money agreements, personal property transfers, encumbrances, and other escrow documents as they are customarily drafted in the state of Washington.

(4) The escrow officer examination shall be in a form and a location prescribed by the director, with the advice of the escrow commission, and shall be given at least annually.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-030, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-030, filed 9/9/88; Order RE 122, § 308-128B-030, filed 9/21/77.]

**WAC 208-680B-050 Successful applicants must apply for license.** Any person who has passed the examination for escrow officer must apply to become licensed within one year from the date of such examination in order to be eligible for such license. If an escrow officer license has not been issued within two years of successful completion of the examination, then the applicant must retake and successfully complete the examination. Failure to comply with this provision will necessitate the taking and passing of another examination.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-050, filed 9/9/88; Order RE 122, § 308-128B-050, filed 9/21/77.]

**WAC 208-680B-070 Misuse of escrow officer license prohibited.** An escrow officer shall not permit the use of his or her license, whether for compensation or not, to enable any person to in fact establish and carry on an escrow agency wherein the escrow officer does not have full management and supervisory responsibilities as required by RCW 18.44.071 and these regulations. Failure to adequately supervise any individual conducting escrow or assisting in escrow shall be a violation of this section and may constitute grounds for revocation of the escrow officer's license.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-070, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-070, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128B-070, filed 9/21/77.]

**WAC 208-680B-080 Escrow officer and agent fees.** The director shall charge the following fees:

<b>Title of Fee</b>	<b>Fee</b>
Escrow officer:	
First examination	\$ 154.19
Reexamination	154.19
Original license	164.46
License renewal	164.46
Transfer of license, name or address change or license activation	25.70
Duplicate license	25.70
Escrow agent:	
Application and original certificate	354.63
Renewal	354.63
Late renewal with penalty	531.93
Transfer of certificate, name or address change	25.70
Duplicate certificate	25.70



## Escrow agent branch office:

Application and original license	354.63
Renewal	354.63
Late renewal with penalty	531.93
Transfer of license, name or address change	25.70
Duplicate license	25.70

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-680B-080, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680B-080, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680B-080, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 91-11-066, § 308-128B-080, filed 5/16/91, effective 6/16/91. Statutory Authority: RCW 18.44.080 and 43.24.086. 90-03-099, § 308-128B-080, filed 1/24/90, effective 3/1/90. Statutory Authority: RCW 43.24.086. 87-18-032 (Order PM 668), § 308-128B-080, filed 8/27/87.]

**WAC 208-680B-081 Fee increase.** The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-680B-080, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-680B-081, filed 5/29/01, effective 7/1/01.]

**WAC 208-680B-082 Waiver of fees.** The director may waive any or all of the fees and assessments imposed under WAC 208-680B-080, in whole or in part, when he or she determines that both of the following factors are present:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-680B-082, filed 5/29/01, effective 7/1/01.]

**WAC 208-680B-090 Dishonored checks and insufficient payment of fees.** Payment of any fee required under chapter 18.44 RCW by a check that is dishonored, or is an insufficient payment, shall be considered a nonpayment and the license action for which the dishonored check, or insufficient payment, was tendered shall not be completed by the department.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-090, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-090, filed 4/2/01, effective 5/3/01.]

[2002 WAC Supp—page 532]

2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-090, filed 9/9/88.]

**WAC 208-680B-100 Number of locations directly supervised by escrow officers simultaneously.** No designated escrow officer or designated branch escrow officer shall simultaneously supervise more than one location without the prior written consent of the department.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-100, filed 4/2/01, effective 5/3/01.]

**WAC 208-680B-110 Escrow officers may only be designated to one company.** A designated escrow officer or designated branch escrow officer may perform escrow services for only one escrow agent at a time without the prior written consent of the director or his/her designee. A designated escrow officer or designated branch escrow officer may only supervise those escrow agent(s), and the employees of escrow agent(s), for which the officer has been designated by the director or his/her designee.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-110, filed 4/2/01, effective 5/3/01.]

**WAC 208-680B-120 Escrow agent's prohibition of designated escrow officer.** An escrow agent may not prohibit the designated escrow officer from accessing the escrow agent's trust account books and records unless it notifies the department of such prohibition within twenty-four hours of the prohibition. Such notification must include the reason for the prohibition, a current address and telephone number for the prohibited designated escrow officer, a request for a replacement designated escrow officer, and a notice that no escrow business will be conducted without a designated escrow officer unless prior written consent has been given by the director.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-120, filed 4/2/01, effective 5/3/01.]

## Chapter 208-680C WAC

### ESCROW—ESCROW AGENT OFFICE

(Formerly chapter 308-128C WAC)

#### WAC

208-680C-020	Office identification.
208-680C-040	Change of office location.
208-680C-045	Closure of office.
208-680C-050	Deceptive names prohibited.

**WAC 208-680C-020 Office identification.** Any main or branch office of the escrow agent shall be identified by displaying the name, visible to the public, of the escrow agent as licensed at the address appearing on the office license. Any fixed physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined in RCW 18.44.011(4) shall constitute an office.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680C-020, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128C-020, filed 9/21/77.]

**WAC 208-680C-040 Change of office location.** The escrow agent shall notify the department of any change of location or mailing address of the agent's office or branch office prior to engaging in business at the new location or address. Notification shall be made by filing a change of address application with the department at least ten business days prior to the change in business location or address, accompanied by all licenses issued to the former address or location, and all applicable fees.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-040, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680C-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128C-040, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128C-040, filed 9/9/88; Order RE 122, § 308-128C-040, filed 9/21/77.]

**WAC 208-680C-045 Closure of office. (1) Effect of closure.** When the main office of an escrow agent closes, all branch offices must close. When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting reverts to the main office.

(2) **Notification.** When either the main office or a branch office of an escrow agent closes, all responsible persons are jointly and severally obliged to notify the department within twenty-four hours of closure.

(a) "Responsible person" means: The designated escrow officer; the owner of the firm; a controlling person as defined in RCW 18.44.011(12); and the officers, owners and partners of the entity. The department may allow a person other than a responsible person as defined in this subsection to assume these duties.

(b) Additional notifications shall include:

(i) Delivery of all original escrow licenses for offices being closed to the department within five working days of office closure. All licenses returned must be dated and signed. If a branch office is closing, the branch office license must be returned to the department. If the main office is closing, all licenses issued to the main and all branch offices must be returned.

(ii) Within thirty days of office closure, an itemized accounting of funds held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust bank account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance.

(iii) Within twenty-four hours of office closure, the name, residence address and telephone number of the person responsible for the records.

(iv) Within thirty days of office closure, the street address where the records are located.

(c) All responsible persons are jointly and severally obliged to notify the department within thirty days of any change in the person responsible for the records or the place the records are maintained.

(3) **Maintenance of records after closure.** When an escrow office closes, the records must be maintained in the state of Washington for at least six years. The records shall be

available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

(4) **Trust account.** If the trust bank account contains client funds at the time of closure, the person responsible for the records shall provide the department with quarterly reconciliations of the trust bank account to the trial balance, in compliance with WAC 208-680E-011(9), until the trust bank account balance is zero. The responsible person shall submit the reconciliations for the periods ending March, June, September and December. These reconciliations are due within thirty days of the end of the preceding period.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-045, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680C-045, filed 10/16/96, effective 11/16/96.]

**WAC 208-680C-050 Deceptive names prohibited.** At the discretion of the director or the director's designated representative, an escrow agent may not be issued a license nor advertise in any manner using names or trade styles which are similar to currently issued licenses or imply that the agent is a nonprofit organization, research organization, public bureau or public group, or are otherwise deceptive or in violation of RCW 30.04.020, 31.12.025, 32.04.020(2), 33.08.010, or any other statute that limits the use of names. A bona fide franchisee may be issued a license using the name of the franchisor with the firm name of the franchisee.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680C-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128C-050, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128C-050, filed 9/9/88; Order RE 122, § 308-128C-050, filed 9/21/77.]

## Chapter 208-680D WAC

### ESCROW—RECORDS AND RESPONSIBILITIES

(Formerly chapter 308-128C WAC)

#### WAC

208-680D-010	Designated escrow officer responsibilities.
208-680D-020	Required records.
208-680D-030	Accuracy and accessibility of records.
208-680D-040	Agreements and closings.
208-680D-050	Expedient performance.
208-680D-060	Disbursement of funds.
208-680D-080	Licensed escrow officers' responsibilities.
208-680D-090	Escrow instructions, agreements, disclosures—Prohibitions.

**WAC 208-680D-010 Designated escrow officer responsibilities.** The designated escrow officer shall be responsible for the custody, safety, and correctness of entries of all required escrow records. The escrow officer retains this responsibility even though another person or persons may be assigned by the escrow officer the duties of preparation, custody, recording or disbursing.

The designated branch escrow officer shall bear responsibility for the custody, safety and correctness of entries of all transactions at the branch office. The designated escrow officer shall bear responsibility for all actions of the designated branch escrow officer.

Prior to issuing a new license reflecting a change of the designated escrow officer or branch designated escrow

officer of a registered escrow agent, evidence must be submitted that the responsibility for preexisting escrows is transferred to the incoming designated escrow officer or incoming licensed branch escrow officer. Such evidence shall be a statement signed by both the outgoing designated escrow officer and the incoming designated escrow officer, listing all outstanding trust liabilities and certifying that funds in hand in the trust account maintained by the agent are adequate to meet all such trust liabilities. In the case of a change in designated branch escrow officer, the outgoing and incoming designated branch escrow officers must sign the statement.

When the director or his/her designee makes a determination that there is reason to believe that the licensee's trust accounting records may not be in compliance with the requirements of WAC 208-680E-011, the director or his/her designee may retain or instruct the licensee to retain a certified public accountant or other person acceptable to the director, to reconcile the trust account and report whether it has been maintained in compliance with WAC 208-680E-011 and report on the adequacy of the licensee's internal routine and controls prior to the acceptance of a new designated escrow officer or designated branch escrow officer.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-010, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-010, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-010, filed 9/9/88; Order RE 122, § 308-128D-010, filed 9/21/77.]

**WAC 208-680D-020 Required records.** Escrow agents shall be required to keep the following transaction records as a minimum; and all records except the reconciled bank statements, shall identify the transaction to which they pertain by escrow number or other clearly identifying information:

(1) Trust account records.

(a) Copies of all duplicate deposit slips validated by the bank or bearing the signature of the designated escrow officer and the date of actual deposit, wires, separate receipts, or other evidence of the deposit of funds into the trust account;

(b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;

(c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;

(d) Client's ledger containing an individual ledger sheet for each transaction: Provided however, That for computerized record systems, an individual ledger sheet need not be maintained in the transaction files until the closing of the transaction if the computer records demonstrate on a daily basis the status of the transaction funds;

(e) If a manual trust accounting system is employed to administer the trust account, copies of all written receipts and prenumbered checks.

(2) Other records.

(a) A transaction file shall be maintained to contain all agreements, contracts, documents, leases, escrow instructions, closing statements and correspondence for each transaction;

(b) Reconciled bank statements and cancelled checks for all bank accounts of the escrow agent, including but not limited to the pooled escrow trust accounts, individual escrow trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computerized accounting or record system must be sequentially numbered. The escrow agent shall retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-23-049 (Order PM 790), § 308-128D-020, filed 11/14/88; 88-19-016 (Order PM 763), § 308-128D-020, filed 9/9/88; Order RE 122, § 308-128D-020, filed 9/21/77.]

**WAC 208-680D-030 Accuracy and accessibility of records.** (1) **Accuracy.** All records shall be accurate, posted and kept current to the date of the most recent transaction.

(2) **Location.** The escrow agent must maintain all records available for inspection by the department for a minimum of six years at an address where the escrow agent is licensed to maintain an escrow office. Records of transactions may be stored at a remote location within the state of Washington after the escrow has been completed for at least one year. Records stored at a remote location shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

(3) **Permanent storage.** After completion of the escrow transaction records may be stored on permanent storage media, such as optical disk or microfilm, provided the retrieval process does not permit modification of the documents. "Retrieval process" means the on-site ability to view and print the document in its original form including signatures or other writing placed upon the original document. The escrow agent must have in its records a statement signed by the supplier of the permanent storage system that the system does not permit the user to modify a document after it has been permanently stored.

(4) **Restrictions on storage.** Transactions and accounting records may not be stored at a remote location or on permanent storage media as described in subsection (2) or (3) of this section if there are funds relating to the transaction, such as reconveyance or holdbacks, remaining in the trust bank account.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-030, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680D-030, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680D-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-030, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-030, filed 9/9/88; Order RE 122, § 308-128D-030, filed 9/21/77.]

**WAC 208-680D-040 Agreements and closings.** The escrow agent shall be responsible for the effecting and closing of escrow agreements between the principal parties. The agent shall as a minimum:

(1) Prepare or accept an instrument of escrow instructions among the principal parties and the escrow agent. The escrow instructions shall be signed by the principal parties.

Escrow instructions shall contain any and all agreements between the principals and the escrow agent or incorporate other written agreements by reference. The escrow instructions shall not be modified except by written agreement signed by the principals and accepted by the escrow agent.

(2) Disclose in writing to the principal parties when fees for services provided may be realized by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example HUD1 or HUD1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent shall mean any item payable directly to the escrow agent whether realized by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) Ensure that all fees and/or justifiable costs are for bona fide services performed by the escrow agent or contractually ordered by the escrow agent to be performed by a third party to the transaction and bear a reasonable relationship in value to the services performed. No justifiable costs known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the justifiable cost of the third-party service on the preliminary closing statement, disclose the actual justifiable cost of the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual justifiable cost of the third-party service to the principal parties to the transaction; or

(b) Assume responsibility for performing the service and charge the principal parties to the transaction a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties to the transaction in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680E-011 (12)(a).

(4) Comply with the instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.

(5) Maintain copies of the escrow instructions and closing statement (for example, HUD1 or HUD1A) in the transaction file.

(6) Require an addendum to the purchase agreement for any and all material changes in the terms of the transaction, including but not limited to, changes in the financing of the transaction.

(7) Provide the services and perform all acts pursuant to the escrow instructions.

(8) Provide a complete detailed closing statement (for example HUD1 or HUD1A) as it applies to each principal at the time the transaction is closed. The escrow agent shall retain a copy of all closing statements in the transaction file, even if funds are not handled by the agent. The closing statements (for example HUD1 or HUD1A) shall show:

(a) The date of closing.

(b) The total purchase price.

(c) An itemization of all adjustments, monies or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500 and all applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received.

(d) A detail of debits and credits identified to each principal party.

(e) Names of payees, makers and assignees of all notes paid, made or assumed.

(9) Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(10) Obtain original signatures of the principals on either the preliminary or final closing statement and maintain a copy of the signed closing statement in the transaction file.

(11) Provide a copy of the final closing statement to each principal party and to each real estate broker involved with the transaction.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-040, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-040, filed 1/31/94, effective 3/3/94; 88-23-049 (Order PM 790), § 308-128D-040, filed 11/14/88; Order RE 122, § 308-128D-040, filed 9/21/77.]

**WAC 208-680D-050 Expeditious performance.** An escrow agent shall perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance shall be considered in violation of RCW 18.44.430 (1)(i).

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-050, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128D-050, filed 9/21/77.]

**WAC 208-680D-060 Disbursement of funds.** The escrow agent shall disburse funds as set forth in the escrow instructions. Disbursement of any money or other items in violation of the trust or before the happening of the conditions of the escrow agreement or escrow instructions is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by all of the principal parties: Provided, That funds are disbursed in compliance with RCW 18.44.400(3).

Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreement of the parties, the escrow agent must hold such funds until receiving written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the director may, at his/her discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction.

At no time may an escrow agent disburse or delay the disbursement of funds without the written consent of all principal parties.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-060, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680D-060, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680D-060, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-23-049 (Order PM 790), § 308-128D-060, filed 11/14/88; Order RE 122, § 308-128D-060, filed 9/21/77.]

**WAC 208-680D-080 Licensed escrow officers' responsibilities.** (1) It is the responsibility of every licensed escrow officer to be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW.

(2) It is the responsibility of every licensed escrow officer to keep the department informed of his or her current home address.

(3) It is the licensed escrow officer's responsibility to ensure accessibility of their offices and records to representatives of the department.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-080, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-080, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128D-080, filed 9/9/88.]

**WAC 208-680D-090 Escrow instructions, agreements, disclosures—Prohibitions.** It is a violation of this section and RCW 18.44.301, for an escrow agent to:

(1) Employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter;

(6) Omit to make a full and true entry in the books and accounts of the business with intent to defraud.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-090, filed 4/2/01, effective 5/3/01.]

## Chapter 208-680F WAC

### ESCROW—FINANCIAL RESPONSIBILITY

(Formerly chapter 308-128C WAC)

#### WAC

208-680F-010	Bond.
208-680F-020	Errors and omissions policy.
208-680F-040	Return of cash deposit or securities.
208-680F-060	Cash deposit, securities—Full force and effect.
208-680F-070	Cancellation of errors and omissions policy, new policy required.

**WAC 208-680F-010 Bond.** Each licensed escrow agent shall obtain and keep in effect a bond in an aggregate minimum amount of \$200,000 providing fidelity coverage on all corporate officers, escrow officers, partners, and employees engaged in escrow transactions. Such bond shall be struc-

tured to provide coverage for the total amount of all claims up to an aggregate minimum of \$200,000. A deductible of up to \$10,000 on the required fidelity bond is allowed, as long as an additional surety bond of \$10,000 is maintained by the escrow agent. In the event that a fidelity bond with no deductible is obtained by the escrow agent, no surety bond is required.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680F-010, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128F-010, filed 9/9/88; Order RE 122, § 308-128F-010, filed 9/21/77.]

#### WAC 208-680F-020 Errors and omissions policy.

Each licensed escrow agent shall obtain and keep in effect an errors and omissions policy providing coverage in the minimum aggregate amount of \$50,000 or, alternatively, cash deposit or securities in the principal amount of \$50,000. Securities used as an alternative to an errors and omissions policy shall be effectively delivered to the director. For the purpose of fulfilling the requirements of chapter 18.44 RCW and these rules, the escrow agent shall execute an irrevocable assignment and any supporting documentation as required by the director. Securities which are stocks or other interest in the registered escrow agency are not acceptable securities for the purposes of fulfilling the requirements of chapter 18.44 RCW and these rules.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680F-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128F-020, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128F-020, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-020, filed 6/7/79. Statutory Authority: RCW 18.44.360. 78-08-027 (Order RE 124, Resolution No. RE 124), § 308-128F-020, filed 7/14/78; Order RE 122, § 308-128F-020, filed 9/21/77.]

#### WAC 208-680F-040 Return of cash deposit or securities.

(1) The cash deposit or securities shall be returned to the escrow agent upon the date of expiration, cancellation, or revocation of the escrow agent's license: Provided, That the director may hold the cash deposit or securities for a longer period in order to satisfy any actions commenced under WAC 208-680F-050 prior to the expiration, cancellation, or revocation of the escrow agent's license.

(2) The cash deposit or securities shall be returned to an applicant within thirty days of the director's denial of an initial application for an escrow agent's license.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680F-040, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680F-040, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680F-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128F-040, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-040, filed 6/7/79.]

**WAC 208-680F-060 Cash deposit, securities—Full force and effect.** All escrow agents who assign, transfer, or set over a cash deposit or securities in lieu of an errors and omissions policy shall at all times keep in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business, such deposit or securities in the principal amount of \$50,000. Failure to maintain the deposit

or securities at the minimum level shall be sufficient grounds for the suspension or revocation of the escrow agent's license.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680F-060, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-060, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 79-07-009 (Order RE 126), § 308-128F-060, filed 6/7/79.]

**WAC 208-680F-070 Cancellation of errors and omissions policy, new policy required.** In the event of cancellation or expiration of an errors and omissions policy or fidelity bond, the escrow agent shall file with the director satisfactory evidence of a new policy or bond. Failure to file a new policy or bond shall be sufficient grounds for the suspension or revocation of the escrow agent's license. During the time the escrow agent does not have an errors and omissions policy or fidelity bond coverage in effect, the escrow agent may not transact business pursuant to RCW 18.44.201.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680F-070, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-070, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128F-070, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-070, filed 6/7/79.]

## Chapter 208-680G WAC

### EXAMINATIONS, INVESTIGATIONS, ENFORCEMENT, SANCTIONS, AND COSTS

#### WAC

208-680G-010	Examinations.
208-680G-020	Investigations.
208-680G-030	Enforcement.
208-680G-040	Sanctions.
208-680G-050	Examination and investigation fees and expense— Authority to retain specialists.

**WAC 208-680G-010 Examinations.** (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the director or designee, through their staff, may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the business described in RCW 18.44.021.

(2) The director or designee may make necessary inquiry of the business or personal affairs, or both, of each such person for the purposes of determining such compliance. In conducting examinations, the director or designee, through their staff, may request, require, or conduct the following:

(a) Access, during reasonable business hours, to the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business account records;

(b) Interview any person subject to RCW 18.44.020, or any employee or independent contractor of any person subject to RCW 18.44.020;

(c) Interview any principal party or agent to the transaction;

(d) The filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in subsection (1) of this section;

(f) Analysis and review of any items described in subsection (1) of this section;

(g) Assistance, as necessary, from any employee or person subject to RCW 18.44.020;

(h) Meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.020;

(i) Preparation and delivery, as deemed necessary, of a report of examination requiring a response from the recipient.

(3) The frequency of examinations shall be made at the discretion of the director or designated person.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680G-010, filed 4/2/01, effective 5/3/01.]

**WAC 208-680G-020 Investigations.** (1) The director or designated person may make at any time, public or private investigations within or outside of this state to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the director or designee, through their staff, may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The director or designated person may investigate, as deemed relevant by the director, the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the director or designated person, may request, require, instruct, direct, order, subpoena, or conduct the following:

(a) Access during reasonable business hours, to any location where any escrow business records are located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administration of oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person, or subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence, or existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(d) Interview or interrogate, publicly or privately, under administration of oath or otherwise, any person subject to RCW 18.44.020, or any employee or independent contractor of any person subject to RCW 18.44.020;

(e) Interview or interrogate, publicly or privately, under administration of oath or otherwise, any principal party, agent to the transaction, or any person whose testimony is deemed relevant;

(f) The filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;



(g) Copy, or request to be copied, any items described in (a) of this subsection, or when the director or his/her designee makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the director may take originals of any items described in (a) of this subsection, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director;

(h) Analysis and review of any items described in (a) of this subsection;

(i) Assistance, as necessary, from any employee or person subject to RCW 18.44.021;

(j) Meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(k) Meetings and sharing of information with other regulatory or law enforcement agencies;

(l) Preparation and delivery, as deemed necessary, of a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the director.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the director.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680G-020, filed 4/2/01, effective 5/3/01.]

**WAC 208-680G-030 Enforcement.** The director, or designated person, may conduct the following types of enforcement activity:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from the unlawful practice, and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin the acts or practices and to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the director;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any escrow office;

(5) Hold hearings; or

(6) Make referrals to other regulatory or law enforcement agencies.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680G-030, filed 4/2/01, effective 5/3/01.]

**WAC 208-680G-040 Sanctions.** The director may impose the following sanctions:

(1) Denial, suspension, or revocation of license for any violation of RCW 18.44.260;

(2) Remove or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, con-

trolling person, director, employee, or licensed escrow officer for any violation of RCW 18.44.260;

(3) Assess a fine of up to one hundred dollars per day for each day's violation of chapter 18.44 RCW, or these rules.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680G-040, filed 4/2/01, effective 5/3/01.]

**WAC 208-680G-050 Examination and investigation fees and expense—Authority to retain specialists.** (1) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.

(2) The expense of required travel and services related to an examination or investigation outside this state shall be borne by the person examined or investigated. Such expense includes, but is not limited to, travel, lodging, and per diem expense.

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680G-050, filed 4/2/01, effective 5/3/01.]

## Title 210 WAC

### STATE TREASURER'S OFFICE

### (FINANCE COMMITTEE)

#### Chapters 210-03

#### Financing contracts.

#### Chapter 210-03 WAC FINANCING CONTRACTS

#### WAC

210-03-010	Authorization.
210-03-020	Definitions.
210-03-030	Filing notice of intent.
210-03-040	Review of notice of intent.
210-03-050	State agency participation.
210-03-060	Other agency participation.
210-03-070	Financing participation deadlines.
210-03-080	Scheduled payments.

**WAC 210-03-010 Authorization.** Chapter 39.94 RCW provides for financing of both real and personal property by state agencies and other agencies through the use of financing contracts. The state finance committee must approve all financing contracts issued on behalf of the state of Washington. Transactions may be financed with certificates of participation (COPs). Certificates of participation represent ownership interests, or participation, in the future stream of lease payments. Certificates of participation are issued on behalf of the state pursuant to a lease of financed assets that provide collateral to the lender. The state finance committee has delegated administrative responsibility for the lease/purchase program to the office of the state treasurer. The office of the state treasurer may pool financing requests in the name of the