

# Title 50 WAC

## BANKING, DIVISION OF

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### Chapter 50-08 WAC

#### PRACTICE AND PROCEDURE

#### WAC

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**WAC 50-08-009 Hearings—Methods.** Hearing which may involve the revocation or suspension of a license shall be called and conducted in the following manner:

(1) Before any such hearing shall be called, the supervisor of banking shall give written approval to the holding of it. When it has been determined that a hearing shall be held, the entire record of the licensed premises involved and of the licensees shall be given to the assistant attorney general assigned to the division of banking, who will hereinafter be referred to as the attorney.

(2) The attorney shall prepare a written complaint which shall fully advise the licensees of all charges which will be considered at the hearing. The complaint shall be signed by the supervisor of banking.

(3) The supervisor shall conduct the hearing, which shall be held as soon as feasible. Each licensee charged shall be served with a copy of the complaint together with written notice of the time and place of the hearing and the issues involved. Such notice and complaint shall be served not less than ten days prior to the hearing unless the licensee consents to shorter notice.

(4) All subpoenas shall be issued by the supervisor, who shall issue them when requested by the attorney, a licensee or a licensee's attorney, and he may issue them on his own motion.

(5) Nothing contained herein shall prevent the supervisor from exercising any power given by chapter 31.08 RCW.

[Subsections 1-5, filed 4/21/67.]

**WAC 50-08-010 Hearings—Appearance and practice before the division of banking.** No person may appear in a representative capacity before the division of banking or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation, who appears for such individual firm, association, partnership, or corporation.

[§ 50-08-010, filed 4/21/67.]

**WAC 50-08-020 Hearings—Appearance in certain proceedings may be limited to attorneys.** In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the division of banking or its designated hearing officer determines that representative activity in such hearing requires a high degree of legal training, experience, and skill, the division of banking or its designated hearing officer may limit those who may appear in a representative capacity to attorneys at law.

[§ 50-08-020, filed 4/21/67.]

**WAC 50-08-040 Hearings—Standards of ethical conduct.** All persons appearing in proceedings before the division of banking in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the division of banking may decline to permit such person to appear in a representative capacity in any proceeding before the division of banking.

[§ 50-08-040, filed 4/21/67.]

**WAC 50-08-050 Hearings—Appearance by former employee of division or former member of the attorney general's staff.** No former employee of the division of

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banking or member of the attorney general's staff may at any time after severing his employment with the division or the attorney general appear, except with the written permission of the division of banking, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the division.

[§ 50-08-050, filed 4/21/67.]

**WAC 50-08-060 Hearings—Former employee as expert witness.** No former employee of the division of banking shall at any time after severing his employment with the division of banking appear, except with the written permission of the division of banking, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the division of banking.

[§ 50-08-060, filed 4/21/67.]

**WAC 50-08-070 Hearings—Computation of time.** In computing any period of time prescribed or allowed by the division of banking rules, by order of the division or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. This section shall not apply to periods of license suspension or revocation.

[§ 50-08-070, filed 4/21/67.]

**WAC 50-08-080 Hearings—Notice and opportunity for hearing in contested cases.** All parties shall be served with a notice at least ten days before the date set for the hearing. The notice shall state the time, place and issues involved, as required by RCW 34.04.090(1), or any case where the Small Loan Act of the state of Washington, chapter 31.08 RCW provides for a hearing.

[§ 50-08-080, filed 4/21/67.]

**WAC 50-08-085 Hearings—Waiver of hearing.** In any case involving violations of the regulations, where the supervisor deems it appropriate, may afford the licensee an opportunity to waive formal hearing. If the licensee so elects to waive formal hearing, he may then state in writing on the waiver form furnished by the supervisor any matter in explanation or mitigation of the violations which he desires the supervisor to consider in making his decision. The licensee, at the time he submits the waiver, may also request to be present when the supervisor meets to consider his decision in the matter. In the event the licensee elects to waive formal hearing he shall thereafter be bound by such election and may not thereafter request formal hearing.

[§ 50-08-085, filed 4/21/67.]

**WAC 50-08-090 Hearings—Service of process—By whom served.** The division of banking shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

[§ 50-08-090, filed 4/21/67.]

**WAC 50-08-100 Hearings—Upon whom served.** All papers served by either the division of banking or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiations of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

[§ 50-08-100, filed 4/21/67.]

**WAC 50-08-110 Hearings—Service upon parties.** The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

[§ 50-08-110, filed 4/21/67.]

**WAC 50-08-120 Hearings—Method of service.** Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered mail, or by telegraph.

[§ 50-08-120, filed 4/21/67.]

**WAC 50-08-130 Hearings—When service complete.** Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

[§ 50-08-130, filed 4/21/67.]

**WAC 50-08-140 Hearings—Filing with agency.** Papers required to be filed with the division of banking shall be deemed filed upon actual receipt by the division accompanied by proof of service upon parties required to be served.

[§ 50-08-140, filed 4/21/67.]

**WAC 50-08-150 Hearings—Subpoenas where provided by law—Form.** Every subpoena shall be issued in the name of the division of banking and shall set forth the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

[§ 50-08-150, filed 4/21/67.]

**WAC 50-08-160 Hearings—Issuance to parties.** Upon application of counsel for any party to a hearing, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The division of banking may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. No subpoena shall be issued except where authorized by statute.

[§ 50-08-160, filed 4/21/67.]

**WAC 50-08-170 Hearings—Service.** Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law.

[§ 50-08-170, filed 4/21/67.]

**WAC 50-08-180 Hearings—Fees.** Witnesses summoned before the division of banking shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington.

[§ 50-08-180, filed 4/21/67.]

**WAC 50-08-190 Hearings—Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgement of service with the division of banking or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the division of banking, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

[§ 50-08-190, filed 4/21/67.]

**WAC 50-08-200 Hearings—Quashing.** Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the division of banking may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

[§ 50-08-200, filed 4/21/67.]

**WAC 50-08-210 Hearings—Enforcement.** Upon application and for good cause shown, the division of banking will seek judicial enforcement of subpoenas issued to parties and which have not been quashed.

[§ 50-08-210, filed 4/21/67.]

**WAC 50-08-220 Hearings—Geographical scope.** Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[§ 50-08-220, filed 4/21/67.]

**WAC 50-08-230 Hearings—Depositions and interrogatories in contested cases—Right to take.** Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within ten days after service of original process. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas.

[§ 50-08-230, filed 4/21/67.]

**WAC 50-08-240 Hearings—Scope.** Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding.

[§ 50-08-240, filed 4/21/67.]

**WAC 50-08-250 Hearings—Officer before whom taken.** Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the division of banking or agreed upon by the parties by stipulation in writing filed with the division of banking. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party or a privy of any counsel of a party, or who is financially interested in the proceeding.

[§ 50-08-250, filed 4/21/67.]

**WAC 50-08-260 Hearings—Authorization.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the division of banking. The notice shall state the time and place for the taking of the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[§ 50-08-260, filed 4/21/67.]

**WAC 50-08-270 Hearings—Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the division of banking may make an order that the deposition shall not be taken, or

that it may be taken only at some designated place other than stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel or that after being sealed, the deposition shall be opened only by order of the division, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the division or the division may make any other order which justice required to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the division of banking may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[§ 50-08-270, filed 4/21/67.]

**WAC 50-08-280 Hearings—Oral examination and cross-examination.** Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross-interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

[§ 50-08-280, filed 4/21/67.]

**WAC 50-08-290 Hearings—Recordation.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

[§ 50-08-290, filed 4/21/67.]

**WAC 50-08-300 Hearings—Signing attestation and return.** When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to

make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the division of banking holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of the witness)" and shall promptly send it by registered or certified mail to the division or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

[§ 50-08-300, filed 4/21/67.]

**WAC 50-08-310 Hearings—Use and effect.** Subject to rulings by the hearing officer upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

[§ 50-08-310, filed 4/21/67.]

**WAC 50-08-320 Hearings—Fees of officers and deponents.** Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken.

[§ 50-08-320, filed 4/21/67.]

**WAC 50-08-330 Hearings—Depositions upon interrogatories—Submission of interrogatories.** Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within 10 days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect

interrogatories upon the party who served cross-interrogatories.

[§ 50-08-330, filed 4/21/67.]

**WAC 50-08-340 Hearings—Interrogation.** Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in these rules, the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

[§ 50-08-340, filed 4/21/67.]

**WAC 50-08-350 Hearings—Attestation and return.** The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the division, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

[§ 50-08-350, filed 4/21/67.]

**WAC 50-08-360 Hearings—Provisions of deposition rule.** In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

[§ 50-08-360, filed 4/21/67.]

**WAC 50-08-370 Hearings—Official notice—Matters of law.** The division of banking, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; Congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions and administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser;

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) **Agency organization.** The division of banking organizations, administrations, officers, personnel, official publications, and practitioners before its bar.

[§ 50-08-370, filed 4/21/67.]

**WAC 50-08-380 Hearings—Material facts.** In the absence of controverting evidence, the division of banking upon request made before or during a hearing may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties herein, and the disposition of any proceeding then pending before or theretofore concluded by the division;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the department as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or the division may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the division rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer of the division may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the division of banking or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[§ 50-08-380, filed 4/21/67.]

**WAC 50-08-390 Hearings—Presumptions.** Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the division of banking, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, elojned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

[§ 50-08-390, filed 4/21/67.]

**WAC 50-08-400 Hearings—Stipulations and admissions of record.** The existence or nonexistence of a material fact, as made or agreed in a stipulation or in any admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies, and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or the division of banking that such a stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[§ 50-08-400, filed 4/21/67.]

**WAC 50-08-410 Hearings—Form and content of decisions in hearings.** Every decision and order, whether proposed, initial or final shall:

- (1) Be correctly captioned as to name of agency and name of proceeding;
- (2) Designate all parties and counsel to the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Be accompanied by appropriate numbered findings of fact and conclusions of law;
- (5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;
- (6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

[§ 50-08-410, filed 4/21/67.]

**WAC 50-08-420 Hearings—Definition of issues before hearing.** In all proceedings, the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant material matter only.

[§ 50-08-420, filed 4/21/67.]

**WAC 50-08-430 Hearings—Prehearing conference rule.** In any proceeding the division of banking may upon its own motion, or upon the motion of one of the parties or their qualified representatives, direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of facts and of documents;
- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the proceeding.

[§ 50-08-430, filed 4/21/67.]

**WAC 50-08-440 Hearings—Record of conference action.** The division of banking shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[§ 50-08-440, filed 4/21/67.]

**WAC 50-08-450 Hearings—Submission of documentary evidence in advance.** Where practicable, the division of banking may require:

- (1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding

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sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

- (2) That documentary evidence not submitted in advance, as may be required by section (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

- (3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

[§ 50-08-450, filed 4/21/67.]

**WAC 50-08-460 Hearings—Excerpts from documentary evidence.** When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[§ 50-08-460, filed 4/21/67.]

**WAC 50-08-470 Hearings—Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses.** The hearing examiner or other appropriate officer in all classes of cases where practicable shall make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, shall require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

[§ 50-08-470, filed 4/21/67.]

**WAC 50-08-480 Hearings—Written sworn statements.** The hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, shall require, and when not so permissible, shall make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and together with the exhibits upon which based, be submitted to him and to the other parties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any

ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally. Witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses.

[§ 50-08-480, filed 4/21/67.]

**WAC 50-08-490 Hearings—Supporting data.** That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with written sworn statements, but, wherever practicable, that he restrict to a minimum the placing of such data in the record.

[§ 50-08-490, filed 4/21/67.]

**WAC 50-08-500 Hearings—Effect of noncompliance with WAC 50-08-470 or 50-08-480.** Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of these rules, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements.

[§ 50-08-500, filed 4/21/67.]

**WAC 50-08-510 Hearings—Continuances.** Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the division of banking of said desire, stating in detail the reasons why such continuance is necessary. The division, in passing upon a request for a continuance shall consider whether such request was promptly and timely made. For a good cause shown, the division of banking may grant such a continuance and may at any time order a continuance upon its own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner conducting the hearing may in his discretion, continue the hearing and fix the date for introduction of additional evidence, or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[§ 50-08-510, filed 4/21/67.]

**WAC 50-08-520 Hearings—Rules of evidence—Admissibility criteria.** Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

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[§ 50-08-520, filed 4/21/67.]

**WAC 50-08-530 Hearings—Tentative admission—Exclusion—Discontinuance—Objections.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[§ 50-08-530, filed 4/21/67.]

**WAC 50-08-540 Hearings—Petitions for rule making, amendment, or repeal—Who may petition.** Any interested person may petition the division of banking requesting the promulgation, amendment, or repeal of any rule.

[§ 50-08-540, filed 4/21/67; Rule 1 (part), filed 3/23/60.]

**WAC 50-08-550 Hearings—Requisites.** Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

[§ 50-08-550, filed 4/21/67; Rule 1 (part), filed 3/23/60.]

**WAC 50-08-560 Hearings—Agency must consider.** All petitions shall be considered by the division of banking and it may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

[§ 50-08-560, filed 4/21/67.]

**WAC 50-08-570 Hearings—Notice of disposition.** The division of banking shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition.

[§ 50-08-570, 4/21/67.]

**WAC 50-08-580 Hearings—Declaratory rulings.** As prescribed by RCW 34.04.080, any interested person may petition the division of banking for a declaratory ruling. The division shall consider the petition and within a reasonable time it shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the division shall, within a reasonable time:



- (1) Issue a binding declaratory ruling; or
- (2) Issue a nonbinding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued.

[§ 50-08-580, filed 4/21/67.]

**WAC 50-08-590 Hearings—Forms.** (1) Any interested person petitioning the division of banking for a declaratory ruling pursuant to RCW 34.04.080, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the division of banking, department of general administration, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs, the first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and five legible copies shall be filed with the agency. Petitions shall be on white paper, 8 1/2" x 11" in size.

(2) Any interested person petitioning the division of banking requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the division of banking, department of general administration, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

[§ 50-08-590, filed 4/21/67.]

## Chapter 50-12 WAC

### BANKS AND TRUST COMPANIES

#### WAC

- 50-12-020 Characterization of "federal fund transactions."
- 50-12-030 Definitions and characterization of time deposits.
- 50-12-045 Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.
- 50-12-050 Limiting loans to officers.
- 50-12-060 Accounts in excess of one hundred thousand dollars.
- 50-12-070 Nonbankable assets.
- 50-12-080 Purchase or sale of United States government securities—Resale or repurchase agreement.
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- 50-12-100 Leasing bank premises—Limitations.
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- 50-12-260 Combining loans to separate borrowers.
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- 50-12-310 Insurance agency activities—Promulgation.
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- 50-12-340 Insurance agency activities—General rule.
- 50-12-350 Insurance agency activities—Exceptions.
- 50-12-360 Insurance agency activities—Subsidiary.
- 50-12-370 Insurance agency activities—Enforcement.

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

- 50-12-010 Minimum reserve requirements for state banks and trust companies—Computations. [Statutory Authority: RCW 30.04.090. 79-10-107 (Order 42), § 50-12-010, filed 9/26/79; Order 38, § 50-12-010, filed 2/23/77; Order 35, § 50-12-010, filed 12/22/75; Order 12, § 50-12-010, filed 11/20/72; Order 2, § 50-12-010, filed 12/23/68; Order 1, § 50-12-010, filed 5/28/68, filed 3/1/66.] Repealed by 85-19-052 (Order 62), filed 9/13/85. Statutory Authority: RCW 30.12.060
- 50-12-040 Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks. [Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-040, filed 9/13/85. Statutory Authority: RCW 30.04.030. 82-24-074 (Order 48), § 50-12-040, filed 12/1/82. Statutory Authority: RCW 30.08.095. 79-04-042 (Order 40), § 50-12-040, filed 3/23/79; Order 32, § 50-12-040, filed 10/2/75; Order 27, § 50-12-040, filed 6/3/74; Order 20, § 50-12-040, filed 8/6/73; Order 4, § 50-12-040, filed 5/15/69, effective 6/16/69.]

Repealed by 90-12-008, filed 5/25/90, effective 6/25/90.  
Statutory Authority: RCW 30.08.095.

**WAC 50-12-020 Characterization of "federal fund transactions."** When a bank purchases funds for reserve purposes or sells excess funds to another bank so that such bank may meet its reserve requirements, these transactions between banks have been commonly referred to as "overnight borrowings," "overnight security transactions," or "federal fund transactions." "Federal fund transactions" would normally occur when member banks purchase funds for reserve purposes through the Federal Reserve System or when such banks sell excess funds through the Federal Reserve System to another member bank so that such bank may meet its reserve requirements. However, for the purpose of uniformity, all future transactions of this sort, whether through the Federal Reserve System or between banks, may be referred to as "federal fund transactions."

This type of transaction takes the form of a transfer of funds from the seller to the buyer. Payment is usually made by the purchasing bank the following day in the amount of the funds purchased and for a specified fee.

Such a transaction does not create, on the part of the buyer, an obligation subject to RCW 30.04.140 but is considered a purchase of such funds.

Conversely, such a transaction does not create a loan or investment subject to RCW 30.04.110 on the part of the seller, but is to be considered a sale of such funds.

[Order 3, § 50-12-020, filed 12/23/68.]

**WAC 50-12-030 Definitions and characterization of time deposits.** The term "time deposits" means "time certificates of deposit" and "time deposits, open account," as defined below.

(1) **Time certificates of deposit.** The term "time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable:

- (a) On a certain date, specified in the instrument, not less than thirty days after the date of the deposit; or
- (b) At the expiration of a specified period not less than thirty days after the date of the instrument; or
- (c) Upon written notice to be given not less than thirty days before the date of repayment.

(2) **Time deposits, open account.** The term "time deposit, open account," means a deposit, other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than thirty days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than thirty days in advance of withdrawals.

A time deposit is a deposit and therefore not subject to individual bank and trust company lending limits, as prescribed by RCW 30.04.110. However, before a bank or trust company may deposit its funds with another bank in the form of a time deposit, the depository bank must first be appointed a depository by a vote of a majority of the

directors of the depositing bank and approved as a depository by the supervisor of banking.

If a bank acquires a time deposit with a bank that has not been approved as a depository by the supervisor of banking, such transaction shall be considered to be an investment and subject to the bank's lending limitation.

[Order 2, § 50-12-030, filed 12/23/68.]

**WAC 50-12-045 Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.** (1) The supervisor 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) A satellite facility or facilities which are to be used by its own customers or customers of another bank;
- (vii) A network system of satellite facilities as defined in WAC 50-40-010(4) or modification of a previously approved network system made in accordance with WAC 50-40-060 (1) or (2);
- (viii) Merger, consolidation, or reorganizational agreement;

(ix) Relocation of main office or branch;

(x) 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;

(xi) The purchase or sale of a branch;

(xii) 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;

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

(xiv) 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) Satellite facility;
- (v) Certificate of good standing;
- (vi) Other.

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

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

(2) The hourly fee for services shall be \$90.00 per employee hour expended. The supervisor 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 30.08.095, 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 50-12-050 Limiting loans to officers.** (1) A bank or trust company may make the following loans to any of its officers:

(a) A loan secured by a first lien on a dwelling if at the time the loan is made:

(i) The dwelling secured is expected to be both owned by the officer and used by him as his residence after the loan is made; and

(ii) No other such loan made by the bank or trust company to the officer under the authority of (a) of this subsection is outstanding;

(b) A loan to finance the education of an officers' children; and

(c) Any other secured or unsecured loan including a line of credit which, at the time the loan is made, is not in excess of the greater of \$25,000 or 2.5% of capital and unimpaired surplus as defined in RCW 30.12.060(2), but in no event for an amount greater than \$100,000.

(2) A bank or trust company shall not make a loan under subsection (1) of this section to an officer which, at the time the loan is made, exceeds the greater of \$25,000 or 5% of capital and unimpaired surplus as defined in RCW 30.12.060(2) unless a resolution authorizing a loan for a greater amount is adopted by a vote of a majority of the board of directors of the bank or trust company prior to the making of such loan, and the vote and resolution is entered in the corporate minutes.

(3) In no case shall the total liability of an officer to a bank or trust company under subsection (1) of this section exceed either \$500,000, unless approved in advance for a greater amount by a majority of the board of directors prior to the making of any loan in excess of this amount, or the limit prescribed by RCW 30.04.110, whichever is less. When computing the total outstanding liability of an officer of a bank or trust company belonging to an affiliated group of two or more corporations, all loans to the officer from the affiliated corporations shall be aggregated, including but not limited to loans from:

(a) The bank or trust company's parent bank holding company; or

(b) Any other corporation held by the bank or trust company's parent bank holding company; or

(c) A subsidiary of the bank or trust company; or

(d) A subsidiary of any other corporation if such corporation is held by the bank or trust company's parent bank holding company.

(4) Any loan to an officer of a bank that does not require specific prior approval by a majority of the board of directors by resolution or otherwise pursuant to subsections (2) and (3) of this section shall be promptly reported to the board of directors and duly reflected in the minutes of the next regular board meeting.

(5) For purposes of this section, the words "loan" and "loans" shall mean all extensions of credit by the bank or trust company including but not limited to the purchase, discount, or acquisition, as security or otherwise, of any debt or obligation of any officer owed to any other person.

[Statutory Authority: RCW 30.12.060, 85-19-052 (Order 62), § 50-12-050, filed 9/13/85; 84-03-036 (Order 58), § 50-12-050, filed 1/13/84; 79-04-042 (Order 40), § 50-12-050, filed 3/23/79; Order 31, § 50-12-050, filed 10/2/75; Order 4, § 50-12-050, filed 5/15/69, effective 6/16/69.]

**WAC 50-12-060 Accounts in excess of one hundred thousand dollars.** A mutual savings bank may accept or hold accounts in excess of one hundred thousand dollars on the following terms and conditions:

(1) Such accounts in the aggregate are placed in assets of similar maturity;

(2) The following records are maintained at all times with respect to each such account:

(a) The name(s) and address(es) of the depositor(s);

(b) The manner in which the account is held;

(c) The amount of the initial deposit;

(d) The contemplated time of withdrawal, if known;

(e) The interest rate; and

(f) Such other information available to the mutual savings bank as the supervisor may from time to time require in order to carry out the duties of his office;

(3) A separate report maintained showing at all times the aggregate total of all such accounts accepted or held; and

(4) Asset liquidity records and controls are maintained. The supervisor may from time to time impose such requirements or restrictions as he deems appropriate in connection with accepting or holding one or more such accounts, based upon the nature and size of the account, the condition of the mutual savings bank accepting the same, the general economic conditions then existing, and such other factors as the supervisor may deem relevant to the prudent operation of the mutual savings bank accepting or holding the account.

[Order 29, § 50-12-060, filed 10/2/75; Order 7 and Emergency Order 6, § 50-12-060, filed 1/7/70.]

**WAC 50-12-070 Nonbankable assets.** In determining whether an asset of a bank, mutual savings bank or trust company is bankable all of the circumstances of the asset shall be weighed, including but not limited to the following:

(1) Character of the borrower

(2) Capacity of the borrower

(3) Capital of the borrower

(4) Collateral, sufficiency of

(5) Economic conditions pertaining to the type of business in which the borrower is engaged

(6) Conformance to general banking standards as then currently practiced in the banking industry.

If, in the examination of a bank, mutual savings bank or trust company, an examiner finds an asset which in his opinion, after weighing all the circumstances of the asset, is nonbankable, the supervisor may require that such asset be charged off the books of the bank, mutual savings bank or trust company.

Within fifteen days following the next meeting of the board of directors following receipt of written notice from the supervisor to charge off such asset, but in no event more

than forty-five days following receipt of such written notice, the bank, mutual savings bank or trust company, shall write the same off as an asset or file a written statement with the supervisor explaining why, in its opinion, the asset should not be so treated. After considering such written statement and within ten days after receipt thereof, the supervisor will notify the bank in writing of his decision as to the treatment of the asset.

[Order 9, § 50-12-070, filed 5/9/72.]

**WAC 50-12-080 Purchase or sale of United States government securities—Resale or repurchase agreement.** The purchase or sale of securities of, or fully guaranteed as to principal and interest by, the United States government and agencies thereof, or a fractional undivided interest therein by a bank, under an agreement or agreements to resell or repurchase the interest transferred, or a portion thereof, at the end of a stated period, shall not constitute an obligation subject to the lending limit of RCW 30.04.110, an indebtedness or liability of the bank within the meaning of RCW 30.04.150, a borrowing for the purposes of reloading within the meaning of RCW 30.04.160, nor a pledge or hypothecation of securities or assets of the bank to a depositor or creditor within the meaning of RCW 30.04.140.

[Statutory Authority: RCW 30.04.030. 83-03-020 (Order 51), § 50-12-080, filed 1/13/83; Order 28, § 50-12-080, filed 9/10/74.]

**WAC 50-12-090 Purchase or sale of United States government securities solely for customers' account not within purview of RCW 30.04.200.** The provisions of RCW 30.04.200 shall not prohibit banks or the officers or employees thereof in the course of their employment from purchasing and selling securities and stocks without recourse, solely upon the order and for the account of customers of the bank, or from dealing in, underwriting and purchasing for the account of the bank obligations of, or obligations guaranteed as to principal and interest by, the United States or agencies thereof or of any state or political subdivision thereof.

[Statutory Authority: RCW 30.04.030. 83-01-082 (Order 49), § 50-12-090, filed 12/17/82.]

**WAC 50-12-100 Leasing bank premises—Limitations.** A bank or trust company may lease part of the premises in which it conducts its day-to-day business pursuant to RCW 30.04.210 to persons engaged in nonbanking or nontrust business activities subject to the following limitations:

(1) No director, officer, or employee of such bank or trust company may have any direct or indirect financial interest in the lessee's business activities conducted on the premises leased;

(2) No bank or trust company may receive commissions or other revenues from the lessee other than periodic rental payments received under terms that are usual and customary in leasing space used for similar commercial purposes as determined by the supervisor;

(3) No lessee may have access to security areas of the bank or trust company's premises, nor may a lessee conduct business activities on a bank or trust company's premises other than during regular banking hours;

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(4) No director, officer, or employee of a bank or trust company may be employed by, or serve in any fiduciary capacity for a corporation or other person leasing the premises of such bank or trust company for such business activities;

(5) No bank or trust company may exercise managerial control over the lessee's business activities or assume, guarantee, or otherwise become obligated for the lessee's debts or legal obligations;

(6) No bank or trust company may advertise a lessee's business activities conducted on such bank or trust company's premises as a service provided by the bank or trust company, or otherwise represent that the lessee's business activities are not independently owned and operated;

(7) No bank or trust company may use tying arrangements involving the sale of a lessee's goods or services offered on such bank or trust company's premises or in any other way require purchase of a lessee's goods or services as a condition for granting credit or performing services.

(8) For purposes of this section, the term "bank or trust company" means any person or corporation operating under the provisions of Title 30 RCW directly or indirectly affiliated with the lessor.

[Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-100, filed 9/13/85.]

**WAC 50-12-110 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 general 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 50-12-115 (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 30.08.140. 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 50-12-115 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 estimates 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 50-12-110 through 50-12-116.

(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 30.08.140. 87-20-036 (Order 70), § 50-12-115, filed 9/30/87.]

**WAC 50-12-116 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 50-12-100, there is no limit on the bank's investment. However, where the investment company's 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 acquisition 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 30.08.140(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 50-12-117 Investments in corporations.**

Nothing in WAC 50-12-110, 50-12-115, or 50-12-116 shall limit the authority of a bank or trust company to invest in corporations or entities, with the prior authorization of the supervisor, pursuant to RCW 30.04.\_\_\_\_, (section 1, chapter 498, Laws of 1987).

[Statutory Authority: RCW 30.08.140, 87-24-042 (Order 71), § 50-12-117, filed 11/25/87.]

**WAC 50-12-120 Promulgation.** The division of banking, hereinafter referred to as the "division," after due and proper notice, and pursuant to chapter 30.60 RCW hereby adopts and promulgates the following rules and regulations, effective January 1, 1986.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-120, filed 12/30/86.]

**WAC 50-12-130 Purpose.** This regulation is intended to encourage banks chartered under Title 30 RCW to help meet the credit needs of their local community or communities; to provide guidance to banks as to how the division will assess the records of these banks in satisfying their continuing and affirmative obligations to help meet the credit needs of the local communities, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of those banks; and to provide for proper consideration of those records in connection with certain applications.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-130, filed 12/30/86.]

**WAC 50-12-140 Definitions.** For purposes of interpreting and administering the provisions and procedures contained herein, the definitions of terms used shall be identical to the corresponding definitions set forth in the Community Reinvestment Act of 1977, Public Law 95-128, sections 801-806, 12 U.S.C. 2901, et seq. and regulations promulgated pursuant thereto; provided, these definitions are not inconsistent with the context used, or otherwise defined, in this regulation.

The term "division" means the division of banking of the state of Washington. The term "supervisor" means the supervisor of banking.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-140, filed 12/30/86.]

#### **WAC 50-12-150 Assessing the record of performance.**

In connection with its examination of a bank, the division shall assess the record of performance of the bank in helping to meet the credit needs of its entire community, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of the bank. The division will review the bank's Community Reinvestment Act statement(s) and any other written and signed reports, documents, or comments prepared or filed by the bank with the division, or one or more federal bank regulatory agencies, and will use this material as part of or in lieu of an investigation as set forth by RCW 30.60.010. The foregoing material, together with such additional information as may be deemed necessary and obtained by investigation performed by the division, will be considered in assessing the bank's record of performance, based upon the following factors:

(1) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(2) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(3) The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(4) Any practices intended to discourage applications for types of credit set forth in the institution's Community Reinvestment Act statement(s);

(5) The geographic distribution of the institution's credit extensions, credit applications and credit denials;

(6) Evidence of prohibited discriminatory or other illegal credit practices;

(7) The institution's record of opening and closing offices and providing services at offices;

(8) The institution's participation, including investments, in local community development projects;

(9) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(10) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(11) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(12) Other factors that, in the judgment of the supervisor, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-150, filed 12/30/86.]

**WAC 50-12-160 Rating assignment.** (1) Based upon the foregoing investigation and assessment, the supervisor shall annually assign to the bank a numerical community reinvestment rating based on a one through five scoring system in accordance with RCW 30.60.010. Such numerical scores shall represent performance assessments as follows:

- |                               |   |
|-------------------------------|---|
| (a) Excellent performance:    | 1 |
| (b) Good performance:         | 2 |
| (c) Satisfactory performance: | 3 |
| (d) Inadequate performance:   | 4 |
| (e) Poor performance:         | 5 |

(2) For each calendar year commencing after December 31, 1986, the most recent community reinvestment rating assigned to the bank by the supervisor shall be used as a basis for limiting the funds invested in real property and improvements thereof pursuant to RCW 30.04.212. These investments shall be limited to a percentage of capital, surplus, and undivided profits, as follows:

- |  |                |
|--|----------------|
| (a) Excellent performance-rating (1):    | 10% limitation |
| (b) Good performance-rating (2):         | 8% limitation  |
| (c) Satisfactory performance-rating (3): | 6% limitation  |
| (d) Inadequate performance-rating (4):   | 3% limitation  |
| (e) Poor performance-rating (5):         | no investment  |

No bank may at any time be required to dispose of any investment made in accordance with this section because the bank is not then authorized to acquire such investment, if such investment was lawfully acquired by the bank at the time of acquisition.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-160, filed 12/30/86.]

**WAC 50-12-170 Rating for period January 1, 1986 through December 31, 1986.** For the period January 1, 1986 through December 31, 1986, the rating assigned to all state chartered banks shall be a "1"; provided, however, that if a bank has been assigned a CRA rating of 3 or less in the most recent compliance report prepared by the FDIC or the Federal Reserve, the division deems the ten percent limitation for this period to be excessive, and an unsafe and unsound banking practice, and the bank shall be allowed to invest only the amount which would be allowable pursuant to RCW 30.04.212 if the rating of the most recent compliance report of the FDIC or Federal Reserve were assigned to the bank for the period January 1, 1986 through December 31, 1986.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-170, filed 12/30/86.]

**WAC 50-12-180 Limitation on single investment.** The total investment by a bank in a single parcel of real property, and improvements thereon, shall not exceed twenty-five percent of the aggregate amount of such bank's real estate investments allowed by RCW 30.04.212.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-180, filed 12/30/86.]

**WAC 50-12-190 Investment in qualifying community investments.** (1) An amount equal to ten percent of the aggregate amount invested in real estate by a bank pursuant to RCW 30.04.212 shall be placed in qualifying community investments as defined in subsection (3) of this section.

(2) A qualifying community investment made by an entity that wholly owns a bank, is wholly owned by a bank, or is wholly owned by an entity that wholly owns the bank, shall be deemed to have been made by a bank to satisfy the requirements of subsection (1) of this section.

(3) The term "qualifying community investment" means any direct or indirect investment or extension of credit made by a bank in projects or programs designed to develop or redevelop areas in which persons with low-incomes or moderate-incomes reside, designed to meet the credit needs of such low-income or moderate-income areas, or that primarily benefits low-income and moderate-income residents of such areas. The term includes, but is not limited to, any of the following investments within the state of Washington:

(a) Investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or business that address the needs of the low-income and moderate-income areas.

(b) Investments in residential mortgage loans, home improvement loans, housing rehabilitation loans, and small business or small farm loans originated in low-income and moderate-income areas, or the purchase of such loans originated in low-income and moderate-income areas.

(c) Investments for the preservation or revitalization of urban or rural communities in low-income and moderate-income areas.

The term does not include personal installment loans, or loans made for the purchase of, or secured by, an automobile.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-190, filed 12/30/86.]

**WAC 50-12-200 Consideration of performance record in meeting community credit needs in approving and disapproving applications.** The division shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low-income and moderate-income neighborhoods in determining the approval or disapproval for the following applications:

- (1) For a new branch or satellite facility;
- (2) For a purchase of assets;
- (3) For a merger;
- (4) For an acquisition;
- (5) For authority to engage in a business activity;
- (6) For a conversion from a national bank to a state-chartered bank; and

(7) Such other application as the supervisor may consider appropriate.

The performance record need not be considered for subsections (2), (3), and (4) of this section where solvency and safety soundness of the bank is threatened. Assessment of an institution's CRA performance may be a basis for denying an application.

[Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214, 87-02-010 (Order 66), § 50-12-200, filed 12/30/86.]

**WAC 50-12-210 Promulgation.** The division of banking, hereinafter referred to as the "division," after due and proper notice, and pursuant to the provisions of RCW 30.04.111 hereby adopts and promulgates the following rules and regulations, effective September 9, 1987.

[Statutory Authority: RCW 30.04.111, 87-20-022 (Order 69), § 50-12-210, filed 9/30/87.]

**WAC 50-12-220 Purpose.** These rules and regulations are intended to prevent one individual, or relatively small group, from borrowing an unduly large amount of the bank's funds. Further, the intention is also to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business.

[Statutory Authority: RCW 30.04.111, 87-20-022 (Order 69), § 50-12-220, filed 9/30/87.]

**WAC 50-12-230 Definitions.** (1) The term "person" shall include an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(2) The term "loans and extensions of credit" means any direct or indirect advance of funds to a person made on a basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in this section, and includes a renewal, modification, or extension of the maturity date of a loan or extension of credit. Provided, the term "loan or extension of credit" does not include a renewal, extension or restructuring of an existing loan, with interest paid current and no further advance of funds, by a bank under the direction and control of a conservator appointed by the supervisor.

(3) The term "contractual commitment to advance funds" means:

(a) An obligation on the part of the bank to make payments (directly or indirectly) to a designated third party contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party; or

(b) An obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit, guarantees, puts, and other similar arrangements. Undisbursed loan funds, loan commitments not yet drawn upon which do not fall under this definition, and commercial letters of credit or similar instruments are not considered contractual commitments to advance funds.

(4) The term "readily marketable collateral" means financial instruments and bullion which are saleable under ordinary circumstances with reasonable promptness at a fair market value determined by daily quotations based on actual transactions on an auction or a similarly available daily bid and ask price market.

(5) The term "financial instruments" shall include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

(6) The term "current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(7) The term "capital" will include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

(8) The term "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and amounts transferred to surplus from undivided profits pursuant to resolution of the board of directors.

(9) The term "subsidiary" means:

(a) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such person, or is held by it with power to vote;

(b) Any company the election of a majority of whose directors is controlled in any manner by such person; or

(c) Any company with respect to the management or policies of which such person has power, directly or indirectly, to exercise a controlling influence, as determined by the division, after notice and opportunity for hearing.

[Statutory Authority: RCW 30.04.111, 88-16-066 (Order 74), § 50-12-230, filed 8/1/88; 87-20-022 (Order 69), § 50-12-230, filed 9/30/87.]

**WAC 50-12-240 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 50-12-250 shall not exceed twenty percent of the capital and surplus of the bank or trust company.

[Statutory Authority: RCW 30.04.111, 87-20-022 (Order 69), § 50-12-240, filed 9/30/87.]

**WAC 50-12-250 General limitation—Loans fully secured by readily marketable collateral.** (1) Loans or extensions of credit by a state bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus. However, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 50-12-240 exceed forty-five percent, the division of banking



will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 50-12-240.

(2) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(3) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(4) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking actions.

[Statutory Authority: RCW 30.08.140. 87-24-042 (Order 71), § 50-12-250, filed 11/25/87. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-250, filed 9/30/87.]

**WAC 50-12-260 Combining loans to separate borrowers.** (1) Loans or extensions of credit to one person will be attributed to other persons when:

(a) The proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the particular transaction. A "common enterprise" is presumed to exist when:

(a) The expected source of repayment for each loan or extension of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them.

(3) Substantial financial interdependence occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(4) Throughout this section the term "control" is presumed to exist when one or more persons acting in concert directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

[Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-260, filed 9/30/87.]

**WAC 50-12-270 Loans to corporations.** Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person need not be combined where the bank has determined that the person and subsidiaries involved are not engaged in a "common enterprise." If members of a corporate group (a person and all its subsidiaries) are either:

(1) Substantially financially interdependent; or

(2) Engaged in "common enterprise," then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group. Conversely, if members of a corporate group are neither substantially financially interdependent nor engaged in "common enterprise," then the loans to different members are separately subject to a twenty percent limitation. In no event may the total amount of loans or extensions of credit by a state bank to a corporate group exceed fifty percent of the bank's capital and surplus.

[Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-270, filed 9/30/87.]

**WAC 50-12-280 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 50-12-210 through 50-12-300, 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 50-12-260(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 50-12-260(1) is satisfied with respect to such other members. The tests set forth in WAC 50-12-260(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 50-12-260(1) are applicable to such partners or members.

[Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-280, filed 9/30/87.]

**WAC 50-12-290 Exceptions to the lending limits.**

(1) Discount of commercial or business paper: Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(a) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in the fabrication of a product, or to be used for any other business purposes which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

(b) Since the basis for unlimited credit stems from the anticipated sale of a commodity to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Consequently, although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default occurred must thereafter be taken into consideration in determining whether additional loans or extensions of credit may be made. These same principles of disqualification apply to any renewal or extension of either the entire loan or an installment thereof.

(2) Bankers' acceptances: The purchase of banker's acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(a) Acceptances by a state bank of "ineligible" drafts, i.e., time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the general twenty percent limitation of RCW 30.04.111.

(b) During any period within which a state bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to appropriate limitations.

(3) Loans secured by bills of lading or warehouse receipts covering readily marketable staples: Loans and extensions of credit secured by bills of lading, warehouse

receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(a) This exception allows a state bank to make loans or extensions of credit to one person in an amount equal to thirty-five percent of its capital and surplus in addition to the general twenty percent limitation.

(b) A readily marketable staple means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral. Staples eligible for this exception must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify [qualify] at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable staples.

(c) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(d) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten months if secured by nonperishable staples, and (ii) not more than six months if secured by refrigerated or frozen staples.

(e) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of the instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by one of these documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(f) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive

possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

(g) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with a registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(4) Loans secured by United States obligations: Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(a) This exception applies only to loans or extensions of credit which are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(b) If the market value of the collateral declines so that the loan is no longer in conformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days.

(c) Securities issued by any department, agency, bureau, board, commission or establishment of the United States, or any corporation wholly owned, directly or indirectly, shall not be considered eligible collateral for purposes of this section, unless such securities shall be direct obligation of or fully guaranteed as to principal and interest by the United States.

(5) Loans to or guaranteed by a federal agency: Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(a) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(b) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(c) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(6) Loans secured by segregated deposit accounts: Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(a) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(b) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(c) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for state banks to take deposits denominated in foreign currencies.

(7) Unpaid purchase price of sale of bank property: The unpaid portion of the purchase price of a sale of bank property, if secured by that property, shall not be subject to any limitation based on capital and surplus.

(a) Any sale of bank property, resulting in an unpaid purchase price exceeding the bank's lending limit must be approved in advance of the sale by the board of directors, including the terms of payment of such unpaid purchase price, and if the purchase is by a director, officer or employee of the bank, shall conform to Regulation O of the Federal Reserve System and RCW 30.12.050.

(b) The bank must ensure that a security interest has been perfected in the collateral, including execution and recording or filing of documents and any other action required by state law.

(8) Discount of installment consumer paper.

(a) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to twenty per centum of capital and surplus.

(b) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(c) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to

perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(d) For purposes of this subsection, "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(e) For purposes of this subsection, "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(f) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's chairman or chief executive officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(g) If a loan under this section is in default and the dealer or seller of the loan has contractually committed to repurchase the paper, then the loan will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

(h) If loan payments are received and/or controlled by the dealer or seller of the paper and remitted to the bank, then those loans will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

[Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-290, filed 9/30/87.]

**WAC 50-12-300 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 50-12-210 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 50-12-210 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 50-12-210 through this section may make additional advances to such person after those dates if the additional advances are permitted under WAC 50-12-210 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 50-12-210 through this section but are not in conformance with the rules established in WAC 50-12-210 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 50-12-210 through this section may be made on or after the effective dates of WAC 50-12-210 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 50-12-210 through this section no later than April 1, 1988. Loans or extensions of credit which are not in conformance with WAC 50-12-210 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 50-12-210 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 50-12-210 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 50-12-210 through this section.

[Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-300, filed 9/30/87.]

**WAC 50-12-310 Insurance agency activities—Promulgation.** The division of banking, after due and proper notice, and pursuant to the general rule-making authority in RCW 30.04.030 hereby adopts and promulgates the following rules and regulations.

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-310, filed 5/2/90, effective 6/2/90.]

**WAC 50-12-320 Insurance agency activities—Purpose.** These rules and regulations are intended to administer and interpret the provisions governing the authority of state-chartered commercial banks and trust companies to act as insurance agents pursuant to the provisions in RCW 30.04.215(1), 30.08.140(10), and 30.08.150(3).

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-320, filed 5/2/90, effective 6/2/90.]

**WAC 50-12-330 Insurance agency activities—Definitions.** (1) "Bank" means a bank chartered under the provisions of Title 30 RCW.

(2) "Trust company" means a trust company chartered under the provisions of Title 30 RCW.

(3) "Insurance agent" means any person, including a bank, appointed by an insurer to solicit applications for insurance on its behalf and conduct such other activities and be subject to such restrictions of an insurance agent as authorized by the Washington insurance code, Title 48 RCW.

(4) "City" means a city whose boundaries and powers of self-government are defined by Title 35 or 35A RCW.

(5) "Located in a city" means operating a duly certificated full service branch within the city limits of the city.

(6) "Act as insurance agent" means to exercise the full power of an insurance agent on all lines of insurance subject only to the limitations and requirements of Title 48 RCW.

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-330, filed 5/2/90, effective 6/2/90.]

**WAC 50-12-340 Insurance agency activities—General rule.** Except as provided in these rules, or as otherwise provided by law, a bank may not act as insurance agent.

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-340, filed 5/2/90, effective 6/2/90.]

**WAC 50-12-350 Insurance agency activities—Exceptions.** (1) A bank located in a city of not more than five thousand inhabitants may act as insurance agent from an office in that city. A bank exercising this power may continue to act as insurance agent notwithstanding a change of the population of the city in which it is located.

(2) A trust company may act as an insurance agent pursuant to its powers under RCW 30.08.150(3) "to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise."

(3) A bank may engage in insurance activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of June 11, 1986. These activities include, but are not limited to:

(a) General insurance agency activities conducted by a bank with total assets of fifty million dollars or less, provided, however, that such bank may not engage in the sale of life insurance or annuities. For purposes of this exception "total assets" is determined by the latest consolidated report of condition filed with the supervisor of banking. This exception ceases when the value of the assets of the bank exceed fifty million dollars. The insurance agency license must be surrendered and the assets sold or otherwise disposed of within three years unless otherwise extended by the supervisor of banking.

(b) A bank may act as agent for life, disability, and involuntary unemployment insurance if the insurance is limited to assuring the repayment of the outstanding balance due on a specific extension of credit by the bank.

(c) A bank may act as agent for property insurance on loan collateral, provided such insurance is limited to assuring repayment of the outstanding balance of the extension of credit and such extension of credit is not more than ten thousand dollars (twenty-five thousand dollars to finance the purchase of a residential manufactured home and which is secured by such home) increased by the percentage increase in the *Consumer Price Index for Urban Wage Earners and*

*Clerical Workers* published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year of the extension of credit.

(4) A bank or trust company may engage in any insurance agency activity lawfully engaged in by national banks located in the state of Washington.

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-350, filed 5/2/90, effective 6/2/90.]

**WAC 50-12-360 Insurance agency activities—Subsidiary.** A bank or trust company may conduct insurance agency activities that are authorized to be engaged in by the bank or trust company through a subsidiary of the bank or trust company as authorized by RCW 30.04.125(8).

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-360, filed 5/2/90, effective 6/2/90.]

**WAC 50-12-370 Insurance agency activities—Enforcement.** It shall be considered an unsafe and unsound practice in conducting the affairs of the bank or trust company if in the opinion of the supervisor the insurance agency activities of the bank or bank subsidiary are:

(1) A violation of any applicable state or federal consumer protection law; or

(2) A violation of any applicable state or federal statute prohibiting anticompetitive activities.

[Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-370, filed 5/2/90, effective 6/2/90.]

## Chapter 50-14 WAC MUTUAL SAVINGS BANKS

### WAC

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**WAC 50-14-010 Facilitating loans—Real property.** For purposes of this section the following words shall have the following meanings:

(1) "Foreclosed property" means real estate or interest therein, or other property used in connection therewith acquired through foreclosure or similar action, deed of trust sales, or by deed in lieu of any thereof.

(2) "Facilitating loan" means a loan or real estate contract covering foreclosed property made by a mutual savings bank to the purchaser of the foreclosed property.

(3) "Loan limits" means the limitations on investments imposed by RCW 32.20.410.

A mutual savings bank may make a facilitating loan for not in excess of the sale price of the property if the board of trustees or officers or committees designated by the board deem it prudent to dispose of the property in that manner. Facilitating loans shall not be deemed violations of RCW 32.20.250 or 32.20.260, nor shall the division of banking require facilitating loans to be classified as loans made pursuant to RCW 32.20.255. Until such time as a facilitating loan conforms to the requirements of RCW 32.20.250, 32.20.255 or 32.20.260, or other investment statutes relating to mutual savings bank, it shall be carried on the books and records of the bank as "Other real estate loans - Debts previously contracted," and shall not be carried at more than the value of the property securing it. Facilitating loans shall be included in determining the amounts invested which are subject to the loan limits to the extent of the value at which they are carried on the books of the bank. The bank may, however, make facilitating loans regardless of the loan limits.

[Order 36, § 50-14-010, filed 7/8/76.]

**WAC 50-14-020 Introduction.** This chapter implements the authority of the supervisor of banking (the "supervisor") under chapters 32.08, 32.34, and 34.05 RCW to enact regulations concerning the organization and operation of mutual holding companies. It addresses only those features of the organization and operation of mutual holding companies and their subsidiary stock savings banks that are not governed by Title 32 RCW. Among the provisions that must be considered are:

- (1) Chapter 32.32 RCW for the chartering of a mutual savings bank and the conversion of a mutual savings bank to a stock savings bank;
- (2) Title 32 RCW generally for the operations of any such savings bank; and
- (3) Chapter 32.34 RCW for any merger or acquisition of assets involving a mutual holding company or banking subsidiary of a mutual holding company.

In addition, the supervisor has determined that formation of a business trust is not the sole and exclusive method by which a state savings bank may form a mutual holding company ("MHC").

Under RCW 32.34.050, a state savings bank is allowed to form a business trust that, in turn, is authorized to become a MHC. However, based on the statutory authority granted to the supervisor under that statute as well as chapters 32.08 and 34.05 RCW, the supervisor has determined that utilization of a business trust is not the exclusive procedure for creation of MHCs.

By enacting RCW 32.08.142, the legislature evidenced a clear intent that state-chartered savings banks not be placed at a competitive disadvantage to federally chartered savings banks. While the state Constitution prohibits automatic incorporation into state law of federal laws enacted after adoption of RCW 32.08.142, that restriction does not invalidate the legislative intent that state institutions not be placed at an undue competitive disadvantage with federal savings banks.

Conditioning MHC formation on the utilization of a business trust to act as the MHC is potentially disadvantageous to state savings banks in view of:

(a) The absence of state statutory and regulatory guidance concerning the governance and authority of trusts when acting as holding companies;

(b) The uncertainty of regulations of such trusts as MHCs; and

(c) The potential federal tax uncertainties that would arise by utilizing a trust in connection with a tax free reorganization into a mutual holding company.

In addition, business trusts are permitted by statute (chapter 23.90 RCW) to exercise the general powers of domestic corporations, including the power to merge into a domestic corporation. As a result, the supervisor has determined that the scope of chapter 32.34 RCW and the incidental powers clause of RCW 32.08.140 make it convenient or useful in connection with a savings bank's performance of its specifically enumerated powers to accomplish a MHC reorganization, to utilize either a corporation formed under the laws of the state of Washington or a business trust.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-020, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-020, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-030 Definitions—Regulations not exclusive.** (1) The definitions in RCW 32.32.025 shall apply to any transaction under these rules unless the context requires otherwise and except as provided herein.

(2) The reorganization of a mutual savings bank into mutual holding company form ("reorganization") and the subsequent conversion of the MHC into stock form or the offering of common stock of a subsidiary of a MHC that will cause the MHC to hold less than fifty-one percent of the issued and outstanding common stock of the stock savings bank ("conversion to stock form") shall be governed by chapter 32.32 RCW, except as provided in these rules.

(3) The term "mutual holding company" shall mean the business trust or mutually owned corporation, or the successor of either, originally established by a savings bank to serve as the holding company of a stock savings bank subsidiary, provided that a MHC shall at all times own fifty-one percent or more of the issued and outstanding common stock of a stock savings bank subsidiary that is the successor by merger or purchase to substantially all of the assets and all of the deposits and other liabilities of the savings bank that has reorganized into a mutual holding company pursuant to RCW 32.34.050 and these rules.

(4) To achieve the intent of RCW 32.34.050 in a manner that ensures consistency with chapter 32.32 RCW, and acting pursuant to RCW 32.32.010, the supervisor hereby waives or modifies to the extent set forth in these rules the applicability of the following provisions of chapter 32.32 RCW as they relate to the organization and operation of mutual holding companies and their stock savings bank subsidiaries: RCW 32.32.035, 32.32.045 through 32.32.070, 32.32.085, 32.32.090, 32.32.095, 32.32.110, 32.32.120, 32.32.135 through 32.32.160, 32.32.185 through 32.32.205, 32.32.240 through 32.32.275, 32.32.315, 32.32.320, 32.32.330, 32.32.335, 32.32.355, 32.32.440, and 32.32.485.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-030, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-030, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-040 Authorization to form mutual holding companies.** (1) Notwithstanding any other provision of law, and in accordance with the general requirements set forth in WAC 50-14-050 through 50-14-140, a mutual savings bank may reorganize under a plan of reorganization so as to cause its deposit-taking and one or more other activities to be conducted by a stock savings bank subsidiary of a mutual holding company, which subsidiary is formed for such purpose. The plan of reorganization must be adopted by the bank's trustees and submitted to and approved by the supervisor as provided in these rules.

(2) Except to the extent that such provisions are inconsistent with these rules, the new stock savings bank subsidiary of the mutual holding company shall be subject to the same provisions of Title 32 RCW as apply to other stock savings banks.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-040, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-040, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-050 Required approvals.** (1) A reorganization of a mutual savings bank pursuant to these rules shall be approved by not less than two-thirds of the board of trustees of the mutual savings bank.

(2)(a) A mutual savings bank proposing a reorganization pursuant to these rules shall provide the supervisor with written notice of such proposed reorganization. Such notice shall include (i) a copy of the plan of reorganization approved by the board of trustees pursuant to subsection (1) of this section, (ii) the proposed incorporation and authorization certificates for the mutual holding company and/or the stock savings bank subsidiary, as appropriate, and (iii) such other information as the supervisor shall require. The supervisor shall approve or disapprove the plan of reorganization within sixty days of acceptance of a completed plan of reorganization.

(b) In determining whether to approve the plan of reorganization, the supervisor shall consider:

(i) Whether the formation of the mutual holding company would be in the interests of the depositors of the mutual savings bank proposing to reorganize;

(ii) Whether the reorganization would promote safe and sound banking practices;

(iii) Whether the reorganization would serve the public interest;

(iv) Whether the financial and management resources of the mutual savings bank proposing to reorganize are sufficient to warrant approval of the reorganization; and

(v) Whether the mutual savings bank proposing to reorganize either fails to furnish any information required under (a) of this subsection or furnishes information containing any statement that, at the time and in the circumstances under which it was made, was false or misleading with respect to any material fact or omits any material fact necessary to make statements therein not false or misleading.

(c) When the supervisor shall have determined to approve or disapprove the plan of reorganization, the supervisor shall so advise the mutual savings bank in writing and, if appropriate, shall endorse approval on the incorporation and authorization certificates and cause the same to be filed in such manner and in the respective offices provided

in chapter 32.08 RCW. Upon the filing of the authorization certificate as provided in RCW 32.08.080, the existence of the mutual holding company and/or stock savings bank, as appropriate, shall commence. As used in these rules, the term "authorization certificate" shall include an amended authorization certificate.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-050, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-050, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-060 Formation of a mutual holding company.** (1)(a) The plan of reorganization may authorize the formation of a MHC by:

(i) The organization by or at the discretion or request of the mutual savings bank of a business trust or mutual corporation that shall serve as a MHC, the organization by the MHC of a stock savings bank subsidiary and the transfer to such stock savings bank of substantially all of the mutual savings bank's assets and liabilities, including all of its deposit liabilities, in accordance with these rules;

(ii) The organization by or at the direction or request of the mutual savings bank of a business trust or mutual corporation that shall serve as the MHC, and the organization by such MHC of a stock savings bank subsidiary that merges with the mutual savings bank; or

(iii) The reorganization of the mutual savings bank under any other method approved by the supervisor.

(b) For the purposes of (a) of this subsection and when authorized by the supervisor, as hereinafter provided, the trustees of the mutual holding company, consisting of five or more natural persons who are citizens of the United States, may incorporate an interim stock savings bank subsidiary in the manner herein prescribed. No savings bank shall incorporate for less amount nor commence business unless it has a paid-in capital stock in such amount as may be determined by the supervisor after consideration of the proposed transaction.

(i) Persons desiring to incorporate an interim stock savings bank shall file with the supervisor a notice of their intention to organize a savings bank in such form and containing such information as the supervisor shall prescribe by regulation or otherwise require, together with proposed articles of incorporation and bylaws, which shall be submitted for examination to the supervisor at his office in Olympia. The proposed articles of incorporation shall state:

(A) The name of such savings bank.

(B) The city, village or locality and county where the head office of such savings bank is to be located.

(C) The nature of its business (i.e., that of a savings bank).

(D) The amount of its capital stock, which shall be divided into shares of a par or no par value as may be provided in the articles of incorporation.

(E) The names, places of residence, and mailing addresses of the persons who as directors are to manage the bank until the first annual meeting of its shareholders.

(F) If there is to be preferred or special classes of stock, a statement of preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class; or a statement that the shares of each class shall have the attributes as shall be determined by the bank's board of

directors from time to time with the approval of the supervisor.

(G) Any provision granting the shareholders the preemptive right to acquire additional shares of the bank and any provision granting shareholders the right to cumulate their votes.

(H) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including, without limitation, any provision restricting the transfer of shares.

(I) Any provision the incorporators elect to so set forth, not inconsistent with law or with the purposes for which the bank is organized, or any provision limiting any of the powers granted in the applicable provisions of the Revised Code of Washington.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers granted in the applicable provisions of the Revised Code of Washington. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer authorized to take acknowledgements.

(ii) In case of approval, the supervisor shall forthwith give notice thereof to the proposed incorporators and file one of the triplicate articles of incorporation in his own office, transmit another triplicate to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other articles of incorporation, the secretary of state shall file such articles and record the same. Upon the filing of articles of incorporation approved as aforesaid by the supervisor, with the secretary of state, all persons named therein and their successors shall become and be a corporation, which shall have the powers and be subject to the duties and obligations prescribed by the applicable provisions of the Revised Code of Washington, and whose existence shall continue from the date of the filing of such articles until terminated pursuant to law; but such corporation shall not transact any business, except as is necessary or convenient to its organization and preparation to engage in business, until it has received from the supervisor a certificate of authority to engage in the banking business as a stock savings bank.

(c) For the purposes of (a) of this subsection, WAC 50-14-080 permits a newly organized stock savings bank to issue to persons other than its parent MHC, an amount of common stock and securities convertible into common stock that, in the aggregate, does not exceed forty-nine percent of the issued and outstanding common stock of such stock savings bank upon completion of the offering. Issued and outstanding securities that are convertible into common stock shall be considered issued and outstanding common stock for purposes of computing the forty-nine percent limitation. This subsection shall not limit the authority of such stock savings bank to issue equity or debt securities other than common stock and securities convertible into common stock.

(2) In connection with the reorganization of a mutual savings bank as provided in WAC 50-14-040, the MHC may acquire assets of the mutual savings bank to the extent that such assets are not then required to be transferred to (or retained by) the stock savings bank in order to satisfy capital

or reserve requirements of any applicable state or federal law or regulation.

(3) A stock savings bank whose outstanding common stock is at least fifty-one percent but less than one hundred percent owned by a mutual holding company shall have at least one director, but no more than two-fifths of its directors, who are "unaffiliated directors" who shall represent the interests of the minority shareholders. An "unaffiliated director" is a director who is not:

(a) An officer or employee of the stock savings bank (or any affiliate thereof); or

(b) An officer, trustee, or employee of the mutual holding company.

If the incorporation certificate or bylaws of the stock savings bank provide that the board of directors shall be divided into two or more classes, then to the extent possible, each class shall contain the same number of unaffiliated directors as each other class.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-060, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-060, filed 2/28/92, effective 3/30/92.]

#### **WAC 50-14-070 Mutual holding company powers.**

(1) Upon the formation of a MHC:

(a) The MHC shall possess all the rights, powers, and privileges (except deposit-taking powers) and shall be subject to all the limitations, not inconsistent with these rules, of a mutual savings bank under Title 32 RCW; and

(b) The MHC shall be subject to the limitations imposed by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841, et seq.) or, in the case of a MHC resulting from the reorganization of a savings bank that elected either before or after such reorganization to be treated as a savings association (as defined in 12 U.S.C. Section 1467a), such mutual holding company shall be subject to the limitations imposed by the savings and loan holding company provisions of the Home Owners' Loan Act (12 U.S.C. Section 1467a).

(2) Notwithstanding any inconsistent provisions of Title 32 RCW, and subject to the express approval of (or additional rules promulgated by) the supervisor, a MHC may:

(a) Merge with, acquire, or purchase the assets of a mutual holding company established pursuant to these rules or the savings and loan holding company provisions of the Home Owners' Loan Act (12 U.S.C. Section 1467a);

(b) Acquire or purchase the assets or stock of a stock savings bank, commercial bank, credit union, stock savings and loan association, stock federal savings bank, or stock federal savings and loan association;

(c) Acquire a mutual savings bank, mutual savings and loan association, federal mutual savings bank, or federal mutual savings and loan association through the merger of such institution with a stock subsidiary of such mutual holding company;

(d) Convert to a stock holding company pursuant to the provisions of a plan which is approved by the supervisor, preserves the subscription and liquidation account rights of depositors of the mutual savings bank who then remain depositors of the stock savings bank and otherwise complies with WAC 50-14-130; and



(e) Engage in any other acquisition or combination, specifically permitted by the supervisor, including a merger into or sale of assets to another mutual or stock corporation.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-070, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-070, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-080 Offering of securities.** (1) Any offering of shares of voting securities by a MHC which converts to stock form or of common stock of a stock savings bank subsidiary of a MHC that will cause the holding company to hold less than fifty-one percent of the issued and outstanding common stock of the stock savings bank upon completion of the offering (a "subsequent offering") shall be governed by the rules prescribed in chapter 32.32 RCW, except to the extent that those rules are explicitly waived or modified by the supervisor.

(2) Any offering of shares of any class of stock of a stock savings bank subsidiary of a MHC that will not cause the MHC to hold less than fifty-one percent of the issued and outstanding common stock of the stock savings bank upon completion of the offering may be accomplished through either a public distribution or by means of a limited distribution or placement of the securities, none of which methods of offering will require the stock of the savings bank subsidiary to be offered to members of the unconverted mutual savings bank or of the MHC. Any such offering shall comply with the disclosure requirements of chapter 32.32 RCW, shall be made by means of an offering circular approved by the supervisor, and shall be sold at a price that is approved (a) by the supervisor in the case of the initial offering of shares to persons other than the MHC, and in such case based upon a proposed price range established by qualified persons who are independent of the bank and (b) by the board of directors in the case of other offerings contemplated by this subsection.

(3) The procedures to follow in conducting a subsequent offering may, with the supervisor's approval, differ from those set forth in chapter 32.32 RCW.

(4) Notwithstanding any contrary provision of Title 32 RCW, there shall be no requirement to use an underwriter in an offering made pursuant to subsection (2) of this section, though such use is permissible.

(5) Subject to approval of the supervisor, a stock savings bank subsidiary of a MHC may declare or pay a cash dividend that is payable only to shareholders of the stock savings bank other than the MHC.

(6) Notwithstanding any contrary provision of Title 32 RCW, no offering circular used in connection with an offering pursuant to subsection (2) of this section shall be required to set forth the estimated subscription price range of the shares being offered.

(7) A stock savings bank subsidiary of a MHC may issue and, consistent with these rules, any person may acquire any amount of preferred stock of the bank.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-080, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-080, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-090 Subscription rights.** (1) Upon a conversion to stock form, as such conversion is defined in WAC 50-14-030(2), by a MHC or a stock savings bank subsidiary of a MHC, depositors of the stock savings bank at the record date of the conversion to stock form who continuously have been depositors since the reorganization, or were depositors of any savings association subsequently acquired by a MHC at a time when the association was in mutual form and remained depositors of the stock savings bank, shall receive, without payment, nontransferable rights to subscribe for stock of the converted MHC or the converted stock savings bank to be sold in the subsequent offering, to the extent that such depositors would have received those rights pursuant to RCW 32.32.045 in a stock conversion of the savings bank as prescribed in chapter 32.32 RCW; provided, however, that such depositors who are not shareholders of the stock savings bank at the record date for the subsequent offering shall have priority rights, not inconsistent with the provisions of chapter 32.32 RCW, to subscribe for shares to be issued in the subsequent offering in accordance with a plan approved by the supervisor or made pursuant to subsequent rules to be promulgated by the supervisor.

(2) For purposes of this section, an "eligible account holder" is any depositor of a stock savings bank at the record date for a conversion to stock form of the bank or the MHC who has continuously owned in such bank one or more accounts valued in the aggregate of fifty dollars or more since the date that the trustees of the unconverted mutual savings bank approved the reorganization or the date that the bank's predecessor mutual association was acquired by the MHC.

(3) Nothing in chapter 32.34 RCW or chapter 50-14 WAC shall be construed to authorize or require that depositors in a mutual savings bank that reorganizes as a MHC be offered stock in the stock savings bank subsidiary except as provided in subsection (1) of this section.

(4) Depositors in a mutual savings bank that reorganizes as a MHC with a stock savings bank subsidiary shall become depositors in such subsidiary when the mutual savings bank merges with or transfers its assets and liabilities to the stock savings bank.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-090, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-090, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-100 Stock issuance and stock award plans.** The authority for a stock savings bank subsidiary of a MHC to issue stock shall be subject to the following limitations, unless otherwise approved by the supervisor.

(1) The stock sold in the reorganization shall be sold at a total price equal to the estimated pro forma market value of such stock, based on an independent valuation as provided in WAC 50-14-080(2) and any stock sold in a later offering shall be sold at its fair value as determined by the board of directors of the stock savings bank.

(2) The aggregate amount of issued and outstanding common stock of the stock savings bank owned or controlled by persons other than the MHC at the close of any proposed issuance shall be forty-nine percent or less than the savings bank's total outstanding common stock.

(3) The aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the savings bank, by any nontax-qualified employee stock benefit plan of the savings bank or any insider (which for the purpose of these rules will mean an officer, director, or associate of an officer or director) of the savings bank (exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market) shall not exceed ten percent of the outstanding shares of common stock of the savings bank held by persons other than the savings bank's MHC parent at the close of the proposed issuance. In calculating the number of shares held by any insider or associate, shares held by any tax-qualified or nontax-qualified employee stock benefit plan of the savings bank that are attributable to such person shall not be counted.

(4) The aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the savings bank, by any nontax-qualified employee stock benefit plan of the savings bank or any insider of the savings bank and his or her associates (exclusive of any stock acquired by said plan or insider and his or her associates in the secondary market) shall not exceed ten percent of the stockholders' equity of the savings bank held by persons other than the MHC parent at the close of the proposed issuance.

(5) The aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the savings bank, by any one or more tax-qualified employee stock benefit plans of the savings bank (exclusive of any stock acquired by such plans in the secondary market) shall not exceed ten percent of the outstanding shares of common stock of the savings bank held by persons other than the MHC parent at the close of the proposed issuance.

(6) The aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the savings bank, by any one or more tax-qualified employee stock benefit plans of the savings bank (exclusive of any stock acquired by such plans in the secondary market) shall not exceed ten percent of the stockholders' equity of the savings bank held by persons other than the MHC parent at the close of the proposed issuance.

(7) The aggregate amount of common stock acquired in the proposed issuance, plus all prior issuances of the savings bank by all nontax-qualified employee stock benefit plans of the savings bank and insiders of the savings bank (exclusive of any stock acquired by said plans and by insiders in the secondary market) shall not exceed thirty-five percent of the outstanding shares of common stock of the savings bank held by persons other than the MHC parent at the close of the proposed issuance if the savings bank has less than fifty million dollars in total assets prior to the issuance or twenty-five percent of such outstanding shares if the savings bank has more than five hundred million dollars in total assets before the issuance. If the savings bank has between fifty million dollars and five hundred million dollars in total assets before the issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less fifty million dollars divided by forty-five million dollars. In calculating the number of shares held by insiders and their associates, shares held by any tax-qualified or nontax-qualified employee stock benefit

plan of the savings bank that are attributable to such persons shall not be counted.

(8) The aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the savings bank, by all nontax-qualified employee stock benefit plans of the savings bank, insiders of the savings bank, and associates of insiders of the savings bank (exclusive of any stock acquired by said plans and by insiders in the secondary market) shall not exceed thirty-five percent of the stockholders' equity of the savings bank held by persons other than the association's mutual holding company parent at the close of the proposed issuance if the savings bank has less than fifty million dollars in total assets before the issuance or twenty-five percent of such stockholders' equity if the savings bank has more than five hundred million dollars in total assets prior to the issuance. If the savings bank has between fifty million dollars and five hundred million dollars in total assets before the proposed issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less fifty million dollars divided by forty-five million dollars.

(9) Shares of authorized but unissued stock of a stock savings bank subsidiary of a MHC may be reserved to satisfy and may be issued pursuant to any stock-based incentive plan for employees, directors, and others approved by the savings bank's board of directors and a majority of its stockholders.

(10) If, at the close of any stock issuance, the stock savings bank has holders of record of its outstanding voting securities that would require registration under the Securities Exchange Act of 1934, then such requirement shall be met.

(11) For a period of three years following the proposed issuance, no insider of the savings bank shall sell, without the supervisor's prior written approval, any stock of the savings bank purchased in connection with the reorganization except that the personal representative of such insider may sell shares in the event of the death of the insider.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-100, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34.]050. 92-06-041, § 50-14-100, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-110 Liquidation account.** (1) The entire unconsolidated net worth of a MHC shall constitute a liquidation account for the benefit of the depositors of its subsidiary stock savings banks who continuously have been depositors since the reorganization or were depositors of any savings association subsequently acquired by a MHC at a time when the association was in mutual form and remained depositors of the stock savings bank ("eligible depositors"). The liquidation account shall not be a fixed amount but may increase (as to the entire account but not as to any individual eligible depositor) or decrease (as provided in RCW 32.32.190 through 32.32.205, except as application of those sections is inconsistent with these rules) over time. The function of the liquidation account is to establish that upon the complete liquidation of the mutual holding company, the entire net worth of the mutual holding company will be distributed among those persons who are the eligible depositors of its subsidiary savings bank(s) as of the date of the liquidation. The designation of the mutual holding

company's net worth as a liquidation account shall not operate to restrict the use or application of the mutual holding company's net worth accounts.

(2) In the event of a complete liquidation of a mutual holding company, the remaining liquidation account of the mutual holding company shall be distributed ratably among all the eligible depositors of its subsidiary savings bank(s) as of the date of the liquidation.

(3) Upon the conversion to stock form of a mutual holding company, the liquidation account of the holding company shall no longer be maintained. Instead, each subsidiary savings bank shall at that time establish a liquidation account, which liquidation accounts shall in the aggregate equal the mutual holding company's liquidation account as of its last periodic report of condition immediately preceding its conversion into a stock-form holding company. The liquidation account established by each subsidiary savings bank shall be in the same proportion to the mutual holding company's liquidation account as the total of the subaccount balances of the then eligible depositors of the subsidiary savings bank bears to the total subaccount balances of the eligible depositors of all subsidiary savings banks of the mutual holding company. The liquidation account established by a subsidiary savings bank shall comply with the rules contained in RCW 32.32.185 through 32.32.205, to the extent not inconsistent with these rules.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-110, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-110, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-120 Reorganization into mutual holding company form.** (1) The mutual holding company may retain or acquire assets of the mutual savings bank only to the extent permitted by the supervisor.

(2) A stock savings bank established in connection with a reorganization shall reserve no authorized but unissued shares, except as necessary to satisfy a stock option plan or issue securities convertible into stock.

(3) A plan of reorganization shall contain the provisions referenced in RCW 32.32.035, except that it need not provide for the sale of any stock and the aggregate price of any stock sold shall bear the same proportion to total estimated pro forma market value of the subsidiary savings bank(s) determined by an independent appraisal that the shares sold bear to the total issued and outstanding shares of the savings bank(s).

[Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-120, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-130 Conversion of mutual holding company into stock holding company.** (1) If approved by the supervisor, a MHC may convert to a stock form holding company.

(2) The MHC shall adopt a plan of conversion which the supervisor finds to be in accordance with the provisions of chapter 32.32 RCW and these rules.

(3) The conversion must include such provisions requiring the exchange of shares of the subsidiary savings bank(s) for shares of the resulting stock holding company as the supervisor finds to be fair to members of the MHC who

possess subscription rights and to stockholders of the subsidiary banks.

[Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-130, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-130, filed 2/28/92, effective 3/30/92.]

**WAC 50-14-140 Construction.** Nothing contained in chapter 50-14 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 32.34.040 - [32.34].050. 92-06-041, § 50-14-140, filed 2/28/92, effective 3/30/92.]

## Chapter 50-16 WAC CONSUMER FINANCE ACT RULES

### WAC

50-16-020	Recordkeeping—General.
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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

50-16-990 Appendix to Small Loan Act rules. [Letters (codified as WAC 50-16-990), filed 3/23/60.] Repealed by 82-24-074 (Order 48), filed 12/1/82. Statutory Authority: RCW 31.08.230.

**WAC 50-16-020 Recordkeeping—General.** Each licensee shall install and maintain, in connection with the business done in each licensed office, such books, accounts and records as will lend themselves readily to inspection and audit by the supervisor of banking or his representatives, and shall maintain separate books and records pertaining to the business done under the provisions of the Consumer Finance Act in the event any other type of business is conducted in the same office by the licensee.

[Statutory Authority: RCW 31.08.230. 82-24-074 (Order 48), § 50-16-020, filed 12/1/82; Rule 50-16-020, filed 12/20/63; § 50-16-020, filed 1/17/61; § 50-16-020, filed 12/12/60; Small Loan Act rules (part), filed 11/29/60; Small Loan Act rules, § 1 (part), filed 3/23/60.]

**WAC 50-16-025 Allocation of expenses to consumer finance business.** If any other business than that authorized under the Consumer Finance Act is conducted in the same office, the licensee shall fairly and equitably allocate all expenses for the purpose and with the result that the books relating to the licensee's business under the Consumer

Finance Act will fairly reflect the expense of conducting such business.

[Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-025, filed 12/1/82; Rule 50-16-025, filed 12/20/63; § 50-16-025, filed 1/17/61; § 50-16-025, filed 12/12/60; Small Loan Act rules (part), filed 11/29/60; § 1 (part), filed 3/23/60.]

**WAC 50-16-030 Books, files and accounting records required.** At least the following books, files and accounting records shall be maintained:

(1) **Loan register.**

(a) Every loan shall be recorded in the loan register, which shall be kept currently in the order made showing the following information:

- (i) Number of loan
- (ii) Date of loan
- (iii) Name of borrower
- (iv) Amount of loan

(b) As an alternative method for maintaining records, the licensee may maintain a copy of the disclosure statement in a separate binder, and in chronological order.

(2) **Borrowers' individual account cards or looseleaf ledgers.** A separate account record shall be maintained for each loan made to any one borrower. Each such account record shall provide space for the proper recording of the following information:

- (a) Loan register number of loan
- (b) Date of loan
- (c) Name and address of borrower
- (d) Rate at which charges are to be computed or the annual percentage rate (APR), if less than the maximum
- (e) Terms of repayment
- (f) Face amount of note
- (g) If charges are precomputed:
- (i) Principal amount of loan
- (ii) Total amount of charges
- (iii) Amount which may be collected as a default charge
- (h) Payments received showing:
  - (i) Date of payment
  - (ii) Amount paid on principal or amount paid on note when charges have been precomputed
  - (iii) Remaining principal balance or remaining face amount of note when charges have been precomputed
  - (iv) Amount paid on charges, except when charges are precomputed
  - (v) Date to which charges are paid, except when charges are precomputed
  - (vi) The amount of default and/or deferment charges collected
    - (i) Name and address of co-maker or endorser, if any
    - (j) Date of maturity of loan
    - (k) Amount of charge for life insurance
- (l) When a note has been reduced to judgment, the face of the account record must show the following:
  - (i) Date of judgment
  - (ii) Amount of judgment
  - (iii) Court costs

Thereafter, all payments received must be applied on the judgment and properly identified.

(3) **Cash book.** Acceptable records showing all cash receipts and disbursements.

(4) **Alphabetical record of makers, endorsers, co-makers, sureties.** Cards or other records of makers, endorsers, co-makers or sureties, showing liability thereof on all loans.

(5) **General ledger.** The general ledger, which shall be posted at least once as of the close of business on a fixed date (preferably the last business day) of each month, and a trial balance taken therefrom. When the general ledger for the office is maintained elsewhere, a copy of the monthly trial balance shall be forwarded to the consumer finance office, showing the following information as of the end of each month:

- (a) Total number and amount of precomputed loans
- (b) Reserve for unearned precomputed charges
- (c) Total number and amount of nonprecomputed loans
- (d) Total number and amount of contracts outstanding
- (e) Total number and amount of all other loans, being loans not made under the Consumer Finance Act.

(6) Such books, accounts, and records may be maintained in each licensed office by means of electronic display equipment if such equipment is made available to the supervisor of banking or his representatives for purposes of examination in the licensed office. Such books, accounts, and records shall be made available to the supervisor of banking or his representatives in printed form within ten days after a request for such records.

[Statutory Authority: RCW 31.04.150, 85-19-054 (Order 64), § 50-16-030, filed 9/13/85. Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-030, filed 12/1/82; 79-04-042 (Order 40), § 50-16-030, filed 3/23/79; Rule 50-16-030, filed 12/20/63; § 50-16-030, filed 1/17/61; § 50-16-030, filed 12/12/60; Small Loan Act rules (part), filed 11/29/60; § 1 (part), filed 3/23/60.]

**WAC 50-16-035 Forms.** Copies of all forms of applications, notes, statements to borrowers, receipts, mortgages, security agreements and/or chattel assignments, and other documents which are currently used by the licensee and which relate to loan transactions, shall be filed with the supervisor.

[Statutory Authority: RCW 31.08.230, 79-04-042 (Order 40), § 50-16-035, filed 3/23/79; Rule 50-16-035, filed 12/20/63; § 50-16-035, filed 1/17/61; § 50-16-035, filed 12/12/60; Small Loan Act rules (part), filed 11/29/60; § 1 (part), filed 3/23/60.]

**WAC 50-16-040 Litigation record.** Each licensed office shall maintain a separate permanent record of all loans in litigation, so entitled, including all loans assigned, sold or transferred for the purpose of suit, which record shall contain the following:

- (1) Loan number, original amount of loan, and unpaid balance.
- (2) Nature of security foreclosed, attached, to be recovered, or otherwise repossessed.
- (3) Name of owner of such property, if not the property of the borrower.
- (4) Date and terms of settlement of account, if prior to obtaining judgment, or if after judgment obtained, all items included in collection after suit is instituted.

[Rule 50-16-040, filed 12/20/63; § 50-16-040, filed 1/17/61; § 50-16-040, filed 12/12/60; Small Loan Act rules (part), filed 11/29/60; § 1 (part), filed 3/23/60.]

**WAC 50-16-045 Loans.** (1) **Numbering and filing.** Each loan made shall have its proper account number and all instruments taken in connection with any loan must bear this account number. All such instruments and papers required by the Consumer Finance Act to be retained by the licensee shall be filed so as to be readily available for inspection at any time, and shall be retained for a period of two years after date of final entry.

(2) **Payment schedule.** All loan contracts shall provide for substantially equal payments, and such payments shall be due not less frequently than once in each month. If agreed by the parties to the loan contract the due date of the first installment may be not more than fifteen days more than one month from date of loan. A month shall be that period of time from any date in a month to a corresponding date in the next month and if there is no corresponding date, then to the last day of the next month.

[Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-045, filed 12/1/82; 79-04-042 (Order 40), § 50-16-045, filed 3/23/79; Rule 50-16-045, filed 12/20/63; § 50-16-045, filed 1/17/61; § 50-16-045, filed 12/12/60; Small Loan Act rules, § II, filed 11/29/60; § 2, filed 3/23/60.]

**WAC 50-16-050 Computation of charges.** Licensees shall adopt a fixed method of computing charges on fractional balances and shall either compute charges on the actual fractional dollar which may be contained in any balance or disregard the fraction entirely. Under no circumstances shall charges be computed on "even dollar" balances in excess of the amount actually due upon the loan.

[Rule 50-16-050, filed 12/20/63; § 50-16-050, filed 1/17/61; § 50-16-050, filed 12/12/60; Small Loan Act rules, § III A, filed 11/29/60; § 3, filed 3/23/60.]

**WAC 50-16-055 Rebate of precomputed charges.**

(1) **General.** When the loan is prepaid in full, a rebate of the precomputed charge must be made either by the method prescribed by the Consumer Finance Act in RCW 31.08.160 (3)(b) or by recomputing charges on actual unpaid balances for the actual time outstanding.

(2) **Prepayment before first installment date.** If prepayment in full occurs before the first installment date the rebate must be made as of the exact day of prepayment. In addition to the standard rebate as of the first installment, an additional rebate of one-thirtieth of the portion of the precomputed charge applicable to a first installment period of one month shall be made for each day from the date of such prepayment to the first scheduled installment date. The full amount of the precomputed charges may be rebated and charges recomputed on the unpaid principal balance for the actual time such balance was outstanding.

(3) **Prepayment after first installment date.** When prepayment in full occurs on an installment date the rebate must be made as of that installment date. When an installment date precedes the prepayment date by fifteen days or less, the rebate shall be made as of such preceding installment date. When an installment date precedes the prepayment date by sixteen days or more, the rebate shall be made as of the first installment date following such prepayment (except during the first installment period).

(4) **Renewal, refinanced, judgment obtained before maturity.** When the contract is renewed or refinanced

before maturity, or judgment is obtained before maturity, the same rebate is required as for prepayment in full.

[Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-055, filed 12/1/82; Rule 50-16-055, filed 12/20/63; § 50-16-055, filed 1/17/61; § 50-16-055, filed 12/12/60; Small Loan Act rules, § III B, filed 11/29/60.]

**WAC 50-16-060 Splitting loans prohibited.** A licensee who makes loans to both members of a marital community individually in compliance with the provisions of the Federal Equal Credit Opportunity Act shall not be deemed to have violated RCW 31.08.160(4). If separate loans are made for the purpose of obtaining a higher rate of charge, then the making of such loans shall be deemed a violation. For the purpose of RCW 31.08.160(4), and this rule, "licensee" shall include two or more licensees who are, directly or indirectly owned or controlled by the same group or have common management.

[Statutory Authority: RCW 31.08.230, 79-04-042 (Order 40), § 50-16-060, filed 3/23/79; Rule 50-16-060, filed 12/20/63; § 50-16-060, filed 1/17/61; § 50-16-060, filed 12/12/60; Small Loan Act rules, § III D, filed 11/29/60.]

**WAC 50-16-065 Statement to borrower—Receipt.** Every licensee shall:

(1) Deliver to the borrower at the time the loan is made, a statement of the loan as provided in RCW 31.08.170(1) of the Consumer Finance Act and shall retain a copy of said statement which shall bear an acknowledgment by the borrower that he has received the original thereof.

(2) Procure a receipt from the borrower for the proceeds of the loan. (Statement of loan, acknowledgment by borrower and receipt for proceeds of loan, for convenience, may be incorporated in one instrument.)

(3) All of the above instruments shall be retained by the licensee for a period of not less than two years after recorded date of cancellation of the note.

[Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-065, filed 12/1/82; Rule 50-16-065, filed 12/20/63; § 50-16-065, filed 1/17/61; § 50-16-065, filed 12/12/60; Small Loan Act rules, § IV, filed 11/29/60; § 4(a), filed 3/23/60.]

**WAC 50-16-070 Advertising.** (1) **General.** No licensee in any of its advertising or upon any of its forms, instruments or stationary shall use any phrase or expression referring to its authority or supervision by the state, or any department thereof, or the supervisor of banking, except the following: "Licensed under the Washington Consumer Finance Act" or "under state regulation," or both: *Provided*, That when either such phrase is employed, it shall be used in conjunction only with the business of making small loans under the Consumer Finance Act.

(2) **Misleading advertising.** All advertising, printed or spoken, shall be truthful in statement and implication and shall not be of such a nature as may reasonably be construed to be misleading or deceptive. In determining whether any particular advertising matter violates the provisions or intent of RCW 31.08.150, the supervisor will give consideration to general arrangement of copy and to whether, from statements made, the inference or impression may reasonably be drawn that such statements or representations are inaccurate, deceptive or misleading. It shall be considered misleading:

(a) To use phrases such as "lowest costs," "lowest rates," "quickest service," "legal rates," "no red tape," "easy payments," "repayment in easy installments."

(b) To advertise "new reduced rates" or "a new type of service" or any such similar comparative expression unless such statement is in fact accurate with respect to the business of the licensee so advertising and unless such advertisement clearly indicates that such new plan refers specifically to a change in the particular licensee's plan of operation, and which change must be of more than minor importance with respect to the business of the licensee. Any such advertisement shall not be used for a period longer than sixty days after such plan has been put into effect.

(3) **Blind loan advertisements.** Licensees shall not use blind loan advertisements such as using only telephone numbers or newspaper box addresses. Every advertisement shall clearly indicate the identity of the licensee.

(4) **Disclosure of extension charge.** Licensees shall not advertise that in the event of sickness or disability or other contingency, payment will be extended without also stating that charges continue during the period of extension, if such is the fact.

(5) **Distribution of handbills.** No licensee shall distribute, or cause to be distributed, handbills or similar advertising matter except in the office of the licensee or through the mails.

(6) **Credit cards—Letters of credit.** No licensee shall solicit business by means of "credit cards," "letters of credit," or other similar devices which indicate that a holder has an established credit standing with a licensee unless such holder has made a bona fide application to the licensee and credit has actually been established.

(7) **Inducements prohibited.** No licensee shall, by any representation or device, either directly or indirectly, offer to any persons anything of value by means of which they will be encouraged to become borrowers or for recommending, referring, or inducing applicants to apply for or secure loans from any such licensee.

Note: The distribution of articles of trivial value for general good will advertising, in the ordinary course of business, will not be deemed to be in violation of this prohibition.

(8) **Charges and payments specified.** When examples or tables of periodic payments under a flat payment plan are advertised, they shall include all charges to the borrower as well as principal. If principal payments only are advertised, a clear statement of the rate of charge or the total amount of charge shall be included. In all such advertising the total number and frequency of payments must be specified. No advertising shall include average repayments or average cost of a loan.

(9) **Retention of advertising copy.** Each licensee shall retain for a period of one year from date of use, with date of use indicated thereon, information disclosing the medium through which any advertisement was disseminated, identical copies of all advertising material published, distributed, broadcast or televised, available for inspection by the supervisor at any time.

All form letters sent to former or present customers soliciting additional loans shall be considered advertising. If the advertisement relates to a specific office maintained by the licensee, the material must be maintained in that office.

If the advertisement relates to the licensee's business generally and does not relate to a particular office, the material need be maintained only in one office in this state designated by the licensee.

[Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-070, filed 12/1/82; 79-04-042 (Order 40), § 50-16-070, filed 3/23/79; Rule 50-16-070, filed 12/20/63; § 50-16-070, filed 1/17/61; § 50-16-070, filed 12/12/60; Small Loan Act rules, § V, filed 11/29/60; § 5, filed 3/23/60.]

**WAC 50-16-075 Restrictions on insurance.** (1) No licensee shall write or sell insurance on the life of any borrowers where such insurance is a condition to the granting of a loan.

(2) No insurance shall be required in connection with any loan made under the Consumer Finance Act, except as and to the extent authorized by RCW 31.08.175.

[Statutory Authority: RCW 31.08.230, 82-24-074 (Order 48), § 50-16-075, filed 12/1/82; 79-04-042 (Order 40), § 50-16-075, filed 3/23/79; Rule 50-16-075, filed 12/20/63; § 50-16-075, filed 1/17/61; § 50-16-075, filed 12/12/60; Small Loan Act rules, § VI A and B, filed 11/29/60; § 3(d), filed 3/23/60.]

**WAC 50-16-080 Delivery of policy or evidence to borrower—Master policy required.** (1) If any borrowers procure any insurance by or through a licensee, the licensee shall cause to be delivered to the borrowers within thirty days from date of loan a copy of the policy, certificate, or other evidence thereof which may be incorporated in the statement required by RCW 31.08.170.

(2) Each licensee shall maintain at each licensed office a specimen copy of any master or blanket policy in lieu of which a certificate or other evidence thereof has been delivered to borrowers under the provisions of RCW 31.08.175(3).

[Statutory Authority: RCW 31.08.230, 79-04-042 (Order 40), § 50-16-080, filed 3/23/79; Rule 50-16-080, filed 12/20/63; § 50-16-080, filed 1/17/61; § 50-16-080, filed 12/12/60; Small Loan Act rules, § V, C and D, filed 11/29/60.]

**WAC 50-16-085 Rebate of credit life insurance charge.** When a loan is repaid in full by cash, a new loan, renewal, refinancing or otherwise, a portion of the life insurance charge made in connection with the loan contract shall be rebated in accordance with paragraphs (a) and (b) of subsection (3) of RCW 31.08.160, regardless of the amount of such rebate.

[Rule 50-16-085, filed 12/20/63; § 50-16-085, filed 1/17/61; § 50-16-085, filed 12/12/60; Small Loan Act rules, § VI E, filed 11/29/60.]

**WAC 50-16-090 File for official correspondence and reports.** Each licensee shall maintain a permanent file for all official communications from the office of the supervisor of banking and for copies of correspondence and reports addressed to the supervisor of banking.

[Rule 50-16-090, filed 12/20/63; § 50-16-090, filed 1/17/61; § 50-16-090, filed 12/12/60; Small Loan Act rules, § VII A, filed 11/29/60; § 7(a), filed 3/23/60.]

**WAC 50-16-095 Knowledge of the law and regulations.** Each licensee shall be responsible for assuring that any person making loans on behalf of the licensee under the Consumer Finance Act shall have a sufficient understanding

of the statutes and regulations applicable to its business so as to insure compliance with the Consumer Finance Act.

[Statutory Authority: RCW 31.08.230. 82-24-074 (Order 48), § 50-16-095, filed 12/1/82; 79-04-042 (Order 40), § 50-16-095, filed 3/23/79; Rule 50-16-095, filed 12/20/63; § 50-16-095, filed 1/17/61; § 50-16-095, filed 12/12/60; Small Loan Act rules, § VII B, filed 11/29/60; § 7(b), filed 3/23/60.]

**WAC 50-16-100 Hours of business.** The place of business designated in the license shall be open during customary hours to receive payments from borrowers, and such hours shall be posted at the entrance to the office.

[Statutory Authority: RCW 31.08.230. 79-04-042 (Order 40), § 50-16-100, filed 3/23/79; Rule 50-16-100, filed 12/20/63; § 50-16-100, filed 1/17/61; § 50-16-100, filed 12/12/60; Small Loan Act rules, § VII C, filed 11/29/60; § 7 C, filed 3/23/60.]

**WAC 50-16-105 Insufficient funds charge.** If any payment on a loan is made by check and payment of that check is refused because there was no account or due to insufficient funds, the licensee may charge a fee not to exceed ten dollars for each check on which payment is refused.

[Statutory Authority: RCW 31.08.230. 83-18-017 (Order 54), § 50-16-105, filed 8/30/83.]

## Chapter 50-20 WAC

### WASHINGTON CONSUMER LOAN ACT

#### WAC

50-20-100	Books and records.
50-20-110	The note.
50-20-120	Contents of statement to borrower.
50-20-130	Restrictions as to charges.
50-20-140	Advertising.
50-20-150	Other business in same office.
50-20-160	Open-end loans—Increase in interest—Notice to borrower.
50-20-170	File for official correspondence and reports.
50-20-180	Knowledge of the law and regulations.
50-20-190	Schedule of fees.
50-20-200	Transitional rule.

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

50-20-001	Foreword. [Industrial loan rules (part), filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.
50-20-010	Books and records. [Statutory Authority: RCW 31.04.150. 85-19-053 (Order 63), § 50-20-010, filed 9/13/85. Statutory Authority: RCW 31.04.150(2). 79-04-042 (Order 40), § 50-20-010, filed 3/23/79; Order 5, § 50-20-010, filed 12/4/69; § 1, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.
50-20-020	The note. [Statutory Authority: RCW 31.04.150(2). 80-13-024 (Order 43), § 50-20-020, filed 9/9/80; Order 5, § 50-20-020, filed 12/4/69; § 2, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.
50-20-030	Investment certificates. [§ 3, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.
50-20-040	Contents of statement to borrower. [Statutory Authority: Chapter 31.04 RCW. 88-21-031 (Order 75), § 50-20-040, filed 10/11/88; Order 5, § 50-20-040, filed 12/4/69; § 4, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.
50-20-050	Restrictions as to charges. [Statutory Authority: Chapter 31.04 RCW. 88-21-031 (Order 75), § 50-20-050, filed 10/11/88.

Statutory Authority: RCW 31.04.150. 85-19-053 (Order 63), § 50-20-050, filed 9/13/85; 84-06-001 (Order 59), § 50-20-050, filed 2/23/84. Statutory Authority: RCW 31.04.150(2). 82-24-074 (Order 48), § 50-20-050, filed 12/1/82; 80-13-024 (Order 43), § 50-20-050, filed 9/9/80; 79-04-042 (Order 40), § 50-20-050, filed 3/23/79; Order 5, § 50-20-050, filed 12/4/69; § 5, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.

50-20-055 Simple interest defined. [Statutory Authority: RCW 31.04.150(2). 85-22-014 (Order 65), § 50-20-055, filed 10/29/85; 82-24-074 (Order 48), § 50-20-055, filed 12/1/82.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.

50-20-060 Advertising. [Order 5, § 50-20-060, filed 12/4/69; § 6, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.

50-20-070 Other business in same office. [Order 16, § 50-20-070, filed 7/2/73; Order 5, § 50-20-070, filed 12/4/69; § 7, filed 3/23/60.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.

50-20-080 Branching. [Order 33, § 50-20-080, filed 11/5/75.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.

50-20-090 Open-end loans—Increase in interest—Notice to borrower. [Statutory Authority: RCW 31.04.150. 85-19-053 (Order 63), § 50-20-090, filed 9/13/85.] Repealed by 91-22-035, filed 10/30/91, effective 1/1/92. Statutory Authority: 1991 c 208 § 17.

**WAC 50-20-100 Books and records.** (1) The books, accounts, records, and files required to be maintained by RCW 31.04.145 may be maintained by means of electronic display equipment if such equipment is made available to the supervisor of banking or his representatives for purposes of examination at the licensee's place of business.

(2) All real estate loans above ten thousand dollars shall be supported by either an appraisal prepared by a qualified independent professional third party appraiser or by the most recent property tax assessment prepared by the county assessor.

(3) No licensee shall take any instruments in which blanks are not filled in completely before the proceeds of the loan are delivered.

(4) Whenever a loan or forbearance is made by mail by a licensee outside Washington state to a person then residing in this state, the licensee shall license such out-of-state office pursuant to RCW 31.04.055 and 31.04.075.

(5) A licensee may service loans made pursuant to chapter 208, Laws of 1991, at locations outside the state of Washington provided that the licensee shall consent to the supervisor's examination of such loans at that out-of-state location. All costs which are reasonable and necessary for the examination of the location shall be paid by the licensee.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-100, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-110 The note.** (1) Specimen forms of the written instrument or note evidencing any loan under this act shall be filed with the supervisor of banking.

(2) The written instrument or note shall state the following:

(a) The number and date of the loan except for mail loans and live checks, to which a number shall be affixed after the documents have been returned to the licensed location.

(b) Total amount to be repaid or amount of credit line.

(c) The manner in which it is to be repaid.

(d) Adequate description of any security. Under no circumstance shall a licensee intentionally take a security interest in collateral prohibited under federal law.

(e) For closed-end loans, the maturity date.

(f) The rate of interest and the method of calculating interest to be collected after original maturity date.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-110, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-120 Contents of statement to borrower.**

(1) The licensee shall deliver to the borrower at the time any loan, whether open-end or closed-end, is made, a statement in the format required by Federal Reserve Board Regulation Z which shall disclose in clear and distinct terms the following information:

(a) The name and address of the licensee.

(b) The name and address of the borrower.

(c) The number and date of the loan except for mail loans and live checks.

(d) The total amount of the loan.

(e) List of charges, including:

(i) Interest rate and amount. This shall be disclosed both as (A) the annual percentage rate (APR) as defined in Regulation Z, 12 (C.F.R. 226), and (B) the simple interest rate, which is the single nominal annual interest rate (stated as a percentage), which if applied to the unpaid amounts of principal outstanding from time to time would produce the same total of interest paid at maturity as originally contracted for, based upon the assumption that all payments were made on the loan according to the schedule of payments agreed to by the borrower and calculations were made according to the actuarial method.

(ii) Loan origination fee.

(iii) Filing and releasing fee.

(iv) Title insurance premium.

(v) Appraisal fee.

(f) For closed-end loans, date of maturity of the loan.

(g) Rate of interest after original maturity date.

(h) Description of the security, if any.

(i) Agreement to permit payment in full before maturity.

(j) Penalty and charge, if any, of ten cents or less on each dollar of any installment payment delinquent ten days or more.

(k) Charge for checks returned by bank unpaid.

(l) Service fees, if any.

(m) Any other requirements imposed by Regulation Z (Titles I and V of Consumer Credit Protection Act, P.L. 90-321, 82 Stat. 146 1/5 U.S.C. 1601-1665.)

(2) Sufficient information must be maintained in the licensee's files to show compliance with state and federal law.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-120, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-130 Restrictions as to charges.** (1) No licensee shall charge or collect from the borrower any funds for the cost of filing, recording, releasing, or reconveyance of mortgages, deeds of trust, security agreements, or other documents, or for transferring title certificates to vehicles, or for any other fees paid or to be paid to public officials,

unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing, recording, transferring, releasing, or reconveyance thereof. Fees for releasing or reconveying security for the obligation owed to the licensee may be charged and collected at the time of final payment of the loan.

(2) No licensee may charge and collect an annual fee in excess of thirty-five dollars payable each year in advance for the privilege of opening and maintaining an open-end loan account.

(3) No licensee may charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check in the event it has been redeposited and returned a second time.

(4) No licensee may charge or collect an appraisal fee incurred or to be incurred in appraising security offered by the borrower in excess of the actual costs paid or to be paid to an independent third party professional appraiser. Such charge may be made or collected from the borrower for costs of an appraisal at the time of application for the loan or at any time thereafter except as prohibited herein. If the appraisal fee is not collected at the time of the application, the licensee's good faith estimate of that fee shall be given to the borrower at the time of the application.

(5) A licensee may agree with the borrower for the payment by the borrower of the fees charged by a title company in connection with title insurance required by the licensee in connection with a loan. The borrower has the right to select the person or company by or through whom such title insurance will be offered, subject to the licensee's reasonable conditions, such as type of coverage or endorsements, or financial soundness and proper licensing of the company to do business in the state of Washington. The licensee may select the person or company by or through whom such title insurance will be offered if the borrower does not do so within a reasonable time before the loan transaction is consummated.

(6) A licensee may include the premiums for noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing.

(7) In the event a licensee makes a new loan where any part of the proceeds is used to pay the amount due it on an existing loan within four months from date of origination or of the most recent advance upon an existing loan, an origination fee shall be permitted only to the extent that new money is advanced or the existing credit line increased, unless the origination fee on the existing loan is refunded.

(8) A licensee may not collect a prepayment penalty except as preempted by federal law.

[Statutory Authority: RCW 31.04.165. 93-16-033, § 50-20-130, filed 7/27/93, effective 8/27/93. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-130, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-140 Advertising.** A copy of all direct mail advertising shall be sent by the company to the supervisor of banking.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-140, filed 10/30/91, effective 1/1/92.]



**WAC 50-20-150 Other business in same office.** (1) No licensee will be permitted to conduct its business within an office, room or place of business in which other business is solicited or engaged in, or in association or in conjunction therewith, if the supervisor of banking shall find, after five days written notice, and after a hearing, that the other business has concealed or facilitated evasion of the Consumer Loan Act. If the supervisor so finds, he shall order such licensee in writing to desist from such conduct.

(2) No licensee shall transact such business or make any loan provided for or by this act under any other name or at any other place of business than that named on the license. This is not intended to prohibit loans by mail or the closing of real estate-secured loans in an escrow company, a title insurance company, or an attorney's office.

(3) A licensee may engage in the sale of incidental products on the premises of the licensed location upon receiving approval from the supervisor of banking. The cost of such products may, at the consumer's option, be payable from the proceeds of the consumer loan and included in the amount financed provided that (a) the sale of the product is not a factor in the approval of credit and this fact is clearly disclosed in writing to the consumer and (b) in order to obtain the product the consumer gives specific affirmative written indication of his or her desire to purchase the product after receiving disclosure of the cost.

(4) No licensee shall change its place of business to another location unless and until authority for such change shall have been granted by the supervisor of banking.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-150, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-160 Open-end loans—Increase in interest—Notice to borrower.** A licensee is not required to give thirty days written notice of an increase in the interest rate charged on an open-end loan pursuant to RCW 31.04.115(6), if the following conditions are met:

(1) The interest rate charged on the open-end loan is based upon a commonly published index or upon an index approved by the supervisor; and

(2) The borrower has agreed in writing prior to the increase to base the interest rate on the index.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-160, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-170 File for official correspondence and reports.** Each licensee shall maintain a permanent file for all official communications from the office of the supervisor of banking and for copies of correspondence and reports addressed to the supervisor of banking.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-170, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-180 Knowledge of the law and regulations.** Each licensee shall be responsible for assuring that any person making loans on behalf of the licensee under the Consumer Loan Act shall have a sufficient understanding of the statutes and regulations applicable to its business so as to insure compliance with the Consumer Loan Act.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-180, filed 10/30/91, effective 1/1/92.]

(1995 Ed.)

**WAC 50-20-190 Schedule of fees.** The rate of charges for review of applications and attendant investigations other than regular examinations covered in WAC 50-44-030(1) shall be at the rate prescribed in WAC 50-12-045(2).

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-190, filed 10/30/91, effective 1/1/92.]

**WAC 50-20-200 Transitional rule.** (1) Any industrial loan company holding a certificate of authority under RCW 31.04.070 on December 31, 1991, shall receive, effective January 1, 1992, a license to do business as a consumer loan licensee under the Consumer Loan Act, RCW 31.04.045(3). The supervisor shall issue a license for each location at which the industrial loan company is authorized to conduct its business under the Industrial Loan Company Act, chapter 31.04 RCW. This transitional rule shall apply to all industrial loan companies maintaining their corporate form in lieu of the surety bond requirements described in RCW 31.04.045(3). Industrial loan companies changing their name effective January 1, 1992, are required to give the supervisor notice of such change by December 20, 1991. Nothing in this transitional rule shall prohibit a licensee after January 1, 1992, from applying to the supervisor's office for approval to operate under the surety bond requirements of RCW 31.04.045(3).

(2) An industrial loan company may submit an application, on a form prescribed by the supervisor, to convert to bond form, as authorized under RCW 31.04.045(3), prior to January 1, 1992. If approved, such approval shall become effective on January 1, 1992, and the respective licenses shall be issued under the name of the licensee as described in the application. If an application is approved under this section, no licenses shall be granted under subsection (1) of this section.

(3) By January 10, 1992, all industrial loan companies holding certificates of authority pursuant to RCW 31.04.070 shall surrender such certificates of authority to the supervisor's office.

[Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-200, filed 10/30/91, effective 1/1/92.]

## Chapter 50-24 WAC PUBLIC RECORDS

### WAC

50-24-010	Purpose.
50-24-020	Definitions.
50-24-030	Description of central and field organization of division of banking.
50-24-040	Operations and procedures.
50-24-050	Public records available.
50-24-060	Public records officer.
50-24-070	Office hours.
50-24-080	Requests for public records.
50-24-090	Copying.
50-24-100	Exemptions.
50-24-110	Review of denials of public records requests.
50-24-120	Protection of public records.
50-24-130	Records index.
50-24-140	Information generally—Address.
50-24-150	Adoption of form.
50-24-990	Appendix I—Form—Request for public record.

**WAC 50-24-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the department of general administration, division of banking with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure—Campaign finances—Lobbying—Records; and in particular with sections 25-32 of that act, dealing with public records.

[Order 14, § 50-24-010, filed 5/1/73.]

**WAC 50-24-020 Definitions.** (1) Public records. "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) Writing. "Writing means handwriting, typewriting, printing, photostating, photographing and every other means or recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents."

(3) Division of banking. The supervisor of banking, division of banking is appointed by the director of the department of general administration. The division of banking shall hereinafter be referred to as the "division of banking." Where appropriate, the term supervisor of banking also refers to the staff and employees of the division of banking.

[Order 14, § 50-24-020, filed 5/1/73.]

**WAC 50-24-030 Description of central and field organization of division of banking.** Division of banking. The division of banking is an administrative, supervisory, licensing and chartering agency. The administrative office of the division of banking and its staff is located in the General Administration Building, Olympia, Washington. In addition to this office of record, a field office, for the convenience of the field examiners for the preparation of their reports of examination and other official duties, is maintained in Seattle, Washington. The Seattle office is not a depository for public records and none are available at that office for public inspection or copying.

[Statutory Authority: RCW 42.17.250, 82-24-074 (Order 48), § 50-24-030, filed 12/1/82; 79-04-042 (Order 40), § 50-24-030, filed 3/23/79; Order 14, § 50-24-030, filed 5/1/73.]

**WAC 50-24-040 Operations and procedures.** The primary purpose of the division of banking is the maintenance of a sound banking system and a sound consumer finance system, the prevention or irresponsible acts by members of the banking and financial system, and the insuring that these systems serve the needs and convenience of the public through the fostering of appropriate competition and operating efficiency. In order to accomplish this purpose, the division of banking's duties are divided into two major areas, i.e., examination and chartering.

The supervisor of banking has authority to examine the operations of all state banks, trust companies, mutual savings banks, consumer finance companies, industrial loan companies, industrial development corporations, stock savings

banks, alien banks, bank holding companies, and agricultural credit corporations. These duties are carried out through a full-time staff of field examiners employed by the division of banking. The examiners examine the books and records of an institution in order to detect any violations of the relevant statutes or regulations and to determine if good industry practices are being followed. After receipt of the examination reports, the supervisor communicates the results to the managing group of the institution examined and requires any violations of law or regulations to be corrected.

The other main function of the division of banking is action upon applications by various groups to establish a financial institution or to change an existing one. The following general pattern or procedure is followed in such decision making by the supervisor of banking. This pattern is used and applies to applications:

(1) To incorporate new state chartered banks, mutual savings banks or trust companies;

(2) To establish branches of existing banks, mutual savings banks or trust companies;

(3) Applications for agricultural credit corporations;

(4) Applications for stock savings banks;

(5) Applications for satellite (ATM) network systems;

(6) Applications for trust powers to be conferred upon the existing banks or trust companies;

(7) Applications to establish subsidiary corporations;

(8) Merger applications;

(9) Applications to move the main office or branch;

(10) Applications for licenses for consumer finance companies or additional branches thereof;

(11) Applications for charter of industrial loan companies or additional branches thereof; and

(12) Applications for industrial development corporations. An application is filed accompanied by the filing fee set by statute or regulation. After the application has been fully documented and supported by all required schedules, statements, etc., an investigator is assigned to make the field investigation or survey. Upon completion of the field investigation and after analysis of all of the factors generally considered as required by pertinent statutes, the assigned investigator submits his written report including his summary and recommendations. Based upon the findings of the investigator and his recommendations, the supervisor of banking will then either approve or deny the application.

Operations are channeled and actions determined, and the public may obtain information, submit requests, or obtain copies of public records from the above listed office of the supervisor of banking in Olympia. In general, the public may obtain information, make submittals or requests, or obtain copies of division of banking decisions as follows:

I. For state chartered banks, trust companies, mutual savings banks, stock savings banks, industrial development corporations, agricultural credit corporations, and satellite (ATM) network systems, or branches thereof:

(a) Chartering - supervisor of banking or deputy supervisor of banking;

(b) Investigations, staff studies, research and instruction manuals - assistant supervisor, deputy supervisor, or supervisor of banking.

(c) Examinations - chief bank examiner, assistant supervisor, or deputy supervisor;

(d) General inquiries - office receptionist or any of above named officials.

**II. Consumer finance:**

(a) Chartering industrial loan companies - supervisor or deputy supervisor of banking;

(b) Licensing consumer finance companies - supervisor or deputy supervisor of banking;

(c) Investigations and examinations of both, either of above officials;

(d) General inquiries - deputy supervisor, supervisor of banking and chief examiner consumer finance.

General inquiries or requests to inspect public records may be made in person, as indicated above, or in writing addressed to the supervisor of banking, Olympia. Applications for permission to organize a new state bank, trust company, or mutual savings bank or for the chartering of a stock savings bank, or an industrial loan company, or for licensing of a consumer finance company, may be applied for in writing. However, as a matter of general procedure, it has been found desirable and is recommended that interested groups visit the office of the supervisor for a round-table discussion of requirements, forms to be filled out, fees payable to the supervisor of banking and the secretary of state, plus a general discussion of the primary market area the applicant wishes to serve and of the economic resources of that area together with a brief review of existing financial institutions already in that area.

[Statutory Authority: RCW 42.17.250. 82-24-074 (Order 48), § 50-24-040, filed 12/1/82; Order 14, § 50-24-040, filed 5/1/73.]

**WAC 50-24-050 Public records available.** All public records of the division of banking as defined in WAC 50-24-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by sections 26 and 31, chapter 1, Laws of 1973 and WAC 50-24-100, and by RCW 43.19.060 and 43.19.070. Substantive rules of general applicability adopted by the supervisor of banking can be found in Title 50 WAC, and are incorporated herein by reference as though fully set forth.

[Order 14, § 50-24-050, filed 5/1/73.]

**WAC 50-24-060 Public records officer.** The division of banking's public records shall be in charge of the public records officer designated by the division of banking. The person so designated shall be located in the administrative office of the division of banking. The public records officer shall be responsible for the following: The implementation of the division of banking rules and regulations regarding release of public records, coordinating the staff of the division of banking in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973.

[Order 14, § 50-24-060, filed 5/1/73.]

**WAC 50-24-070 Office hours.** Public records shall be available for inspection and copying during the customary office hours of the division of banking. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(1995 Ed.)

[Order 14, § 50-24-070, filed 5/1/73.]

**WAC 50-24-080 Requests for public records.** In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the division of banking, which shall be available at its administrative office. The form shall be presented to the public records officer; or to any member of the division of banking staff, if the public records officer is not available, at the administrative office of the division of banking during customary office hours. The request shall include the following information:

(a) The name of the person requesting the records;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the division of banking current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

[Order 14, § 50-24-080, filed 5/1/73.]

**WAC 50-24-090 Copying.** No fee shall be charged for the inspection of public records. The division of banking shall charge a fee of twenty-five cents per page of copy for the first twenty pages and ten cents per page for every copy thereafter for providing copies of public records and for use of the division of banking copy equipment. This charge is the amount necessary to reimburse the division of banking for its actual costs incident to such copying. The division of banking will charge additional amounts based on employee salaries if a particular request requires an unusual amount of time to be spent by the division. The copying fee shall be paid in cash, certified check, cashier's check or money order.

[Order 14, § 50-24-090, filed 5/1/73.]

**WAC 50-24-100 Exemptions.** (1) The division of banking reserves the right to determine that a public record requested in accordance with the procedures outline in WAC 50-24-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

(2) RCW 30.04.075 provides as the general rule that all information received by the supervisor and his office from any bank or trust company or mutual savings bank is confidential and may not be disclosed to any person other than certain other government officials, on penalty of forfeiture of office and punishment as a gross misdemeanor.

(3) In addition, pursuant to RCW 42.17.260, the division of banking reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing.

(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-24-100, filed 9/13/85; Order 14, § 50-24-100, filed 5/1/73.]

**WAC 50-24-110 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the supervisor of banking. The supervisor of banking shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the division of banking has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: RCW 42.17.250. 82-24-074 (Order 48), § 50-24-110, filed 12/1/82; Order 14, § 50-24-110, filed 5/1/73.]

**WAC 50-24-120 Protection of public records.** Public records shall be available for public inspection during regular office hours as provided for by regulation at the Office of the Supervisor of Banking, General Administration Building, Olympia. No person shall be allowed to remove any records made available to him for inspection from the place designated for inspection by the public records officer. If copies are desired the person so desiring them shall inform the public records officer who shall then either have the copies made or make the copying facilities of the division of banking available for copying.

[Statutory Authority: RCW 42.17.250. 82-24-074 (Order 48), § 50-24-120, filed 12/1/82; 79-04-042 (Order 40), § 50-24-120, filed 3/23/79; Order 14, § 50-24-120, filed 5/1/73.]

**WAC 50-24-130 Records index.** (1) Index. The division of banking has available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since June 30, 1972:

"(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

"(b) Those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the agency;

"(c) Administrative staff manuals and instructions to staff that affect a member of the public;

"(d) Planning policies and goals, and interim and final planning decisions;

"(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

"(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party."

(2) Availability. The current index promulgated by the division of banking shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

[Order 14, § 50-24-130, filed 5/1/73.]

**WAC 50-24-140 Information generally—Address.** All communications with the division of banking including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 and these rules, requests for copies of the division of banking's decisions and other matters, shall be addressed as follows: Division of Banking, Records Officer, General Administration Building, Olympia, Washington 98504.

[Statutory Authority: RCW 42.17.250. 82-24-074 (Order 48), § 50-24-140, filed 12/1/82; 79-04-042 (Order 40), § 50-24-140, filed 3/23/79; Order 14, § 50-24-140, filed 5/1/73.]

**WAC 50-24-150 Adoption of form.** The division of banking hereby adopts for use by all persons requesting inspection and/or copying or copies of its records, the form attached hereto as Appendix No. 1 [WAC 50-24-990], entitled "Request for public record."

[Order 14, § 50-24-150, filed 5/1/73.]

**WAC 50-24-990 Appendix I—Form—Request for public record.**

**"Request for public record"**

To: The Division of Banking

(a) Name of person requesting public record(s)

..... ( ..... )  
Signature Please Print

( ..... )  
Name of organization, if applicable

- .....  
Mailing Address of Applicant      Phone Number
- (b) .....  
Date request made at      Time filed  
Division of Banking,      Time of day  
Olympia      request made
- (c) Nature of request .....
- .....
- (d) Identification Reference on  
Current Index .....  
Please Describe  
.....
- (e) Description of record, or matter, requested if not  
identifiable by reference to the division of banking's  
current index .....
- .....
- .....
- .....
- .....
- .....

[Order 14, Appendix I (codified as WAC 50-24-990), filed 5/1/73.]

**Chapter 50-28 WAC**  
**NEW STATE BANKS AND TRUST COMPANIES—**  
**APPLICATION AND INVESTIGATION**

**WAC**

- 50-28-010 Purpose.
- 50-28-020 Operations and procedures.
- 50-28-030 Policy and guidelines.
- 50-28-040 Fees.
- 50-28-050 Field investigation.
- 50-28-060 Adoption of form.
- 50-28-070 Payment on subscription for the capital stock.
- 50-28-990 Appendix I—Form—Notice of intention to organize a state bank or trust company.

**WAC 50-28-010 Purpose.** The purpose of this chapter shall be to provide persons desiring to incorporate a bank or trust company with the requirements and guidelines necessary to comply with statutory provisions and to insure expeditious processing of a notice of intention to organize a bank or trust company.

[Order 21, § 50-28-010, filed 8/6/73.]

**WAC 50-28-020 Operations and procedures.** A notice of intention to incorporate a bank or trust company shall be filed with the supervisor at the division of banking in Olympia. As a matter of general procedure, it has been found desirable and is recommended that interested groups visit the office of the supervisor for a round-table discussion of statutory and other requirements, the forms, documenta-

tion and general information needed, the fees payable to the supervisor of banking and the secretary of state, plus a general discussion of the primary market area the applicants wish to serve and of economic resources of that area together with a brief review of existing financial institutions now serving that area.

[Order 21, § 50-28-020, filed 8/6/73.]

**WAC 50-28-030 Policy and guidelines.** The notice of intention to organize a state bank or trust company shall be filed with the supervisor in duplicate, on a form furnished by the division of banking. It is the established policy of the division of banking to require diligent and timely completion and submission of forms, schedules, surveys, economic studies, maps and all supporting data deemed necessary and required to conduct the statutory investigation. For the purpose of expediting the investigation and correlating said investigation with that of the Federal Deposit Insurance Corporation, in the event deposits of the proposed bank or trust company are to be insured by that agency, the schedules, statements and supporting data shall be organized under six basic general headings or factors:

- (1) Financial history and condition.
  - (a) Pro forma statement of condition - beginning of business.
    - (b) Premises to be occupied by proposed bank, whether owned or leased, whether permanent or temporary, details as to description, costs, from whom purchased or leased, insurance coverage, estimated annual depreciation. If property is to be purchased or leased from a director, officer, a large shareholder, or an interest of any such, complete details should be furnished.
      - (c) Details as to proposed investment in and rental of furniture, fixtures and equipment.
      - (d) Relationships and associations with proposed bank of any of the sellers or lessors of land, buildings or equipment, either directly or indirectly.
      - (e) Organization expenses (which should not be borrowed from any source) - complete and detailed accounting is required for all expenses related to organization, including detailed account of actual legal work performed together with any additional costs anticipated prior to opening or costs incurred or work performed during the organization period for which disbursement has been deferred beyond the opening date.
        - (2) Adequacy of the capital structure.
          - (a) Proposed allocations within total capital structure.
            - (i) Amount of paid-in common capital stock (No. shares x par value).
            - (ii) Amount of paid-in surplus.
            - (iii) Amount of paid-in undivided profits.
            - (iv) Amount of other segregations, including the organization or expense fund, if planned.
          - (b) Minimum capital requirements of state law (RCW 30.08.010 as amended by chapter 104, Laws of 1973).
          - (c) The adequacy (deemed reasonable) of the proposed capital structure is evaluated, in part, by:
            - (i) The population of the community to be served.
            - (ii) Ratio the projected net total capital structure will bear to the estimated volume of deposits at the end of each of the first three years of operations.

(3) Future earnings prospects. A detailed projection of earnings and expenses is to be submitted showing the breakdown of income and expenses for each of the first three years of operations. Provision should be made for the bad debt reserve (loan losses) based upon the major types of loaning demands the proposed bank expects to serve and total loans expected by the end of the first, second and third years of operations.

(4) General character of management.

(a) A financial report and a biographical report for each officer and director is required together with a report by each officer and director stating the number of shares to be purchased, the total cost of such shares and details as to source and financing terms for such portion as not paid in cash. (If disclosure of any of the proposed officers would jeopardize current employment, include the information in a special "CONFIDENTIAL SECTION.")

(b) The subscribers (proposed shareholders) are to be listed alphabetically with name and address, occupation and number of shares being purchased indicated by number of shares and total subscription price. The list should indicate "D" for the directors designee, "O" for officers.

(c) For any subscribers for 5% or more of the proposed capital stock, the financing terms are required as for directors and officers.

(d) The membership of the committees of the directorate are to be designated and duties outlined, including:

- (i) Loan and/or executive committee.
- (ii) Investment committee.
- (iii) Audit committee.

(e) Management of the proposed bank will report:

(i) Name of principal correspondent bank or banks and basis upon which the selection was made.

(ii) Determination that sufficiency of surety bond coverage conforms with generally accepted banking practices.

(f) Any changes contemplated in the proposed directorate or active management during the first year are to be reported, or, if none, so state.

(5) Convenience and needs of the community to be served.

(a) Applicants have the responsibility of developing as fully as possible the economic support and justification for the proposed bank including:

(i) The community and "surrounding country" (the trade territory or market area) which the proposed bank will serve, including the geographic boundaries within which all or most of the bank's potential customers reside.

(1) Furnish a detail map of such area pinpointing and indexing each financial institution (banks and savings and loan associations and mutual savings bank, whether head office or branch office).

(2) Provide list or recapitulation of subscribers residing in or closely identified with the area to be served.

(3) Provide estimates of the total deposits anticipated during the early period of operations together with totals expected by the end of each of the first three years. The latter should be segregated:

- (a) Demand deposits.
- (b) Savings passbook accounts.
- (c) Other time deposits.
- (d) Public funds.

(e) Recapitulation as to total demand and total time.

(4) The economic characteristics of the trade territory specified above for the most recent five-year period where possible. . . including manufacturing, agricultural and other industrial data, construction activity, retail and wholesale sales, housing starts, school population, census figures and projections.

(5) Such additional data relating to the trade area considered relevant and indicating support for the proposed bank as may be obtained from such sources as local offices of utilities, planning commission, chamber of commerce or trade associations, traffic surveys, county auditor, title insurance company, etc. (In the event an economic survey or feasibility study has been prepared it may provide most of the information needed.)

(ii) List principal business and industries of the market area by name of company, type of business, average number of employees, approximate annual payroll and annual sales. If significant, furnish details as to public employment of the area, including schools, military, U.S., state, county, municipal or other.

(b) List all banks, branches, trust companies, mutual savings banks and branches, together with savings and loan associations presently serving in the proposed market area and surrounding country, including any authorized but unopened offices, indicating "N/A" for information determined unobtainable:

- (i) Name of the financial institution.
- (ii) Location.
- (iii) Distance (road miles or city blocks) from proposed site.
- (iv) Direction from site.
- (v) Date established.
- (vi) Date of latest statement available.
- (vii) Deposits: Demand, time and total.
- (viii) Loans: Commercial, consumer, real estate secured and total to extent available.

(6) Consistency of corporate powers. In addition to the proposed articles of incorporation submitted with the notice of intention to organize, the proposed bylaws should be submitted together with articles of incorporation and complete details for any proposed affiliate (i.e., a premises holding company).

[Order 21, § 50-28-030, filed 8/6/73.]

**WAC 50-28-040 Fees.** The filing fee to accompany the notice of intention to organize a bank or trust company shall be that established by WAC 50-12-040, 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 50-12-040 as devoted to processing and preliminary review and investigation.

[Order 21, § 50-28-040, filed 8/6/73.]

**WAC 50-28-050 Field investigation.** The required field investigation will be undertaken promptly upon submis-

sion of the notice of intention to organize a bank or trust company accompanied by statutory fees, provided the required documentation is determined by preliminary review to be complete in all respects. If, in the judgment of the supervisor, matters of substantive nature are missing or incomplete the notice of intent to organize and submitted documents may be returned to the correspondent of record. If the matters deemed incomplete be of relatively minor nature the applicants may be notified in writing thereof and given a reasonable time to make corrections or submit additional information or schedules required. For purposes of section 5, chapter 104, Laws of 1973 1st ex. sess. (RCW 30.08.030), a notice of intention to organize a bank or trust company shall not be deemed to be received by the supervisor unless and until all of the information required by the supervisor has been provided to him.

[Order 21, § 50-28-050, filed 8/6/73.]

**WAC 50-28-060 Adoption of form.** The division of banking hereby adopts for use of all persons requesting permission to organize a state bank or trust company, the form attached hereto as Appendix No. 1, entitled "Notice of intention to organize a state bank or trust company."

[Order 21, § 50-28-060, filed 8/6/73.]

**WAC 50-28-070 Payment on subscription for the capital stock.** The subscription agreement with prospective purchasers of the capital stock of a proposed new bank or trust company shall not contain any agreement for any amount to be paid in advance for the purpose of defraying organization costs. No payment on subscription for stock shall be made until the articles of incorporation have been approved by the supervisor of banking and filed with the secretary of state.

[Order 30, § 50-28-070, filed 10/2/75.]

**WAC 50-28-990 Appendix I—Form—Notice of intention to organize a state bank or trust company.**

APPENDIX I

NOTICE OF INTENTION TO ORGANIZE A STATE BANK OR TRUST COMPANY

To the Supervisor of Banking:

We, the undersigned, as proposed incorporators and subscribing shareholders, being natural persons and citizens of the United States of America, make application for permission to organize a state bank or trust company under the title of . . . . . to be located in . . . . ., County of . . . . ., State of Washington, with capital stock of \$. . . . ., surplus of \$. . . . ., and undivided profits of \$. . . . .

We submit herewith the proposed articles of incorporation for examination together with all such data, information, schedules, maps and supporting documentation specified by statute and regulations as necessary and required to conduct the statutory investigation.

We enclose Cashier's Check for \$2,000 to apply upon the statutory cost of investigation. If the cost of the investigation to be made exceeds \$2,000, we agree to pay such excess in accordance with WAC 50-12-040.

We designate . . . . ., whose address is . . . . ., as correspondent of records to receive all instructions and correspondence in connection with this application.

SUBSCRIBED at . . . . ., Washington, this . . . . day of . . . . ., 19. . .

- \* . . . . .
- \* . . . . .
- \* . . . . .
- \* . . . . .
- \* . . . . .
- \* . . . . .

Enclosure: \$2,000 Cashier's Check  
Payable to the Supervisor  
of Banking

(\*) Please type name under signature.

[Order 21, Appendix I—Form (codified as WAC 50-28-990), filed 8/6/73.]

**Chapter 50-30 WAC  
CHECK CASHERS AND SELLERS—REGULATION  
OF**

**WAC**

- 50-30-010 Application investigation and supervision fee.
- 50-30-020 Schedule of fees for check cashers and sellers.
- 50-30-030 Bond for applicants engaging in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.
- 50-30-040 Access to criminal history information.
- 50-30-050 Issuance of license.
- 50-30-060 Disclosure of significant developments.
- 50-30-070 Accounting and financial records to be maintained by the licensee.
- 50-30-080 Licensees are required to comply with federal and state laws including but not limited to the following.
- 50-30-090 Audit report by licensee—Financial statements.
- 50-30-100 Trust accounts—Limitations and prohibitions.
- 50-30-110 Transitional rule.

**WAC 50-30-010 Application investigation and supervision fee.** (1) An applicant at the time of filing an application for a license under this act shall pay to the supervisor a reasonable sum determined by the supervisor as a deposit for investigating the application. The deposit fee is not refundable if an application is denied or withdrawn. The investigation fee shall be applied to the actual cost of investigation of the application and if not sufficient to cover said cost, the applicant will be assessed and responsible for additional cost incurred.

(2) The supervisor at least every eighteen months shall conduct an examination of the business and examine the books, accounts, records, and files used therein, of any licensee, of any agent, and of any person who the supervisor has reason to believe is engaging in the business of cashing or selling checks. The licensee so examined shall pay to the supervisor the actual cost of examining and supervising each licensed place of business at the examination hourly rate prescribed. The supervisor may accept an audit report

prepared by an independent certified public accountant or an examination prepared by another state in lieu of, in whole or in part, an examination performed by the supervisor.

[Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-010, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-020 Schedule of fees for check cashers and sellers.** (1) The supervisor shall collect the following fees:

(a) Hourly charges for services plus actual expenses for review of application and investigation for:

- (i) New license application.
- (ii) Additional locations.
- (iii) Change of control.
- (iv) Relocation of office.
- (v) Voluntary or involuntary liquidation of licensee.
- (vi) Other.

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

(2) The hourly fee for periodic examinations described in WAC 50-30-010(2) shall be ninety dollars per hour.

[Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-020, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-030 Bond for applicants engaging in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.** (1)(a) RCW 31.45.030 (5)(a) requires a licensee engaged in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose to obtain at the beginning of each calendar year and file with the supervisor a bond running to the state of Washington, which bond shall be issued by a surety insurer which meets the requirements of chapter 48.28 RCW, and be in a format acceptable to the supervisor. This surety bond shall be conditioned upon the licensee paying all persons who purchase checks, drafts, or money orders from the licensee the face value of any check, draft, or money order which is dishonored by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed. The bond shall only be liable for the face value of the dishonored check, draft, or money order, and shall not be liable for any interest or consequential damages.

The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the supervisor and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the supervisor. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's

liability. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplement to any liability or other insurance required by law or by the contract. If the surety desires to make payment without awaiting court action against it, the penal sum of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond.

Any person who is a purchaser of a check, draft, or money order from the licensee having a claim against the licensee for the dishonor of any check, draft, or money order by the drawee bank, savings bank, or savings and loan association due to insufficient funds or by reason of the account having been closed, may bring suit upon such bond or deposit in the superior court of the county in which the check, draft, or money order was purchased, or in the superior court of a county in which the licensee maintains a place of business. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the dishonor of the check, draft, or money order on which the claim is based. In the event said claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond, or deposit, without regard to the date of filing of any claim or action.

(b) The penal sum of the surety bond that shall be filed by each licensee shall not be less than the amount established in the following table:

Highest Monthly Liability*	Required Bond	Plus Percentage of Excess Over
Up to \$50,000	Highest Monthly Liability	Highest Monthly Liability
\$50,001 to \$100,000	\$50,000	.5 above \$50,000
\$100,000 plus	\$75,000	.25 above \$100,000

The maximum fidelity coverage required shall be three million dollars.

\* The monthly liability is the total sum of checks for a given month. The "Highest Monthly Liability" shall be determined by the highest monthly liability of checks from the preceding calendar year multiplied by seventy-five percent.

(2) In lieu of such surety bond, the applicant may deposit with such banks, savings banks, savings and loan associations, or trust companies in this state as such applicant may designate and the supervisor may approve, bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof or guaranteed by the United States or of the state of Washington or of a municipality, county, school district, or instrumentality of the state of Washington or guaranteed by the state to an aggregate amount, based on principal amount or market value, whichever is lower, of not less than the amount of the required fidelity bond or portion thereof. The securities shall be deposited as aforesaid and held to secure the same obligations as would the fidelity bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the supervisor, to substitute other qualified securities for those deposited, and shall be required so to do on written order of the supervisor made for good cause shown.

(3) In lieu of such surety bond, the applicant may deposit with the supervisor an irrevocable letter of credit



drawn in favor of the supervisor for an amount equal to or greater than the required bond. The irrevocable letter of credit must be issued by a bank, savings bank, or savings and loan association in this state as such applicant may designate and the supervisor may approve.

[Statutory Authority: RCW 31.45.200, 93-16-032, § 50-30-030, filed 7/27/93, effective 8/27/93; 92-24-028, § 50-30-030, filed 11/24/92, effective 12/25/92. Statutory Authority: 1991 c 355 § 24, 92-02-105, § 50-30-030, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-040 Access to criminal history information.** (1) The supervisor may review any criminal history record information relating to an applicant that is maintained by any federal, state, or local law enforcement agency of:

- (a) An applicant for a license under this article; or
- (b) A principal of an applicant for a license under this article.

(2) The supervisor may refuse to grant a license or may suspend or revoke a license if the applicant, licensee, or principal of the applicant or licensee, fails to provide a complete set of fingerprints and a recent photograph on request.

(3) All criminal history record information received by the supervisor is confidential information and is for exclusive use of the supervisor and the division of banking. Except on court order or as provided by subsection (4) of this section, or otherwise restricted by law, the information may not be released or otherwise disclosed to any other person or agency.

(4) The supervisor may not provide a person being investigated under this section with a copy of the person's criminal history record obtained pursuant to subsection (1) of this section. This subsection does not prevent the supervisor from disclosing to the person the dates and places of arrests, offenses, and dispositions contained in the criminal history records.

[Statutory Authority: 1991 c 355 § 24, 92-02-105, § 50-30-040, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-050 Issuance of license.** If the supervisor determines all criteria of section 4, chapter 355, Laws of 1991 has been met and the appropriate fees paid, the supervisor shall issue a nontransferable license for the applicant to engage in the business of cashing and/or selling checks. The license shall remain in effect for a period of five years from the date of its issuance unless earlier surrendered, suspended, or revoked.

[Statutory Authority: 1991 c 355 § 24, 92-02-105, § 50-30-050, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-060 Disclosure of significant developments.** A licensee shall be required to notify the supervisor in writing within thirty days of the occurrence of any of the following significant developments:

- (1) Licensee filing for bankruptcy or reorganization.
- (2) Notification of the institution of license revocation procedures in any state against the licensee.
- (3) The filing of a criminal indictment any way related to check cashing and/or selling activities of licensee, key officer, director, or principal, including, but not limited to,

the handling and/or reporting of moneys received and/or instruments sold.

(4) A licensee, key officer, director, or principal being convicted of a crime.

(5) A change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire ten percent of the stock, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation. The supervisor may require such information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control shall mean any change in principals of the organization either active or passive. Change of control investigation fees shall be billed to the persons or group at the rate billed for applications.

[Statutory Authority: 1991 c 355 § 24, 92-02-105, § 50-30-060, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-070 Accounting and financial records to be maintained by the licensee.** Cashers of checks and/or sellers of checks, drafts, money orders, or other commercial paper serving the same purpose shall be required to maintain as a minimum the following books and records.

(1) A daily record of checks cashed shall be maintained as a record of all check cashing transactions occurring each day. Such daily record shall be limited to the following provided a sufficient audit trail is available through records obtainable from the licensee's bank of account.

- (a) Amount of the check cashed;
- (b) Amount of fee charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products.

(2) A daily cash reconciliation shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation shall separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits.

(3) Records required under subsections (1) and (2) of this section may be maintained in combined form, hand or machine posted, or automated.

(4) A general ledger containing records of all assets, liabilities, capital, income, and expenses shall be maintained. The general ledger shall be posted from the daily record of checks cashed or other record of original entry, at least monthly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated general ledger reflecting activity at two or more locations by the same licensee may be maintained provided books of original entry are separately maintained for each location.

(5) All checks, drafts, and money orders drawn on a financial institution domiciled in the United States and cashed by a licensee shall be sent for deposit to the licensee's account at a depository financial institution located in Washington state or sent for collection not later than close of business on the third business day after the day on which the check was accepted for cash.

(6) Every licensee shall maintain current personnel files for its employees.

[Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-070, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-080 Licensees are required to comply with federal and state laws including but not limited to the following.** (1) Each licensee shall comply with section 103.29 of the Code of Federal Regulations and maintain detailed records to satisfy currency transaction reporting requirements of the United States Treasury Department.

(2) Each licensee must comply with chapter 63.29 RCW Uniform Unclaimed Property Act.

[Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-080, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-090 Audit report by licensee—Financial statements.** (1) Each licensee shall submit annually a financial statement on a form prescribed by the supervisor. Financial statements may be prepared by outside accountants or by the licensee's own accountants. Said statements are due one hundred five days after the calendar year end, or if the licensee has established a fiscal year, then one hundred five days after the fiscal year end.

(2) A licensee engaged in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose, whose license has been surrendered or revoked shall submit to the supervisor, at its own expense, on or before one hundred five days after the effective date of such surrender or revocation, a closing audit report containing audited financial statements as of such effective date for the twelve months ending with such effective date or for such other period as the supervisor may specify. If the report, certificate, or opinion of the independent accountant is in any way qualified, the supervisor may require the licensee to take such action as appropriate to permit an independent accountant to remove such qualification from the report, certificate, or opinion. Such report shall include relevant information specified by the supervisor.

(3) The reports and financial statements referred to in subsections (1) and (2) of this section shall include at least a balance sheet and a statement of income together with such other relevant information as the supervisor may require, and shall be prepared in accordance with general accepted accounting principles and the reports and financial statements referred to in subsection (2) of this section shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant. The audits shall be conducted in accordance with generally accepted auditing standards.

(4) For good cause and upon written request, the supervisor may extend the time for compliance with this section.

(5) A licensee shall, when requested by the supervisor, for good cause, submit its unaudited financial statement, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income as of the date and for the period specified by the supervisor.

(6) The supervisor may reject any financial statement, report, certificate, or opinion filed pursuant to this section by

notifying the licensee or other person required to make such filing of its rejection and the cause thereof. Within thirty days after the receipt of such notice, the licensee or other person shall correct such deficiency. The supervisor shall retain a copy of all filings so rejected.

[Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-090, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-100 Trust accounts—Limitations and prohibitions.** (1) The licensee in the business of selling checks shall periodically at least monthly withdraw from the trust account an amount equal to fees earned for the corresponding period from the sale of checks, drafts, money orders, or other commercial paper serving the same purpose. The remaining balance of the trust account must be sufficient to cover all checks, drafts, money orders, and other commercial paper serving the same purpose that remain outstanding and drawn against the trust account.

(2) A licensee is prohibited from allowing the bank of account to charge back checks or drafts deposited to the trust account and subsequently dishonored against said trust account.

(3) Withdrawals from the trust account by a licensee, whose license has been suspended, terminated, or not renewed, will not be allowed, without the supervisor's consent, until a closing audit report has been received according to WAC 50-30-090(2).

[Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-100, filed 1/2/92, effective 2/2/92.]

**WAC 50-30-110 Transitional rule.** Businesses engaged in check cashing or check selling as of December 1, 1991, may file application with the supervisor and immediately obtain an interim license upon acceptance of the application for review. Such license shall be good for sixty days unless extended by the supervisor. This section shall become void after July 1, 1993.

[Statutory Authority: RCW 31.45.200. 92-17-025, § 50-30-110, filed 8/11/92, effective 9/11/92. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-110, filed 1/2/92, effective 2/2/92.]

## Chapter 50-32 WAC ESTABLISHMENT OF ALIEN BANKS IN WASHINGTON—PROCEDURE

### WAC

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50-32-99003 Appendix III—Forms—Application for certificate authorizing an alien bank to establish and operate a bureau in the state of Washington.

**WAC 50-32-010 Purpose.** The purpose of this chapter is to ensure compliance with and provide the rules and regulations necessary to administer the provisions and requirements of chapter 53, Laws of 1973 1st ex. sess.

[Order 23, § 50-32-010, filed 8/14/73.]

**WAC 50-32-020 Definitions.** For purposes of these rules and regulations, the following terms are defined as:

(1) **Act** - chapter 53, Laws of 1973 1st ex. sess.

(2) **Application** - "Application" means an application of an alien bank to the supervisor of banking for a certificate of authority to establish and operate an agency, branch or bureau in the state of Washington.

(3) **Domiciliary country** - "Domiciliary country" means the foreign country under the laws of which the alien bank is organized.

(4) **Fiscal year** - "Fiscal year" means the fiscal year of the alien bank.

(5) **Depository** - "Depository" shall mean a bank with its principal place of business within the state of Washington selected by the alien bank and approved by the supervisor of banking, for the deposit of the cash or liquid assets required by section 7 and 12 of the act.

(6) **Rules and regulations** - "Rules and regulations" means all of Title 50 WAC. Alien banks in conducting authorized banking business shall be subject to such rules and regulations under the same terms and conditions as applied to banks organized under the laws of this state to the extent that such rules and regulations as applied to alien banking operations are consistent with the intent and purposes of the alien bank act and subject to limitations and restrictions imposed by these alien bank rules and regulations.

(7) **Section** - Section numbers referred to herein are those found in chapter 53, Laws of 1973 1st ex. sess.

[Order 23, § 50-32-020, filed 8/14/73.]

**WAC 50-32-030 Application procedure.** An application by an alien bank to establish and operate an office or bureau in the state of Washington shall be made on the form prescribed in Appendices 1, 2 or 3, whichever is applicable.

An application shall not be deemed complete if, in the opinion of the supervisor, the applicant has not supplied all of the required information or the information supplied is deficient. After receipt of the completed application, the supervisor shall conduct his required investigation.

(1) **Office.** The supervisor shall notify the applicant of denial or conditional approval of an application for a certificate for an agency or branch within 180 days of his receipt of the completed application.

If the application for a certificate for an agency or branch is conditionally approved, the applicant must supply the following documents executed by the governing board and properly sworn to before a U.S. Consular Official within 60 days of notification.

(a) Appointment of the supervisor of banking as agent

(b) Designation of bank's agent for service in Washington

(c) Letter of guaranty

(d) Appointment of depository(ies)

(e) Certificate of allocation and assignment of capital

(f) Depository agreements for assigned and allocated capital

(g) A power of attorney in favor of the person designated to be in charge of the business and affairs of the office.

The applicant shall also provide proof of fidelity bond coverage and the oath of the managing officer of the Washington office.

After receipt of these documents and after the supervisor is satisfied that all statutory requirements have been met, he shall issue his certificate.

(2) **Bureau.** The supervisor shall notify the applicant of denial or approval of an application for a certificate for a bureau within 90 days of his receipt of the completed application. If the application is approved, the certificate will be issued forthwith.

[Order 23, § 50-32-030, filed 8/14/73.]

**WAC 50-32-040 Examination—Frequency—Scope.**

The accountant selected to audit the books of account of an alien office shall be an independent accountant licensed to practice by the state of Washington and who is not an employee, officer, or holder of the securities of the alien bank or its subsidiaries. Such accountant must have knowledge and experience with respect to auditing books of international corporations. A resume' of such accountant wherein the knowledge and experience is set forth must accompany the alien bank's request that such accountant be approved by the supervisor of banking. The report of such independent accountant shall be based upon an audit made in accordance with generally accepted auditing standards without limitation on its scope and shall be unqualified.

[Order 23, § 50-32-040, filed 8/14/73.]

**WAC 50-32-050 Fees.** (1) The fees to accompany the filing of an application and attendant investigation are prescribed in WAC 50-12-040, 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.

[Order 23, § 50-32-050, filed 8/14/73.]

**WAC 50-32-060 Records and books of account.** Records and books of account of an alien bank office shall be kept as though the Washington office was conducted as a separate and distinct entity with its assets and liabilities entirely separate and apart from other operations of its head office and its subsidiaries or affiliated corporations. Books and accounts shall be maintained, where possible, as are the books and accounts of banks chartered by the state of Washington, to:

(1) Facilitate the preparation of required reports of condition.

(2) Facilitate the preparation of the required report of income.

[Order 23, § 50-32-060, filed 8/14/73.]

**WAC 50-32-070 Branch records.** An alien branch shall:

- (1) Identify United States domiciled creditors
- (2) Segregate and maintain controls for:
  - (a) Demand deposits.
  - (b) Time deposits.

for each class of depositors specified and authorized in section 11(1)(i) through (vii) of the act.

- (3) Maintain loan records and controls to:
  - (a) Identify loan customers as to types as restricted by section 11(2)(a)(i) through (iv) of the act.
  - (b) Specify the purpose of each loan or guarantee with respect to the restrictions imposed by section 11(2)(b)(i), (ii) and (iii) of the act.

(c) Organize and maintain credit files, including appropriate comments relative to (a) and (b) above and to demonstrate the credit worthiness and standing of the customer.

(4) Maintain credit files to reflect the credit worthiness or rating of assets held as required or authorized by sections 7 and 12(2) of the act.

(5) Establish and maintain controls to reflect at all times that liquid assets held in accordance with the requirements of section 12(2) of the act are not less than one hundred eight percent of the aggregate amount of liabilities of the alien bank payable at or through its Washington office.

(6) Establish and maintain controls to reflect maintenance of additional capital equal to not less than ten percent of deposit liabilities.

[Order 23, § 50-32-070, filed 8/14/73.]

**WAC 50-32-080 Agency records.** With consideration to the statutory requirements imposed upon an approved agency of an alien bank by section 18 of the act, an agency shall maintain controls and records relating to the making of loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets to:

- (a) Readily identify the customer and basis upon which the loan or guaranty was granted;
- (b) The purpose and terms of such loan or guaranty; and
- (c) The precise manner in which the business of the customer is directly related to the international movement of goods and services.

[Order 23, § 50-32-080, filed 8/14/73.]

**WAC 50-32-090 Reports—Required reports.** Each alien bank shall file the following periodic reports relating to the financial condition of the office:

- (1) Examination (audit) report by an accountant approved by the supervisor as of the last business day of the fiscal year as prescribed by section 14 of the act.
- (2) Reports of resources and liabilities as required by banks chartered by the state of Washington as prescribed by RCW 30.08.180 and 30.08.190, together with proof of publication. An agency need not publish such reports.

(3) Annual report of income on calendar year basis as a special report as required of banks chartered by the state of Washington (RCW 30.08.190).

[Order 23, § 50-32-090, filed 8/14/73.]

**WAC 50-32-100 Notice concerning deposit insurance.** Every alien bank branch, the deposits of which are not insured by the Federal Deposit Insurance Corporation, shall display at its place of business in Washington a sign at least seven inches by three inches at each window or place where deposits are accepted stating that deposits are not insured by the Federal Deposit Insurance Corporation. A statement may be included on the same sign to the effect that deposits of U.S. domiciled depositors are partially protected by capital maintained pursuant to RCW 30.42.120(1).

[Order 25, § 50-32-100, filed 3/21/74.]

**WAC 50-32-99001 Appendix I—Forms—Application for certificate authorizing an alien bank to establish and operate a branch in the state of Washington.**

APPLICATION FOR CERTIFICATE AUTHORIZING AN ALIEN BANK TO ESTABLISH AND OPERATE A BRANCH IN THE STATE OF WASHINGTON

TO: Supervisor of Banking  
Division of Banking  
Olympia, Washington 98504

The (Applicant alien bank), with its head office and principal place of business located at (Domiciliary Country) hereby initiates this application for certificate authorizing the establishment and operation of a branch to be located . . . . . in the City of . . . . ., County of . . . . ., State of Washington.

The (Bank), is incorporated, chartered or otherwise authorized to conduct a banking business under the laws of (Domiciliary Country). We enclose a verified copy of the resolution adopted by the bank's governing board, properly sworn to before a U.S. Consular Official, authorizing the filing of this application and designating the officer(s) who is (are) to sign this application and provide the material required herein, authorizing the payment of fees required by law or regulation, and designating the managing officer(s) of the proposed branch. We enclose a bank draft for \$1,500.00 to apply upon the statutory cost of investigation. If the cost of investigation to be made exceeds \$1,500.00 we agree to pay such excess in accordance with WAC 50-12-040 together with such other costs and fees as may be legally required by statute or regulation.

Correspondence, instructions, requests for information, reports, etc., should be addressed:

- .....  
Head Office
- .....  
Proposed Branch

To expedite the statutory investigation the following information, schedules, certifications, resume's, etc., are furnished:

(a) Name of present Chief Executive Officer . . . . . and Name of the Secretary . . . . .

(b) The bank's fiscal year ends . . . . .

(c) (English translation): Four certified copies of the most recent edition of the bank's certificate of authority or other legal authorization of your country to conduct a banking business and the bank's articles of incorporation.

(d) Date of certificate of authority or its equivalent under which presently operating . . . . . and expiration date, or duration, of the certificate of authority or its equivalent . . . . .

(e) Capital structure at end of last fiscal year: (i.e., equity capital, surplus, undivided profits, unallocated or contingency reserves).

(f) Two copies of last available statement of condition.

(g) Statement of object and purpose or purposes which bank proposes to pursue in the transaction of business in the state of Washington.

(h) Copy of (English translation where applicable) laws of domiciliary country under which applicant bank is organized which permits a bank with its principal place of business in the state of Washington to establish in that foreign country a branch, agency or similar operation. Attached to a copy of such laws shall be either (a) an opinion of counsel (a member of the bar in the foreign country under whose laws the applicant is organized), including references to or extracts from relevant statutes, if any, to the effect that a bank with its principal place of business in the state of Washington may be permitted to establish and maintain in such foreign country a branch, agency or similar operation, or (b) a certificate of an official of the applicant's country who is authorized under its laws to issue a license to a bank with its principal place of business in the state of Washington to maintain either a branch or agency, to the effect he is so authorized.

(i) An opinion of counsel for the applicant (a member of the bar in the foreign country under whose laws the applicant is organized) to demonstrate that this application to establish a branch is in compliance with local laws. Such opinion should state that (a) the applicant's charter authorizes it to carry on the business contemplated by the application, (b) the applicant has conducted, and is now conducting, its business as authorized by the charter and bylaws in compliance with the laws of its country of incorporation, and (c) the making of the application is in compliance with the laws of the country of incorporation.

(j) Letter or certificate from banking authorities of domiciliary country granting permission to the applicant to apply for a branch in this state.

(k) Furnished herewith:

(1) Name, title and resume' for each officer of the proposed branch in Washington.

(2) Confidential financial statement for the managing officer of the proposed branch in Washington.

(1) Deposit projections for the first three years of operations:

I. Highest deposit totals anticipated by end of first year of operations of the proposed branch \$. . . . .

II. Highest deposit totals anticipated by end of second year of operations of the proposed branch \$. . . . .

III. Highest deposit totals anticipated by the end of the third year of operations of the proposed branch \$. . . . .

(m) Indicate whether eligible deposit liabilities of the branch in the state of Washington will be covered by the insurance protection of the Federal Deposit Insurance Corporation (yes or no).

(n) Outline of background information in support of application.

(o) Copy of option or conditional lease on proposed branch site.

(p) A verified or authenticated copy of the bank's bylaws.

EXECUTED at . . . . ., for the (Bank), this . . . . day of . . . . ., 19. . . .

(By the bank's chief executive officer) \* . . . . .

(and the secretary of the banking corporation) \* . . . . .

Bank Seal

\*Please type name and official title under the signatures.

[Order 23, Appendix I (codified as WAC 50-32-99001), filed 8/14/73.]

**WAC 50-32-99002 Appendix II—Forms—Application for certificate authorizing an alien bank to establish and operate an agency in the state of Washington.**

APPLICATION FOR CERTIFICATE AUTHORIZING AN ALIEN BANK TO ESTABLISH AND OPERATE AN AGENCY IN THE STATE OF WASHINGTON

TO: Supervisor of Banking  
Division of Banking  
Olympia, Washington 98504

The (Applicant alien bank) with its head office and principal place of business located (Domiciliary Country) hereby initiates this application for certificate authorizing the establishment and operation of an agency to be located . . . . . in the City of . . . . ., County of . . . . ., State of Washington.

The (Bank), is incorporated, chartered or otherwise authorized to conduct a banking business under the laws of (Domiciliary Country). We enclose a verified copy of the resolution adopted by the bank's governing board, properly sworn to before a U.S. Consular Official, authorizing the filing of this application and designating the officer(s) who is (are) to sign this application and provide the material required herein, authorizing the payment of fees required by law or regulation, and designating the managing officer(s) of the proposed agency. We enclose a bank draft for \$1,500.00 to apply upon the statutory cost of investigation. If the cost of investigation to be made exceeds \$1,500.00 we agree to pay such excess in accordance with WAC 50-12-040 together with such other costs and fees as may be legally required by statute or regulation.

Correspondence, instructions, requests for information, reports, etc., should be addressed:

.....  
Head Office

.....  
Proposed Agency

To expedite the statutory investigation, the following information, schedules, certifications, resume's, etc., are furnished:

- (a) Name of present chief executive officer . . . . . and name of the secretary . . . . .
- (b) The bank's fiscal year ends . . . . .
- (c) Four certified copies (English translation where applicable) of the most recent edition of the bank's certificate of authority or other legal authorization of your country to conduct a banking business and the bank's articles of incorporation.
- (d) Date of certificate of authority or its equivalent under which presently operating . . . . . and expiration date, or duration, of the certificate of authority or its equivalent . . . . .
- (e) Capital structure at end of last fiscal year: (i.e., equity capital, surplus, undivided profits, unallocated or contingency reserves).
- (f) Two copies of last available statement of condition.
- (g) Statement of object and purpose or purposes which bank proposes to pursue in the transaction of business in the state of Washington.
- (h) Copy of (English translation where applicable) laws of domiciliary country under which applicant bank is organized which permits a bank with its principal place of business in the state of Washington to establish in that foreign country a branch, agency of similar operation. Attached to a copy of such laws shall be either (a) an opinion of counsel (a member of the bar in the foreign country under whose laws the applicant is organized), including references to or extracts from relevant statutes, if any, to the effect that a bank with its principal place of business in the state of Washington may be permitted to establish and maintain in such foreign country a branch, agency or similar operation, or (b) a certificate of an official of the applicant's country who is authorized under its laws to issue a license to a bank with its principal place of business in the state of Washington to maintain either a branch or agency, to the effect he is so authorized.
- (i) An opinion of counsel for the applicant (a member of the bar in the foreign country under whose laws the applicant is organized) to demonstrate that this application to establish an agency is in compliance with local laws. Such opinion should state that (a) the applicant's charter authorizes it to carry on the business contemplated by the application, (b) the applicant has conducted, and is now conducting, its business as authorized by the charter and bylaws in compliance with the laws of its country of incorporation, and (c) the making of the application is in compliance with the laws of the country of incorporation.
- (j) Letter or certificate from banking authorities of domiciliary country granting permission to the applicant to apply for an agency in this state.
- (k) Furnished herewith:
  - (1) Name, title and resume' for each officer of the proposed agency in Washington.
  - (2) Confidential financial statement of the managing officer of the proposed agency in Washington.
- (l) Outline of background information in support of application.

- (m) Copy of option or conditional lease on proposed agency site.
- (n) A verified or authenticated copy of the bank's bylaws.

EXECUTED at . . . . ., for the (Bank), this . . . . day of . . . . ., 19. . . .

(By the bank's chief executive officer) \* . . . . .

(and the secretary of the banking entity) \* . . . . .

Bank Seal

\*Please type name and official title under the signatures.

[Order 23, Appendix II (codified as WAC 50-32-99002), filed 8/14/73.]

**WAC 50-32-99003 Appendix III—Forms—Application for certificate authorizing an alien bank to establish and operate a bureau in the state of Washington.**

APPLICATION FOR CERTIFICATE AUTHORIZING AN ALIEN BANK TO ESTABLISH AND OPERATE A BUREAU IN THE STATE OF WASHINGTON

(To be filed in duplicate)

TO: Supervisor of Banking  
Division of Banking  
Olympia, Washington 98504

The (Applicant alien bank), with its head office and principal place of business located at (Domiciliary Country), hereby initiates this application for certificate authorizing the establishment and operation of a bureau to be located . . . . . in the City of . . . . ., County of . . . . ., State of Washington.

The (Bank) is incorporated, chartered or otherwise authorized to conduct a banking business under the laws of (Domiciliary Country).

We enclose a verified copy of the resolution, adopted . . . . . by the bank's governing board, specifically empowering its President (or Chief Executive Officer) and the bank's Secretary (or equivalent officer) to execute this application, pay the fees required by law or regulation, provide such information and furnish such reports and enter into such agreements as may be necessary.

Correspondence, instructions, and requests for information, reports, etc., should be addressed:

- . . . . .  
Head Office
- . . . . .  
Proposed Bureau

To expedite the statutory investigation, the following information, schedules, documents, etc., are furnished:

- (a) Name of present Chief Executive Officer . . . . . and name of the Secretary . . . . .
- (b) The bank's fiscal year ends . . . . .
- (c) (English translation) Four certified copies of most recent edition of the bank's certificate of authority or other

legal authorization of your country to conduct an international banking business and the bank's articles of incorporation.

(d) Date of certificate of authority or its equivalent under which presently operating . . . . . and expiration date, or duration, of the certificate of authority or its equivalent . . . . .

(e) Capital structure at end of last fiscal year: (i.e., equity capital, surplus or rest accounts, undivided profits, unallocated or contingency reserves).

(f) Two copies of last available statement of condition.

(g) Statement of object, purpose and activities which bank proposes to pursue the establishment and operation of a bureau in this state at the place designated herein.

Enclosed is a bank draft for \$300.00 to apply upon the statutory cost of investigation. If the cost of investigation to be made exceeds \$300.00, we agree to pay such excess in accordance with WAC 50-12-040 together with such other costs and fees as may be legally required by state or regulation.

EXECUTED in duplicate at . . . . . for the (Legal name of applicant bank) this . . . day of . . . . ., 19. . .

(By the chief executive officer) \* . . . . .

(and the Secretary of the banking corporation) \* . . . . .

Bank Seal

\*Please type name and official title under the signatures.

[Order 23, Appendix III (codified as WAC 50-32-99003), filed 8/14/73.]

Chapter 50-36 WAC
ADMINISTRATION OF TRUST COMPANIES—
INVESTMENTS, ETC.

WAC

- 50-36-010 Definitions.
50-36-020 Administration of fiduciary powers.
50-36-030 Audit of the trust department.
50-36-040 Collective investment funds—Funds authorized.
50-36-050 Collective investment funds—Administration of funds.
50-36-060 Collective investment funds—Valuation of assets, admissions and withdrawals.
50-36-070 Collective investment funds—Audit.
50-36-080 Collective investment funds—Financial reports.
50-36-090 Collective investment funds—Investments and administration.
50-36-100 Organization and management fees.
50-36-110 Certificate of interest.
50-36-120 Remedy of mistake made in good faith.

WAC 50-36-010 Definitions. For purposes of this chapter, the following words are defined as:

(1) "Fiduciary powers" means the power to act in any fiduciary capacity authorized by the state of Washington including, but not limited to, trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, agent, custodian, escrow agent, corporate bond paying and transfer agent, escrow holder, managing agent, depository, committee of estates of incompetents.

(2) "Trust department" means that group or groups of officers and employees of a trust company organized under

the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the trust company, whether or not the group or groups are so named.

(3) "Agency" means the fiduciary relationship in which title to the property constituting the agency does not pass to the trust institution but remains in the owner of the property, who is known as the principal, and in which the agent is charged with certain specific duties with respect to the property.

(4) "Agency coupled with an interest" means an agency in which the agent has a legal interest in the subject matter. Such an agency is not terminated automatically, as are other agencies, by the death of the principal but continue in effect until the agent can realize upon its legal interest.

(5) "Managing agent" means the fiduciary relationship assumed by a trust company upon the creation of an account which names the trust company as agent and confers investment discretion upon the trust company.

(6) "Trust company" as used herein shall also include banks which are authorized to exercise trust powers.

[Order 22, § 50-36-010, filed 8/14/73.]

WAC 50-36-020 Administration of fiduciary powers. (1)(a) The board of directors is responsible for the proper exercise of fiduciary powers by the trust company. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the trust company in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the trust company's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.

(b) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s) or committee(s) to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or for each fiduciary account where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every qualified fiduciary subject to this regulation and exercising fiduciary powers in this state shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the trust company and its trust department.

(4) The trust department may utilize personnel and facilities of other departments of the trust company, and other departments of the trust company may utilize the

personnel and facilities of the trust department only to the extent not prohibited by law and as long as the separate identity of the trust department is preserved.

(5) Fiduciary records shall be kept separate and distinct from other records of the trust company and maintained in compliance with the provisions of RCW 30.04.240. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the supervisor of banking.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

[Order 22, § 50-36-020, filed 8/14/73.]

**WAC 50-36-030 Audit of the trust department.** A committee of directors, exclusive of any active officers of the trust company, shall at least once during each calendar year and within 15 months of the last such audit, make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this regulation and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

[Order 22, § 50-36-030, filed 8/14/73.]

**WAC 50-36-040 Collective investment funds—Funds authorized.** Any trust company qualified to act as fiduciary in this state may establish common trust funds (referred to in this regulation as "collective investment funds") for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the trust company procures the consent of its co-fiduciary or co-fiduciaries to such investment, and provided such investment is not in contravention with the provisions of chapter 30.24 RCW:

(a) In a common trust fund maintained by the trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the trust company in its capacity as trustee, executor, administrator, or guardian.

(b) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

[Order 22, § 50-36-040, filed 8/14/73.]

**WAC 50-36-050 Collective investment funds—Administration of funds.** Collective investments of funds or other property held by such qualified fiduciary (and

referred to in this paragraph as "collective investment funds") shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the plan) which shall be approved by a resolution of the trust company's board of directors and filed with the supervisor of banking. The plan shall contain appropriate provisions not inconsistent with the rules and regulations of the supervisor of banking as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the trust company with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing assets in the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. A copy of the plan shall be available at the principal office of the trust company for inspection during all banking hours, and upon request a copy of the plan shall be furnished to any person.

(2) Property held by a bank in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation under any provisions of the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (a) or (b) of WAC 50-36-040, subject to the provisions herein contained pertaining to such funds, and may qualify for tax exemption pursuant to section 584 of the Internal Revenue Code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of subparagraph (b) of WAC 50-36-040, if the fund qualifies for tax exemption under Revenue Ruling 56-267 and following rulings.

(3) All participants in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a trust company as fiduciary in a participation in a collective investment fund is proper, the trust company may consider the collective investment fund as a whole and shall not, for example, be prohibited from making such investment because any particular asset is nonincome producing.

[Order 22, § 50-36-050, filed 8/14/73.]

**WAC 50-36-060 Collective investment funds—Valuation of assets, admissions and withdrawals.** (1) Not less frequently than once during each period of 3 months a trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except: (a) On the



basis of such valuation, and (b) as of such valuation date, (c) no participation shall be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the trust company and approved in such manner as the board of directors shall prescribe, and (d) no requests or notice may be canceled or countermanded after the valuation date.

(2) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind, provided that all distributions as of any one valuation date shall be made on the same basis.

(3) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(4) Any trust company administering a collective investment fund shall have the responsibility of maintaining in cash and readily marketable investments such part of the assets of the fund as shall be deemed to be necessary to provide adequately for the needs of participants and to prevent inequities between such participants, and if prior to any admissions to or withdrawals from a fund the trust company shall determine that after effecting the admissions and withdrawals which are to be made less than 40 percent of the value of the remaining assets of the collective investment fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund shall be permitted as of the valuation date upon which such determination is made: *Provided*, That ratable distribution upon all participations shall not be so prohibited in any case.

[Order 22, § 50-36-060, filed 8/14/73.]

**WAC 50-36-070 Collective investment funds—Audit.** A trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the trust company. In the event such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the collective investment fund.

[Order 22, § 50-36-070, filed 8/14/73.]

**WAC 50-36-080 Collective investment funds—Financial reports.** (1) A trust company administering a collective investment fund shall at least once during each period of 12 months prepare a financial report of the fund which shall be filed with the supervisor of banking within 90 days after the end of the fund's fiscal year. This report, based upon the above audit, shall contain a list of investments in the fund showing the cost and current market value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss and any other investment changes; income and

disbursements; and an appropriate notation as to any investments in default.

(2) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. No predictions or representations as to future results may be made. In addition, as to funds described in WAC 50-36-040, neither the report nor any other publication of the trust company shall make reference to the performance of funds other than those administered by the trust company.

(3) A copy of the financial report shall be furnished, or notice shall be given that a copy of such report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of such financial report may be furnished to prospective customers. The cost of printing and distribution of these reports will be borne by the trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in WAC 50-36-040 may be given publicity solely in connection with the promotion of the fiduciary services of the trust company.

(4) Except as herein provided, the trust company shall not advertise or publicize its collective investment fund(s). Restraint is required in fiduciary advertisements to preclude the violation of securities laws including the Mutual Fund Reform Act.

[Order 22, § 50-36-080, filed 8/14/73.]

**WAC 50-36-090 Collective investment funds—Investments and administration.** (1) A trust company administering a collective investment fund shall have the exclusive management thereof.

(2) No trust company shall have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective investment fund may be invested in stock or obligations, including time or savings deposits, of the bank or any of its affiliates: *Provided*, That such deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this part, funds held by a trust company as fiduciary for its own employees may be invested in a collective investment fund.

(3) A trust company may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance until the time of the next valuation date to an account holding a participation be deemed to constitute the acquisition of an interest by the bank.

(4) Any trust company administering a collective investment fund may purchase for its own account from such fund any devaluated fixed income investment held by such fund, if in the judgment of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount

plus interest and penalty charges due. If the trust company elects to so purchase such investment, it must do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(5) Except in the case of collective investment funds described in paragraph (b) of WAC 50-36-040:

(a) No funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of 10 percent of the then market value of the fund: *Provided*, That in applying this limitation if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one;

(b) No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any closely held corporation, as may be determined by the supervisor of banking, or, of any one person, firm, or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such person, firm, or corporation would aggregate in excess of 10 percent of the then market value of the fund: *Provided*, That this limitation shall not apply to investments in direct obligations of the United States or its agencies or other obligations fully guaranteed by the United States or its agencies as to principal and interest: *And Provided Further*, That this limitation shall not apply to investments in securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as now or hereafter amended, if both of the following conditions are met:

(i) The portfolio of the investment company or investment trust is limited to such obligations of, or fully guaranteed by, the United States or its agencies and to repurchase agreements fully collateralized by such obligations; and

(ii) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian;

(6) In addition to the investments permitted under WAC 50-36-040, funds or other property received or held by a trust company as fiduciary may be invested collectively, to the extent not prohibited by law, as follows:

(a) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank fiduciary fund."

(b) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issue: *Provided*, That the trust company owns no participation in the loan or obligation and has no interest in any investment therein except in its capacity as fiduciary.

(c) In a common trust fund maintained by the trust company for the collective investment of cash balances received or held by a trust company in its capacity as trustee, executor, administrator, or guardian, which the trust company considers to be individually too small to be invested separately to advantage. The total investment for

such fund must not exceed \$100,000; the number of participating accounts is limited to 100, and no participating account may have an interest in the fund in excess of \$10,000: *Provided*, That in applying these limitations if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons, such account shall be considered as one: *And Provided*, That no fund shall be established or operated under this subparagraph for the purpose of avoiding the provisions of chapter 50-36 WAC.

(d) In any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries or affiliates or by several individual settlors who are closely related: *Provided*, That such investment is not made under this subparagraph for the purpose of avoiding any provision of this regulation, in particular, but not limited to the provisions beginning with new section WAC 50-36-040.

(e) In such other manner as shall be approved in writing by the supervisor of banking.

[Statutory Authority: RCW 30.04.030. 90-07-011, § 50-36-090, filed 3/13/90, effective 4/13/90; Order 22, § 50-36-090, filed 8/14/73.]

**WAC 50-36-100 Organization and management fees.** (1) A trust company administering a collective investment fund shall absorb the costs of establishing or reorganizing a collective investment fund.

(2) The trust company may charge a fee for the management of the collective investment fund provided that the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by a trust company to a participant, exceed the total amount of compensations which would have been charged to said participant if no assets of said participant had been invested in participations in the fund.

(3)(i) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the trust company administering the fund.

(ii) A trust company may (but shall not be required to) transfer up to 5 percent of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account: *Provided*, That no such transfers shall be made which would cause the amount in such account to exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(iii) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund, the reserve account shall be credited with the amount so recovered.

[Order 22, § 50-36-100, filed 8/14/73.]

**WAC 50-36-110 Certificate of interest.** No trust company administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form.

[Order 22, § 50-36-110, filed 8/14/73.]

**WAC 50-36-120 Remedy of mistake made in good faith.** No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

[Order 22, § 50-36-120, filed 8/14/73.]

### Chapter 50-40 WAC

#### SATELLITE FACILITIES—BANKS, TRUST COMPANIES AND MUTUAL SAVINGS BANKS

##### WAC

50-40-010	Definitions.
50-40-020	Application.
50-40-040	Adoption of form.
50-40-050	Network systems.
50-40-060	Modification of approved network systems.
50-40-070	Approval—Disapproval—Request for hearing.
50-40-990	Appendix I—Form—Application to provide satellite facility.

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

50-40-030	Public convenience. [Order 27, § 50-40-030, filed 6/3/74.] Repealed by 82-24-074 (Order 48), filed 12/1/82. Statutory Authority: RCW 30.04.030.
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**WAC 50-40-010 Definitions.** As used in these regulations:

(1) "Supervisor" means supervisor of banking appointed pursuant to RCW 43.19.020.

(2) "Satellite facilities" within the meaning of chapter 30.43 RCW include, without limitation, both "on-line" and "off-line" cash dispensing or automated teller facilities which are not on the premises of the financial institution whose customers use these facilities. Such facilities constitute "satellite facilities" irrespective of whether they are owned by the financial institution or by others.

(3) "Switch" means an electronic or paper-based switching system, pursuant to which transactions in a network system of satellite facilities are effected, routed and processed.

(4) "Network system" means one or more satellite facilities the use of which is shared on a contractual basis among more than one participating financial institution and which are identified with a common trademark or trade name.

(5) "Sponsor" means the owner or operator of a network system.

[Statutory Authority: RCW 30.04.030. 82-24-074 (Order 48), § 50-40-010, filed 12/1/82; Order 27, § 50-40-010, filed 6/3/74.]

**WAC 50-40-020 Application.** Application for approval to provide a satellite facility or facilities which are

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to be used exclusively by the customers of one state-chartered bank, trust company, stock savings bank, or mutual savings bank shall be submitted in accordance with this section. The application shall be filed with the supervisor's office in Olympia on the form set forth in WAC 50-40-990 and must include the minimum fee required by WAC 50-12-040(13).

The applicant shall submit the following information with the application form:

(1) Types of transactions to be conducted.  
(2) Details as to ownership and operation of the facility or facilities.

(3) If requested by the supervisor to aid the determination of whether the public convenience will be served by the proposed satellite facility or facilities, an analysis of the trade area to be served by the proposed facility or facilities. Included within this analysis shall be a study of the number of customers of the applicant living, working and/or shopping in the trade area to be served by the proposed satellite facility or facilities and the likelihood of those customers using the facility.

[Statutory Authority: RCW 30.04.030. 82-24-074 (Order 48), § 50-40-020, filed 12/1/82; Order 27, § 50-40-020, filed 6/3/74.]

**WAC 50-40-040 Adoption of form.** The division of banking hereby adopts for use of all persons requesting approval to provide a satellite facility or facilities which are to be used exclusively by the customers of one state-chartered bank, trust company, stock savings bank, or mutual savings bank, the form attached hereto as Appendix I (WAC 50-40-990), entitled "Application to provide satellite facility."

[Statutory Authority: RCW 30.04.030. 82-24-074 (Order 48), § 50-40-040, filed 12/1/82; Order 27, § 50-40-040, filed 6/3/74.]

**WAC 50-40-050 Network systems.** Application for approval to establish or operate a network system in which one or more state-chartered banks, trust companies, stock savings banks, or mutual savings banks participate shall be submitted in accordance with this section. Application may be made either by the sponsor or by one or more participating financial institutions. The application shall include the following:

(1) A copy of a resolution of the governing body of each state-chartered bank, trust company, stock savings bank, or mutual savings bank participating in the network system, authorizing such participation.

(2) A list showing the exact location of each proposed satellite facility, including the street address, city and state. If a satellite facility is to be located in a retail store, institution, office building or other type of merchant or business establishment, indicate the name and type of establishment. If a satellite facility is to be located in a shopping center, state the name of the shopping center.

(3) A list of all equipment necessary to operate the network system, including the terminal (specify manufacturer), auxiliary equipment, and the data centers where transactions will be routed.

(4) Identification and description of the type of activator and personal identification code (PIC) which will be used by customers at satellite facilities to access their accounts, as well as indication of how and by whom the activator and the

PIC will be issued, with a description of the security measures to be taken.

(5) A summary of the design and general operating features of the network system. At a minimum, this response must include a discussion of:

- (a) The proposed hours of operation;
- (b) The mode of operation (i.e., off-line, off-line with on-line terminals, on-line, or a combination);
- (c) Transactions and transaction restrictions;
- (d) Procedures for verification, authorization, storage and posting of transactions;
- (e) Receipts, audit trails, "hot-card" files, and any other measures used to protect the integrity of the system;
- (f) The switch, including (i) an explanation of the means by which a transaction is routed to the appropriate data centers; (ii) a description of logging and audit procedures for the purpose of verifying transactions processed through the switch; (iii) the identity of all data centers involved in the operation of the system; (iv) the identity of any party or parties other than the sponsor responsible for operation of the switch, (v) a description of the sponsor's or such other party's or parties' experience and qualifications in switch operation, and (vi) procedures for operation during terminal, switch, or CPU down-time (whether scheduled or unscheduled).

(6) If there are financial institutions participating in the network system which do not have offices within this state, evidence that satellite facilities in the jurisdiction in which such institutions are organized are made available on a reciprocal basis to financial institutions which have offices in the state of Washington.

(7) Such identification of the party or parties who will own and maintain the satellite facilities as the supervisor may require.

(8) Evidence of bonding and insurance coverage for the sponsor and other parties involved in operation of the switch or network system.

(9) A complete description in full detail of the procedures for protection of customer privacy and the confidentiality of account information.

(10) A summary description of the procedures to be used to protect against fraudulent use of the network system.

(11) Copies of agreements between financial institution participants and the sponsor. If the agreements are in standardized form, a sample will suffice.

(12) Names and head office addresses of all financial institutions who will participate in the network system.

(13) A description of the method of sharing, including the organizational structure of the network system and the basis for sharing capital expenditures and operating costs.

(14) A certified copy of a resolution of the governing body of the sponsor which (a) authorizes the supervisor to conduct such examinations of the network system and its various component parts as are deemed necessary by the supervisor; (b) sets forth the agreement of the sponsor to pay the supervisor's expenses incurred in such examinations in accordance with the supervisor's rates for special examinations of financial institutions as set forth in WAC 50-44-030; (c) gives assurances to the supervisor that such authorization and agreement shall not be withdrawn until the expiration of at least thirty days after notice of such withdrawal has been given to the supervisor; and (d) confirms the understanding

of the sponsor that failure to permit such examination by the supervisor shall be grounds for immediate suspension of the supervisor's approval of the network system.

[Statutory Authority: RCW 34.04.030. 83-02-013 (Order 50), § 50-40-050, filed 12/23/82.]

**WAC 50-40-060 Modification of approved network systems.** (1) A previously approved network system which desires to add satellite facilities shall submit in writing to the supervisor the exact location of each proposed additional satellite facility, including the street address, city and state. If a satellite facility is to be located in a retail store, institution, office building or other type of merchant or business establishment, indicate the name and type of establishment. If a satellite facility is to be located in a shopping center, state the name of the shopping center.

(2) A previously approved network system which desires to add participating financial institutions shall, either separately or in conjunction with the financial institution, submit to the supervisor the name and head office address of each such financial institution. For each such additional financial institution which is a state-chartered bank, trust company, stock savings bank or mutual savings bank, a copy of a resolution of the governing body of such institution authorizing participation in the network system shall also be submitted.

If the proposed additional financial institutions do not have offices in this state, evidence of the type required under WAC 50-40-050(6) shall be submitted to the supervisor for the jurisdiction in which such institution is organized, unless such information has previously been submitted for such jurisdiction.

(3) A previously approved network system which proposes to modify its system so that the information previously submitted to the supervisor will no longer accurately describe such system, shall submit in writing to the supervisor such information necessary to describe accurately such system as modified.

[Statutory Authority: RCW 30.04.030. 82-24-074 (Order 48), § 50-40-060, filed 12/1/82.]

**WAC 50-40-070 Approval—Disapproval—Request for hearing.** The supervisor shall notify the applicant and, in the case of a network system, all participating state-chartered banks, trust companies, stock savings banks and mutual savings banks, of the approval of the satellite facilities or network system or modification thereto. If the supervisor disapproves the application, reasons for such disapproval shall be set forth in the written notice of disapproval. The applicant may request a hearing before the supervisor by submitting a written request therefor within twenty days of the date of the supervisor's notice of disapproval. Such hearing and all further proceedings shall be governed by the provisions of chapter 34.04 RCW.

[Statutory Authority: RCW 30.04.030. 82-24-074 (Order 48), § 50-40-070, filed 12/1/82.]

WAC 50-40-990 Appendix I—Form—Application to provide satellite facility.

APPENDIX I FORM—APPLICATION TO PROVIDE SATELLITE FACILITY

(NOT TO BE CONSTRUED TO BE THE ESTABLISHMENT OF A BRANCH.)

To the Supervisor of Banking: (Bank, Trust Company, Stock Savings Bank, or Mutual Savings Bank, hereinafter referred to as the Applicant), (City), Washington, hereby initiates application for approval to provide satellite facilities at (Include street designation or approximate location in terms of nearest intersection), (City or Town, indicate direction if outside city limits), (County), Washington.

The location of the proposed satellite facility would be . . . . miles distant from the main office and . . . . miles distant from the nearest branch (Name) of the Applicant.

We enclose a verified copy of a resolution adopted (Date) by the Board of Directors or Board of Trustees of the Applicant, duly authorizing the undersigned to make this application, and obligate the Applicant for necessary costs. Also enclosed is a check to apply upon the costs of investigation. If the cost of investigation to be made exceeds the minimum required by WAC 50-12-040(13), the Applicant will pay such excess in accordance with that section.

We also enclose the supporting data required by WAC 50-40-020.

SUBSCRIBED AT . . . . ., Washington, this . . . . day of . . . . ., 19. . .

(Please type name and position under signature)

[Statutory Authority: RCW 30.04.030. 83-20-072 (Order 55), § 50-40-990, filed 10/3/83; 82-24-074 (Order 48), § 50-40-990, filed 12/1/82; Order 27, Appendix I (codified as WAC 50-40-990), filed 6/3/74.]

Chapter 50-44 WAC

SCHEDULE OF COSTS OF EXAMINATIONS

- WAC 50-44-005 Determination of collection method—Principles. 50-44-010 Collection of examination costs—Collection method. 50-44-020 Semiannual asset charge—Assessment. 50-44-030 Hourly fees and charges—Regular, including extraordinary examination and special examinations. 50-44-050 Limitations on assessments. 50-44-060 Banking fund—Minimum cash balance.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

50-44-040 Special assessment for working capital. [Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-040, filed 12/31/81.] Repealed by 83-09-037 (Order 52), filed 4/18/83. Statutory Authority: RCW 30.04.030.

WAC 50-44-005 Determination of collection method—Principles. When determining a revision to the

collection method, the supervisor shall consider but not be limited to the following principles.

(1) The revenue to be collected shall be sufficient to allow the division of banking to achieve its statutory mission to examine institutions within all required time periods.

(2) Regulatory costs shall be apportioned in a manner consistent with the state of Washington's overall policy commitments to rural and economically distressed areas, promoting the delivery of financial services to those areas.

(3) No industry or institution shall bear a disproportionate share of regulatory costs.

(4) There shall be a significant correlation between assessments and examination costs across institutions.

(5) The division of banking shall have sufficient resources to maintain a competent and motivated staff.

(6) Such other principles as the supervisor may deem relevant.

[Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-005, filed 8/30/91, effective 9/30/91.]

WAC 50-44-010 Collection of examination costs—

Collection method. The requirement of RCW 30.04.070 and 30.08.095 that the supervisor collect from each bank, mutual savings bank, stock savings bank, trust company, or industrial loan company, the costs of the division, shall be met in accordance with the procedures established in this chapter. Costs shall be recouped by the following methods: Semiannual asset charges in order to recoup nondirect bank examination related expenses (RCW 30.08.095, giving the supervisor the authority to charge for other services rendered), and an hourly charge for the estimated actual cost of examination determined by a rate specified herein times the number of hours spent by division personnel in regular or extraordinary examinations.

[Statutory Authority: RCW 30.04.070 and 30.08.095. 90-12-007, § 50-44-010, filed 5/25/90, effective 6/25/90. Statutory Authority: RCW 30.04.030. 83-20-072 (Order 55), § 50-44-010, filed 10/3/83; 82-24-074 (Order 48), § 50-44-010, filed 12/1/82. Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-010, filed 12/31/81.]

WAC 50-44-020 Semiannual asset charge—

Assessment. A semiannual charge for assets will be used to recoup nondirect bank examination related expenses (RCW 30.08.095). The semiannual charge for assets will be computed upon the asset value reflected in the most recent report of condition. The rate of such charge shall be as set forth in the following schedules:

(1) Commercial banks, mutual savings banks, and stock savings banks.

The rate of such charge shall be based on the total asset value as reflected in the report of condition due for that period provided, the supervisor may adjust such rates if the supervisor determines that a disproportionate amount of revenue is being collected by such rate.

If the bank's total assets are:

The assessment is:

Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	.00001408	0
500	1000	7040	.0000135	500
1000	—	13,790	.0000133	1000

(2) Alien banks.

The rate of such charge shall be .000035189 of the total asset value as reflected in the report of condition due for that period provided, the supervisor may adjust such rate if the supervisor determines that a disproportionate amount of revenue is being collected by such rate.

(3) Industrial loan companies and, effective January 1, 1992, consumer finance licensees under chapter 208, Laws of 1991.

The rate of such charge shall be .000084896 of the total asset value as reflected in the consolidated annual report of Washington assets or semiannual notice of assessment of Washington assets (whichever is applicable) due for that period provided, the supervisor may adjust such rate if the supervisor determines that a disproportionate amount of revenue is being collected by such rate.

The supervisor's office shall forward by United States mail a notice to each financial institution showing the manner of calculating the asset charge due and a worksheet for such purposes. The notices shall be mailed with the blank June and December report of condition commencing with the June 1990 report of condition applicable to commercial, savings and alien banks and the consolidated annual report and a semiannual notice of assessment applicable to industrial loan companies. The asset charge shall be calculated by the financial institution and forwarded to the office of the supervisor of banking with the applicable report. A completed copy of the worksheet shall be included with the assessment. An additional two hundred dollar penalty shall be assessed if the amount is not paid by the time such report of condition or notice of assessment is due.

[Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-020, filed 8/30/91, effective 9/30/91; 90-12-007, § 50-44-020, filed 5/25/90, effective 6/25/90. Statutory Authority: RCW 30.04.030 and 31.04.150. 89-09-004 (Order 77), § 50-44-020, filed 4/6/89. Statutory Authority: RCW 30.04.030. 83-20-072 (Order 55), § 50-44-020, filed 10/3/83; 82-24-074 (Order 48), § 50-44-020, filed 12/1/82. Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-020, filed 12/31/81.]

**WAC 50-44-030 Hourly fees and charges—Regular, including extraordinary examination and special examinations.** Each bank, mutual savings bank, trust company, alien bank, or industrial loan company shall pay to the supervisor the following fees:

(1) For regular examinations, including extraordinary examinations for the express purpose of examining unusual conditions or circumstances, including extensions of regular examinations wherein conditions may warrant extension of time required in the examination beyond normal allotted time and such other reviews as determined by the supervisor; sixty-five dollars per hour. The supervisor may charge the actual cost of examinations performed under personal service contracts by third parties.

(2) For electronic data processing examination, trust examination, or other examination requiring specialized expertise, ninety dollars per hour. Electronic data processing centers and trust companies are exempt from the asset assessment provisions of WAC 50-44-020(1) if such centers or companies are not a part of the assets of the bank as reported in the report of condition.

(3) The supervisor shall submit a statement for the foregoing charges following the completion of any applicable examination, and the charges shall be paid not later than thirty days after submission of such statement.

(4) These charges shall become effective for invoicing that occurs after the effective date of this rule, provided such invoicing relates to examinations occurring on or after July 1, 1991.

[Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-030, filed 8/30/91, effective 9/30/91; 90-12-007, § 50-44-030, filed 5/25/90, effective 6/25/90. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-44-030, filed 9/13/85. Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-030, filed 12/31/81.]

**WAC 50-44-050 Limitations on assessments.** (1)

Definitions. For purposes of this provision, the following terms, or the plural thereof, shall have the meaning ascribed.

(a) "Rural community" is a community of population less than ten thousand inhabitants located in a county without a metropolitan sampling area ("MSA"), as established by the United States Office of Management and Budget.

(b) "Economically distressed area" is a county with an unemployment rate that is twenty percent above the statewide average for the previous three years; or a community that has experienced sudden and severe or long-term and severe loss of employment, or erosion of its economic base due to decline of its dominant industries; or an area within a county which area:

- (i) Is composed of contiguous census tracts;
- (ii) Has a minimum population of five thousand persons;
- (iii) Has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and
- (iv) Has an unemployment rate which is at least forty percent higher than the county's unemployment rate.

(c) "Located" means the institution's primary market area where at least sixty percent of the institution's deposits are booked.

(2) Limit on assessment. If an institution is located in a rural community or economically distressed area, and if the charges assessed under WAC 50-44-020(1) relating to a semiannual asset charge and WAC 50-44-030(1) relating to the hourly examination fee, exceed ninety-five percent of the assessment charge applicable for a two-year period of the office of the comptroller of the currency ("OCC") or its successor then the assessments paid in excess of such amount shall be rebated to the institution pursuant to subsection (5) of this section unless abated by the supervisor as provided in subsection (6) of this section.

(3) Determination. For purposes of determining rebate entitlement, the total of semiannual assessments and examination fees are determined by adding the monthly average semiannual assessment and the monthly average of the examination fees for any twenty-four month period after

June 1, 1990. The monthly average is determined by dividing the semiannual assessment fee 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 OCC charge is determined in the same manner.

(4) Rebate. The rebate is determined by the difference between the sum of the applicable monthly average state charges for the twenty-four month period minus ninety-five percent of the sum of the applicable monthly average OCC charge for the same period, as each are determined in subsection (3) of this section. The total amounts of all rebates shall not exceed three-quarters of one percent of the current biennium budget.

(5) Petition. Entitlement of the rebate shall occur only upon petition and proof to the supervisor during the first month of the last quarter of the current biennium.

(6) Rebate abatement. At the discretion of the supervisor, all or part of the rebate determined under subsection (4) of this section may be denied if the supervisor determines that:

(a) 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;

(b) 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, regulatory, or other conditions beyond the control of competent management;

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

(d) Such other factors as the supervisor may deem equitable or relevant.

(7) Institutions may become eligible to receive a rebate on or after April 1, 1993, for amounts paid on or after the 1991-1993 biennium and such eligibility shall continue for two years thereafter.

[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.]

**WAC 50-44-060 Banking fund—Minimum cash balance.** The supervisor shall maintain a minimum cash balance in the banking fund (RCW 43.19.095) of at least one month's allotment. One month's allotment is based upon the current biennium budget divided by twenty-four months. In the event the banking fund balance drops below this figure the supervisor shall declare the next semiannual asset assessment due; payment within thirty days of such declaration. The supervisor shall bill each institution based on the most current report of condition and payment shall be in lieu of the next regularly scheduled asset assessment.

[Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-060, filed 8/30/91, effective 9/30/91.]

## Chapter 50-48 WAC

### ACQUISITION OF BANKS, TRUST COMPANIES, NATIONAL BANKING ASSOCIATIONS OF BANK HOLDING COMPANIES BY OUT-OF-STATE BANK HOLDING COMPANIES

#### WAC

- 50-48-010 Authority and purpose.
- 50-48-020 Joint application.
- 50-48-030 Information required—Identity of applicant parties and operating subsidiaries—Designation of representative of each applicant.
- 50-48-040 Information required from applicant to be acquired.
- 50-48-050 Information required from acquiring applicant.
- 50-48-060 Information to be made available by acquiring applicant.
- 50-48-070 Information to be made available by applicant to be acquired.
- 50-48-080 Application to include statement of interlocking management or ownership.
- 50-48-090 Supervisor may consult with and obtain information from appropriate federal regulatory authority.
- 50-48-100 Interstate acquisition reciprocity—States possessing.

**WAC 50-48-010 Authority and purpose.** These regulations are promulgated pursuant to section 9, chapter 157, Laws of 1983, to establish a procedure under which an out-of-state bank holding company which desires to acquire more than five percent of the shares of the voting stock, or all 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, may apply to the supervisor for approval of such acquisition.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-010, filed 10/3/83.]

**WAC 50-48-020 Joint application.** An application for approval of such acquisition shall be submitted jointly by the acquiring bank holding company and the domestic institution or bank holding company to be acquired. The application need not be in any particular format, but must set forth all the information required under these regulations. The application shall include a copy of the agreement setting forth the plan of merger or acquisition, including certified copies of the resolutions of the respective boards of directors of parties to the agreement approving same. The application shall also include a statement authorizing any federal or state regulatory agency to make available to the supervisor any and all information which such agency may have relating to the applicants or any of their subsidiaries.

[Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-48-020, filed 9/13/85. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-020, filed 10/3/83.]

**WAC 50-48-030 Information required—Identity of applicant parties and operating subsidiaries—Designation of representative of each applicant.** Unless included in other information required by this chapter, the application shall set forth the name and main office address of all operating subsidiaries of both the acquiring bank holding company and the bank, trust company, national banking association or domestic bank holding company to be acquired. In addition, the application shall set forth the name, office address, and telephone of one or more persons

designated by each applicant to be its official representative in connection with the application. All contact between the supervisor's office and the applicant should, except in extraordinary circumstances, be through such representatives.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-030, filed 10/3/83.]

**WAC 50-48-040 Information required from applicant to be acquired.** The bank, trust company, national banking association, or domestic bank holding company to be acquired shall include with the application each of the following items of information:

(a) A statement verifying that the bank, trust company, national banking association or domestic bank holding company to be acquired is in such a liquidity or financial condition as to be in danger of closing, failing or insolvency, setting forth with specificity the circumstances upon which such conclusion is based.

(b) A statement of all courses of action actively considered as an alternative to the proposed merger or acquisition; a statement of why each such course of action or combination of more than one of them was not taken; a statement as to why assistance available from the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other governmental agency either alone or in combination with other actions is not sufficient to alleviate the liquidity or financial situation so as to avoid the danger of closing, failing or insolvency; and if known, the course or courses of action which will be taken in the event the merger or acquisition is not consummated.

(c) Financial records including: (1) Copies of reports of condition required to be filed with the appropriate regulatory authorities and financial statements showing its assets and liabilities as of the end of each of the six most recent quarterly periods of operation; (2) copies of income and expense statements for each of the six most recent quarterly periods of operation; and (3) a copy of the most recent independent audit report.

Information submitted in response to this subsection shall be consolidated figures for the entire organization. If individual figures for operating subsidiaries are available, they shall also be submitted.

(d) A statement setting forth which, if any, state banks, trust companies, or national banking associations doing business in this state, or domestic bank holding companies have been solicited to make an offer for acquisition or merger. If no such solicitations have been made, the application shall include an explanation of the decision not to make such solicitations. The application shall include a summary of the terms of any bona fide offer for merger or acquisition received from any domestic bank, trust company, national banking association or bank holding company, and shall further state whether any domestic offerors have been given the opportunity to match the terms of the proposed acquisition by or merger with the out-of-state bank holding company.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-040, filed 10/3/83.]

**WAC 50-48-050 Information required from acquiring applicant.** The applicant out-of-state bank holding

company shall submit with the application each of the following items of information:

(a) A copy of its most recent audited financial statement, its most recently prepared statement of assets and liabilities, including footnotes and explanations, and its most recent income and expense report.

(b) A statement of its then existing business plan, both short-range and long-range, for operation of the bank, trust company, national banking association or domestic bank holding company to be acquired. Such statement shall include comments by the acquiror as to how the proposed acquisition will meet the needs and convenience of the people of the state of Washington.

(c) A list of any other notices pursuant to the change in Bank Control Act (12 U.S.C. § 1817(j)) filed on its behalf involving any other bank, trust company, national banking association or bank holding company which is presently pending. Such list shall include the date and place of filing each notice and the name and address of the institution to which each notice pertains.

(d) A statement as to what part, if any, of the funds to be used in making the acquisition or merger are borrowed from sources other than its own subsidiaries. With respect to any such funds, the applicant shall state: (1) The amount and source of borrowed funds; (2) collateral pledged, if any; (3) terms of the loan, including interest rates, amortization requirements, guarantors, endorsers, and any other arrangements or agreements among the parties to such loan transaction; (4) proposed source of funds for debt service; (5) whether and to what extent the acquiring party intends to rely on dividends, fees, etc. from the institution being acquired for debt servicing requirements.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-050, filed 10/3/83.]

**WAC 50-48-060 Information to be made available by acquiring applicant.** The applicant out-of-state bank holding company shall make available for review by the office of the supervisor the following:

(a) Any current file which it or its principal banking subsidiary or subordinate is required to maintain by regulations promulgated by the appropriate federal financial supervisory authority (as defined in 12 U.S.C. § 2902(1)) for purposes of the Community Reinvestment Act (12 U.S.C. § 2902 et seq.).

(b) Copies of all internal documents having to do with the proposed merger or acquisition, including, without limitation, memoranda or analyses together with conclusions and recommendations to management and all financial or other information from which such memoranda, analyses, conclusions, recommendations or other documents were prepared.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-060, filed 10/3/83.]

**WAC 50-48-070 Information to be made available by applicant to be acquired.** The bank, trust company, national banking association or domestic bank holding company to be acquired shall make available to the supervisor all internally generated reports relating to the operation



of any or all operating subsidiaries during the immediately preceding two-year period.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-070, filed 10/3/83.]

**WAC 50-48-080 Application to include statement of interlocking management or ownership.** The application must state whether any management official (as defined in 12 U.S.C. § 3201(4)) of the acquiring out-of-state bank holding company or any of its affiliated corporations (as the term "affiliated" is defined by 12 U.S.C. § 3201(3)) is also a management official of any other depository institution or holding company other than the bank, trust company, or national banking association being acquired, or whether any person, partnership or corporation who owns or controls, directly or indirectly, ten percent or more of the outstanding voting shares of the acquiring applicant also owns, directly or indirectly, ten percent or more of the outstanding voting shares of any other depository institution or holding company. If such circumstances do exist, the application shall include: (1) The name of such person or persons, partnerships or corporations; (2) name and address of the depository institution or holding company; (3) relationship triggering this reporting requirement; and (4) nature and extent of ownership interest held by such person, partnership or corporation in the applicant and other depository institution or holding company.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-080, filed 10/3/83.]

**WAC 50-48-090 Supervisor may consult with and obtain information from appropriate federal regulatory authority.** The supervisor may consult with appropriate federal regulatory agencies in connection with any application filed hereunder and shall consider any information received from such agency or agencies in ruling upon the application.

[Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-090, filed 10/3/83.]

**WAC 50-48-100 Interstate acquisition reciprocity—States possessing.** The supervisor of banking, having reviewed the laws of the following states as they relate to a domestic (Washington) bank holding company acquiring more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within such states, has determined, pursuant to RCW 30.04.232, that the laws of such states allow a domestic bank holding company to acquire a bank, trust company, or national banking association, the principal operations of which are conducted within such states, and permit the operation of the acquired bank, trust company, or national banking association within such states on terms and conditions no less favorable than other banks, trust companies, or national banking associations doing a banking business within such states: (1) Alaska, (2) Arizona, (3) California, (4) Colorado, (5) Connecticut, (6) Idaho, (7) Illinois, (8) Kentucky, (9) Louisiana, (10) Maine, (11) Massachusetts, (12) Michigan, (13) Nebraska, (14) Nevada, (15) New Hampshire, (16) New Jersey, (17) New Mexico,

(18) New York, (19) North Dakota, (20) Ohio, (21) Oklahoma, (22) Oregon, (23) Pennsylvania, (24) Rhode Island, (25) South Dakota, (26) Tennessee, (27) Texas, (28) Utah, (29) Vermont, (30) West Virginia, and (31) Wyoming.

Other states not listed shall be reviewed on a case-by-case basis.

[Statutory Authority: RCW 30.04.232 (1)(c). 93-07-113, § 50-48-100, filed 3/23/93, effective 4/23/93. Statutory Authority: RCW 30.04.232. 87-13-015 (Order 68), § 50-48-100, filed 6/9/87; 87-10-047 (Order 67), § 50-48-100, filed 5/5/87.]

## Chapter 50-52 WAC WASHINGTON LAND BANK

### WAC

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**WAC 50-52-010 Purpose.** The purpose of this chapter shall be to provide regulations for the implementation of chapter 31.30 RCW which was adopted as amended on March 5, 1986. This chapter shall establish requirements and guidelines necessary to comply with statutory provisions in establishing, incorporating, operating, and regulating the borrower-owned corporate entity to be known as the Washington Land Bank.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-010, filed 6/11/87.]

**WAC 50-52-020 Establishment.** The Washington Land Bank shall be patterned after the federal land banks organized under the Farm Credit Act of 1971, as amended, within state constitutional limits. The Washington Land Bank shall be an institution organized by eligible borrowers to provide long-term credit to farmers, ranchers, and producers of privately cultured aquatic products, and their close family members and affiliated legal entities as provided herein.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-020, filed 6/11/87.]

**WAC 50-52-030 Definitions.** (1) Person - A "person" means (a) an individual who is a citizen of the United States or who has been lawfully admitted into the United States for permanent residence and is so domiciled and is a bona fide resident of the state of Washington; or (b) a legal entity in which essentially all of the outstanding stock or equity and voting control is directly or indirectly owned by, or held for the benefit of, a person or persons.

(2) Legal entity - A "legal entity" means any partnership, corporation, estate, trust, or other entity which is established pursuant to the laws of the United States, or any state thereof, including the Commonwealth of Puerto Rico or the District of Columbia, and which is legally vested with the authority to conduct a business.

(3) Affiliated legal entity - A legal entity in which essentially all of the voting stock or equity and voting control is directly or indirectly owned by, or held for the benefit of, a person.

(4) Bona fide farmer, rancher, or producer of privately cultured aquatic products - A person who owns and/or operates agricultural or aquacultural property, and is engaged, directly or through a close family member or an affiliated legal entity, in the production of agricultural

products, including privately cultured aquatic products under controlled conditions.

(5) Close family member - Means a spouse, sibling, child, grandchild, parent, grandparent, fathers-in-law or mothers-in-law, and sons-in-law or daughters-in-law.

(6) "Supervisor" shall mean the supervisor of banking of the state of Washington.

(7) "Aquaculture" shall have the meaning set forth in RCW 15.85.020.

(8) "Aquatic farmer" shall have the meaning set forth in RCW 15.85.020.

(9) "Privately cultured aquatic product" shall have the meaning set forth in RCW 15.85.020.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-030, filed 6/11/87.]

**ORGANIZATION AND POWERS**

**WAC 50-52-040 Incorporators.** When authorized by the supervisor, as herein provided, the Washington Land Bank may be organized, in the manner herein prescribed, by any group of three or more persons eligible to borrow money from the bank. The bank shall not incorporate for a lesser amount nor commence business unless it has a paid-in capital stock, surplus and undivided profits in the amount as may be determined by the supervisor after consideration of the proposed location, management, the size and economic characteristics of the market area, the proposed activities and operation of the bank, and other factors deemed pertinent by the supervisor. The proposed bank shall, before commencing business, have subscribed and paid into it in the same manner as is required for capital stock, an additional amount equal to at least ten percent of the capital stock above required, which shall be carried in the undivided profit account and may be used to defray organization and operating expenses of the company. Any sum not so used shall be transferred to the capital stock of the bank before any dividend shall be declared to the stockholders.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-040, filed 6/11/87.]

**WAC 50-52-050 Notice of intention to organize.** Eligible persons desiring to incorporate the Washington Land Bank shall file with the supervisor a notice of their intention to organize the bank containing the following information, which shall be organized and submitted under the following basic general headings or factors with appropriate supporting schedules, statements, and data:

(1) Financial history and condition.

(a) Pro forma statement of condition - beginning of business.

(b) Premises to be occupied by proposed bank. Detailed description of form of ownership, costs, from whom purchased or leased, insurance coverage, and estimated annual depreciation.

(c) Details as to proposed investment in and rental of furniture, fixtures, and equipment.

(d) Relationships and associations with proposed bank of any of the sellers or lessors of land, buildings, or equipment, either directly or indirectly.

(e) Organization expenses: A complete and detailed accounting is required for all income and expenses related to organization, including a detailed account of actual legal accounting and consulting expenses, together with any additional costs anticipated prior to opening or costs incurred or work performed during the organization period for which disbursement has been deferred beyond the opening date.

(2) Adequacy of the capital structure.

(a) Source of capital funds and proposed allocations within total capital structure.

(i) Amount of paid-in capital stock (no. shares x par value).

(ii) Amount of paid-in surplus.

(iii) Amount of paid-in undivided profits.

(iv) Amount of other segregations; including the organization or expense fund, if planned.

(b) The adequacy of the proposed capital structure shall be discussed in the notice, and will be evaluated, in part, in relation to:

(i) The size and economic characteristics of the market to be served.

(ii) Ratio the projected net total capital structure will bear to the estimated volume of debt at the end of each of the first six years of operations.

(3) Future earnings prospects. A detailed projection of earnings and expenses is to be submitted showing the breakdown of income and expenses for each of the first six years of operations. Provision should be made for loan losses and a bad debt reserve based upon a realistic evaluation of anticipated losses to be sustained in each of the major types of loan demands the proposed bank expects to serve and total loans expected by the end of each of the first six years of operations.

(4) General character of management.

(a) A financial report and a biographical report of each proposed officer and director is required together with a report by each officer and director stating the proposed compensation of such officer, director, and any other financial interest such officer or director shall have or expect to have in the bank.

(b) The subscribers (proposed shareholders) for each class of stock are to be listed alphabetically with name and address, occupation and number of shares being purchased indicated by number of shares being purchased indicated by number of shares and total subscription price. The list should indicate "D" for the directors designee, "O" for officers.

(c) For any subscribers for five percent or more of any class of the proposed capital stock, the same financial information shall be provided as is required for directors and officers.

(d) The membership of the committees of the directorate if any, are to be designated and duties outlined, including:

(i) Loan and/or executive committee.

(ii) Investment committee.

(iii) Audit committee.

(e) The notice shall state the amount of anticipated surety bond coverage and the basis upon which it was determined that this amount is sufficient and conforms with generally accepted banking practices.

(f) Any changes contemplated in the proposed directorate or active management during the first year are to be reported, or, if none, so state.

(5) Convenience and needs of the community to be served.

(a) Applicants have the responsibility of developing as fully as possible the proposed business plan, together with economic support and justification for the proposed bank, including the trade or market area which the proposed bank will serve (which will be the state of Washington), including the manner in which various regions, markets, and producers of particular agricultural products are to be served. This shall identify the location of branch offices or other direct sources of providing services to borrowers, such as agent banks or other agency or loan production offices.

(b) The notice shall state the total indebtedness anticipated, and the nature and term thereof anticipated during the early period of operations together with totals expected by the end of each of the first six years. To the extent relevant, the notice shall state the economic characteristics of the trade territory specified above for the most recent five-year period, including manufacturing, agricultural, and other industrial data, construction activity, retail and wholesale sales, housing starts, school population, census figures and projections.

(c) The notice shall provide information relevant to the economic characteristics of the agricultural community for the most recent five-year period, together with projections for the ensuing six-year period indicating support for and viability of the proposed bank. In the event an economic survey or feasibility study has been prepared it may provide much of the needed information.

(6) Articles and bylaws. The proposed articles of incorporation and bylaws for the bank shall be submitted as part of the notice.

Investigation. When the notice of intention to organize and propose articles of incorporation complying with the foregoing requirements have been received by the supervisor, together with the fees required by law, he shall ascertain from the best source of information at his command and by such investigation as he may deem necessary, whether the character, responsibility, and general fitness of the persons named in such articles are such as to command confidence and warrant belief that the business of the proposed bank will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter; whether the resources of the market to be served afford a reasonable promise of adequate support for the proposed bank; whether the operation of the bank in the manner proposed offers a reasonable promise of viability and continued financial safety and soundness of the proposed bank; and whether the proposed bank is being formed for other than the legitimate objects covered by this chapter.

Notice to file articles—Articles approved or refused—Hearing. After the supervisor shall have satisfied himself of the above facts, and, within three months of the date the notice of intention to organize has been received in his office, he shall notify the incorporators to file executed and acknowledged articles of incorporation with him in triplicate. Unless the supervisor otherwise consents in writing, such articles shall be in the same form and shall contain the same information as the proposed articles and shall be filed with him within ten days of such notice. Within ten days after

the receipt of such articles of incorporation, he shall endorse upon each of the triplicates thereof, over his official signature, the word [word] "approved," or the word "refused," with the date of such endorsement. In case of refusal he shall forthwith return one of the triplicates, so endorsed, together with a statement explaining the reason for refusal to the person from whom the articles were received, which refusal shall be conclusive, unless the incorporators, within ten days of the issuance of such notice of refusal, shall request a hearing pursuant to the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended.

Approved articles to be filed and recorded—Organization complete. In case of approval the supervisor shall forthwith give notice thereof to the proposed incorporators and file one of the triplicate articles of incorporation in his own office, and shall transmit another triplicate to the secretary of state, and the last to the incorporators. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other articles of incorporation the secretary of state shall file such articles and record the same. Upon the filing of articles of incorporation, approved as aforesaid by the supervisor, with the secretary of state, all persons named therein and their successors shall become and be a corporation, which shall have the powers and be subject to the duties and obligations prescribed by chapter 31.30 RCW and this chapter, and whose existence shall continue from the date of the filing of such articles for the term mentioned in its articles of incorporation unless sooner terminated pursuant to law; but such corporation shall not transact any business except as is necessarily preliminary to its organization until it has received a certificate of authority as provided herein.

Certificate of authority—Issuance—Contents. Before the Washington Land Bank shall be authorized to do business, and within ninety days after approval of the articles of incorporation, it shall furnish proof satisfactory to the supervisor that such corporation has a paid-in capital in the amount fixed by its articles of incorporation, that any requisite surplus or reserve fund has been accumulated or paid in cash, and that it has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this title. If so satisfied, and within ten days after receipt of such proof, the supervisor shall issue under his hand and official seal, in triplicate, a certificate of authority for such corporation. The certificate shall state that the corporation therein named has complied with the requirements of law, that it is authorized to transact at the place designated in its articles of incorporation the business of the Washington Land Bank. One of the triplicate certificates shall be transmitted by the supervisor to the corporation and the other two shall be filed by the supervisor in the same offices where the articles of incorporation are filed and shall be attached to said articles of incorporation, and the one filed with the secretary of state shall be recorded.

Failure to commence business—Effect—Extension of time. In the event the Washington Land Bank shall have failed to organize and commence business within six months after the certificate of authority to commence business has been issued by the supervisor, it shall forfeit its rights and privileges as such corporation, which fact the supervisor shall certify to the secretary of state, and such certificate of

forfeiture shall be filed and recorded in the office of the secretary of state in the same manner as the certificate of authority; however, the supervisor may, upon showing of cause satisfactory to him, issue an order under his hand and seal extending for not more than [than] three months the time within which such organization may be effected and business commenced, such order to be transmitted to the office of the secretary of state and filed and recorded therein.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-050, filed 6/11/87.]

**WAC 50-52-060 Articles of incorporation.** (1) The articles of incorporation shall set forth:

(a) The name of the corporation, which shall be "The Washington Land Bank."

(b) The period of duration, which may be perpetual or for a stated term of years.

(c) That the purposes for which the corporation is organized shall be to engage in the lending and borrowing of money and any or all lawful business which may be allowed to it under chapter 31.30 RCW, or subsequent amendments thereto.

(d) That the voting stock of the Washington Land Bank shall be held only by borrowers who are farmers or ranchers, which stock shall not be transferred, pledged, or hypothecated except to other eligible borrowers.

(e) The aggregate number of shares which the corporation shall have the authority to issue and if such shares are to be divided into classes, the number of shares of each class.

(f) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class.

(g) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(h) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(i) The address of its initial registered office and the name of its initial registered agent at such address.

(j) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors have been elected and qualified. Not less than a majority of such directors shall be persons eligible to borrow from the Washington Land Bank.

(k) The name and address of each incorporator.

(2) The articles shall be accompanied by a statement signed by each of the organizers of Washington Land Bank establishing his eligibility to borrow from the Washington Land Bank.

(3) In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) The direction of the management of the business and the regulation of the affairs of the corporation;

(b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;

(c) The par value of any authorized shares or class of shares; and

(d) Any provision which under this title is required or permitted to be set forth in the bylaws.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-060, filed 6/11/87.]

**WAC 50-52-070 Organization meeting of directors.**

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, unless such notice is waived in writing, which notice shall state the time and place of the meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each director signs an instrument which states the action so taken.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-070, filed 6/11/87.]

**WAC 50-52-080 Amendment to articles of incorporation.** With the approval of the supervisor, the Washington Land Bank may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment. Not less than ten days before the proposed adoption of any such amendments a written notice setting forth the proposed amendment shall be given to the supervisor for approval.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-080, filed 6/11/87.]

**WAC 50-52-090 Stock/voting stock.** The Washington Land Bank shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. Voting stocks shall be issued to and held only by borrowers who are farmers or ranchers or producers of privately cultured aquatic products, which stock shall not be transferred, pledged, or hypothecated except to other eligible borrowers.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-090, filed 6/11/87.]

**WAC 50-52-100 Issuance of shares.** Subject to any restrictions in the articles of incorporation:

(1) Shares may be issued for such consideration as shall be authorized by the board of directors.

(2) Upon authorization by the board of directors, the Washington Land Bank may issue its own shares in exchange for or in conversion of its outstanding shares, or distribute its own shares, pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration. However, such issuance of shares of any class or series shall not be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by an affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

(3) The board of directors shall from time to time authorize the issuance of additional capital stock so that borrowers purchasing stock or participation certificates therein may be eligible for loans from the bank.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-100, filed 6/11/87.]

**WAC 50-52-110 Par value—Determination of price—Payment for shares.** (1) The voting stock of Washington Land Bank shall be divided into shares of par value of not less than five dollars each.

(2) The capital stock of Washington Land Bank may be of such classes as its board of directors may determine.

(3) Consideration for shares may consist of cash, promissory notes, services performed, contracts for services to be performed, or any other tangible or intangible property. If shares are issued for other than cash, the board of directors shall determine the value of the consideration. Shares issued when the Washington Land Bank received the consideration determined by the board are validly issued, fully paid, and nonassessable. A good faith judgment of the board of directors as to the value of the consideration received for shares is conclusive. Washington Land Bank may place shares issued for a contract for future services or a promissory note in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed or the note is paid. If the services are not performed or the note is not paid, the shares escrowed or restricted and the distributions credited may be cancelled in whole or in part.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-110, filed 6/11/87.]

**WAC 50-52-120 Bylaws.** The initial bylaws of Washington Land Bank shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation except that the power to amend any bylaw relating to compensation of officers or directors shall be reserved to shareholders. The bylaws may contain any provisions for the regulation and management of the affairs of Washington Land Bank not inconsistent with law or the articles of incorporation.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-120, filed 6/11/87.]

**WAC 50-52-130 Bylaws and other powers in emergency.** The board of directors of Washington Land Bank may adopt emergency bylaws, subject to repeal or change by action of the shareholders, operative during any emergency in the conduct of the business of Washington Land Bank resulting from an attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-130, filed 6/11/87.]

**WAC 50-52-140 Meetings of shareholders.** Meetings of shareholders may be held at such place within this state as may be stated in or fixed in accordance with the bylaws. If no place is stated or so fixed, meetings shall be held at the principal place of business of Washington Land Bank.

An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen-month period the superior court may, on the application of any shareholder for a writ of mandamus, summarily order a meeting to be held.

Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the bylaws.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-140, filed 6/11/87.]

**WAC 50-52-150 Notice of shareholder meetings.** Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten or more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of Washington Land Bank with postage thereon prepaid.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-150, filed 6/11/87.]

**WAC 50-52-160 Record of shareholders entitled to vote.** The officer or agent having charge of the stock transfer books for shares of Washington Land Bank shall make, at least ten days before each meeting of shareholders, a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which record, for a period of ten days prior to such meeting, shall be kept on file at the registered office of Washington Land Bank. Such record shall be produced and

kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure to the extent of such damage.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-160, filed 6/11/87.]

**WAC 50-52-170 Quorum of shareholders.** (1) A quorum at a meeting of shareholders is constituted by the representation in person or by proxy of:

(a) The percentage of shares entitled to vote set forth in the articles of incorporation, except that no such percentage shall be less than ten percent; or

(b) In the absence of any provision in the articles of incorporation, a majority of shares entitled to vote.

(2) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this title or the articles of incorporation or bylaws.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-170, filed 6/11/87.]

**WAC 50-52-180 Voting of shares.** A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Unless the articles of incorporation otherwise provide, at each election for directors every shareholder entitled to vote at such election shall have the right, in person or by proxy, to cast one vote for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors shall equal, or by distributing such votes on the same principle among any number of such candidates.

Shares standing in the name of a corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of

a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-180, filed 6/11/87.]

**WAC 50-52-190 Board of directors.** All corporate powers shall be exercised by or under authority of, and the business and affairs of Washington Land Bank shall be managed under the direction of, a board of directors. Directors shall be residents of this state and not less than a majority of the directors shall be persons eligible to borrow from the Washington Land Bank. The articles of incorporation or bylaws may prescribe other qualifications for directors. The shareholders shall have authority to fix the compensation of directors, which shall be set forth in the bylaws.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-190, filed 6/11/87.]

**WAC 50-52-200 Duties of directors.** A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of Washington Land Bank, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of Washington Land Bank whom the director believes to be reliable and competent in the matter presented;

(2) Counsel, public accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly designated in accordance with a provision in the articles of incorporation or bylaws, as to matters within its designated authority, which committee the director believes to merit confidence; so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-200, filed 6/11/87.]

**WAC 50-52-210 Number and election of directors.** The board of directors of Washington Land Bank shall consist of five or more members. The number of directors shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles

of incorporation, but no decrease shall have the effect of shortening the term of any incumbent director nor shall the number of directors be reduced to less than five. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such personnel shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this title. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-210, filed 6/11/87.]

**WAC 50-52-220 Classification of directors.** In lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-220, filed 6/11/87.]

**WAC 50-52-230 Vacancies.** Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-230, filed 6/11/87.]

**WAC 50-52-240 Removal of directors.** At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director of the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of

directors, or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-240, filed 6/11/87.]

**WAC 50-52-250 Quorum of directors.** (1) Except as provided in subsection (2) of this section:

(a) A majority of the number of directors fixed by the articles of incorporation shall constitute a quorum for the transaction of business.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(2) A transaction with Washington Land Bank in which a director or an officer has a direct or indirect interest shall be authorized, approved, or ratified only in the manner prescribed for approval of a loan to such director in chapter 50-52 WAC, and only directors with no direct or indirect interest in the transaction shall be eligible to vote thereon.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-250, filed 6/11/87.]

**WAC 50-52-260 Dissent by directors.** A director of Washington Land Bank who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file this written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Washington Land Bank immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-260, filed 6/11/87.]

**WAC 50-52-270 Executive and other committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to: (1) Authorize distributions, except at a rate or in periodic amount determined by the board of directors, (2) approve or recommend to shareholders actions or proposals required by this title to be approved by shareholders, (3) fill vacancies on the board of directors or any committee thereof, (4) amend the bylaws, or (5)

appoint other committees of the board of directors or the members thereof.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-270, filed 6/11/87.]

**WAC 50-52-280 Place and notice of directors' or designated committee meetings—Presence.** Meetings of the board of directors, regular or special, shall be held within the state of Washington.

Regular meetings of the board of directors or of any committee designated by the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated by the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated by the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-280, filed 6/11/87.]

**WAC 50-52-290 Loans to directors—Guarantees of obligations of directors.** (1) The Washington Land Bank may not lend money to, or lend money upon the guaranty of, or guarantee the obligation of, a director of the bank unless the particular loan or guarantee is approved by the affirmative vote of at least a majority of the directors of the Washington Land Bank. Neither the benefited director nor any other director having a direct or indirect interest in the transaction may vote for approving such a loan.

(2) The fact that a loan is made to or guaranteed by a director in violation of this section does not affect the borrower's or guarantor's liability on the loan.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-290, filed 6/11/87.]

**WAC 50-52-300 Officers.** The officers of Washington Land Bank shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors, or chosen in such other manner, as may be prescribed by the bylaws.



[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-300, filed 6/11/87.]

**WAC 50-52-310 Removal of officers.** Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of Washington Land Bank will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of an officer or agent and shall not of itself create contract rights.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-310, filed 6/11/87.]

**WAC 50-52-320 Books, records and minutes.** Washington Land Bank shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the share held by each. Any books, records, and minutes may be in written form or any other form capable of being converted into written form within a reasonable time.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-320, filed 6/11/87.]

## LENDING

**WAC 50-52-330 Eligibility.** (1) To be eligible to borrow, a person must be a bona fide farmer, rancher, or producer of privately cultured aquatic products, as defined in WAC 50-52-030(4), which status shall be established as a part of the application for credit.

(2) When the borrower does not own the real estate pledged as collateral, the loan shall be made on the following basis:

- (a) The borrower must be a bona fide farmer or rancher.
- (b) The loan shall be secured by the agricultural land on which the borrower is farming.
- (c) The land shall be leased to the borrower on a long-term basis.
- (d) The owner of the land shall sign a hypothecation agreement for the purpose of securing the bank's interest in the collateral for the loan.

(3) A legal entity shall meet the requirements in subsection (1) of this section and the following qualifications to be eligible to borrow:

- (a) A majority of the shares of its outstanding voting stock or equity must be owned by the individuals conducting the farming, livestock, or aquatic operation.
- (b) It shall own assets primarily related to the production of agricultural products or production of privately cultured aquatic products.
- (c) A majority of its income must originate from its production of agricultural products or production of privately cultured aquatic products.

(4) A legal entity engaged in agriculture or production of privately cultured aquatic products for the primary purpose of conducting its operation at a loss to absorb taxable income from nonagricultural or nonaquatic sources

shall not be eligible. The legal entity shall demonstrate compliance with this subsection.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-330, filed 6/11/87.]

**WAC 50-52-340 Combined operations.** Where applications include a combination of farming or producing privately cultured aquatic products, the determination of eligibility can be made on the basis of the criteria set out for either or any combination of these operations.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-340, filed 6/11/87.]

**WAC 50-52-350 Assumption of loans.** Loans made by the Washington Land Bank may be assumed by a person eligible to borrow from the Washington Land Bank. Loans may not be assumed without the prior approval of the Washington Land Bank. A person proposing to assume a loan shall submit an application in the form designated by the board of directors. In approving or denying approval of such assumption, the Washington Land Bank shall apply the same standards applied by the Washington Land Bank to comparable loans then being made by Washington Land Bank.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-350, filed 6/11/87.]

**WAC 50-52-360 Long-term real estate mortgages.** Washington Land Bank may make, or participate with other lenders in, only long-term loans to eligible farmers, ranchers, or producers of privately cultured aquatic products, as defined in WAC 50-52-030(4), for a term of not less than five years nor more than forty years, which loans must be secured by a first lien in real property located in the state of Washington, conveyed to Washington Land Bank by mortgage executed by all parties necessary, in the opinion of Washington Land Bank counsel, for the proper conveyance thereof. Subject to limitations applicable to making long-term real estate mortgage loans, Washington Land Bank may make continuing commitments to make such loans under specified circumstances. Policies established by the bank's board shall be followed in making loans and in making commitments for loans. Borrowers shall be permitted to make advance payments on their loans or, under agreement with Washington Land Bank, to make advance conditional payments for the purpose of establishing reserves to pay off the loan upon maturity or to make these funds available to the borrowers as needed. Washington Land Bank may pay interest on advance conditional payments at a rate not to exceed the rate charged on related loans.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-360, filed 6/11/87.]

**WAC 50-52-370 Nondiscrimination in lending and other services.** Washington Land Bank shall not, because of the race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract) of an eligible person, deny a loan, or refuse to allow, receive, or consider any application, request, or inquiry with respect to a loan, or refuse to perform any other

service it customarily makes available to borrowers, applicants, and members, or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of a loan or other service on any such basis.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-370, filed 6/11/87.]

**WAC 50-52-380 Nondiscriminatory advertising.**

Washington Land Bank advertising shall not use words, phrases, symbols, directions, forms, or models in such advertising which imply or suggest a policy of discrimination or exclusion in violation of the provisions of Title VIII of the Civil Rights Act of 1968.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-380, filed 6/11/87.]

**WAC 50-52-390 Deferral of payments.**

With the approval of the Washington Land Bank, during the first five years after the loan is originated, the borrower may elect to defer payment of all or any portion of the principal or interest due from the borrower if the following conditions are met:

(1) If approved, deferral of such payment shall be made on the date such payment is due during the first five years after the loan is originated.

(2) The deferral of such payment shall not cause or allow the principal and accrued interest on the outstanding loan, including interest accruing during the period of deferral, to exceed sixty-five percent of the original appraised value or the current appraised value of the collateral, whichever is less. Values of the collateral shall be determined according to the appraisal standards set forth in WAC 50-52-440.

(3) The borrower shall notify Washington Land Bank of its intention to defer payments not more than ninety nor less than thirty days prior to making such election, and shall have received approval of such deferral in writing. If the outstanding principal and accrued interest exceeds, or would during the deferral period exceed, sixty-five percent of the appraised value, the borrower shall make partial payments until such principal, accrued interest, and interest which will accrue during the deferral period are reduced to comply with subsection (2) of this section. Application of such payments shall be first made against accrued interest and any other charges or fees and then to reduction of outstanding principal.

(4) The repayment of the principal amount and all interest accrued and to accrue, including any and all interest charges or fees earned during the period of deferral and thereafter, shall be recomputed and amortized over a term equal to the original term of the loan. Interest rate or rates may vary from time to time during the repayment period of the loan, in accordance with the interest rates and charges policy set forth in WAC 50-52-460.

(5) In connection with a request to defer repayment, the borrower shall provide to Washington Land Bank such current financial statements, budgets and projections, current land appraisal and other loan documentation as Washington Land Bank may require.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-390, filed 6/11/87.]

**WAC 50-52-400 Basis of loan.** Loans made by the Washington Land Bank shall be made on the basis of long-term profitability rather than short-term cash flow. For this purpose, the term "long-term profitability" shall mean the ability of the borrower to repay the money borrowed and all accrued interest and the charges during the term of the loan as written including deferral periods as allowed herein, from the borrower's existing resources and from reasonably anticipated future income and resources based upon the borrower's demonstrated abilities, as disclosed by the loan application and supporting documentation. The board of directors shall establish written lending policies, which shall set forth the criteria which shall be applied in granting or extending credit, and the relative weight to be accorded to each factor. The factors shall include, in addition to collateral value, the ability and willingness of the borrower to meet the repayment terms, the borrower's financial condition, the borrower's reputation, and the borrower's earning projections from farming operations and other sources. Lending policies shall include provisions for adequate collateral and loan documentation.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-400, filed 6/11/87.]

**WAC 50-52-410 Borrower liability.** All primary borrowers shall be fully liable for loans obtained from Washington Land Bank. Where personal guaranty is required, each guarantor shall be fully liable unless the primary borrower or other guarantors provide adequate financial strength to result in a sound loan even though the personal liability of an individual guarantor may be limited.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-410, filed 6/11/87.]

**WAC 50-52-420 Loan terms and conditions.** (1) Loans may be made for not less than five years nor more than forty years. The written loan approval prepared by Washington Land Bank shall set out the terms and conditions under which a loan is approved. To assure proper understanding, provide needed controls, and protect the lender, a formal written loan agreement shall be entered into between the borrower and the bank. The Washington Land Bank may participate in loans with other lenders, provided that such loans would be lawful loans if made directly by Washington Land Bank.

(2) The outstanding loan balance, including all accrued and unpaid interest, costs, and fees, on any loan shall not at any time during the life of the loan exceed sixty-five percent of the appraised value established by the appraisal of the primary real estate security made at the time the loan was originated or at the time of any subsequent deferral of payment, whichever is less. This shall not, however, prohibit the Washington Land Bank from advancing taxes, advancing insurance premiums with respect to the real estate, capitalizing past due interest, rescheduling loan payments, or granting partial releases of security interests in the real estate when, (a) there is adequate collateral to support the total amount of the outstanding debt without exceeding the sixty-

five percent loan to value ratio, and such action will increase the ability of the debtor to repay the debt, or, (b) if there is not adequate collateral to support the debt, litigation is in process for the collection of the debt, the actions are in connection with such litigation, and the actions are considered by Washington Land Bank to be necessary to protect the financial interest of Washington Land Bank in the collateral.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-420, filed 6/11/87.]

**WAC 50-52-430 Security requirements.** The primary security for a Washington Land Bank loan shall consist of a first lien on interests in real estate located in the state of Washington comprising agricultural property, or real estate used as an integral part of an eligible aquatic operation. The real estate interest must be mortgageable under deeds or leases which would allow the bank to have first lien security interest in the property and all parties who are necessary, in the opinion of Washington Land Bank counsel, for the proper conveyance of a first mortgage on said property shall join in the execution of all necessary instruments. Fixtures which are an integral part of, and normally sold with, the real estate may be included in the appraised value of property upon which the loan is based, provided that Washington Land Bank shall receive a first lien in such fixtures. The board of directors shall develop policies to assure that the appraised value of nonagricultural assets such as mineral deposits, commercial buildings, and improvements are properly identified in the report.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-430, filed 6/11/87.]

**WAC 50-52-440 Appraisals.** Appraised value shall be the basis for valuing all collateral. The board of directors shall establish written appraisal standards for the Washington Land Bank, which shall be utilized in determining the present value of the property. Value shall be determined by a qualified appraiser, as established by the board of directors, utilizing methods and procedures generally recognized in the industry for determining the fair market value of real estate. All appraisal reports or values shall be rendered in writing, setting forth the appraiser's opinion as to value and the basis, including all relevant facts and assumptions, upon which such value is determined.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-440, filed 6/11/87.]

**WAC 50-52-450 Additional security.** When necessary to protect the interest of the Washington Land Bank after a loan has been made, or to prevent default in the repayment or allow reasonable forbearance in collection of a delinquent loan, additional security may be required to supplement primary real estate security. Such additional security shall be considered only for additional collateral protection, and may not be included as part of the value of the security upon which the loan or any deferral is based. Recovery value shall be the basis for measuring the collateral worth of such additional security. Recovery value is defined as the anticipated sale price expected to be received

in a liquidation sale of such collateral, less any selling or maintenance costs and any prior liens and encumbrances.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-450, filed 6/11/87.]

**WAC 50-52-460 Interest rates and charges policy.** In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the cost of money, necessary reserves and expenses, capital requirements, and services provided to borrowers and members.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-460, filed 6/11/87.]

**WAC 50-52-470 Interest rates.** Loans made by Washington Land Bank shall bear interest at a rate or rates as may be determined by the board of directors. The board shall set interest rates or establish in writing the basis for the setting of rates by management. Any interest rate plan shall set loan-pricing policies and objectives, provide guidance regarding the circumstances under which management may adjust rates, and provide the upper and lower limits on management authority. The board of directors may not delegate its ultimate responsibilities for setting interest rates, and any interest rate plan adopted shall be reviewed on at least a quarterly basis by the bank's board, as well as in conjunction with its review and approval of the bank's annual fiscal plan and long-range financial plan.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-470, filed 6/11/87.]

**WAC 50-52-480 Interest on past due loans.** Provisions may be made in the approved interest rate program for the collection of interest at a higher rate after maturity of a loan or installment if provision is made in the note or loan document.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-480, filed 6/11/87.]

**WAC 50-52-490 Other charges and fees.** Washington Land Bank may impose reasonable charges or fees in connection with loans, deferral of payments, and other services rendered.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-490, filed 6/11/87.]

**WAC 50-52-500 Interest rate programs.** (1) The following types of interest rate programs may be employed:

(a) Fixed rates. The rate of interest specified in the note or loan document shall be the rate chargeable to the borrower during the period of the loan.

(b) Variable rates. The interest rate(s) on outstanding loan balances may be changed from time to time during the period of the loan, if appropriate provisions are made in the note or loan document.

(c) Fixed interest spread. Interest rates shall be expressed in terms of a percentage to be added to the cost of money to the Washington Land Bank.

(2) Differential rates. Differential interest rates may be established for loans based on type, purpose, amount, quality, funding, or operating costs, any combination of these factors, or such other factors as may be approved by the board of directors.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-500, filed 6/11/87.]

**WAC 50-52-510 Participations.** Washington Land Bank may enter into loan participation agreements with one or more other lenders, including federal land banks existing under the Farm Credit Act of 1971, as amended, provided the loan participation results in significantly beneficial or improved loan terms or conditions or services to the borrower which could not be obtained as a result of a direct loan. Such benefits to the borrower shall be documented in the loan file. All participations must be in loans which, in all respects, would be lawful for Washington Land Bank to make.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-510, filed 6/11/87.]

**WAC 50-52-520 Lending limits.** The total amount of loans, advances, commitments, financial assistance, or other extension of credit, including the purchase of loan participation(s) and the retained portion of any participations sold without recourse, which Washington Land Bank may have outstanding to any one borrower shall not exceed twenty percent of the capital and surplus of the bank.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-520, filed 6/11/87.]

**WAC 50-52-530 Computation of obligation for lending limit determination.** The obligation of an individual or legal entity shall be the total unpaid principal amount of loans or extensions of credit by Washington Land Bank which the individual or entity is liable to repay, including any direct or indirect advance of funds to a person made on a basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. The term "loans or extension of credit" includes a renewal, modification, or extension of the maturity date of a loan or extension of credit but shall include only that portion of any participation loans held by the Washington Land Bank.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-530, filed 6/11/87.]

**WAC 50-52-540 Notice of action on loan application.** Every applicant for a loan from Washington Land Bank is entitled to a prompt notice of action on his application and, if the loan is denied or reduced, the reason for such action.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-540, filed 6/11/87.]

**WAC 50-52-550 Applicant's right to appeal.** An applicant who has reason to believe he was denied credit or was offered credit in a reduced amount because Washington Land Bank failed to take into account facts pertinent to his

application, or misinterpreted or failed to properly apply the rules and regulations governing his application, shall be entitled to an informal hearing. That informal hearing shall be in person before the loan committee, or officer, or employee of Washington Land Bank authorized to act on that application. The applicant must make the request for such a hearing in writing within thirty days of notice of the original action. Promptly after such a hearing he shall be notified of the decision reached and the reasons therefor.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-550, filed 6/11/87.]

**WAC 50-52-560 Records.** Washington Land Bank shall maintain a complete file of all such written requests for hearing, along with all other written inquiries from applicants or borrowers concerning credit denials.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-560, filed 6/11/87.]

**WAC 50-52-570 Special lending programs.** To provide the best possible credit service to farmers, ranchers, and producers of cultured aquatic products, the board may adopt policies permitting Washington Land Bank to enter into agreements with other entities, including cooperative associations, to facilitate the making of loans to eligible farmers, ranchers, and producers of privately cultured aquatic products. Entities who are the originating lenders shall be responsible for the servicing of the loans they make. However, loan participation agreements may designate specific loan servicing efforts to be accomplished by a participating institution. The board of directors shall direct Washington Land Bank to adopt loan servicing policies and procedures to assure that loans will be serviced fairly and equitably for the borrower while minimizing the risk for Washington Land Bank. Procedures shall include specific plans which help preserve the quality of loans and which help resolve credit deficiencies as they develop.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-570, filed 6/11/87.]

## BORROWING—SECURITIES—INVESTMENTS

**WAC 50-52-580 Borrowings from commercial banks.** The board of directors by resolution, shall authorize all commercial bank borrowings.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-580, filed 6/11/87.]

**WAC 50-52-590 Borrowings from financial institutions other than commercial banks.** The Washington Land Bank may borrow from other financial institutions, such as insurance companies, thrift institutions or other public or private sources upon such terms and in such amounts as may be determined by the board of directors.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-590, filed 6/11/87.]

**WAC 50-52-600 Resolution required.** The board of directors shall by resolution authorize the issuance of notes, bonds, debentures, and similar obligations in such amounts

as may be required to meet the Washington Land Bank's needs. Such resolution shall specify the maximum amount of obligations which shall be outstanding at any one time, as well as the amount, maturities, and rates of interest in each issue, and shall authorize the president of the bank, the executive committee or appropriate officers to do all things necessary and proper to issue such obligations.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-600, filed 6/11/87.]

**WAC 50-52-610 Debt policy.** The board of directors shall adopt a written policy regarding the management of its debt, and the sources of funding for the repayment of such debt.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-610, filed 6/11/87.]

**WAC 50-52-620 Securities issuance—Registration and disclosure.** In connection with the offering or sale of any "security," as defined by RCW 21.20.005(12) or any federal securities law, the Washington Land Bank shall comply with the provisions of the Securities Act of Washington, chapter 21.20 RCW, and any other applicable federal or state securities law.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-620, filed 6/11/87.]

**WAC 50-52-630 Investments.** Washington Land Bank is authorized to hold investment portfolios for the purposes of maintaining sufficient liquidity, investing short-term surplus funds, and managing short-term debt. The bank is not authorized to maintain investment portfolios primarily as a means of generating additional income.

The board of directors shall adopt a policy regarding the management of its investments. Within this policy, the following items shall be addressed:

- (1) The purpose of the bank's investments.
- (2) The portfolio objectives.
- (3) The bank's liquidity needs.
- (4) The portfolio size and quality.
- (5) Maturity guidelines.
- (6) Authorization to manage investment activities.
- (7) Reporting and monitoring requirements.

Additional areas may be addressed in the policy as deemed appropriate.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-630, filed 6/11/87.]

**WAC 50-52-640 Debt to capital ratios requirements.** Washington Land Bank shall not incur aggregate liabilities exceeding twelve times its capital and surplus.

The term "capital and surplus" as used in this section, represents total net worth including undistributed earnings or losses but excluding valuation reserves and liability reserves. The term "aggregate liabilities" as used in this section, represents all amounts owed to others.

[Statutory Authority: RCW 31.30.010. 87-13-030 (Order 87-1), § 50-52-640, filed 6/11/87.]

## Chapter 50-56 WAC

### SMALL BUSINESS ADMINISTRATION 7(A) LOAN GUARANTY PROGRAM NONDEPOSITORY LENDERS—LICENSING AND REGULATION

#### WAC

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- 50-56-050 Records.
- 50-56-060 Reports.
- 50-56-070 Examinations.
- 50-56-080 Fees.

**WAC 50-56-010 Purpose.** The purpose of this chapter shall be to provide guidelines for application for a license to operate a nondepository small business lending venture under the auspices of the federal Small Business Administration (SBA) guaranty program known as the 7(a) loan guaranty program. Specifics of the program are set forth in section 7(a) of the federal "Small Business Investment Act of 1958," 15 U.S.C., part 636(a). These rules also establish other regulatory oversight guidelines and provide for fees. These rules are promulgated under the general rule-making authority of the state supervisor of banking, and are required under legislation passed by the legislature (section 3(1), chapter 212, Laws of 1989.)

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-010, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-020 Application procedures.** An application for state license to operate a nondepository small business lending venture to qualify for participation in the SBA 7(a) program shall be filed with the supervisor at the division of banking and shall include such fees as established elsewhere in these rules. As a matter of general procedure, it is recommended that interested parties visit the office of the supervisor prior to submitting their application to review statutory and other requirements for this action.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-020, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-030 Application format.** Applicants may use the same documentation as required by the SBA for their approval of the lender to the extent that such documentation meets the requirements of statute and these rules unless waived by the supervisor. The application must contain the following:

- (1) Applicant's name, address, and telephone number.
- (2) A statement that the applicant is incorporated under the Washington Business Corporation Act or the Washington Nonprofit Corporation Act and a copy of applicant's Articles of Incorporation and Bylaws, properly certified.
- (3) A list of officers, directors, associates, and all holders of ten or more percent of any class of the applicant's capital stock.
- (4) A statement of personal history of all those listed in subsection (3) of this section. SBA Form 1081 or its equivalent may be used.

(5) A copy of the most recent audited financial statement of any entity other than a natural person holding ten or more percent of any class of stock of the applicant.

(6) An organizational chart showing the relationship of the applicant to its affiliates, as well as the applicant's internal organizational structure.

(7) Copies of the last three audited financial statements of the applicant, and supporting tax returns.

(8) Applicant's business plan which should include at a minimum:

(a) A detailed pro forma financial projection for at least three years of operations.

(b) A market study of the intended geographical area of operations.

(c) An explanation of applicant's method of funding loans, including the unguaranteed portion.

(d) An outline of loan servicing procedures proposed.

(e) Copies of written policies and procedures to be used, which must include policies requiring disclosure of conflicts of interest of affiliates, directors, officers, and employees; prohibiting false statements or representations to the supervisor; and preventing fraud or undue influence by the licensee.

(9) Certified copy of a resolution by the applicant's board of directors designating the person(s) authorized to act on behalf of applicant.

(10) An opinion of independent counsel that the applicant is in compliance with applicable state and federal laws in the formation and organization of the company, with applicable securities laws, and is chartered to conduct its business in the proposed operating area.

(11) Such marketing materials as may have been prepared that portray the nature of applicant's operations.

(12) Copies of all bonds in effect for directors, officers, and employees.

(13) Other such information as the supervisor may require.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-030, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-040 Continuing operations.** Licensees shall maintain an adequate financial condition.

(1) Minimum capital (unimpaired paid-in capital, surplus, and undivided profits) shall be in the amount of five hundred thousand dollars or five and one-half percent of total assets, whichever is greater, or a greater amount should the supervisor determine that applicant's business plan or economic conditions require a greater amount to conduct the business of a 7(a) lender. The supervisor may consider and include the net worth of any corporate shareholder of the applicant if the shareholder agrees to unconditionally guarantee the liabilities of the applicant and that shareholder agrees to the reporting requirements set forth in WAC 50-56-060.

(2) Capital below the required amount precludes the presentation of additional loans to the SBA for guaranty without the written consent of the supervisor.

(3) Licensees shall maintain a reserve for anticipated loan losses appropriate to its needs, based on the following factors:

(a) The volume and mix of the existing loan portfolio, including the volume and severity of nonperforming loans

and adversely classified credits, as well as an analysis of net charge-offs experienced on previously classified loans.

(b) The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree of risk associated with such loans.

(c) The trend in loan growth, including any rapid increase in loan volume within a relatively short time period.

(d) General and local economic conditions affecting the collectibility of the licensee's loans.

(e) Previous loan loss experience by loan type, including net charge-offs as a percent of average loans over the past several years.

(f) The relationship and trend over the past several years of recoveries as a percent of previous year's charge-offs.

(g) Available outside information of a comparable nature regarding the loan portfolios of other such lenders.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-040, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-050 Records.** Licensees shall maintain records in a fashion consistent with a financial institution and shall have them at all times readily accessible to the supervisor. Records shall be preserved under the following schedule:

(1) Preserve permanently:

(a) All general and subsidiary ledgers reflecting asset, liability, capital stock and surplus and income and expense accounts.

(b) All general and special journals or other records forming the basis for entries in such ledgers.

(c) Articles of incorporation, bylaws, stock registers, licenses, and minutes of board of directors meetings.

(2) Preserve for at least six years following final disposition of the related loan:

(a) All applications for financing.

(b) Financing instruments.

(c) Lending participation agreements.

(d) Escrow agreements.

(e) All other documents and supporting material relating to such loans, including correspondence.

Records and other documents in subsections (1) and (2) of this section may be preserved by reproduction. Provided, however, that the licensee shall prepare a duplicate reproduction which shall be stored separately from the original for the time required. If such reproductions are used, the licensee shall maintain at all times facilities for the projection and reproduction of such records.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-050, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-060 Reports.** Licensees shall submit the following reports to the supervisor:

(1) Annual audits prepared in accordance with generally accepted accounting principles which shall be certified unless the supervisor makes other provision in writing in advance.

(2) Quarterly financial reports which shall include a balance sheet and income and expense statement for both the period and year to date.

(3) A notification of any suit or proceeding involving fraud or dishonesty where the licensee or an employee may be a party, or where an adverse judgment could contribute

materially to the impairment of the licensee's capital. Such notification must be forwarded with copies of the complaint within thirty days of the filing of such action.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-060, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-070 Examinations.** The supervisor will conduct examinations of licensees as provided by statute and will forward a report of examination to the licensee's board of directors for information and action as appropriate. These examination reports and all subsequent and related correspondence are the property of the supervisor and will be subject to the same confidentiality requirements as established for financial institutions regulated by the division of banking.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-070, filed 12/7/89, effective 1/7/90.]

**WAC 50-56-080 Fees.** The cost of regulation of nondepository 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 supervisor. Costs of investigation will be borne by the licensee and will be based on actual staff costs of the division of banking, 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 50-44 WAC.

[Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-080, filed 12/7/89, effective 1/7/90.]

## Chapter 50-60 WAC MORTGAGE BROKERS AND LOAN ORIGINATORS—LICENSING

### WAC

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**WAC 50-60-010 Definitions.** (1) "Material litigation" is defined as any past or pending litigation which would be relevant to the director's ruling on an application for a mortgage brokerage license, including but not limited to the following types of litigation:

(a) Any previous convictions for a felony in the last seven years or currently pending felony charges.

(b) Any previous or pending civil actions involving financial misconduct, including but not limited to violations of the Mortgage Brokers Practices Act, the Consumer Protection Act, or state or federal securities laws.

(2) A "branch office" is defined as a fixed physical location such as an office, separate from the principal place of business of the licensed mortgage broker, where a licensee holds itself out to the public as acting as a mortgage broker. "Hold out to the public" means advertising or otherwise informing the public that mortgage loans are made or negotiated at that location, or listing that location on business cards, stationery, brochures, rate lists or other promotional items, but does not include listing a home or mobile telephone number on business cards or stationery in addition to listing the telephone number of a licensed place of business.

(3) A "principal" of any partnership, company, association or corporation is defined as any person who owns a ten percent interest or more in the partnership, company, association or corporation.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-010, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-020 Statutory exemptions.** (1) The following are exempt from all provisions of these rules, with the exception of those who must comply with RCW 19.146.0201 according to RCW 19.146.020(2):

(a) Any person doing business under the laws of this state or the United States relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(c) Any person doing any act under order of any court;

(d) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) Any mortgage broker approved and subject to auditing by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(g) Any mortgage broker approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, 12 U.S.C. Sec. 1701, as now or hereafter amended;

(h) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality or any of the entities in this subsection (1)(h); and

(i) A real estate broker who provides information only in connection with a CLO system, who may receive a fee for such information in an amount approved by the director and who conforms to all rules of the director with respect to the providing of such service.

(2) Those persons otherwise exempt under subsection (1)(f), (g), and (i) of this section must comply with RCW 19.146.0201.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-020, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-030 Application procedure for mortgage broker license.** Each person, as defined in RCW 19.146.010(8), desiring to obtain licensure as a mortgage broker shall apply to the director by submitting the following:

(1) An application shall be made in the form prescribed by the director.

(2) The applications described in subsection (1) of this section must be accompanied by:

(a) A surety bond or equivalent as described in RCW 19.146.205 (3)(a), (b), or (c).

(b) Payment to the director of five hundred dollars for each application as a license fee to cover the costs of investigation and processing of the application, and otherwise enforcing this chapter.

(3) Each principal of an applicant that is a corporation or a partnership, or the owner if the applicant is unincorporated, shall complete and submit the following with the application:

(a) Biographical information including complete and accurate employment history and a description of any material litigation for the preceding seven years.

(b) An independent credit report obtained from a recognized credit reporting agency.

(c) A signed authorization for a background investigation.

(d) A completed fingerprint card accepted by the Washington state patrol.

(4) Notwithstanding any other provision of these rules, the director may deny an application as incomplete if the

applicant fails within ten business days to meet a second request from the director for information, except that the director may grant an extension to the applicant when good cause is shown. An example of good cause may include, but shall not be limited to, death or incapacitating illness of the preparer, or other catastrophic occurrence. Denial under such circumstances shall not affect new applications filed after the denial. Following denial on such grounds and upon submission of an additional license fee, an applicant may reapply.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-030, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-040 Experience, education and testing requirements.** (1) An applicant who has satisfactorily completed an approved course or courses of study and has passed an approved examination shall be judged to meet the [experience] [educational] requirements for licensing as expressed in RCW 19.146.210 (1)(e):[.].

(2) An applicant who has two years of experience in the following categories may apply to the director for a waiver of the requirement for completion of an approved course of study:

(a) Mortgage broker, or responsible individual in a mortgage brokerage business[,] or branch manager of a mortgage brokerage business;

(b) Mortgage banker, or responsible individual in a mortgage brokerage business or branch manager of a mortgage brokerage business;

(c) Loan officer, with responsibility primarily for loans secured by lien interests on real estate;

(d) Branch manager of a lender, with responsibility primarily for loans secured by lien interests on real estate.

(e) Mortgage broker with a license from another state the licensing standards of which the director determines to be substantially similar to those in this state.

(3) An applicant shall be deemed to have satisfactorily completed an approved course of study and passed an approved examination if the applicant has:

(a) Attended at least 40 hours of class of an approved course of study, or such other period of class time as the director may deem adequate, and

(b) Received a certificate of completion from the course provider, which certificate verifies the applicant's attendance in the course and the applicant's satisfactory performance on an approved examination.

(4) Each licensee shall, upon or before the last business day of the calendar month in which their license was originally issued, submit to the director a certificate of completion from a course provider, which certificate verifies that a responsible party designated by the licensee and all of the licensee's branch managers have attended a seminar which was approved by the director and contained as its content a presentation and discussion of relevant changes to the laws, regulations, and industry practices and ethics listed in WAC 50-60-045 (c)(i) through (x).

[Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-040, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-040, filed 1/7/94, effective 2/7/94.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed



material in the above section does not appear to conform to the statutory requirement.

**WAC 50-60-045 Approval of course providers, courses of study, and examinations.** (1) An application to the director for approval of a course of study shall include the following items:

(a) A description of the course provider's experience in teaching this type of course and administering this type of examination;

(b) A complete listing of all instructors for the course, including their qualifications and experience teaching courses similar to this course;

(c) All course materials and lesson plans on a session by session basis, which shall cover at least the following subjects to be taught:

(i) The Mortgage Broker Practices Act, chapter 19.146 RCW, and the rules promulgated pursuant to this act in chapter 50-60 WAC;

(ii) The Consumer Protection Act, chapter 19.86 RCW;

(iii) The Escrow Agent Registration Act, chapter 18.44 RCW;

(iv) Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage Disclosure Act, and Community Reinvestment Act, and the regulations promulgated pursuant to these acts.

(v) Trust account and record keeping requirements as defined in chapter 19.146 RCW and chapter 50-60 WAC;

(vi) Mortgage, deed of trust, and real estate contract law as provided in Title 61 RCW;

(vii) Principal and agent law;

(viii) Real estate and appraisal law as provided for in chapters 18.85 and 18.140 RCW;

(ix) Arithmetical computations common to mortgage brokering including, but not limited to, the computation of annual percentage rate, finance charge, amount financed, payment and amortization;

(x) Ethics in the mortgage industry; and

(d) a copy of any examinations to be used in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised examinations or grading scales to be used by a course provider shall be submitted to the director for his or her approval prior to their use in the course of study.

(2) The director shall review the items submitted to the department and determine whether the provider, the proposed course of study, and the proposed examinations and grading scales are approved. Such approval shall be before the period of two years and shall be confirmed through issuance of a certificate of approval. The director or his or her designee may audit a course of study at any time. If the director finds that a course of study is not approved, or if the provider of the course of study has not complied with the requirements of this section, the director may withhold or suspend approval of the course of study and require the return of any certificate of approval previously issued by the director.

(3) Prior to expiration of its certificate of approval, each course provider that desires to maintain its approved status shall submit to the director the items required in paragraph (1) of this section to renew its certificate of approval.

[Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-045, filed 11/8/94, effective 12/9/94.]

**WAC 50-60-050 Access to criminal history information.** (1) The director may review the criminal conviction record that is maintained by any federal, state or local law enforcement agency relating to:

(a) An applicant for a license under this article; or

(b) Any principal of a partnership, company, association or corporate applicant for a license under this article.

(2) The director may refuse to grant a license or may suspend or revoke a license if the applicant, licensee, or any principal of a partnership, company, association or corporate applicant, fails to provide a complete set of fingerprints and a recent photograph on request.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-050, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-060 Application deposits, investigation fees, and annual assessment.** (1) For each application for a Washington mortgage broker license, the director shall receive and there shall be paid to the director[,] prior to issuance of the license, an application deposit. Upon completion of processing and reviewing of the application, the department will prepare a billing, regardless of whether a license has been issued, calculated at the rate of \$35 per hour for each hour 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 the applicant, while any balance remaining from the deposit will be refunded to the applicant.

(2) Upon completion of any investigation or examination of any licensee, or of any mortgage broker subject to the investigatory and enforcement powers of the director under RCW 19.146.020(2), such person shall pay to the director an investigation charge to cover the cost of the investigation or examination. This investigation charge will be calculated at the rate of \$45 per hour for each hour devoted to the investigation or examination of the books and records of the mortgage broker. Those licensees issued licenses prior to March 21, 1994 shall be deemed to have prepaid in their initial license fee the cost of the first compliance examination conducted by the department during the licensee's first two years of operating under a mortgage broker license.

(3) Each licensee shall pay to the director each year, on or before the last business day of the calendar month in which their license was originally issued, [an annual assessment of \$500 for each mortgage broker license.]

[Statutory Authority: RCW 19.146.225. 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.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

**WAC 50-60-070 Branch office application procedure.** Application may be made for branch office licenses in a form specified by the director. However, the branch manager of each branch office must be a licensed mortgage broker, and therefore must complete a separate application

for a mortgage broker license as required by WAC 50-60-030 if he or she is not already licensed. This will require surety bond or equivalent as described in RCW 19.146.205 (3)(a), (b), or (c).

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-070, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-080 Surety bond for applicants engaging in the business of a mortgage broker—General requirements.**

(1) Prior to licensing, an applicant for a mortgage broker license shall obtain and file with the director a surety bond along with a valid power of attorney issued by a bonding company or insurance company authorized to do business in this state. The surety bond amount required of each applicant, ranging from \$20,000 to \$60,000, will be determined by the monthly average number of loan originators employed or engaged by the applicant for the previous 12 months.

(2) The monthly average number of loan originators employed or engaged by the applicant shall be calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the previous 12 months, and dividing this total by 12. If the applicant has been in business less than 12 months, the monthly average number of loan originators employed or engaged by the applicant will be calculated by adding the number of loan originators employed or engaged each month (or part thereof) for the number of months the applicant has been in business and the projected number of loan originators to be employed each month (or part thereof) for the remaining months in the twelve month period, and dividing this total by twelve. If the applicant has no history of business, the monthly average number of loan originators will be determined by adding up the projected number of loan originators to be employed or engaged each month for the first twelve months during which the applicant will do business, and dividing this total by twelve. The projected number of loan originators to be employed or engaged during the first twelve months during which the applicant will do business must reflect at least the actual number of originators at the inception of business.

(3) Based upon the calculation of the monthly average number of loan originators employed or engaged by the applicant, the applicant shall maintain on file with the director a surety bond in an amount equal to or greater than that indicated by the following table:

Monthly Average Number of Loan Originators	Bond Amount
3 or fewer	\$20,000
greater than 3 to 6	\$30,000
greater than 6 to 9	\$40,000
greater than 9 to 15	\$50,000
greater than 15	\$60,000

(4) Each licensee shall maintain on file with the director a valid surety bond or approved alternative in an amount equal to or greater than the required amount. Each licensee shall calculate the monthly average number of loan originators it has employed or engaged over the previous twelve months at least once each year forty-five days prior to the

anniversary date of its bond. If this calculation reveals that the monthly average number of loan originators has increased by an amount which requires an increase in the licensee's surety bond amount, according to the surety bond amount table provided in this section, then the licensee shall obtain an increase in the amount of coverage on its surety bond to the required amount within thirty days of the date of the calculation.

(5) Each licensee shall maintain for a period of four years in an accessible location a worksheet of the calculation required in subsection (4) of this section.

(6) Each licensee shall use the bond form, assignment of certificate of deposit form, or irrevocable letter of credit form approved by the director.

[Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-080, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-080, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-085 Alternatives to the surety bond.**

(1) In lieu of a surety bond as required under WAC 50-60-080, an applicant or licensee may with the approval of the director:

(a) Properly assign to the director a certificate of deposit on a form acceptable to the director for an amount equal to or greater than the required surety bond amount. The depositor shall be entitled to receive all interest and dividends thereon.

(b) An applicant or licensee may also file with the director an irrevocable letter of credit drawn in favor of the director for an amount equal to or greater than the required surety bond. The irrevocable letter of credit must provide the same measure of protection to the consumer and others who may have reason to make claim on the instrument as a surety bond. This means, in part, that the irrevocable letter of credit must provide security for one year after its expiration or suspension against claims from violations that occurred during the period over which it was in effect. The irrevocable letter of credit must be issued by a bank, savings bank, savings and loan association, or credit union, as approved by the director. The licensee and any bank, savings bank, savings and loan association, or credit union providing a letter of credit to the licensee must notify the director within two business days of any suspension, expiration, or material change in the security provided by the irrevocable letter of credit.

(2) A licensee may submit a written request to the director asking that an assigned certificate of deposit or irrevocable letter of credit be released. The director may release the assignment of a licensee's certificate of deposit when a sufficient period of time has passed to provide reasonable confidence that no new claims will be presented against the certificate of deposit. To ensure that there are no outstanding claims or potential claims against the licensee which could result in claims against the licensee's certificate of deposit or irrevocable letter of credit, the director may require that the licensee provide to the director prior to release of the certificate of deposit or letter of credit:

(a) A surety bond in the required amount or an approved alternative if the licensee intends to remain in the mortgage broker business and continue operating under their license;

(b) All of the licensee's licenses and branch licenses if the licensee intends to surrender their licenses and no longer engage in the business of mortgage brokering. In addition, the director may require that the licensee provide to the director proof of exemption from licensing if the licensee intends to surrender its license and remain engaged in the business of mortgage brokering;

(c) Copies of any agreements between the licensee and any bank, savings and loans association, savings bank, or credit union which provided the certificate of deposit or irrevocable letter of credit;

(d) Copies of any agreements between the licensee and any third party which represents an outstanding claim, potential claim, or settlement of any claim against the licensee which could diminish the measure of protection enjoyed by consumers or others who may have reason to make a claim against the licensee;

(e) An audited financial statement for the licensee's mortgage broker business;

(f) Copies of any notes, secured or unsecured, or other forms of debt that are outstanding to any parties not mentioned in (a) through (e) above;

(g) Any other information the director may deem necessary under the circumstances of any licensee's request for release of the certificate of deposit or irrevocable letter of credit;

(4) The surety bond or approved equivalents listed in this section are subject to the provisions of RCW 19.146.240.

[Statutory Authority: RCW 19.146.225, 94-23-033, § 50-60-085, filed 11/8/94, effective 12/9/94.]

**WAC 50-60-090 License standards for applicants licensed in other jurisdictions.** An applicant licensed in other jurisdictions is required to follow the application procedure as stated in WAC 50-60-030.

[Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-090, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-100 License standards for associations.** Since all members of an association are legally responsible for actions of an association, all members of an association must complete an application for licensing and must meet the criteria for licensing as set forth in chapter 19.146 RCW and chapter 50-60 WAC.

[Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-100, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-110 Sale, transfer, or change of control of a licensed mortgage broker agency or business.** (1) A Washington state mortgage broker license is not transferable or assignable.

(2) Whenever a licensee who is a sole proprietorship intends to sell or otherwise transfer their interest in a licensed mortgage broker company or business, the seller (transferor) and buyer (transferee) will insure that there is incorporated within the body of the sale agreement or document of transfer appropriate clauses that set forth provisions relative to the following:

(a) Stipulation that the buyer (transferee) is responsible for obtaining a valid Washington state mortgage broker license prior to completion of the sale or transfer.

(b) Stipulation that the buyer (transferee) is responsible for obtaining the appropriate surety bond, or acceptable alternative, and filing such surety bond or acceptable alternative with the director prior to completion of the sale or transfer.

(c) Clear assignment of the responsibility for all payments due to customers and third party service providers on or before the effective date of the sale to either the seller (transferor) or the buyer (transferee).

(d) Clear assignment of the responsibility for maintaining and preserving the accounting and other records as required by RCW 19.146.060 and WAC 50-60-140 to either the seller (transferor) or the buyer (transferee).

(e) Stipulation that the buyer (transferee) is restricted from or is authorized to use the seller's (transferor's) mortgage broker business name.

(f) Clear assignment of the responsibility to either the buyer (transferee) or seller (transferor) for providing notification of the sale or transfer to all of the seller's (transferor's) clients with loan applications currently in process, or who have deposited funds with the seller (transferor), or who have executed some other form of written agreement with the seller (transferor). The agreement shall also indicate which party is responsible for notifying all third-party service providers for whom the seller or transferor is holding deposits from borrowers to pay fees for their services.

(3) Whenever a licensee that is a partnership or corporation intends to sell or otherwise transfer a controlling interest in a licensed mortgage broker company or business, the seller (transferor) and buyer (transferee) will insure that there is incorporated within the body of the sale agreement or document of transfer appropriate clauses that set forth provisions relative to the following:

(a) Stipulation that the buyer (transferee) is responsible for obtaining a valid Washington state mortgage broker license prior to completion of the sale or transfer.

(b) Stipulation that the buyer (transferee) is responsible for obtaining the appropriate surety bond, or acceptable alternative, and filing such surety bond or acceptable alternative with the director prior to completion of the sale or transfer.

(c) Clear assignment of the responsibility for all payments due to customers and third-party service providers on or before the effective date of the sale to either the seller (transferor) or the buyer (transferee).

(d) Clear assignment of the responsibility for maintaining and preserving the accounting and other records as required by RCW 19.146.060 and WAC 50-60-140 to either the seller (transferor) or the buyer (transferee).

(e) Stipulation that the buyer (transferee) is restricted from or is authorized to use the seller's (transferor's) mortgage broker business name.

(f) Clear assignment of the responsibility to either the buyer (transferee) or seller (transferor) for providing notification of the sale or transfer to all of the seller's (transferor's) clients with loan applications currently in process, or who have deposited funds with the seller (transferor), or who have executed some other form of written agreement with the seller (transferor). The agreement shall also indicate

which party is responsible for notifying all third-party service providers for whom the seller or transferor is holding deposits from borrowers to pay fees for their services.

(4) Whenever there is a change in a principal of a licensee that is a corporation or partnership, the licensee must provide the director with all information required of a principal when an application is made for a mortgage brokers license as specified in WAC 50-60-030. The director shall make a determination, prior to completion of the sale, whether the proposed new principal in the licensee meets the requirements which must be met to be licensed as a mortgage broker as specified in RCW 19.146.210.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-110, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-120 Employees of licensed mortgage broker.** RCW 19.146.200 prohibits a person from engaging in the business of a mortgage broker without first obtaining and maintaining a mortgage broker license, except as an employee of a person licensed or exempt from licensing. For the purpose of licensing of mortgage brokers, an employee is defined as any individual who has an employment relationship, acknowledged by both the employee and the licensee, where the individual is treated as an employee by the licensee for purposes of compliance with federal income tax laws.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-120, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-130 Disclosures required to borrower.** Disclosures required by RCW 19.146.030 (1), (2)(c), (d), (e), and (f) shall be made in the form approved by the director.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-130, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-140 Recordkeeping requirements.** Each mortgage broker required to be licensed by chapter 468, Laws of 1993, shall retain the original contract for the broker's compensation, an accounting of all funds received in connection with the loan, a copy of the settlement statement as provided to the borrower if the loan closed, a record of any fees refunded to the applicant if the loan did not close, copies of the good faith estimate and all other written disclosures, and all other correspondence, papers or records relating to the loan application for a minimum of six years after a mortgage application is received. These records shall be retained in all cases where a mortgage application has been received, any deposits or fees associated with a mortgage application have been accepted, or any written agreement has been executed.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-140, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-150 Disclosure of significant developments.** (1) A licensee shall be required to notify the director in writing within thirty days of the occurrence of any of the following significant developments:

- (a) Licensee filing for bankruptcy or reorganization.
- (b) Notification of license revocation procedures in any state against the licensee.

(c) The filing of a felony indictment related to mortgage brokering activities of licensee, officer, director, or principal.

(d) A licensee, officer, director, or principal being convicted of a felony.

(e) Notification of cancellation of the licensee's surety bond as required for licensing, or any significant decline in value of any alternative to the surety bond held by the director.

(f) The filing of any material litigation against the licensee.

(g) A sale, transfer, or change of control of a licensed mortgage broker agency or business.

(2) A licensee shall be required to notify the director in writing ten days prior to a change of business location.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-160 License denial.** (1) The director may deny, suspend or condition a license if the licensee, any principal of any corporate or partnership licensee, or the owner if the applicant is unincorporated:

- (a) Has not paid the required license fee;
- (b) Has not posted the required bond or otherwise complied with RCW 19.146.205;

(c) Has had any license issued under chapter 468, Laws of 1993, or any similar statute of this or any other state suspended, revoked, or restricted within five years of the filing of the present application;

(d) Has been convicted of a felony within seven years of the filing of this application;

(e) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter;

(f) Has misrepresented or concealed material facts in obtaining a mortgage brokers license or in reinstatement thereof;

(g) Has violated the provisions of the Mortgage Broker Practices Act, the rules promulgated pursuant to that act, or the Consumer Protection Act;

(h) Has had the surety bond required for licensure canceled;

(i) Has allowed the licensed mortgage brokerage business to deteriorate into a condition which would result in denial of a new application for a license;

(j) Has aided or abetted an unlicensed person to practice if a license is required;

(k) Has demonstrated incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(l) Is insolvent in the sense that the value of the applicant's or licensee's liabilities exceed their assets or in the sense that the applicant or licensee cannot meet their obligations as they mature;

(m) Has failed to comply with an order issued by the director, or his or her designee, or an assurance of discontinuance entered into with the director, or his or her designee;

(n) Has performed an act of misrepresentation or fraud in any aspect or the conduct of the mortgage brokerage business or profession;

(o) Has failed to cooperate with the director, or his or her designee, by:

(i) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary actions or denial, suspension, or revocation of a license under this chapter;

(ii) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(iii) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding; or

(p) Has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or authorized representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) The director may deny, suspend or condition a license if the owner, if the applicant is a sole proprietorship; the general partner(s), if the applicant is a partnership; or the chief executive officer, if the applicant is a corporation; does not have the required two years of experience in the residential mortgage loan industry as defined in WAC 50-60-040.

(3) The director may not issue a license if he or she finds that the applicant, or any person who is a director, officer or principal of the applicant, has within the previous seven years been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this rule, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or no contest or nolo contendere or stipulated to facts sufficient to justify a finding of guilt to a charge thereof before a court or federal magistrate, or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such pleas of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or unless the person convicted of the crime shall have received a pardon therefore from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received a certificate of good conduct granted by the state board of pardons and paroles pursuant to the provisions of the executive law to remove the disability under this subsection because of such conviction.

(4) The director may find that a person has failed to demonstrate financial responsibility, character and general fitness such as to warrant a belief that the business will be operated honestly, fairly and efficiently within the purposes of chapter 468, Laws of 1993, whenever:

(a) The person is or has been subject to an injunction issued pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act, or rules promulgated thereunder, or chapter 19.86 RCW, the Consumer Protection Act;

(b) The person has had a license to engage in a similar business suspended or revoked within the previous seven years by any local, state or federal agency within the United States, and that license has not been reinstated without restriction;

(c) The person has had a surety bond or an equivalent form of business insurance canceled or revoked for cause in the previous two years;

(d) The person is a defendant in pending material litigation;

(e) The person's independent credit report issued by a recognized credit reporting agency indicates a substantial history of unpaid debts;

(f) The applicant is insolvent in the sense that the value of the applicant's liabilities exceed the value of their assets, or in the sense that the applicant cannot meet their obligations as they mature;

(g) The person has not demonstrated an acceptable level of knowledge of all laws and regulations applicable to the business of mortgage brokering through compliance with the experience and educational requirements set forth in WAC 50-60-040; or

(h) The applicant has violated the requirements of the Mortgage Brokers Practices Act, the rules promulgated pursuant to that act, or the Consumer Protection Act.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-160, filed 1/7/94, effective 2/7/94.]

#### **WAC 50-60-165 Violations—Penalties and fines.**

Every mortgage broker and their officers, employees, independent contractors, and agents shall comply with chapter 19.146 RCW and all rules and regulations issued thereunder. The violation of any provision of chapter 19.146 RCW, or any rule issued thereunder, or of any order, directive, or requirement of the director shall subject the violator to a fine of \$100 for each offense. Each day's continuance of the violation shall be a separate and distinct offense.

[Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-165, filed 11/8/94, effective 12/9/94.]

**WAC 50-60-170 Transitional rule.** Businesses engaged in mortgage brokering and required to be licensed under chapter 19.146 RCW, may file an application with the director and obtain, upon acceptance of the application as complete and a determination by the director that the applicant meets the verifiable requirements for licensing, an interim license. This interim license shall expire on the date set by the director, unless extended by the director.

[Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-170, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-170, filed 1/7/94, effective 2/7/94.]

**WAC 50-60-180 Licensing of independent contractors to conduct mortgage brokering.** A person may be licensed as an independent contractor to conduct the business of mortgage brokering provided that:

(1) The person meets all requirements for licensing as a mortgage broker under chapter 19.146 RCW or any rule adopted thereunder, with the exception that a surety bond or equivalent in the amount of five thousand dollars shall meet the bonding requirement; and

(2) The person is an independent contractor for a licensed mortgage broker that has accepted responsibility under its license for any and all violations of chapter 19.146 RCW or rules adopted thereunder that the independent contractor may commit and the person has on file with the director a binding written agreement with the licensed mortgage broker to that effect; and

(3) The surety bond or equivalent posted by the licensed mortgage broker with which the person contracts runs to the benefit of the state and any person or persons who suffer loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted thereunder.

The license to conduct business as an independent contractor under a licensed mortgage broker shall state the names of both the independent contractor and the licensed mortgage broker with which the contractor has contracted. This license shall permit the independent contractor to perform mortgage brokering business under the named licensed mortgage broker only. An independent contractor must obtain a separate license for each licensed mortgage broker under which the contractor contracts to conduct the business of mortgage brokering.

[Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-180, filed 1/7/94, effective 2/7/94.]