

Title 208 WAC

FINANCIAL INSTITUTIONS, DEPARTMENT OF

Chapters

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Chapter 208-04 WAC GENERAL PROVISIONS

WAC

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WAC 208-04-010 Definitions. For the purposes of this chapter:

- (1) "Department" means the department of financial institutions.
- (2) "Director" means director of the department.
- (3) "Financial institution" means any bank, consumer loan company, credit union, foreign bank branch, savings bank, savings and loan association, trust company or department, securities broker-dealer, investment advisor, or similar lending institution under the department's direct jurisdiction.

[Statutory Authority: RCW 43.19.080. 94-09-010, § 208-04-010, filed 4/11/94, effective 5/12/94.]

WAC 208-04-020 Purpose; effective date. The purpose of this chapter is to implement RCW 43.19.080, which regulates the manner by which the director and employees of the department may lawfully borrow money from financial institutions under the jurisdiction of the department. This chapter applies to loans and material changes to loans made on or after October 1, 1993.

(1999 Ed.)

[Statutory Authority: RCW 43.19.080. 94-09-010, § 208-04-020, filed 4/11/94, effective 5/12/94.]

WAC 208-04-030 Requirements for loans to department employees and the director. The following procedures and requirements govern loans from financial institutions to employees and the director:

(1) **Requirements for all employees.** No employee of the department may borrow money from a financial institution under the jurisdiction of the department unless the loan is consistent with RCW 43.19.080. The director shall inform employees of the requirements for loans from financial institutions that are specified in these rules and in RCW 43.19.080.

(2) **Loan notification and determination of conformance requirements for employees with administrative or regulatory duties and the director.**

(a) Any employee of the department who the director determines has administrative authority or carries out functions of a regulatory or discretionary nature that could affect a financial institution or its officers or employees shall provide notice to the director of a proposed loan by the financial institution to the employee. Upon receipt of the notice, the director or the director's designee shall promptly review the loan and notify the employee in writing whether or not the loan conforms with RCW 43.19.080. In cases where the loan does not conform, the director or the director's designee shall notify the employee in writing of the reason why it fails to conform and demand that the terms of the loan be modified to conform with the law. If the loan is not modified, the director shall commence appropriate action.

(b) In making a loan conformance determination required by (a) of this subsection, the director or the director's designee may consider:

(i) A written and sworn declaration by the applicant's loan officer or broker that the terms offered and underwriting procedures used are not less stringent than those prevailing at the time for comparable transactions with other persons not employed by either the department or the financial institution;

(ii) Rates and terms readily available in a newspaper of general circulation quoting rates and terms contemporaneous with the applicant's loan; and

(iii) Other relevant information necessary to make a knowledgeable determination that the loan conforms with RCW 43.19.080.

(c) The employee shall provide notice of loans covered by (a) of this subsection on forms prepared by the department. Forms must include all material terms, including but not limited to, the type of loan, the name of the financial institution, the interest rate, the term, the amount financed, the loan fees, and all collateral requirements. Forms must also

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include the sworn declaration described in (b)(i) of this subsection.

(d) The director shall provide notice to the governor of a proposed loan by a financial institution to the director that is subject to RCW 43.19.080. The governor or the governor's designee shall make a written determination of conformance of the loan in accordance with the same procedures and requirements and using the same forms as are required for other employees of the department, as specified in this section.

(3) **Special loan transactions and circumstances.** The following requirements govern special loan transactions and circumstances:

(a) A material change in terms of outstanding loans or obligations on a loan from a financial institution is subject to the requirements of this section. Material changes include, but are not limited to, changes in amount disbursed on term loans, changes in interest rate, changes in loan fees, and changes in collateral requirements.

(b) All lines of credit, including credit cards, extended to employees and the director from a financial institution are subject to the requirements of this section at the time the line of credit is approved. Subsequent draws on the line of credit are not subject to these requirements unless the terms of the line of credit are materially changed. An increase in the amount of the line of credit is not considered a material change in terms.

(c) An employee whose loan is held by an institution that subsequently comes under the jurisdiction of the department through merger, conversion, or other business transaction is not subject to the requirements this section. However, a material change in terms of such an outstanding loan or obligation is subject to the requirements.

(d) A loan made to an employee from an institution not under the jurisdiction of the department that is subsequently sold to an institution under the department's jurisdiction, in whole or in part, is not subject to the requirements of this section. However, a material change in terms in such a loan is subject to the requirements.

(e) The director shall adopt conflict of interest standards and procedures, consistent with the purposes of this chapter and RCW 43.19.080, that govern loans made by financial institutions to persons or entities other than the employee when the proceeds of the loan provide a clear financial benefit to the employee. These loans include, but are not limited to, loans to businesses or other enterprises in which the employee has a substantial financial interest, and loans to spouses and other immediate family members of the employee.

(4) **Violation of rules.** A violation of this section may subject the employee to appropriate discipline.

[Statutory Authority: RCW 43.19.080, 94-09-010, § 208-04-030, filed 4/11/94, effective 5/12/94.]

Chapter 208-08 WAC

ADJUDICATIVE PROCEDURES

WAC

- 208-08-010 Application of this chapter.
- 208-08-020 Adoption of rules of procedure.
- 208-08-030 Appearance and practice before the department.

- 208-08-040 Notice of appearance or withdrawal.
- 208-08-050 Requests for adjudicative hearing.
- 208-08-060 Discovery.
- 208-08-070 Production of documents to parties.
- 208-08-080 Depositions upon oral examination.
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- 208-08-100 Consolidation of proceedings.
- 208-08-110 Prehearing conferences.
- 208-08-120 Informal settlements.
- 208-08-130 Prehearing and posthearing memoranda.
- 208-08-140 Transcript of proceedings.

WAC 208-08-010 Application of this chapter. This chapter applies to all adjudicative proceedings under the jurisdiction of the department of financial institutions or the director of the department of financial institutions. This chapter does not apply to investigations conducted under the authority granted by the acts administered by the department.

[Statutory Authority: RCW 43.320.040 and 34.05.250, 96-11-035, § 208-08-010, filed 5/6/96, effective 6/6/96.]

WAC 208-08-020 Adoption of rules of procedure. (1) **Model rules.** The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If there is a conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term "agency" appears in the model rules it means the department of financial institutions.

(2) **Brief adjudicative proceedings.** The department specifically adopts the criteria and procedures for brief adjudicative proceedings contained in RCW 34.05.482 through 34.05.494. The department will use this procedure in any proceeding under chapter 293, Laws of 1996, regarding the suspension of escrow agent licenses for nonpayment of student loans.

[Statutory Authority: RCW 43.320.040 and 34.05.250, 96-11-035, § 208-08-020, filed 5/6/96, effective 6/6/96.]

WAC 208-08-030 Appearance and practice before the department. (1) Only the following persons may appear in a representative capacity before the department or its designated presiding officer:

(a) Attorneys at law entitled to practice before the supreme court of the state of Washington.

(b) Attorneys at law entitled to practice before the highest court of record of another state, if attorneys at law are permitted to appear in a representative capacity before administrative agencies of that state, and if not otherwise prohibited by the laws of this state.

(c) 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.

(2) The presiding officer may allow other forms of representation if he or she deems the representation satisfactory.

[Statutory Authority: RCW 43.320.040 and 34.05.250, 96-11-035, § 208-08-030, filed 5/6/96, effective 6/6/96.]

WAC 208-08-040 Notice of appearance or withdrawal. (1) **Appearance.** Each attorney or other representative shall file a written notice of appearance with the department and the presiding officer and shall serve a notice of appearance on all attorneys and representatives then of record

and on all unrepresented parties. The notice shall contain the name, address and telephone number of the attorney or representative.

(2) **Withdrawal.** Any attorney or representative who withdraws from representing a party shall file a written notice of withdrawal with the department and the presiding officer and shall serve the notice of withdrawal on all attorneys and representatives then of record and on all unrepresented parties. The notice shall contain the effective date of the withdrawal, and, if known, the name of the person who will represent the party from that time forward. Withdrawal of a party's attorney or representative after the service of a notice of hearing shall not be grounds for the continuance of the hearing unless good cause is shown.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-040, filed 5/6/96, effective 6/6/96.]

WAC 208-08-050 Requests for adjudicative hearing.

(1) **Where filed—Form.** All requests that the department conduct an adjudicative hearing shall be filed with the department on the form provided by the department or on a form that is substantially similar.

(2) **Time limits for request.** The department must receive the request for an adjudicative hearing no later than twenty calendar days after the department serves the applicant with a written notice of an opportunity to request a hearing upon department action or contemplated department action. Service upon the applicant is completed when made in accordance with WAC 10-08-110 (2) and (3) or as provided by the statute under which the department initiated the action. If the statute under which the department initiated the action specifically provides for a different time limit, the time limit in that statute shall apply unless it has been superseded by the Administrative Procedure Act, chapter 34.05 RCW, but in no case shall the time limit for requesting an adjudicative hearing be less than twenty calendar days.

(3) **Failure to request hearing.** Failure of an applicant to file an application for an adjudicative hearing within the time limit set forth in subsection (2) of this section constitutes a default and results in the loss of the applicant's right to an adjudicative hearing. When an applicant defaults, the department may proceed to resolve the case pursuant to RCW 34.05.440(1).

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-050, filed 5/6/96, effective 6/6/96.]

WAC 208-08-060 Discovery. (1) Motion required.

Unless discovery is included in the prehearing order as provided in WAC 208-08-110, a party wishing to make discovery must file a motion for discovery with the presiding officer. The party must also serve the discovery motion on all other parties to the proceeding. Any party opposing the motion must file a response with the presiding officer and the response must be served on all parties within ten calendar days after service of the motion.

(2) **Hearing on discovery motion.** Any party may request a hearing on a discovery motion. If the presiding officer determines that a hearing on the motion is warranted, he or she shall give all parties at least three business days notice of the time and place for the hearing.

(1999 Ed.)

(3) **Decision on motion.** The presiding officer may determine the extent and conditions of discovery in any adjudicative proceeding, considering the criteria set forth in RCW 34.05.446(3) and WAC 208-08-070 and 208-08-080. The presiding officer shall rule upon the motion only after all parties have responded or the time for response has passed.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-060, filed 5/6/96, effective 6/6/96.]

WAC 208-08-070 Production of documents to parties.

(1) **Place of production.** When production of documents is allowed, they shall be produced for inspection and copying at the department's headquarters, at such other place as the parties may agree in writing, or as the presiding officer orders. In the case of documents produced by the department, a party may not remove the documents from the department's offices other than by written agreement of the department. This agreement shall specify the document subject to the agreement, the date for return of the document, and any other terms or conditions as are appropriate to provide for the safe keeping of the documents.

(2) **Copying procedures and charges.** The party requesting production may photocopy any documents produced. The requesting party is responsible for the cost of photocopying. The documents produced by the department may be copied at the department's offices or such other places as the parties may agree. Charges for copies made by the department for a requesting party will be at a rate agreed upon by the parties, or as ordered by the presiding officer.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-070, filed 5/6/96, effective 6/6/96.]

WAC 208-08-080 Depositions upon oral examination.

(1) **Filing of transcripts.** If a deposition is allowed, it shall be recorded, including all questions and objections. If one of the parties orders a transcript, the testimony shall be transcribed verbatim under the direction of the court reporter, who shall certify the transcript. The witness shall sign the transcript or waive signature. If a deposition is transcribed, the court reporter shall file the original transcript and any exhibits to it with the presiding officer. The witness and any party may purchase a copy of the transcript from the court reporter.

(2) **Cost.** The party requesting the deposition shall pay the cost of the deposition, including any sitting or facility fee. A party ordering a copy of a transcript must make appropriate arrangements to pay the court reporter.

(3) **Videotaping of depositions.** If a videotaped deposition is allowed, Superior Court Civil Rule 30 (b)(8) shall apply.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-080, filed 5/6/96, effective 6/6/96.]

WAC 208-08-090 Submission on stipulated facts.

With the agreement of the department, a party may waive a hearing and submit its case upon stipulated facts and briefs. Submission of a case without a hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. The presiding officer shall review the submissions of the parties and shall enter a pro-

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posed order, including findings of fact and conclusions of law. If the parties agree, they may submit the stipulated facts to the director or designee for a final order, bypassing the presiding officer.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-090, filed 5/6/96, effective 6/6/96.]

WAC 208-08-100 Consolidation of proceedings. If there are multiple adjudicative proceedings involving common issues, the department or a party may notify the presiding officer of the common issues and request consolidation of the actions. If no other party objects, the presiding officer shall consolidate the proceedings. If another party objects, the presiding officer, in his or her discretion, may consolidate the proceedings.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-100, filed 5/6/96, effective 6/6/96.]

WAC 208-08-110 Prehearing conferences. The department encourages the use of prehearing conferences. If a party requests a prehearing conference, the presiding officer shall grant the request unless good cause is shown. WAC 10-08-130 governs the conduct of prehearing conferences.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-110, filed 5/6/96, effective 6/6/96.]

WAC 208-08-120 Informal settlements. The department encourages informal settlement of matters before the agency. Any person who believes his or her interest in an adjudicative proceeding may be settled informally may contact the department. The department specifically adopts WAC 10-08-230 setting forth procedures for informal settlements.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-120, filed 5/6/96, effective 6/6/96.]

WAC 208-08-130 Prehearing and posthearing memoranda. The presiding officer shall grant all timely requests to submit prehearing and posthearing memoranda and shall set a reasonable time for the submission of the memoranda. If a party files a posthearing memorandum, the opposing party has the right to file a response.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-130, filed 5/6/96, effective 6/6/96.]

WAC 208-08-140 Transcript of proceedings. (1) **Recording and transcripts.** Testimony and argument at the hearing shall be recorded either electronically or stenographically. Any party, upon motion, may order the court reporter to transcribe the proceedings at the party's expense. A party who orders a transcript of the proceedings shall provide the original transcript to the presiding officer at that party's expense, and upon such other terms as the presiding officer shall order.

(2) **Correction of transcript.** Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. The presiding officer may call for the submission of proposed corrections and may dispose of them at appropriate times during the proceeding. If the parties agree and the presiding officer approves, transcript cor-

rections may be incorporated into the record at any time during the hearing or after the close of evidence. All corrections must be made within ten calendar days after receipt of the transcript unless the presiding officer allows a different period.

[Statutory Authority: RCW 43.320.040 and 34.05.250. 96-11-035, § 208-08-140, filed 5/6/96, effective 6/6/96.]

Chapter 208-12 WAC PUBLIC RECORDS

WAC

208-12-010	Purpose—Scope—Conflict with other regulations.
208-12-020	Definitions.
208-12-030	Description of organization of department.
208-12-040	Location of administrative offices.
208-12-050	Office hours.
208-12-070	Procedure to request public records.
208-12-080	Protection of public records.
208-12-090	Copying.
208-12-100	Exemptions.
208-12-110	Denials of public records requests—Review.
208-12-120	Records index.
208-12-130	Information—Address.

WAC 208-12-010 Purpose—Scope—Conflict with other regulations. The purpose of this chapter is to ensure compliance with chapter 42.17 RCW, Disclosure—Campaign finances—Lobbying—Records; and in particular RCW 42.17.250 through 42.17.348 dealing with public records. It establishes general, consistent rules regarding public records. Divisions may adopt additional rules to supplement this chapter. If specific rules adopted by a division conflict with this chapter, the specific rules control in those situations.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-010, filed 7/1/96, effective 8/1/96.]

WAC 208-12-020 Definitions. "Person" means any individual, partnership, joint venture, public or private corporation, limited liability company, association, federal, state or local government entity or agency however constituted, or any other organization or group of persons, however organized.

"Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics.

"Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-020, filed 7/1/96, effective 8/1/96.]

WAC 208-12-030 Description of organization of department. The department is an administrative, supervisory, licensing, regulatory and chartering agency.

(1) The department is organized pursuant to chapter 43.320 RCW under a director and four assistant directors. The director has delegated authority to each assistant director to act in a specific functional area. The four functional areas are: The division of banks; the consumer services and administration division; the division of credit unions; and the securities division. These divisions regulate various programs, such as banks, trust companies, savings banks, savings and loan associations, alien banks, bank holdings companies, agricultural credit corporations, consumer loan companies, check cashers and sellers, mortgage brokers, escrow agents, credit unions, securities, mutual funds, commodities, franchises, business opportunities, and other similar institutions or areas.

(2) The department is charged with protecting the public interest, protecting the safety and soundness of depository institutions and entities under the jurisdiction of the department, ensuring access to the regulatory process for all concerned parties, and protecting the interests of investors.

(3) The governor appoints the director, with the consent of the senate. The director holds office at the pleasure of the governor.

(a) The director has complete charge of the department. The director may deputize one of the assistant directors to exercise the powers and duties of the director in the event of his or her absence. The director may delegate duties to assistant directors, but there are statutory limitations in RCW 43.320.060 to his power to delegate, and the director remains responsible for all official acts of the employees.

(b) By specific powers of legislation and delegation the director has the responsibility and authority to act and direct in the following areas:

(i) Administer the laws pertaining to licensing and regulation of state banks, savings banks, foreign bank branches, savings and loan associations, credit unions, consumer loan companies, check cashers and sellers, trust companies and departments, securities, mutual funds, franchises, business opportunities, commodities, escrow agents, mortgage brokers, and other similar institutions or areas. A full-time staff, including field examiners, carries out these duties.

(ii) Adopt and enforce rules consistent with and necessary to carry out the provisions of existing laws.

(4) Chapter 34.05 RCW, the Administrative Procedure Act, and department rules govern the formal and informal proceedings conducted by the department.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-030, filed 7/1/96, effective 8/1/96.]

WAC 208-12-040 Location of administrative offices. The administrative offices of the department and all divisions are located in Room 300 of the General Administration Building, 210 - 11th Avenue SW, Olympia, Washington; P.O. Box 41200, Olympia, WA 98504-1200.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-040, filed 7/1/96, effective 8/1/96.]

(1999 Ed.)

WAC 208-12-050 Office hours. Public records are available for inspection and copying during customary office hours. For the purposes of this chapter, customary office hours are from 8:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-050, filed 7/1/96, effective 8/1/96.]

WAC 208-12-070 Procedure to request public records. (1) Members of the public may inspect, copy or obtain copies of public records by making a request on the public records request form prescribed by the division holding the record. The form is available at the administrative office and should be given or mailed to the appropriate division. The request shall include the following information:

- (a) The name of the person requesting the records;
- (b) The date and time of day on which the request was made;
- (c) The nature of the request;
- (d) If the record requested is referenced within the index, a reference to the requested record as it is described in the index; and
- (e) If the requested matter is not identifiable by reference to the index, an appropriate description of the record requested.

(2) The staff person to whom the request is made will assist in identifying the public record requested.

(3) The department may inquire about the reason for a request for a list of individuals to determine whether the list will be used for commercial purposes.

(4) All requests for public records will be acknowledged within five working days after receipt with:

- (a) The information requested;
 - (b) An estimated time required to respond to the request;
- or
- (c) A denial of the request.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-070, filed 7/1/96, effective 8/1/96.]

WAC 208-12-080 Protection of public records. It is the department's responsibility to prevent unreasonable invasions of privacy, protect public records from destruction, damage or disorganization, and prevent excessive interference with essential functions of the department. Before a person may review original records, that person must agree to the following conditions:

- (1) The records may not be removed from the area designated for review;
- (2) The records may not be destroyed;
- (3) The records may not be altered in any way;
- (4) The records may not be defaced in any way, including marking upon, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that already exist in the file;
- (5) The records may not be cut, torn or mutilated in any way;
- (6) The records must be kept in the order in which received; and

(7) The records will be returned to the department when no longer required by the requester, but no later than the end of customary business hours.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-080, filed 7/1/96, effective 8/1/96.]

WAC 208-12-090 Copying. The department does not charge a fee for inspecting public records. The department may charge fifteen cents per page for providing copies of public records. If copies are requested, the department will make copies or make the department's copying facilities available.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-090, filed 7/1/96, effective 8/1/96.]

WAC 208-12-100 Exemptions. All public records of the department are available for public inspection and copying pursuant to these rules, unless the department determines that a requested public record is exempt under the provisions of RCW 42.17.310 or other statute.

(1) Various statutes exempt certain records from disclosure, including but not limited to: Securities, RCW 19.100.242, 19.110.140, 21.30.170, 21.30.370, 21.20.480, 21.20.510, 21.20.700, 21.20.855; Banks, RCW 30.04.075; Savings and Loan Associations, RCW 33.04.110; Agricultural Lenders, RCW 31.35.070; Savings Banks, RCW 32.04.220; and Credit Unions, RCW 31.12.565.

(2) Other statutory exemptions may cover records received by the department from another regulatory agency or under interagency agreement.

(3) In addition, pursuant to RCW 42.17.260, the department reserves the right to delete identifying details when it makes available or publishes any public record, if there is reason to believe that disclosure of such details would be an invasion of personal privacy. All deletions will be justified in writing.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-100, filed 7/1/96, effective 8/1/96.]

WAC 208-12-110 Denials of public records requests—Review. (1) If a request for a public record is denied, the person denying it will send the requester a written statement giving the reason for the denial. If based on an exemption, the written statement will give the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. A copy of the denial will be immediately forwarded to the director or designee for review.

(2) The director or designee will consider the denial and affirm or reverse it within two business days. The original denial becomes final if the director does not respond within two business days.

(3) Administrative remedies are not exhausted until the close of the second full business day following the original denial of inspection.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-110, filed 7/1/96, effective 8/1/96.]

WAC 208-12-120 Records index. Each division maintains an index of its records available to the public. The index

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is attached to the department's public records request procedure. Current indices are available upon request.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-120, filed 7/1/96, effective 8/1/96.]

WAC 208-12-130 Information—Address. Requests for specific public records should be addressed to the appropriate division. General communications regarding public records and requests for copies of department's records shall be addressed as follows: Department of Financial Institutions, Records Officer, PO Box 41200, Room 300, General Administration Building, Olympia, Washington 98504-1200.

[Statutory Authority: RCW 43.320.040 and 42.17.250. 96-14-082, § 208-12-130, filed 7/1/96, effective 8/1/96.]

Chapter 208-418 WAC

FEES CHARGED TO CREDIT UNIONS AND RELATED PARTIES

(Formerly chapter 419-18 WAC)

WAC

208-418-020	Collection of fees.
208-418-040	Quarterly asset assessments.
208-418-050	Pass through of attorney general costs.
208-418-060	One-time special assessment for fiscal 1997.
208-418-070	Other fees.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-418-030	Hourly charge for examinations. [Recodified as § 208-418-030, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-030, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-030, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1), 85-07-008 (Order 85-2), § 419-18-030, filed 3/8/85. Statutory Authority: RCW 31.12.320, 82-13-016 (Order 82-5), § 419-18-030, filed 6/7/82.] Repealed by 96-12-058, filed 5/31/96, effective 7/1/96. Statutory Authority: 1996 c 274.
208-418-045	Credit unions examination fund—Minimum cash balance—Acceleration of semiannual asset charge. [Recodified as § 208-418-045, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-045, filed 2/28/95, effective 3/31/95.] Repealed by 96-17-072, filed 8/20/96, effective 9/20/96. Statutory Authority: RCW 42.320.040 [43.320.040].
208-418-080	Scheduled increases in rate of examination and supervision charges. [Recodified as § 208-418-080, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-080, filed 2/28/95, effective 3/31/95.] Repealed by 96-12-058, filed 5/31/96, effective 7/1/96. Statutory Authority: 1996 c 274.

WAC 208-418-020 Collection of fees. Chapter 274, Laws of 1996, authorizes the director to charge fees to credit unions and certain related parties in order to cover the costs of the operation of the division of credit unions and to establish a reasonable reserve for the division. As set forth in more detail in this chapter, the fees for this purpose shall consist of:

- (1) Quarterly asset assessments charged to credit unions;
- (2) Charges to a credit union for costs incurred by the division for certain types of attorney general assistance in regard to the credit union; and
- (3) Certain other fees charged by the director.

Fees must be paid no later than thirty days after their due date. The director may waive all or any portion of any fee payable by a credit union or other party based on the ability of the credit union or party to pay the fee.

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

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

The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments. Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter.

(2)	Credit Union's Total Assets	Quarterly Asset Assessment
over	\$ 500M	\$ 18,357+ .000015 x total assets over \$500M
over	\$ 100M up to \$500M	\$ 5,104+ .000033134 x total assets over \$100M
over	\$ 20M up to \$100M	.000051035 x total assets
over	\$ 10M up to \$20M	\$ 1,125
over	\$ 2M up to \$10M	\$ 750
over	\$ 200K up to \$2M	\$ 500
up to	\$ 200K	\$ 0
	Corporate Centrals	.0000252 x total assets

M= Million K= Thousand

(3) A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

(4) For the purpose of this chapter, "total assets" includes all assets held by a Washington chartered credit union whether held within this state or a branch in another state, and assets of foreign credit unions held through branches within the state of Washington, as reported on the credit union's form 5300 or similar financial report. However, the director may waive any assessment on assets held by Washington chartered credit unions through branches in other states based upon reciprocal agreements with the other state's regulatory authority. As used in this chapter, "foreign credit union" means a credit union chartered under the laws of another state or a foreign country.

(1999 Ed.)

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

WAC 208-418-050 Pass through of attorney general costs. (1)

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

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

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

WAC 208-418-060 One-time special assessment for fiscal 1997. (1)

The director will charge credit unions a special assessment totaling \$184,000 during fiscal 1997. The assessment will be charged to credit unions pro rata based on their total assets as of June 30, 1996. The division of credit unions will bill each credit union for its pro rata share of the assessment.

(2) The special assessment is due in one lump sum payment by January 1, 1997, or in four equal installments by August 31 and November 30, 1996, and February 28 and May 31, 1997. However, before any credit union ceases its existence during fiscal 1997 as a state-chartered credit union, it must pay the assessment billing in full.

(3) This section will expire on July 1, 1997.

[Statutory Authority: 1996 c 274. 96-12-058, § 208-418-060, filed 5/31/96, effective 7/1/96. Recodified as 208-418-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-060, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-060, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-060, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-060, filed 9/26/83.]

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

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

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

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

(d) An hourly fee will be charged to a foreign credit union for an on-site examination by the division.

(e) An hourly fee will be charged to a foreign credit union for the processing of the credit union's application to do business in this state.

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

(2) As used in this section, "hourly fee" means a fee of \$55.82 per hour per examiner or other staff person of the division.

(3) In addition, the director will charge a credit union for the actual cost incurred by the division for an examination or investigation of the credit union and/or its related parties performed under personal services contract by third parties.

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

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

Chapter 208-436 WAC

RULES GOVERNING SUPERVISORY APPROVAL OF CREDIT UNION INVESTMENT PRACTICES

(Formerly chapter 419-36 WAC)

WAC

208-436-010	Application to make investments not otherwise permitted by law.
208-436-020	Supplementary application information.
208-436-030	Investments previously approved for other state chartered credit unions.
208-436-040	Investment practice permitted to federally chartered credit unions.
208-436-050	Investment practice not previously permitted to any credit union.
208-436-060	Director action on application.
208-436-070	Engagement in unauthorized investment practice prohibited.
208-436-080	Modification or revocation of investment practices previously authorized.
208-436-090	Investment limitations—Other requirements.

WAC 208-436-010 Application to make investments not otherwise permitted by law. If any credit union wishes to deposit or invest its capital, deposits, or surplus funds in a manner not specifically permitted to credit unions by chapter 31.12 RCW, the credit union shall, before engaging in the proposed investment practice, make written application to the director for authority to make the proposed investment. The application shall contain at least the following information:

(a) The name of the credit union;

(b) The proposed source or sources of the funds to be deposited or invested;

(c) A detailed description of the type of deposit or investment the credit union proposes to make, including the names of any natural persons, corporations, financial institutions or government agencies serving as banker, trustee, management

agent, broker, guarantor, seller of securities, or purchaser of securities;

(d) References, if known to the applicant, showing that other state chartered credit unions have been permitted to make the same type of investment or deposit;

(e) Copies of statutes, regulations, rulings, official correspondence or other information showing that federally chartered credit unions are permitted to make the type of investment or deposit proposed in the application;

(f) Such other information as the applicant credit union wishes to offer in evidence that the proposed investment or deposit would be a safe and prudent one for the applicant credit union to engage in.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-010, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-010, filed 6/7/79.]

WAC 208-436-020 Supplementary application information. Upon receiving an application from a credit union to engage in an investment or deposit practice pursuant to this chapter, the director may request such additional information as he or she deems necessary for the informed disposition of the application. If supplementary application information is requested by the director, the application will not be deemed complete until the supplementary information is supplied.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-020, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-020, filed 6/7/79.]

WAC 208-436-030 Investments previously approved for other state chartered credit unions. If the director finds that the applicant credit union proposes to make the same type of investment or deposit which one or more other state chartered credit unions have previously received permission to make, the director shall grant the application unless he or she finds that the financial position or the state of management of the applicant credit union is such that the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union, in which case the director may instead grant the application conditionally, grant it in modified form, or deny the application.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-030, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-030, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-030, filed 6/7/79.]

WAC 208-436-040 Investment practice permitted to federally chartered credit unions. If the director finds that the applicant credit union proposes to make the same type of investment or deposit which one or more other federally chartered credit unions have previously received permission to make, the director shall grant the application unless he or she finds that the financial position or the state of management of the applicant credit union is such that the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union, in which case the director may instead grant the application conditionally, grant it in modified form, or deny the application.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-040, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-040, filed 6/7/79.]

WAC 208-436-050 Investment practice not previously permitted to any credit union. If the director finds that the proposed investment or deposit practice has not previously been permitted to any state chartered or federally chartered credit union, the director shall make inquiry as to whether the proposed investment or deposit practice would be consistent with Washington law and as to whether the proposed investment or deposit practice would be a sound and prudent practice for the applicant credit union. In connection with this inquiry, the director may consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the application, examinations, or such other information as may be at hand. If the director finds that the investment or deposit practice as proposed would be contrary to or inconsistent with the laws of the state of Washington, or would not be a sound investment practice, the director shall deny the application. If the director finds that proposed investment or deposit practice would be a sound and prudent practice for the applicant credit union, the director shall grant the application. Alternatively, the director may, for cause, grant the application conditionally, grant it in modified form, or deny it in whole or in part.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-050, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-050, filed 6/7/79.]

WAC 208-436-060 Director action on application. After receiving an application from a credit union to engage in an investment or deposit practice not otherwise permitted by law, and after having considered it as provided in this chapter, the director shall grant, grant conditionally, grant in modified form, or deny the application, and shall inform the applicant credit union in writing of this action and of the reasons therefor. Any application not acted upon within six months after its receipt by the director shall be deemed denied unless the director, in writing, informs the applicant credit union that the application is being held for further review.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-060, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-060, filed 6/7/79.]

WAC 208-436-070 Engagement in unauthorized investment practice prohibited. No state chartered credit union shall engage in any investment or deposit practice not authorized by a specific provision of Washington state law or by the director in accordance with this chapter. Unless the director, in writing, informs an applicant credit union that it may engage in an investment or deposit practice provisionally while the application is being reviewed, no credit union shall make deposits or investments pursuant to an application made under this chapter until it has received written authority to do so as provided herein. Failure of a credit union to com-

ply with the terms of this chapter shall be deemed an unsound credit union practice and a wilful violation of an order of the director and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-070, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-070, filed 6/7/79.]

WAC 208-436-080 Modification or revocation of investment practices previously authorized. The director may find that an investment or deposit practice previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice in one or more particular credit unions in light of their financial condition or management. Upon such a finding, the director may in writing inform the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the director so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question (if authority to engage in the practice has been revoked) or to make such modifications as the director requires. The director may for cause shown grant a credit union some definite period of time in which to arrange its affairs to comply with the director's orders. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound credit union practice and a wilful violation of an order of the director and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-080, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-080, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-080, filed 6/7/79.]

WAC 208-436-090 Investment limitations—Other requirements. The director finds that investments in common trust funds under RCW 31.12.425 (1)(f) present potential serious risks to credit unions and that rules establishing specific procedures for those investments are necessary to protect the safety and soundness of credit unions. These rules are not intended to either endorse or encourage credit union investment in common trust funds. Credit unions investing in common trust funds as authorized by RCW 31.12.425 (1)(f) are therefore subject to the following limitations:

(1) Prior to making any investment in a common trust fund, the board of directors shall approve an investment policy detailing the maximum investment the credit union may have in common trust funds and specific investment guidelines. The policy shall also specify who is to authorize such investments.

(2) A credit union shall not invest an aggregate amount of greater than fifteen percent of its total assets in all such common trust funds.

(3) A credit union shall not invest an aggregate amount greater than five percent of its total assets in common trust

funds without the director's prior written approval of its investment policy.

(4) A credit union shall not invest an aggregate amount greater than ten percent of its total assets in common trust funds without the director's prior written approval to make such investment.

(5) A credit union whose aggregate investment in common trust funds exceeds ten percent of its total assets shall establish, by transfer from undivided earnings, a special investment valuation reserve in an amount equal to five percent of the aggregate investment in common trust funds exceeding ten percent of total assets. The special reserve shall be adjusted not less than quarterly based on the aggregate investment in common trust funds amount exceeding ten percent of total assets.

(6) Prior to making any investment in a common trust fund, a credit union shall obtain a prospectus for such fund and determine that all investments, investment activities and deposits of such common trust fund would be legal investments if held by the credit union.

(7) Prior to making any investment in a common trust fund, a credit union shall secure from the investment company marketing the fund a written statement, in addition to any prospectus, specifying that the fund is not engaged in and will not engage in any speculative marketing activity including but not limited to adjusted trading, futures contracts, short sales, and standby commitments, defined as follows:

(a) Adjusted trading means any method of transaction used to defer a loss by selling a security at a price above its current market price and simultaneously purchasing or committing to purchase from that same party another security at a price above its current market price, including interest rate swaps.

(b) Futures contract means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

(c) Short sale means the sale of a security not owned by the seller.

(d) Standby commitment means a commitment to either buy or sell a security, on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

(8) A credit union's directors, officials, committee members, and employees, and immediate family members of such persons, may not receive consideration in any form in connection with the making of an investment or deposit in a common trust fund by the credit union.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-090, filed 8/20/96, effective 9/20/96. Recodified as § 208-436-090, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.545. 86-04-068 (Order 85-7), § 419-36-090, filed 2/5/86.]

[Title 208 WAC—p. 10]

Chapter 208-440 WAC

RULES ON CREDIT UNION PARTICIPATION IN COMMERCIAL BUSINESS ACTIVITIES

(Formerly chapter 419-40 WAC)

WAC

208-440-010	Credit union financial interest in commercial enterprise.
208-440-020	Endorsements of commercial products or services.
208-440-040	Use of credit union space to advertise commercial products and services.
208-440-050	Commercial programs offered to credit union members.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-440-030	Offering of gifts, prizes and premiums. [Recodified as § 208-440-030, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.360. 79-08-047 (Order 79-2), § 419-40-030, filed 7/19/79.] Repealed by 96-17-072, filed 8/20/96, effective 9/20/96. Statutory Authority: RCW 42.320.040 [43.320.040].
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WAC 208-440-010 Credit union financial interest in commercial enterprise. No credit union shall have any direct financial interest in a commercial enterprise by way of stock or other ownership interest in a commercial corporation, by way of partnership interest or participation in a joint venture in a general business enterprise or by way of exchanging money or services for a share of the proceeds of any commercial business enterprise except as provided below:

(1) Any credit union may make loans to commercial enterprises and investments in commercial enterprises to the extent permitted by statute;

(2) Any credit union may engage in the business of renting, leasing or subleasing portions of the land and building(s), in which the credit union carries on its business, to the extent that such land and buildings are not needed for credit union operations;

(3) The director may upon written application grant permission to a credit union to participate in a business enterprise not otherwise authorized by law or by this section, where the director is satisfied that the business enterprise is appropriate and adjunct to ordinary credit union operations and would not be contrary to law.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-440-010, filed 8/20/96, effective 9/20/96. Recodified as § 208-440-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.360. 79-08-047 (Order 79-2), § 419-40-010, filed 7/19/79.]

WAC 208-440-020 Endorsements of commercial products or services. No credit union shall endorse or vouch for the quality of the products or services offered by any other commercial business, nor shall the directors of a credit union spend any credit union money for the purpose of endorsing or advertising the products or services of another commercial business.

[Recodified as § 208-440-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.360. 79-08-047 (Order 79-2), § 419-40-020, filed 7/19/79.]

WAC 208-440-040 Use of credit union space to advertise commercial products and services. Any credit union may permit the use of its property for the advertisement

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of goods and services offered by other commercial establishments, providing that the space or property devoted to such purposes constitutes a small proportion of the total property occupied by the credit union, and providing that no product or service is displayed or advertised in such a manner as to imply that the product or service is offered for sale directly by the credit union or is endorsed or vouched for by the credit union.

[Recodified as § 208-440-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.360. 79-08-047 (Order 79-2), § 419-40-040, filed 7/19/79.]

WAC 208-440-050 Commercial programs offered to credit union members. The board of directors of any credit union may by resolution permit any business enterprise to contact its membership for the purpose of offering some product or service to the membership, or the board of directors of any credit union may authorize the use of its own facilities for the purpose of communicating the offer of some commercial product or service to the membership, so long as no funds of the credit union are spent in connection with such an offer, so long as the offer neither states nor implies endorsement of the product or service offered, so long as every such offer states plainly that the product or service offered is not endorsed or vouched for by the credit union and that the credit union will accept no liability in connection with the use of the product or service offered, and so long as the credit union obtains from the business enterprise making the offer a written agreement to hold the credit union harmless from any claim arising out of the sale or use of the product or service concerned.

[Recodified as § 208-440-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.360. 79-08-047 (Order 79-2), § 419-40-050, filed 7/19/79.]

Chapter 208-444 WAC

MISCELLANEOUS CREDIT UNION RULES
(Formerly chapter 419-44 WAC)

WAC

208-444-010	State chartered credit unions—Acceptance of audit instead of examination.
208-444-020	Prohibited fees.
208-444-030	Nonpreferential loans.
208-444-040	Definitions.
208-444-050	Effective date.

WAC 208-444-010 State chartered credit unions—Acceptance of audit instead of examination. (1) RCW 31.12.545 authorizes the acceptance, in the director's discretion, of independent audit reports in lieu of the examination required thereunder. In order to be considered for acceptance in lieu of an examination, an audit must meet the following conditions:

(a) The audit was performed by accountants who have demonstrated to the director extensive knowledge of the examination procedures and techniques utilized by the division of credit unions;

(b) The scope of the audit follow, but is not limited to, the scope of examinations conducted by the division, including a compliance review;

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(c) The audit includes a verification of loan and share accounts;

(d) The audit includes a cash reconciliation, including an adequately documented physical cash count, and also includes an affirmative verification of investments and deposits made by the audited credit union;

(e) Verification of the status of funds borrowed by the audited credit union, including promissory notes and certificates;

(f) The audit sets forth such comments as are appropriate in a positive format specifying corrective action recommended and schedule for completing such corrective action;

(g) The audit was performed not less than nine months after and not more than fifteen months after the last examination by the division or an audit which was accepted in lieu thereof.

(h) All working papers as well as the accountant's report, internal control report, and any other documents associated with the audit are made available to the director.

(2) Select portions of an audit may be utilized by division examiners in conducting a particular examination if:

(a) The date of the audit corresponds reasonably with the date of the examination; and

(b) That portion of the audit being utilized is supported by working papers which substantially correspond to examination work papers utilized by the division.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-444-010, filed 8/20/96, effective 9/20/96. Recodified as § 208-444-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.320. 83-05-022 (Order 83-1), § 419-44-010, filed 2/9/83.]

WAC 208-444-020 Prohibited fees. (1) Except as otherwise provided herein, no official or employee of a credit union, or immediate family member of an official or employee of a credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union.

(2) This section does not prohibit:

(a) Payment, by a credit union, of salary to employees;

(b) Payment, by a credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance;

(c) Payment, by a credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, provided that the board of directors of the credit union establishes written policies and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually.

(d) Receipt of compensation from a person outside a credit union by a volunteer official or nonsenior management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

(3) For purposes of this section, "official" means any member of the board of directors or a volunteer committee.

[Statutory Authority: RCW 31.12.535 and 43.320.040. 97-23-071, § 208-444-020, filed 11/19/97, effective 3/19/98 by letter filed as WSR 98-10-072.]

WAC 208-444-030 Nonpreferential loans. (1) The rates, terms and conditions on any loan either made to, or endorsed or guaranteed by

- (a) An official
- (b) An immediate family member of an official, or
- (c) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official shall not be more favorable than the rates, terms and conditions for comparable loans to other credit union members.

(2) For purposes of this section, "official" means any member of the board of directors, credit committee or supervisory committee.

[Statutory Authority: RCW 31.12.535 and 43.320.040. 97-23-071, § 208-444-030, filed 11/19/97, effective 3/19/98 by letter filed as WSR 98-10-072.]

WAC 208-444-040 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

- (1) "Compensation" includes non-monetary items, except those of nominal value.
- (2) "Immediate family member" means a spouse or other family member living in the same household.
- (3) "Loan" includes line of credit.
- (4) "Person" means a natural person or an organization.
- (5) "Senior management employee" means the credit union's chief executive officer (typically, this individual holds the title of president or treasurer/manager), any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager), and the chief financial officer (comptroller).
- (6) "Volunteer official" means an official of a credit union who does not receive compensation from the credit union solely for his or her service as an official.

[Statutory Authority: RCW 31.12.535 and 43.320.040. 97-23-071, § 208-444-040, filed 11/19/97, effective 3/19/98 by letter filed as WSR 98-10-072.]

WAC 208-444-050 Effective date. WAC 208-444-020, 208-444-030, and 208-444-040 will take effect on the date that these rules are determined by the Board of the National Credit Union Administration (NCUA) to be substantially equivalent to NCUA rules.

[Statutory Authority: RCW 31.12.535 and 43.320.040. 97-23-071, § 208-444-050, filed 11/19/97, effective 12/20/97.]

Chapter 208-464 WAC

CREDIT UNION MEMBER BUSINESS LOANS

(Formerly chapter 419-64 WAC)

WAC

208-464-010	Purpose.
208-464-020	Definitions.
208-464-030	Policy requirements.
208-464-040	Underwriting review requirements.
208-464-050	Loans to one borrower.
208-464-060	Allowance for loan losses.
208-464-070	Minimum reserves-to-assets ratio.
208-464-080	Prohibitions, director and employee loans.
208-464-090	Prohibitions, other.

WAC 208-464-010 Purpose. This chapter is adopted by the director for the purpose of setting guidelines for credit unions to make member business loans. The objective of this chapter is to ensure that member business loans are made in such a way as to minimize the risk inherent in this type of lending. The director's goal is to provide the basis for a system of member business lending that is consistent with safe and sound credit union practices.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-464-010, filed 8/20/96, effective 9/20/96. Recodified as § 208-464-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-010, filed 2/1/89.]

WAC 208-464-020 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial business or agricultural purpose, except the following, which shall not be considered a member business loan for the purposes of this chapter:

(a) A loan which is fully secured by a first or second lien on a one-to-four unit dwelling that is the member's primary or secondary residence.

(b) A loan which is fully secured by shares in the credit union or by perfected security interests in deposits in other financial institutions.

(c) A loan, the repayment of which is fully guaranteed or insured by the federal government or by the state of Washington or any of its political subdivisions. A binding advance commitment to purchase a member business loan in full by any such entity shall be considered a guarantee for the purposes of this paragraph.

(d) A loan which, when added to all other loans (excluding loans described in paragraphs (a), (b), and (c) of this subsection) to the borrower totals less than twenty thousand dollars.

(2) "Reserves" means the regular reserve, undivided earnings or surplus, and any other unencumbered reserves.

(3) "Affiliated company" means a partnership, corporation, or other entity, fifteen per cent of which is owned by any one director, officer, agent, or employee of the credit union or twenty-five per cent of which is owned by any combination of directors, or employees of the credit union.

(4) "Borrower" means any individual member of the credit union or other entity such as a partnership, corporation, or any other business combination in which the member has a financial interest.

[Recodified as § 208-464-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-020, filed 2/1/89.]

WAC 208-464-030 Policy requirements. A credit union may make member business loans only in accordance with the following requirements unless prior written approval is obtained from the director:

(1) Written commercial lending policies. Credit unions presently involved in member business loans must adopt specific commercial loan policies within sixty days of the effective date of this chapter and must review them at least once every twelve months and certify in the minutes of the board

meeting that the review occurred. Amendments to these policies also must be approved by the board. Other credit unions must adopt similar policies in accordance with this chapter prior to implementing a member business loan program.

These policies and any amendments thereto must be submitted to the director for review at least thirty days prior to the proposed date of implementation of the member business loan program or the amendment. These formal written policies shall at a minimum appropriately address the following:

- (1) The types of business loans that will be made.
- (2) The credit union's market area for business loans.
- (3) The maximum amount of the credit union's assets in relationship to reserves that will be invested in member business loans. In no case will this ratio exceed three hundred percent.

(4) The maximum amount of the credit union's assets in relationship to reserves that will be loaned under this program to any one member, not to exceed the amount set in WAC 208-464-050.

(5) The qualifications and experience of personnel involved in making and administering member business loans.

(6) Collateral requirements for these loans which shall include loan-to-value ratios based on type of loan and type of security, title and casualty insurance requirements, and valuation cycles to regularly determine marketability of collateral.

(7) Schedules of interest rates and terms for each category of member business loan and on what basis these will be adjusted.

(8) Procedures for loan monitoring, servicing, and follow-up procedures, including collection activities.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-464-030, filed 8/20/96, effective 9/20/96. Recodified as § 208-464-030, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-030, filed 2/1/89.]

WAC 208-464-040 Underwriting review requirements. A written analysis of the borrower's ability to repay member business loans shall be made based on the following underwriting areas at a minimum:

(1) Present financial status based on a current balance sheet and income and expense statement, supported by appropriate tax returns, credit information, and historical data.

(2) Pro-forma financial statements showing the impact of the loan on the borrower's capacity to repay.

(3) A feasibility analysis of the project considering local economic conditions and comparative industry trends for the type of venture involved.

(4) Capacity of the borrower to repay from assets not related to the venture in case of failure.

(5) Certification by the appropriately designated loan officer or credit committee that the loan under consideration meets all applicable credit union and statutory requirements.

[Recodified as § 208-464-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-040, filed 2/1/89.]

WAC 208-464-050 Loans to one borrower. The aggregate amount of outstanding member business loans to

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any one borrower shall not exceed twenty percent of the credit union's reserves. If any portion of a member business loan is fully secured by shares in the credit union or a perfected security interest in deposits in another financial institution, such portion shall not be calculated in determining the twenty percent limitation. The director may waive this limitation upon application in writing from a credit union prior to the making of the loan in question. The application for waiver must include the total amount sought, the reason for the waiver request, and other such information as the director may require to evaluate the request.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-464-050, filed 8/20/96, effective 9/20/96. Recodified as § 208-464-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-050, filed 2/1/89.]

WAC 208-464-060 Allowance for loan losses. Under RCW 31.12.475, the director may require the write-off of losses or the establishment of such reserves for weak assets as is deemed appropriate by the director. Member business loans may be classified as performing, substandard, doubtful, or loss, depending on various factors not limited to the delinquency of the loan. Insufficient collateral or unreasonable collateral appraisals, inadequate documentation, and uncertain source of repayment are among the primary weaknesses that will be considered grounds for asset classification. Member business loans adversely classified (substandard, doubtful, or loss) shall be reserved as follow:

(1) Loss loans shall be charged off or reserved at one hundred per cent of the outstanding principal balance.

(2) Doubtful loans shall be reserved at fifty per cent of the outstanding principal balance.

(3) Substandard loans shall be reserved at ten per cent of the outstanding principal balance.

The director may require establishment of reserves of greater or lesser amounts.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-464-060, filed 8/20/96, effective 9/20/96. Recodified as § 208-464-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-060, filed 2/1/89.]

WAC 208-464-070 Minimum reserves-to-assets ratio. Because of the higher risk associated with member business loans, a credit union must have a reserves-to-assets ratio of not lower than four percent to make such loans. The director may waive the requirements of this section in writing.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-464-070, filed 8/20/96, effective 9/20/96. Recodified as § 208-464-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-070, filed 2/1/89.]

WAC 208-464-080 Prohibitions, director and employee loans. Any loan or loans to directors, agents, employees, supervisory or credit committee members, members of their immediate families, or an affiliated company must be made on no more favorable terms and conditions and must not present greater risk to the credit union than similar loans available at that time to other members.

The board of directors shall specifically review each member business loan made to the entities listed in the preceding paragraph and shall certify in writing that the terms, conditions, and elements of risk of each loan(s) meet the requirements stated.

[Recodified as § 208-464-080, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-080, filed 2/1/89.]

WAC 208-464-090 Prohibitions, other. A credit union shall not grant a member business loan where it receives any portion of profits from the venture other than the contractual payment of principal, interest, and normal fees as set forth on the debt instrument.

[Recodified as § 208-464-090, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.015 and 31.12.535. 89-04-050 (Order 89-1), § 419-64-090, filed 2/1/89.]

Chapter 208-472 WAC

CREDIT UNION FIELD OF MEMBERSHIP EXPANSION

(Formerly chapter 419-72 WAC)

WAC

208-472-010	Purpose.
208-472-012	General requirement.
208-472-015	Definitions.
208-472-020	Inclusion of a group with a common bond of occupation.
208-472-025	Application to include a separate occupational group.
208-472-041	Streamlined procedure for small occupational groups.
208-472-045	Inclusion of a group with a common bond of association.
208-472-050	Application to include a separate associational group.
208-472-060	Inclusion of a community group.
208-472-065	Application to include a separate community group.
208-472-070	Application deemed complete.
208-472-075	Approval of application.
208-472-080	Special circumstances.

WAC 208-472-010 Purpose. This chapter is adopted by the director for the purpose of establishing the application process for a credit union to include in its field of membership a separate group:

- (1) With a common bond of occupation or association; or
- (2) That constitutes a community.

[Recodified as § 208-472-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-010, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-010, filed 12/6/89, effective 1/6/90.]

WAC 208-472-012 General requirement. RCW 31.12.045 limits credit union membership "to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." Consequently, any group included within the field of membership of a credit union must:

- (1) Share a common bond of occupation or association; or
- (2) Constitute a community.

A credit union may include different types of groups in its field of membership.

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[Recodified as § 208-472-012, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-012, filed 4/17/95, effective 5/18/95.]

WAC 208-472-015 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Affiliate" of an enterprise means a person that controls, is controlled by, or is under common control with, the enterprise. "Control" means twenty-five percent or greater stock ownership.

(2) "Common bond of association" means a current, unifying factor among a group of natural persons, that is based on membership in a bona fide organization whose primary purpose is other than providing eligibility for credit union services. Such an organization must be primarily composed of natural persons who are eligible to participate in the organization's activities. Such an organization also must have clearly defined membership eligibility and must hold regular meetings at least once each year.

Matriculating students of an accredited college or university, who are members of an identified organization, other than general members of the applicant's credit union, are deemed to have a common bond of association. The organization need not satisfy the requirements set forth in the prior paragraph.

(3) "Common bond of occupation" means a current, unifying factor among a group of natural persons that is based on employment by or a work-related relationship with an enterprise. The group may include only the following categories of persons:

- (a) Employees of the enterprise, and their family members;
- (b) Employees of any subsidiaries of the enterprise, and their family members;
- (c) Employees of the affiliates of the enterprise, and their family members;
- (d) Nonemployee officials of the enterprise, and their family members; and
- (e) Natural persons under contract to work regularly for the enterprise, and their family members.

Each of these categories may be included if they are separately identified in the credit union's bylaws.

(4) "Community" means a current unifying factor among a group of natural persons, that is based on residence or employment within a well-defined and relatively limited geographic area, with a relatively limited population, that is recognized by those who live or work there as a neighborhood, community, or rural district.

For example, the city of Seattle and King County do not constitute a community for this purpose, because they do not have a relatively limited population. On the other hand, the city of Chelan and Chelan school district are within a well-defined and relatively limited geographic area, with a relatively limited population, and may constitute a community if they are recognized by those who live or work there as a neighborhood, community or rural district. (These examples are based on circumstances existing on December 1, 1994.)

(5) "Credit union" means a credit union organized and operating under chapter 31.12 RCW.

(6) "Director" means the director of the Washington state department of financial institutions.

(7) "Number of potential members" means the sum of:

(a) The number of actual members of the applicant credit union; and

(b) The number of employees or members (as appropriate) of the group applied for.

(8) "Required number" means:

(a) If the number of employees or members (as appropriate) of the specified group is two thousand one or more, the required number is at least five percent of the number of these individuals (rounded up to the nearest whole number).

(b) If the number of employees or members (as appropriate) of the specified group is from three hundred thirty to two thousand, the required number is at least one hundred of these individuals.

(c) If the number of employees or members (as appropriate) of the specified group is three hundred twenty-nine or less, the required number is at least thirty percent of the number of these individuals (rounded up to the nearest whole number).

[Statutory Authority: RCW 31.12.045(1) and [31.12].535. 96-17-070, § 208-472-015, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-015, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-015, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-015, filed 12/6/89, effective 1/6/90.]

WAC 208-472-020 Inclusion of a group with a common bond of occupation. Except as permitted by WAC 208-472-041, if a credit union wants to include a separate group with a common bond of occupation in its field of membership, it must make application to the director to amend its bylaws in accordance with RCW 31.12.115. The application must be submitted to the director in duplicate and must include the information as required by WAC 208-472-025.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-020, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-020, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-020, filed 12/6/89, effective 1/6/90.]

WAC 208-472-025 Application to include a separate occupational group. (1) The application to include a separate group with a common bond of occupation must include at least the following information:

(a) The name of the applicant credit union;

(b) Evidence that the applicant's board of directors has complied with the notice and voting requirements of RCW 31.12.115;

(c) A description of the enterprise including its name, number of employees, and the geographic location of those employees. The categories of persons specified in WAC 208-472-015(2) that are included in the group must be separately identified;

(d) A statement from an officer of the enterprise:

(i) That the enterprise desires membership for its employees in the applicant; and

(ii) Whether its employees are currently eligible for membership, based upon such employment, in another state or federally chartered credit union. If the employees of the

enterprise are eligible for membership in another credit union based upon such employment, the applicant must make best efforts to provide a statement of nonobjection from the other credit union.

(2) In addition, the application must also include the following information if applicable:

(a) If the number of potential members of the applicant exceeds one hundred twenty percent of the number of its actual members, then the following information must also be submitted:

(i) A copy of the applicant's most recent monthly financial statement;

(ii) A copy of the applicant's plan or other document demonstrating its ability and intent to provide service to the new group and specific plans relating anticipated growth to capital levels.

(b) If the number of employees of the enterprise exceeds five hundred, then the following must also be submitted:

(i) An analysis whether the group has sufficient size and resources to form a credit union of its own;

(ii) Documentation concerning compliance with plans on penetration and service submitted with previously approved applications for inclusion of a group in the applicant's field of membership;

(iii) Documentation that the applicant has given written notice to all other credit unions headquartered in this state, both state and federally chartered, that have a staffed office in any county in which the offices of the enterprise are located. Credit unions entitled to receive the notice will be given twenty days following receipt of the notice to submit to the department any comments on the application.

(3) If the applicant cannot obtain the letter of nonobjection described in subsection (1)(d) of this section, after having made a best efforts attempt to do so, it must submit documentation that:

(a) The required number of employees of the enterprise desire membership in the applicant; or

(b) The other credit union has failed to adequately serve the group after a reasonable period of time, and how the applicant plans to improve this service.

The applicant must supply a copy of the information required in (a) and (b) of this subsection to the other credit union, which will be given sixty days following receipt of such information to submit to the department any comments on the overlap.

This subsection (3) does not apply to overlaps arising out of merger-type transactions between enterprises.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-025, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-025, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-025, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-025, filed 12/6/89, effective 1/6/90.]

WAC 208-472-041 Streamlined procedure for small occupational groups. (1) Credit unions may apply to the director for approval of an enabling bylaw amendment ("enabling amendment") that enables them to use the streamlined procedure set forth in this section ("SOG procedure") to include small groups with a common bond of occupation

("small occupational groups" or "SOGs") in their field of membership.

(2) The credit union must first apply to the director for approval of an enabling amendment that satisfies the requirements of this section and which complies with RCW 31.12.115. The director shall approve or deny the application in accordance with WAC 208-472-075. Once the application has been approved by the director, the credit union may immediately begin serving SOGs in compliance with this section and the enabling amendment. The enabling amendment may not be amended without the prior approval of the director.

(3) The enabling amendment will in substance permit a credit union to add a SOG to its field of membership if:

(a) The enterprise is located within twenty-five miles from one of the credit union's service facilities;

(b) The enterprise has provided a written request to the credit union for service;

(c) The employees of the enterprise do not have credit union service available based on such employment;

(d) The number of employees of the enterprise do not exceed one hundred or any larger maximum number as authorized by the director; and

(e) The group is included in the credit union's field of membership as specifically identified in amendments to the credit union's bylaws. Such amendments do not require the director's approval.

(4) The credit union must maintain a control log of SOGs included in its field of membership. The control log must include the board approval of the group, the date of the board approval, the name and location of the enterprise, the number of employees included, and the number of miles to the nearest main or branch office of the enterprise.

(5) The size limit of a SOG is based on the number of employees of the enterprise at the time the bylaws are amended to include the SOG; the size limit does not apply to family members of employees or categories of persons that it may be permissible to include in the group pursuant to the definition of a common bond of occupation in WAC 208-472-015(2). Several groups may be included simultaneously using the SOG procedure, however the number of employees in each SOG must be within the SOG size limit.

(6) The director may revoke the ability of a credit union to use the SOG procedure if the director determines that it is being used to circumvent the regular procedure for inclusion of occupational groups in the credit union's field of membership.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-041, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-041, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-041, filed 4/17/95, effective 5/18/95.]

WAC 208-472-045 Inclusion of a group with a common bond of association. If a credit union wants to include a separate group with a common bond of association in its field of membership it must make application to the director to amend its bylaws in accordance with RCW 31.12.115. The application must be submitted to the director in duplicate and must include the information as required by WAC 208-472-050.

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[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-045, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-045, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-045, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-045, filed 12/6/89, effective 1/6/90.]

WAC 208-472-050 Application to include a separate associational group. (1) The application to include a separate group with a common bond of association must include at least the following information:

(a) The name of the applicant credit union;

(b) Evidence that the applicant's board of directors has complied with the notice and voting requirements of RCW 31.12.115;

(c) A detailed description of the group including its charter or articles of incorporation, its bylaws, the qualifications and requirements for membership, and the number and geographic location of its current members;

(d) A resolution from the petitioning group's governing body:

(i) That the members have been informed of the proposal to affiliate with the applicant and desire to be associated with the applicant;

(ii) Whether the members of the group are currently eligible for membership, based upon their association, in a state or federally chartered credit union. If the members of the association are eligible for membership in another credit union based upon membership in the association, the applicant must make best efforts to provide a statement of nonobjection from the other credit union;

(e) A statement by the applicant that its direct marketing efforts will be aimed at active members of the group and that the group will not be used as a vehicle for opening eligibility for credit union membership to the general public;

(2) In addition, the application must also include the following information if applicable:

(a) If the number of potential members of the applicant exceeds one hundred twenty percent of its actual members, then the following information must also be submitted:

(i) A copy of the applicant's most recent monthly financial statement;

(ii) A copy of the applicant's plan or other document demonstrating its ability and intent to provide service to the new group and specific plans relating anticipated growth to capital levels.

(b) If the number of members of the association exceeds five hundred, then the following information must also be submitted:

(i) An analysis whether the group has sufficient size and resources to form a credit union of its own;

(ii) Documentation concerning compliance with plans on penetration and service submitted with previously approved applications for inclusion of a group in the applicant's field of membership;

(iii) Documentation that the applicant has given written notice to all other credit unions headquartered in the state, both state and federally chartered, that have a staffed office in any county in which members of the association reside. Credit unions entitled to receive the notice will be given

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twenty days following receipt of the notice to submit to the department any comments on the application.

(3) If the applicant cannot obtain the letter of nonobjection described in subsection (1)(d) of this section, after having made a best efforts attempt to do so, it must submit documentation that:

(a) The required number of members of the association desire membership in the applicant; or

(b) The other credit union has failed to adequately serve the group after a reasonable period of time, and how the applicant plans to improve this service.

The applicant must supply a copy of the information required in (a) and (b) of this subsection to the other credit union, which will be given sixty days following receipt of such information to submit to the department any comments on the overlap.

This subsection (3) does not apply to overlaps arising out of merger-type transactions between associations.

[Recodified as § 208-472-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-050, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-050, filed 12/6/89, effective 1/6/90.]

WAC 208-472-060 Inclusion of a community group.

If a credit union wants to include in its field of membership a separate group which constitutes a community, it must make application to the director to amend its bylaws in accordance with RCW 31.12.115. The application must be submitted to the director in duplicate and must include the information as required by WAC 208-472-065.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-060, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-060, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-060, filed 12/6/89, effective 1/6/90.]

WAC 208-472-065 Application to include a separate community group. The application to include a community must include at least the following information:

(1) The name of the applicant credit union;

(2) Evidence that the applicant's board of directors has complied with the notice and voting requirements of RCW 31.12.115;

(3) A detailed description of the community, neighborhood or rural district including a map setting forth its geographic boundaries and its current population;

(4) A detailed description of how the proposed community meets the definition set forth in WAC 208-472-015(3);

(5) Letters of support from community organizations and/or residents of the area demonstrating their desire to be associated with the applicant and their willingness to support its objectives;

(6) Any other information that demonstrates the community's desire to have the services of a credit union;

(7) A copy of the applicant's most recent monthly financial statement;

(8) A copy of the applicant's plan or other document demonstrating its ability and intent to provide service to the new group and specific plans relating anticipated growth to

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capital levels. Among other provisions, the plan or other document must include a provision that the applicant will not conduct direct marketing aimed at any occupational or associational group with an office in the community if the group is included in the field of membership of another state or federally chartered credit union. In addition, applicants are encouraged to include provision in the plan or other document for active participation in community activities;

(9) Evidence that the applicant has given written notice to all other credit unions headquartered in the state, both state and federally chartered, that have staffed offices in or within five miles of the boundaries of the community. Credit unions entitled to receive the notice will be given twenty days following receipt of the notice to submit to the department any comments on the application; and

(10) Documentation concerning compliance with plans on penetration and service submitted with previously approved applications for inclusion of a group in the applicant's field of membership.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-065, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-065, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-065, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-065, filed 12/6/89, effective 1/6/90.]

WAC 208-472-070 Application deemed complete.

An application filed pursuant to this chapter is deemed complete when:

(1) The director has received all of the information required by this chapter;

(2) If the applicant credit union is required to provide notice to other credit unions pursuant to WAC 208-472-025(2), 208-472-050(2) or 208-472-065(9), at least twenty days have passed since the applicant gave the notice to other credit unions; and

(3) If the applicant is required to supply certain information to another credit union pursuant to WAC 208-472-025(3) or 208-472-050(3), at least sixty days have passed since the applicant supplied the required information to the other credit union.

If an incomplete application is received, the director will give written notice to the applicant no later than thirty days from the date the original application was received that further information is necessary. The applicant will be allowed thirty days after receipt of the notice to provide the requested information.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-070, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-070, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-070, filed 12/6/89, effective 1/6/90.]

WAC 208-472-075 Approval of application. The director shall give written approval or denial of an application made in conformance with this chapter within thirty days from the date it is deemed complete. The director's decision will take into consideration the following general criteria and other issues or facts that may be relevant to the application:

(1) Whether the application is consistent with the provisions of chapter 31.12 RCW and this chapter;

(2) Whether the applicant credit union is currently operating in conformance with the provisions of chapter 31.12 RCW, applicable rules in Title 208 WAC, and written supervisory orders, directives and agreements;

(3) Whether the proposed new group possesses a common bond of occupation or association, or constitutes a community, as defined in WAC 208-472-015;

(4) If the application involves the inclusion of a group based on a common bond of occupation or association, whether the proposed new group has sufficient size and resources to form a credit union of its own;

(5) Whether the applicant is in a safe and sound condition and possesses the financial and managerial capability to provide credit union service to the proposed group in a safe and sound manner;

(6) Whether the applicant has complied with plans on penetration and service submitted with previously approved applications for inclusion of a group in the applicant's field of membership;

(7) Whether approval of the application might reasonably threaten the viability of another credit union;

(8) Whether the applicant is using the inclusion of the group as a marketing strategy to preempt expansion by other credit unions; and

(9) Whether approval of the application will adversely impact the safety and soundness of the applicant.

The approval of a credit union's application for inclusion of a community group in its field of membership will not preclude approval of another credit union's application to include the same or a portion of the same community group in its field of membership.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-472-075, filed 8/20/96, effective 9/20/96. Recodified as § 208-472-075, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-075, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-075, filed 12/6/89, effective 1/6/90.]

WAC 208-472-080 Special circumstances. An applicant credit union may request that one or more of the provisions of this chapter be waived if an emergency exists which requires immediate inclusion of a separate group in order to preserve the viability of the applicant. The request for waiver may be granted if, in the opinion of the director, the request has a reasonable probability of remedying an emergency situation.

[Recodified as § 208-472-080, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.045, [31.12].115 and [31.12].535. 95-09-049, § 419-72-080, filed 4/17/95, effective 5/18/95. Statutory Authority: RCW 31.12.045(2), 31.12.115, 31.12.516 and 31.12.535. 89-24-085 (Order 89-3), § 419-72-080, filed 12/6/89, effective 1/6/90.]

Chapter 208-480 WAC
REAL ESTATE APPRAISALS
(Formerly chapter 419-80 WAC)

WAC

208-480-010 Definitions.
208-480-020 Appraisals required.

208-480-030 Transactions for which a state-certified appraiser is required.
208-480-040 Transactions for which either a state-certified or state-licensed appraiser is required.
208-480-050 Appraisal standards.
208-480-060 Appraiser independence.
208-480-070 Professional association membership—Competency.

WAC 208-480-010 Definitions. (1) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately-described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(2) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(3) "Appraisal subcommittee" means the appraisal subcommittee of the federal Financial Institutions Examination Council.

(4) "Complex one-to-four family residential property appraisal" means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(5) "Market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(a) Buyer and seller are typically motivated;

(b) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(c) A reasonable time is allowed for exposure in the open market;

(d) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(6) "Real estate" or "real property" means an identified parcel or tract of land, with any improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(7) "Real estate-related financial transaction" means any transaction involving:

(a) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(b) The refinancing of real property or interests in real property; or

(c) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(8) "State-certified appraiser" means any individual who has satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate

appraiser currently meet the minimum criteria for certification issued by the appraiser qualifications board of the Appraisal Foundation. No individual shall be a state-certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a state or territory that is consistent with and equivalent to the uniform state certification examination issued or endorsed by the appraisal qualification board. In addition, the appraisal subcommittee must not have issued a finding that the policies, practices, or procedures of the state or territory are inconsistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) 12 USC 1811. This is equivalent to the state-certified general real estate appraiser classification in the state of Washington.

(9) "State-licensed appraiser" means any individual who has satisfied the requirements for licensing in a state or territory where the licensing procedures comply with Title XI of FIRREA and where the appraisal subcommittee has not issued a finding that the policies, practices, or procedures of the state or territory are inconsistent with Title XI. This is equivalent to the state-certified residential real estate appraiser classification in the state of Washington.

(10) "Tract development" means a project of five units or more that is constructed or is to be constructed as a single development.

(11) "Transaction" means any real estate-related financial transaction entered into on or after January 1, 1993, that:

(a) Any Washington state chartered credit union engages in or contracts for; and

(b) Requires the services of an appraiser.

(12) "Transaction value" means:

(a) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(b) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(c) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

[Recodified as § 208-480-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535. 92-24-053, § 419-80-010, filed 11/30/92, effective 12/31/92.]

WAC 208-480-020 Appraisals required. (1) An appraisal performed by a state-certified or state-licensed appraiser in accordance with this chapter is required for all real estate-related financial transactions except those in which:

(a) The transaction value is fifty thousand dollars or less; or

(b) A lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of the lien; or

(c) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate; or

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(d) There is a subsequent transaction resulting from a maturing extension of credit, provided that (i) the borrower has performed satisfactorily according to the original terms; (ii) no new moneys have been advanced; (iii) the credit standing of the borrower has not deteriorated; and (iv) there has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection; or

(e) A regulated institution purchases a loan or interest in a loan, pooled loans or interests in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this chapter, if applicable, at the time of origination.

(2) Any transaction for which a state-certified or state-licensed appraiser is not required must have an appropriate evaluation of real property collateral that is consistent with the principles of safety and soundness.

(3) The requirements imposed under this section are not intended to excuse or relieve the duty to obtain an appraisal when general financial institution operating practices or other prudent standards would otherwise require an appropriate evaluation of real property collateral.

[Recodified as § 208-480-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535. 92-24-053, § 419-80-020, filed 11/30/92, effective 12/31/92.]

WAC 208-480-030 Transactions for which a state-certified appraiser is required. The following transactions require a state-certified appraiser:

(1) All transactions having a transaction value of one million dollars or more.

(2) All transactions having a transaction value of more than fifty thousand dollars, other than those involving appraisals of one-to-four family residential properties, shall require an appraisal prepared by a state-certified appraiser.

(3) All complex one-to-four family residential property appraisals rendered in conjunction with transactions shall require a state-certified appraiser if the transaction value is two hundred fifty thousand dollars or more. A regulated institution may presume that appraisals of one-to-four family residential properties are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If, during the course of the appraisal, a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(a) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(b) The institution may engage a certified appraiser to complete the appraisal.

(4) Valuation requirement. Secured transactions exempted from appraisal requirements pursuant to WAC 208-480-020(1) and not otherwise exempted from this chapter shall be supported by a written estimate of market value, as defined in this chapter, performed by an individual having no direct or indirect interest in the property, and qualified and

experienced to perform such estimates of value for the type and amount of credit being considered.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-480-030, filed 8/20/96, effective 9/20/96. Recodified as § 208-480-030, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535. 92-24-053, § 419-80-030, filed 11/30/92, effective 12/31/92.]

WAC 208-480-040 Transactions for which either a state-certified or state-licensed appraiser is required. All transactions for which an appraisal is required but which does not require a state-certified appraiser shall be performed by either a state-certified appraiser or state-licensed appraiser.

[Recodified as § 208-480-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535. 92-24-053, § 419-80-040, filed 11/30/92, effective 12/31/92.]

WAC 208-480-050 Appraisal standards. (1) Minimum standards. Where appraisals are required pursuant to this chapter, all such appraisals shall, at a minimum:

(a) Conform to the uniform standards of professional appraisal practice ("USPAP") adopted by the appraisal standards board of the Appraisal Foundation (the complete text of the USPAP is available from the Appraisal Foundation, 1029 Vermont Ave., N.W. Suite 900, Washington, D.C. 20005), except that the departure provision of the USPAP shall not apply;

(b) Be based upon the definition of market value as set forth in WAC 208-480-010;

(c)(i) Be written and presented in a narrative format, or on forms, that satisfy all the requirements of this section; (ii) be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate; and (iii) provide detail and depth of analysis that shall reflect the complexity of the real estate appraised;

(d) Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(i) For one-to-four family residential property, one year preceding the date when the appraisal was prepared; and

(ii) For all other property, three years preceding the date when the appraisal was prepared;

(e) Analyze and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be incoming-producing;

(f) Analyze and report a reasonable marketing period for the subject property;

(g) Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

(h) Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased, any properties that are partially leased or leased at other than market rents, as of the date of the appraisal, or any tract developments with unsold units;

(i) Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

(j) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic,

reasoning, judgment, and analysis in arriving at a conclusion indicates to the reader the reasonableness of the market value reported;

(k) Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

(l) Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion, or exclusion, on the estimate of market value; and

(m) Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(2) Unavailability of information. If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal.

(3) Additional standards. Nothing contained herein shall prevent a regulated institution from requiring additional appraisal standards if deemed appropriate.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-480-050, filed 8/20/96, effective 9/20/96. Recodified as § 208-480-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535. 92-24-053, § 419-80-050, filed 11/30/92, effective 12/31/92.]

WAC 208-480-060 Appraiser independence. (1) Staff appraisers. If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the credit union, the credit union shall take appropriate steps to ensure that the appraisers exercise independent judgment and that appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing an appraisal in connection with transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

(2) Fee appraisers. If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the credit union or its agent, and have no direct or indirect interest, financial or otherwise, in the property or transaction. A credit union may accept an appraisal that was prepared by an appraiser engaged by another institution subject either to this chapter or to Title XI of FIRREA, if the credit union that accepts the appraisal has:

(a) Established procedures for review of real estate appraisals;

(b) Reviewed the appraisal under the established review procedures, finding the appraisal acceptable; and

(c) Documented the review in writing.

[Recodified as § 208-480-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535. 92-24-053, § 419-80-060, filed 11/30/92, effective 12/31/92.]

WAC 208-480-070 Professional association membership—Competency. (1) A state-certified appraiser or a state-

licensed appraiser may not be excluded from consideration for an assignment for a transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(2) All staff and fee appraisers performing appraisals in connection with transactions must be state-certified or state-licensed as appropriate. However, a state-certified or state-licensed appraiser may not be considered competent for any particular assignment solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

[Recodified as § 208-480-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535, 92-24-053, § 419-80-070, filed 11/30/92, effective 12/31/92.]

Chapter 208-620 WAC
WASHINGTON CONSUMER LOAN ACT
(Formerly chapter 50-20 WAC)

WAC

208-620-010	Definitions.
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208-620-040	Bond substitute in lieu of surety bond.
208-620-050	Interstate operations.
208-620-060	Registered agent and agent's office for out-of-state licensees.
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208-620-080	Resignation of registered agent.
208-620-090	Service on out-of-state licensee.
208-620-100	Records.
208-620-110	The note.
208-620-120	Contents of disclosure statement to borrower.
208-620-130	Restrictions as to charges.
208-620-140	Open-end loans—Increase in interest—Notice to borrower.
208-620-150	Open-end loans—Periodic statements.
208-620-160	Advertising.
208-620-170	Knowledge of the law and regulations.
208-620-180	Examinations.
208-620-190	Schedule of fees.
208-620-200	Change of place of business.
208-620-210	Other business in same office.
208-620-220	Annual report and annual fee—Due date—Late penalties.

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Add-on method" means the method of precomputing interest payable on a loan by adding the interest to be earned to the principal balance. This total, plus any charges allowed under this chapter, is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms.

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

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

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"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Department" means the department of financial institutions.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or others documents, or transferring certificates of title to vehicles.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest and includes both open-end and closed-end transactions.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Out-of-state licensee" means any licensee that does not maintain a physical presence within the state.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

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

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment shall first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest shall not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's

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loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

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

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-010, filed 1/26/96, effective 2/26/96.]

WAC 208-620-020 License application. (1) An applicant for a consumer loan company license under RCW 31.04.045 will complete the application form provided by the department.

(2) The completed application shall be accompanied by:

(a) The names, addresses, and occupation of all board directors and senior officers;

(b) A statement of the experience and qualifications of all directors and senior officers;

(c) A current financial statement as of the most recent quarter end, prepared in accordance with generally accepted accounting principles. The statement must include a statement of assets and liabilities and a profit and loss statement;

(d) A business plan which includes at least the following:

(i) The anticipated source of and method of obtaining customers;

(ii) The type of loans to be made at the proposed licensed location;

(iii) The type of loan, if any, that will be sold or transferred to affiliated or nonaffiliated business entities;

(iv) The type of insurance products to be marketed at the proposed licensed location;

(v) The type of incidental products, if any, the applicant intends to market with approval of the director from the proposed licensed location; and

(vi) The procedures the applicant intends to use to resolve consumer complaints;

(e) A certificate of existence/authorization obtained from the Washington secretary of state;

(f) A valid surety bond (or approved bond substitute as provided in WAC 208-620-040) in the amount specified in WAC 208-620-030;

(g) If the applicant will be an out-of-state licensee, the applicant must submit information regarding its registered agent as required of out-of-state licensees by WAC 208-620-060; and

(h) The appropriate fees as specified in WAC 50-20-190.

(3) A licensee must complete another application for each additional consumer loan company license under RCW 31.04.075. The director may require that all or some of the information provided in the original application be updated.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-020, filed 1/26/96, effective 2/26/96.]

WAC 208-620-030 Surety bond. (1) **Bond required.** Each licensee shall file and maintain a surety bond, approved by the director, and executed by the applicant as obligor and by a surety company authorized to do a surety business in

this state as surety. The surety company may not be a wholly owned subsidiary or an affiliate of the licensee.

(2) **Amount of bond.** The penal sum of the bond is one hundred thousand dollars for each branch office up to five branch offices. The amount of the bond is increased by ten thousand dollars for each additional branch office. For example:

Number of Branch Offices	Penal Sum of the Bond
1	\$100,000
2	\$200,000
3	\$300,000
4	\$400,000
5	\$500,000
6	\$510,000

(3) **Conditions on bond.** The bond shall run to the state as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under the act. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by the act and all the rules adopted under the act. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of the act.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-030, filed 1/26/96, effective 2/26/96.]

WAC 208-620-040 Bond substitute in lieu of surety bond. (1) **Authority for Washington business corporation.** A licensee that is a Washington business corporation may maintain a bond substitute, as defined in WAC 208-620-010, in lieu of a surety bond. The bond substitute must be maintained in an amount so that the aggregate sum of the licensee's debt, including outstanding promissory notes or other evidences of debt does not at any time exceed three times the amount of its bond substitute.

Long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the licensee's debt for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the licensee's assets is junior to claims by the state or a consumer under the act. The licensee must file with the director a subordination agreement in favor of the state.

The director may evaluate the documentation submitted by the licensee or other documentation requested by the director and determine whether the bond substitute meets the requirements of RCW 31.04.045(3).

(2) **Financial reports required.** Semiannually a licensee that maintains a bond substitute shall submit to the director year-to-date financial statements prepared in accordance with generally accepted accounting principles, including at a minimum a statement of assets and liabilities and a profit and loss statement. The director may require that financial reports be submitted more frequently if past financial reports have been prepared incorrectly or were misleading or if there is substantial risk that the licensee will violate the bond substitute standard set in subsection (1) of this section.

The director may require other documents, agreements and information deemed necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(3) **Bad debts and uncollectible judgments.** A licensee that maintains a bond substitute may not consider bad debts and uncollectible judgments as assets for purposes of calculating bond substitute. The director may approve exceptions in writing. A bad debt is any debt owed to the licensee upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid. Time consumed by any appeal from such judgment is not counted in the two-year limit.

(4) **Noncompliance.** A licensee that does not maintain sufficient bond substitute shall notify the director within ten business days of any date when the aggregate sum of its promissory notes and other evidence of debt, (other than long-term subordinated debt), exceeds three times the amount of its bond substitute. In the event that the licensee's semiannual financial statements or the director's investigation reveals that the licensee is no longer in compliance with this section, the licensee shall obtain and file with the director a surety bond in the amount required by WAC 208-620-030 within thirty days after receiving notice from the director. A licensee that files a surety bond as required by the director must maintain the surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a bond substitute. Failure to file a surety bond as required in this subsection may result in suspension of the licensee's license(s).

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-040, filed 1/26/96, effective 2/26/96.]

WAC 208-620-050 Interstate operations. (1) **License required.** Any person that conducts business under the act with Washington residents must obtain a license for all locations from which such business is conducted, including out-of-state locations. When conducting business with Washington residents pursuant to the act, the out-of-state licensee must comply with all laws and rules governing the activities of licensees in the state.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records pursuant to WAC 208-620-180. Agreement to allow access to the records is a condition of licensing of an out-of-state location.

(3) **Servicing loans out-of-state.** A licensee may service loans made pursuant to the act at out-of-state locations as long as the locations are licensed. The licensee must agree in writing to provide the director access to the records pursuant to WAC 208-620-180.

(4) **Costs of examinations.** A licensee that makes loans pursuant to the act from out-of-state locations, maintains records outside the state or services loans pursuant to the act outside the state shall pay all costs associated with examining the records, including travel costs.

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[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-050, filed 1/26/96, effective 2/26/96.]

WAC 208-620-060 Registered agent and agent's office for out-of-state licensees. (1) **Agent required.** Any out-of-state licensee must continuously maintain a registered agent in this state. Service of process, notice, or demand in any judicial or administrative noncriminal suit, action, or proceeding against the licensee which arises under the act or any order under the act on the agent shall have the same force and validity as if served personally on the licensee.

(2) **Agent's address.** Each out-of-state licensee must file with the director the agent's name, office mailing address, and consent to appointment. The office mailing address must accurately identify the actual location of the agent's office. It may not be identified by a post office box number or a street address and box number of a private mail box company which creates the illusion of a physical office location where none in fact exists, or other nongeographic address.

(3) **Agent's consent required.** An out-of-state licensee may not appoint a registered agent without the agent's prior written consent to the appointment. If any person has been appointed agent without consent, that person may file a notarized statement attesting to that fact, and the agent's name will be promptly removed from the records of the department.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-060, filed 1/26/96, effective 2/26/96.]

WAC 208-620-070 Change of registered agent or agent's office for out-of-state licensees. An out-of-state licensee may change its registered agent or its agent's office mailing address on the records of the department by filing with the director a statement of change that sets forth:

- (1) The licensee's name;
- (2) If the current registered agent's office location is to be changed, the address of the registered agent's new office in accordance with WAC 208-620-060; and
- (3) If the registered agent is to be changed, the new registered agent's name, office mailing address in accordance with WAC 208-620-060 and written consent to the appointment.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-070, filed 1/26/96, effective 2/26/96.]

WAC 208-620-080 Resignation of registered agent. A registered agent may resign as agent by filing a signed statement of resignation with the director. The director shall mail a copy of the statement of resignation to the licensee at its headquarters location. The agency appointment is terminated on the 31st day after the date on which the statement of resignation was filed.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-080, filed 1/26/96, effective 2/26/96.]

WAC 208-620-090 Service on out-of-state licensee. (1) **Service on agent.** An out-of-state licensee's registered

agent is the licensee's agent for service of process, notice, or demand as set forth in WAC 208-620-060.

(2) **Service on director.** The director shall be an agent of an out-of-state licensee upon whom any process, notice, or demand may be served if: The licensee fails to appoint or maintain continuously a registered agent in this state; or the registered agent cannot with reasonable diligence be found at its office. Service on the director of any process, notice, or demand is made by delivering to and leaving with the director, or with any assistant director of the department, the process, notice, or demand. In the event any process, notice, or demand is served on the director, the director shall immediately cause a copy of it to be forwarded by certified mail, addressed to the licensee at the licensee's address as shown on the records of the department. Any service on the director must be returnable in not less than thirty days.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-090, filed 1/26/96, effective 2/26/96.]

WAC 208-620-100 Records. (1) The records 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 director or his or her representatives for purposes of examination at the licensed location.

(2) A licensee shall not deliver the proceeds of a loan until all appropriate blanks on the loan forms or instruments are filled in completely or marked as "N/A".

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-100, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-100, filed 10/30/91, effective 1/1/92.]

WAC 208-620-110 The note. Any written instrument or note evidencing a loan under the act shall contain the following information:

(1) The number and date of the loan. If the loan is a mail loan or live check the licensee shall affix a number after the documents have been returned to the licensed location.

(2) The principal balance of the loan or, in the case of open-ended credit, the maximum principal balance allowed.

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

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

(5) The rate of interest.

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

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-110, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-110, filed 10/30/91, effective 1/1/92.]

WAC 208-620-120 Contents of disclosure statement to borrower. (1) The licensee shall comply with all applicable federal laws and regulations, including the Truth in Lending and Real Estate Settlement Procedures Acts.

(2) Each licensee shall maintain in its files sufficient information to show compliance with state and federal law.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-120, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-120, filed 10/30/91, effective 1/1/92.]

WAC 208-620-130 Restrictions as to charges. (1) **Filing.** A licensee shall not charge or collect from the borrower any funds for the cost of filing, as defined in WAC 208-620-010, 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. 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) **Returned checks.** A licensee may not 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 even if it has been redeposited and returned more than once.

(3) **Third-party services.** A licensee may not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

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

(5) **Noncredit insurance.** 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.

(6) **Existing loans.** If a licensee makes a new loan or increases a credit line within four months after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line shall be limited as follows:

(a) **Loan.** The licensee may charge an origination fee only on that part of the new loan not used to pay the amount due on the previous loan.

(b) **Credit line.** The licensee may charge an origination fee only on the difference between the amount of the existing credit line and the increased credit line.

(c) **Exception.** The limits in (a) and (b) of this subsection do not apply if the licensee refunds the origination fee on the existing loan or credit line.

(7) **Prepayment penalty.** A licensee may not collect a prepayment penalty on any loan made at rates authorized by the act.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-130, filed 1/26/96, effective 2/26/96. 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 208-620-140 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 director; and

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

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-140, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-160, filed 10/30/91, effective 1/1/92.]

WAC 208-620-150 Open-end loans—Periodic statements. A licensee must deliver a statement to each borrower with an open-end loan at the end of each billing cycle in which there is an outstanding balance of more than one dollar or in which interest is imposed. This statement must meet applicable requirements in Regulation Z. If Regulation Z requires that a statement be delivered, this rule does not require the delivery of a separate statement. No statement need be delivered if the licensee believes the account to be uncollectible or if delinquency collection procedures have been instituted.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-150, filed 1/26/96, effective 2/26/96.]

WAC 208-620-160 Advertising. A licensee shall maintain a copy of all advertising for a period of two years at a location approved by the director. Such copies shall include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-160, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-140, filed 10/30/91, effective 1/1/92.]

WAC 208-620-170 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: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-170, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-180, filed 10/30/91, effective 1/1/92.]

WAC 208-620-180 Examinations. (1) For the purpose of discovering violations of the act or this chapter or securing information lawfully required, the director or designee may investigate the loans and business of every licensee and of every person engaged in the business described in RCW 31.04.035. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the business described in

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RCW 31.04.035, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have access, at reasonable times during business hours, to the offices and places of business, records, safes, and vaults of all such persons. A licensee so examined shall pay to the director the cost of examining and supervising each licensed place of business at the rate specified in WAC 50-20-190(2).

(2) The director or designee shall examine the affairs, business, office, and records of each licensee at least once each twenty-four months.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-180, filed 1/26/96, effective 2/26/96.]

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

(1) **Applications and certificates.**

(a) A charge of ninety dollars per hour for services plus actual expenses for review of application and attendant investigation for:

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

(ii) Branch licensed locations certificate;

(iii) Relocation of main office or branch;

(iv) Notice of change of control;

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

(b) A fee of one hundred dollars for issuing the following certificates:

(i) Certificate of authority;

(ii) Licensed location certificate;

(iii) Certificate of good standing.

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

(3) **Annual assessment fee.**

(a) An annual assessment fee based on adjusted total loan value as defined in (b) of this subsection. The amount of the annual assessment fee is .000169792 multiplied by the adjusted total loan value as calculated from the consolidated annual report for the previous calendar year.

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

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

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

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

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-190, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-190, filed 10/30/91, effective 1/1/92.]

WAC 208-620-200 Change of place of business. A licensee may do business under the act only from the location

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.

A licensee shall not change its place of business to another location until the director has approved the change.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-200, filed 1/26/96, effective 2/26/96.]

WAC 208-620-210 Other business in same office. (1)

Office sharing. A licensee may conduct its business in a licensed location in which other persons or entities engage in business.

(2) **Business only under licensed name.** A licensee may transact business or make any loan subject to the act only under the name on the license.

(3) **Sale of incidental products.** A licensee may engage in the sale of incidental products on the premises of the licensed location only after receiving approval from the director. The cost of such products may, at the consumer's option, be paid from the proceeds of the loan and included in the principal balance provided that:

(a) The purchase 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.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, recodified as § 208-620-210, filed 1/26/96, effective 2/26/96. Statutory Authority: 1991 c 208 § 17. 91-22-035, § 50-20-150, filed 10/30/91, effective 1/1/92.]

WAC 208-620-220 Annual report and annual fee—

Due date—Late penalties. (1) Due date. The director will mail a notice to each licensee showing the way to calculate the annual fee due along with a worksheet for such purposes and the consolidated annual report form. The licensee will calculate the annual fee on the worksheet. The licensee must submit its completed consolidated annual report, worksheet and annual fee to the office of the director by March 1 of each year.

(2) **Late penalties.** A licensee that fails to submit the required annual report by the March 1 due date is subject to a penalty of fifty dollars for each day of delay.

[Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-220, filed 1/26/96, effective 2/26/96.]

Chapter 208-630 WAC

CHECK CASHERS AND SELLERS—REGULATION OF

(Formerly chapter 50-30 WAC)

WAC

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208-630-020	Schedule of fees paid by licensees and applicants.
208-630-021	Application review and investigation fee.
208-630-022	Annual assessment charge.
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208-630-025	Application for small loan endorsement to a check casher or check seller license.
208-630-030	Surety bond.
208-630-035	Alternatives to the surety bond.
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208-630-070	Accounting and financial records.
208-630-075	Monetary instruments—Deposit requirements.
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208-630-085	Licensee with small loan endorsement—Powers—Restrictions.
208-630-090	Audit report by licensee—Financial statements.
208-630-095	Knowledge of the law and regulations.
208-630-100	Trust accounts—Limitations and prohibitions.

WAC 208-630-005 Definitions. "Act" means chapter 31.45 RCW.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with another person.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

"Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.

"Director" means the director of the department of financial institutions.

"Department" means the department of financial institutions.

"Financial institution" means a bank, savings bank or savings and loan association.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

"Licensee" means a check casher or seller licensed by the director to engage in business in accordance with chapter 31.45 RCW. For purposes of the enforcement powers, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by chapter 31.45 RCW.

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Person" means a natural person, corporation, company, partnership, or association.

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

"RCW" means the *Revised Code of Washington*.

"Records" means books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under chapter 31.45 RCW.

"Small loan" means a loan of up to five hundred dollars for a period of thirty-one days or less.

"State" means the state of Washington.

"Substitute security" means 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.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-005, filed 1/12/96, effective 2/12/96.]

WAC 208-630-010 Application deposit fee. At the time an application for a license is filed, an applicant shall pay to the director a deposit fee for investigating the application. The deposit fee is not refundable if the application is denied or withdrawn. The deposit fee is applied to the actual cost of investigating the application. If the deposit fee is not sufficient to cover the cost, the applicant will be assessed and responsible for any additional cost.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-010, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-010, filed 1/2/92, effective 2/2/92.]

WAC 208-630-015 Examinations. (1) The director or his or her designee shall examine the business and records of any licensee or licensee's agent at least every twenty-four months. Every licensee so examined shall pay to the director the actual cost of examining and supervising each licensed place of business at the examination hourly rate established in WAC 50-30-020(2). The director 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 director.

(2) The director may examine the business and records of any agent or person who the director has reason to believe is engaging in business which requires a licensee under chapter 31.45 RCW.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-015, filed 1/12/96, effective 2/12/96.]

WAC 208-630-020 Schedule of fees paid by licensees and applicants. (1) The director shall collect the following fees:

- (a) Charges for costs incurred by the division for review and investigation of applications;
- (b) An annual assessment charge; and
- (c) Charges for examinations described in WAC 208-630-015.

(2) Fees must be paid promptly when due but no later than thirty days after receipt of any billing from the division.

[Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-020, filed 4/11/97, effective 5/12/97. Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-020, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-020, filed 1/2/92, effective 2/2/92.]

(1999 Ed.)

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

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

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

[Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-021, filed 4/11/97, effective 5/12/97.]

WAC 208-630-022 Annual assessment charge. (1) The director will charge each licensee an annual assessment at the rate set forth in subsection (2) of this section. Assessments for a calendar year will be computed on total volume of transactions as of December 31 of the previous calendar year. For licensees with a fiscal year of January through December, annual assessments are due on or before April 15. For licensees with a fiscal year other than that stated above, annual assessments are due one hundred five days after the close of the licensee's fiscal year. For the calendar year 1997, annual assessments for all licensees are due on or before June 30, 1997.

(2) The annual assessment rate is:

(a) For check cashers:

(i) If the volume of checks cashed is one million dollars or less, there is no annual assessment;

(ii) If the volume of checks cashed is over one million dollars, the annual assessment is five hundred dollars per licensed location.

(b) For check sellers:

(i) If the volume of checks sold is one million dollars or less, there is no annual assessment;

(ii) If the volume of checks sold is over one million dollars, the annual assessment is five hundred dollars per licensed location.

(c) For licensees with small loan endorsements, in addition to (a) and/or (b) of this subsection:

(i) If the volume of small loans made is one million dollars or less, there is no annual assessment;

(ii) If the volume of small loans made is over one million dollars, the annual assessment is five hundred dollars per licensed location.

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

[Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-022, filed 4/11/97, effective 5/12/97.]

WAC 208-630-023 Examination fees. The fee for examinations described in WAC 208-630-015 shall be sixty-five dollars per employee hour expended.

[Statutory Authority: RCW 42.320.040 and 31.45.200. 97-09-035, § 208-630-023, filed 4/11/97, effective 5/12/97.]

WAC 208-630-025 Application for small loan endorsement to a check casher or check seller license. Each applicant for a small loan endorsement to a license must apply to the director by filing the following:

(1) An application in the form prescribed by the director including at least the following information:

(a) The legal name, residence, and business address of the applicant, and if the applicant is a partnership, corporation, or association, the name and address of every member, partner, officer, principal and board director;

(b) The trade name or name under which the applicant will do business under the act, the street and mailing address of each location in which the applicant will engage in business under the act;

(c) The location at which the applicant's records will be kept; and

(d) Financial statements and any other pertinent information the director may require with respect to the applicant and its board directors, officers, trustees, members, principals or employees, including information regarding any civil litigation against the applicant or any substantial investor in the applicant (a person or shareholder with an interest of ten percent or more);

(2) A surety bond and related power of attorney, or other security acceptable to the director in an amount equal to the penal sum of the required bond as set forth in WAC 50-30-030 (2)(b). In lieu of the bond, the applicant may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond in accordance with RCW 31.45.030 (5)(b) and (e) and WAC 50-30-030;

(3) A current financial statement as of the most recent quarter end prepared in accordance with generally accepted accounting principles which includes a statement of assets and liabilities and a profit and loss statement;

(4) Information on the applicant's or any affiliate's current or previous small loan or related type business in this state or any other state, including but not limited to name, address, city, state, licensing authority, and whether any enforcement action is pending or has been taken against the applicant in any state;

(5) A copy of the applicant's proposed procedures for resolving borrowers' complaints; and

(6) An application fee.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-025, filed 1/12/96, effective 2/12/96.]

WAC 208-630-030 Surety bond. (1) **Requirement for bond.** A licensee engaged in business under chapter 31.45 RCW must obtain a bond running to the state at the beginning of each calendar year and file it with the director. The 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 director.

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(a) **Conditions on bond.** The bond shall be continuous and conditioned upon the licensee faithfully abiding by chapter 31.45 RCW and all rules in this chapter. It shall also be conditioned upon the licensee paying all persons who purchase monetary instruments from the licensee the face value of any monetary instrument dishonored by the drawee financial institution due to insufficient funds or by reason of the account having been closed. The surety shall only be liable for the face value of the dishonored monetary instrument, and shall not be liable for any interest or consequential damages. For a licensee with a small loan endorsement, the bond shall run to the benefit of the state and any person or persons who suffer loss due to the licensee's violation of chapter 31.45 RCW or this chapter.

(b) **Cancellation of bond.** The bond may be canceled by the surety by giving written notice to the director and licensee of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director.

(c) **Liability of surety.** 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 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 surety 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 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.

(d) **Claiming against the bond—Jurisdiction and venue.** Any person who is a purchaser of a monetary instrument from the licensee having a claim against the licensee for the dishonor of any monetary instrument by the drawee financial institution due to insufficient funds or by reason of the account having been closed, or any person who obtained a small loan from the licensee and was damaged by the licensee's violation of chapter 31.45 RCW or this chapter, may bring suit upon such bond or deposit in the superior court of the county in which the monetary instrument 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 action must be brought not later than one year after the dishonor of the monetary instrument on which the claim is based. If the 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.

(e) **Notification of claims against bond.** The licensee must notify the department of any claim against the bond within ten days after receiving notice of a claim.

(2) **Amount of bond.**

(1999 Ed.)

(a) **Check sellers.** The penal sum of the surety bond for a person with a check seller license 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 multiplying the highest monthly liability of checks from the preceding calendar year by seventy-five percent.

(b) **Small loan endorsement.** The required penal sum of the bond for a small loan endorsement shall be calculated according to the following table. This amount is in addition to the bond amount required for holders of a license to do business as a check seller. The licensee may combine the penal sums of the bonding requirements and file one bond.

Number of Branch Offices	Penal Sum of the Bond
1	\$10,000
2	\$11,000

Plus an additional one thousand dollars for each licensed branch office beyond two branches.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-030, filed 1/12/96, effective 2/12/96. 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 208-630-035 Alternatives to the surety bond.

(1) **Type of alternative allowed.** In lieu of the surety bond required in WAC 50-30-030, an applicant or licensee may substitute one of the following alternatives with the approval of the director. Any alternative to the surety bond shall secure the same obligations as would the surety bond. The amount of alternative substituted under (a), (b) and (c) of this subsection must be equal to or greater than the amount of the required surety bond.

(a) **Securities.** Substitute security assigned to the director. The value of the substitute security shall be based on the principal amount or market value, whichever is lower. The applicant or licensee must deposit the substitute security with a financial institution in this state approved by the director. The depositor is entitled to receive all interest and dividends on the substitute security, has the right, with the approval of the director, to substitute other qualified securities for those deposited, and shall be required to do so on written order of the director made for good cause shown.

(b) **Irrevocable letter of credit.** An irrevocable letter of credit issued in favor of the director. The irrevocable letter of credit must be issued by a financial institution in the state approved by the director and deposited with the director. An irrevocable letter of credit may only be substituted if it provides the same protection to consumers as would a surety bond.

(c) **Time deposit.** An assignment in favor of the director of a certificate of deposit. The certificate of deposit must be

issued by a financial institution in the state. The depositor is entitled to receive all interest and dividends on the certificate of deposit.

(d) **Demonstration of net worth.** A licensee or applicant for a small loan endorsement may demonstrate net worth in excess of three times the amount of the required bond. The licensee shall notify the director within ten business days of any date upon which its net worth decreases below the required amount. A licensee that fails to maintain the required level of net worth and continues to operate under a small loan endorsement will be required to maintain a surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a demonstration of net worth in lieu of a surety bond.

(i) **Reports required.** A licensee that maintains net worth in lieu of a surety bond shall submit to the director within forty-five days after the close of each quarter year-to-date financial statements prepared in accordance with generally accepted accounting principles. The financial statements must include at a minimum a statement of assets and liabilities and a profit and loss statement. The director may continue to require other documents, agreements or information necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(ii) **Bad debts and judgments.** A licensee that maintains net worth in lieu of a surety bond may not consider bad debts and certain judgments as assets. The director may approve exceptions in writing. The licensee must charge off its books any debt upon which any payment is six months or more past due. The licensee may not count as an asset any judgment more than two years old which has not been paid. Time consumed by an appeal from a judgment is not counted in the two-year limit.

(2) **Noncompliance.** A licensee that does not comply with this section must obtain and file with the director a surety bond in the required amount in WAC 50-30-030 by the date specified by the director.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-035, filed 1/12/96, effective 2/12/96.]

WAC 208-630-040 Access to criminal history information.

(1) The director may review any criminal history record information maintained by any federal, state, or local law enforcement agency relating to:

(a) An applicant for a license under chapter 31.45 RCW; or

(b) A principal of an applicant for a license under chapter 31.45 RCW.

(2) The director may deny, 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 director is confidential information and is for exclusive use of the director and the division of consumer services. 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 director 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 director from disclosing to the person the dates and places of arrests, offenses, and dispositions contained in the criminal history records.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-040, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-040, filed 1/2/92, effective 2/2/92.]

WAC 208-630-050 Issuance of license or small loan endorsement. If the director determines that all licensing criteria of chapter 31.45 RCW have been met and the appropriate fees paid, the director shall issue a nontransferable license for the applicant to engage in the business of cashing and/or selling checks or a small loan endorsement to a license. The license shall remain in effect for a period of five years from the date of its issuance unless earlier surrendered, suspended, or revoked. The small loan endorsement will expire at the same time as the license unless earlier surrendered, suspended or revoked.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-050, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-050, filed 1/2/92, effective 2/2/92.]

WAC 208-630-060 Disclosure of significant developments. A licensee shall notify the director 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, board 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, board 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 board directors or otherwise effect a change in policy of the corporation. The director 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: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-060, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-060, filed 1/2/92, effective 2/2/92.]

WAC 208-630-065 The note. Each small loan made under a small loan endorsement pursuant to chapter 31.45 RCW shall be evidenced by a written note which shall state at least the following:

(1) The date of the loan;

(2) The principal amount of the loan which is defined as the face amount of the debt instrument on which interest is owed;

(3) The manner in which it is to be repaid;

(4) The maturity date of the debt; and

(5) The rate of interest and the method of calculating interest.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-065, filed 1/12/96, effective 2/12/96.]

WAC 208-630-068 Contents of disclosure statement to borrower. (1) The licensee shall deliver to the borrower at the time a small loan is made a statement which meets the requirements of all applicable laws, including the federal Truth in Lending Act.

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

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-068, filed 1/12/96, effective 2/12/96.]

WAC 208-630-070 Accounting and financial records. Licensees shall maintain as a minimum the following records for at least two years.

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

(6) For licensees with small loan endorsements, each loan file shall contain at least a copy of the note and a copy of any disclosure statement.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-070, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-070, filed 1/2/92, effective 2/2/92.]

WAC 208-630-075 Monetary instruments—Deposit requirements. (1) **Check cashers.** All monetary instruments 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 monetary instrument was accepted for cash. If the monetary instrument was accepted as part of a small loan transaction under chapter 31.45 RCW, this subsection does not apply.

(2) **Licensees with small loan endorsements.** A licensee with a small loan endorsement may not deposit a monetary instrument accepted in the course of making a small loan under the act prior to the date on the monetary instrument, unless otherwise agreed to in writing by the borrower.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-075, filed 1/12/96, effective 2/12/96.]

WAC 208-630-080 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, the Uniform Unclaimed Property Act.

(3) Each licensee with a small loan endorsement must comply with the federal Truth in Lending Act.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-080, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-080, filed 1/2/92, effective 2/2/92.]

WAC 208-630-085 Licensee with small loan endorsement—Powers—Restrictions. (1) A licensee with a small loan endorsement may:

(a) Agree with the borrower for the payment of fees for a credit report received from a recognized credit reporting company when such fees are actually paid by the licensee to an unaffiliated third party for such services or purposes;

(b) Charge or collect a fee equal to or less than 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 even if it has been redeposited and returned more than once.

(2) A licensee with a small loan endorsement is subject to the following restrictions:

(a) No loan made under this act shall be repaid by proceeds of another loan made under chapter 31.45 RCW by the same lender or affiliate. The proceeds from any loan made under this act shall not be applied to any other loan from the same lender or affiliate;

(b) A licensee shall not make any loan under authority granted by chapter 31.45 RCW under any name or at any place of business other than that named on the license and small loan endorsement;

(1999 Ed.)

(c) A licensee may not hold a check or checks in an aggregate face amount of more than five hundred dollars plus allowable fees from any one borrower at any one time;

(d) A licensee may not hold a check for more than thirty-one days unless requested to do so by the borrower. The licensee may not charge additional fees for holding the check; and

(e) A licensee may not charge an additional fee to cash a monetary instrument issued as part of a small loan made under chapter 31.45 RCW.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-085, filed 1/12/96, effective 2/12/96.]

WAC 208-630-090 Audit report by licensee—Financial statements. (1) Each licensee shall submit annually a financial statement on a form prescribed by the director. Financial statements may be prepared by outside accountants or by the licensee's own accountants. The statements are due by April 15, or if the licensee has established a fiscal year, one hundred five days after the fiscal year end.

(2) A licensee engaged in the business of selling monetary instruments, whose license has been surrendered or revoked shall submit to the director, 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. This closing audit report shall cover the twelve months ending with such effective date or for such other period as the director may specify. If the report, certificate, or opinion of the independent accountant is in any way qualified, the director 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 director.

(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 director may require, prepared in accordance with general accepted accounting principles. 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 director may extend the time for compliance with this section.

(5) A licensee shall, when requested by the director, 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 director.

(6) The director 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 director shall retain a copy of all filings so rejected.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-090, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-090, filed 1/2/92, effective 2/2/92.]

WAC 208-630-095 Knowledge of the law and regulations. Each licensee shall ensure that any employee or person who engages in business on behalf of the licensee under authority granted by chapter 31.45 RCW shall have a sufficient understanding of the statutes and rules applicable to its business to assure compliance with such statutes and rules.

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, codified as § 208-630-095, filed 1/12/96, effective 2/12/96.]

WAC 208-630-100 Trust accounts—Limitations and prohibitions. (1) At least monthly a licensee in the business of selling checks shall withdraw from the trust account an amount equal to fees earned for the corresponding period from the sale of monetary instruments. The remaining balance of the trust account must be sufficient to cover all monetary instruments 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 director's consent, until a closing audit report has been received according to WAC 50-30-090(2).

[Statutory Authority: RCW 43.320.040 and 31.45.200. 96-03-059, recodified as § 208-630-100, filed 1/12/96, effective 2/12/96. Statutory Authority: 1991 c 355 § 24. 92-02-105, § 50-30-100, filed 1/2/92, effective 2/2/92.]

**Chapter 208-660 WAC
MORTGAGE BROKERS AND LOAN
ORIGINATORS—LICENSING**
(Formerly chapter 50-60 WAC)

WAC

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**PART A
DEFINITIONS**

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

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

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

(3) "Application deposit" means a deposit in immediately available funds consisting of three hundred fifty dollars for each license applied for and one hundred seventy-five dollars for each branch office certificate applied for. For example, an applicant requesting a license and two branch office certificates must submit an application deposit of seven hundred dollars (calculated by adding three hundred fifty dollars to the product of two times one hundred seventy-five dollars).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) "Financial misconduct" means without limitation:

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

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

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

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

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

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

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

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

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

(26) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for

a period of time, a specific interest rate or other financing terms will be the rate or terms upon which it will make a loan available to the borrower.

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

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

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

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

(29) "Mortgage Broker Practices Act" means chapter 19.146 RCW and chapter 50-60 WAC.

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

(31) "Person" means a natural person, corporation, company, partnership, or association.

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

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

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

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

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

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

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

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

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

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

[Recodified as § 208-660-010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-010, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-010, filed 1/7/94, effective 2/7/94.]

PART B EXEMPTIONS

WAC 208-660-020 Statutory exemptions. (1) The following persons are exempt from all provisions of the Mortgage Broker Practices Act:

(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) 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;

(e) 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 of any of the entities in this subsection (1)(e); and

(f) A real estate broker who:

(i) In connection with a CLO system, provides only information regarding rates, terms, and lenders;

(ii) Receives a fee for providing such information;

(iii) Conforms to these rules with respect to the providing of such information; and

(iv) Discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender.

However, a real estate broker is not exempt from the Mortgage Broker Practices Act if he or she does any of the following:

(A) Holds himself or herself out as able to obtain a loan from a lender;

(B) Accepts a loan application, or submits a loan application to a lender;

(C) Accepts any deposits for payment to a third-party provider, or accepts any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(D) Negotiates rates or terms with a lender on behalf of a borrower; or

(E) Provides the disclosures required by RCW 19.146.030(1).

(2)(a) The persons described in (b) and (c) of this subsection are exempt from the Mortgage Broker Practices Act except that they:

(i) Must comply with RCW 19.146.0201 through 19.146.090, Part D of chapter 50-60 WAC, and WAC 50-60-125, 50-60-130, 50-60-140, 50-60-165, 50-60-190, and 50-60-200;

(ii) Are subject to the director's authority to take enforcement action for any violation of applicable provisions of the Mortgage Broker Practices Act, pursuant to RCW 19.146.220, 19.146.221, and 19.146.227; and

(iii) Are subject to the director's authority to obtain and review books and records that are relevant to any investigation of such a violation pursuant to the first paragraph of RCW 19.146.235, and WAC 50-60-060(4).

(b) 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 mortgage loan.

(c) 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.

[Recodified as § 208-660-020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-020, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-020, filed 1/7/94, effective 2/7/94.]

WAC 208-660-025 Computer loan origination services and systems. (1) **Definitions.** "Computer loan origination (CLO) services" means the provision of information to consumers by a mortgage broker, lender, real estate agent or other person regarding interest rates and other loan terms available from different lenders.

"CLO system" means computer hardware or software which facilitates the provision of CLO services to consumers.

"CLO service provider" means a party who provides CLO services to consumers. The term does not include any person or entity exempted from chapter 19.146 RCW by RCW 19.146.020 (1)(a) through (g).

"CLO system provider" means a party who provides a CLO system.

(2) **CLO service providers may be subject to licensing.** Unless otherwise exempt under RCW 19.146.020, any person providing CLO services is subject to licensing as a mortgage broker under chapter 19.146 RCW, if the person or broker:

(a) Holds himself or herself out as able to obtain a residential mortgage loan for a consumer from a lender;

(b) Accepts a loan application from a consumer, assists a consumer in completion of a loan application, or submits a loan application on behalf of a consumer to a mortgage broker or lender;

(c) Accepts deposits from a consumer for payment of third-party services or any fees in connection with a loan, whether the fees are paid before, upon, or after the closing of the loan;

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(d) Negotiates the interest rates or terms of a loan with the mortgage broker or lender on behalf of a consumer; or

(e) Provides to the consumer a good faith estimate or other disclosure required of mortgage brokers or other lenders by state or federal law.

(3) **Providers of CLO services must make disclosures.** If the consumer of the CLO service pays for the CLO service either directly or indirectly, the CLO service provider shall give a disclosure statement to the consumer. The disclosure statement shall state:

(a) The amount of the CLO fee which the CLO service provider charges the consumer for the CLO service;

(b) That the use of the CLO system is not required to obtain a residential mortgage loan; and

(c) That the full range of loans available may not be listed on the CLO system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(4) **Disclosure statement must be provided to consumer and retained by the CLO service provider.** Each CLO service provider must give the consumer a copy of the disclosure form when the first CLO service is provided to the consumer. The consumer shall sign and date the disclosure statement as evidence that the consumer received the form. CLO service providers must retain copies of written disclosure statements signed by consumers at an in-state office for two years.

(5) **Mortgage brokers may provide CLO systems—Conditions.** A licensed mortgage broker may provide CLO systems. Prior to providing any CLO system, a mortgage broker subject to licensing must notify the director in writing of its intent to provide the service. The notification shall include:

(a) Copies of any and all agreements between the licensee and the CLO service provider, including any and all business names and addresses where CLO services will be provided;

(b) Copies of any and all CLO disclosure statements which the CLO service provider shall give to consumers in connection with the provision of the CLO services.

(6) **CLO system providers and CLO service providers responsible for violations.** The department may hold both CLO service providers and CLO system providers responsible for any and all violations of chapter 19.146 RCW or chapter 208-660 WAC, and subject either or both the licensee or the service provider to any and all applicable fines and penalties.

[Statutory Authority: RCW 42.320.040 [43.320.040], 19.146.020 (1)(h) and 19.146.225, 97-01-003, § 208-660-025, filed 12/5/96 effective 1/5/97.]

PART C LICENSING

WAC 208-660-030 Application procedure for mortgage broker license. (1) Each person required to have a license must apply to the director by filing the following:

(a) An application in the form prescribed by the director, including without limit the information required by RCW 19.146.205 (1)(a) through (d).

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(b) A surety bond and related power of attorney, or approved alternative to the bond, in accordance with RCW 19.146.205 (3) and WAC 50-60-080 and 50-60-08010.

(c) The application deposit.

(d) In regard to each principal, designated broker, and any branch office manager of the applicant:

(i) Biographical information including complete and accurate employment history and a description of any material litigation involving the person;

(ii) An independent credit report obtained from a recognized credit reporting agency;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) Completed fingerprint cards accepted by the Washington state patrol (this requirement does not apply to branch office managers);

(v) A signed authorization for verification of the existence of a trust account on a form provided by the department;

(vi) A certificate of passing an approved examination (this requirement does not apply to branch office managers); and

(vii) A certificate of satisfactory completion of an approved licensing course, or satisfactory proof of at least two years of experience in accordance with WAC 50-60-040.

(e) A signed certificate of compliance and authorization to examine trust accounts on a form provided by the department;

(f) Information to support any required branch office certificate, as required by WAC 50-60-070.

(g) Information in regard to each independent contractor retained by the applicant, in accordance with RCW 19.146.200(1).

(h) A copy of any written agreement with a lender or licensee, in accordance with RCW 19.146.040(2).

(i) A copy of any form to be approved by the director in accordance with WAC 50-60-130(2).

(j) If the applicant's principal office is located out-of-state, information in regard to the applicant's registered agent, in accordance with RCW 19.146.220(3).

(2) 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 is not limited to, death or incapacitating illness of the preparer, or other catastrophic occurrence. Failure to file requested information under such circumstances will not affect new applications filed after the denial. An applicant may reapply upon submission of a new application and an additional application deposit.

[Recodified as § 208-660-030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-030, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-030, filed 1/7/94, effective 2/7/94.]

WAC 208-660-035 Interim licenses. In the director's discretion, the director may issue interim licenses, subject to such conditions as may be determined by the director, in regard to an application which satisfies the requirements of

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WAC 50-60-030 (1)(a), (b), (c), (d)(i) through (v), (e), (f), (g), (h), (i), and (j). An interim license expires on the date indicated in the license, unless extended by the director.

[Recodified as § 208-660-035, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-035, filed 6/21/95, effective 7/22/95.]

WAC 208-660-040 Experience requirements. (1) A designated broker or branch office manager may use the following experience to satisfy the experience requirements of RCW 19.146.210 (1)(e) and 19.146.265:

(a) As a mortgage broker, or as a designated broker, or branch office manager, of a mortgage broker business;

(b) As a mortgage banker, or responsible individual or branch manager, of a mortgage banking business;

(c) As a loan officer, with responsibility primarily for loans secured by a lien on real estate;

(d) As a branch manager of a lender, with responsibility primarily for loans secured by a lien on real estate.

(e) As a mortgage broker with a mortgage broker (or similar) license from another state where the licensing standards are substantially similar to those in this state, as determined by the director.

(2) Satisfactory proof of two years of experience may include valid copies of W-2 or 1099 tax forms verifying employment for the two-year period, valid copies of form 1120 corporate tax returns for the two-year period signed by the broker or manager as owner of the business for the two-year period, or signed letters from a lender on the lender's letterhead verifying that the broker or manager has originated mortgage loans for the two-year period.

[Recodified as § 208-660-040, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-040, filed 6/21/95, effective 7/22/95; 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.]

WAC 208-660-042 Continuing education requirement. (1) The principal or designated broker and each branch office manager of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker and each branch office manager, no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later than the last business day of January 1996.)

[Recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-042, filed 6/21/95, effective 7/22/95.]

WAC 208-660-045 Approval of courses and examinations. (1) In order to receive approval of a licensing or continuing education course, the course provider must file an

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application with the director, which includes the following items:

(a) A description of the course provider's experience in teaching this type of course;

(b) A complete listing of all instructors for the course, including their qualifications and experience teaching courses similar to this course;

(c) A valid certification as a vocational instructor issued by the state of Washington;

(d) In connection with approval of a licensing course, all course materials and lesson plans on a session-by-session basis, which must cover at least the following subjects to be taught:

(i) The Mortgage Broker Practices Act;

(ii) The Consumer Protection Act;

(iii) The Escrow Agent Registration Act, chapter 18.44 RCW;

(iv) The federal 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 recordkeeping requirements provided in the Mortgage Broker Practices Act;

(vi) Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW;

(vii) Washington principal and agent law;

(viii) Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW;

(ix) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization;

(x) Ethics in the mortgage industry; and

(e) In connection with a continuing education course, all course materials and lesson plans on a session-by-session basis, which cover all relevant changes to the laws and matters described in (d) of this subsection.

(2) In order to receive approval of an examination, the examination administrator must file an application with the director, including the following items:

(a) A description of the examination administrator's experience in administering this type of examination; and

(b) 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 must be submitted to the director for approval prior to their use.

(3) The director shall review the applications filed with the department and determine whether to approve or deny the proposed course or examination. If the director approves the course or examination, the director shall issue a certificate of approval that will be effective for two years from the date of its issuance.

(4) The director shall publish annually a list of approved courses and approved examinations.

(5) A course provider or examination administrator that desires to renew the certificate of approval must apply to the director and file the items required in subsection (1) of this

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section no later than forty-five days before the certificate expires.

(6) The director may audit an approved course or examination at any time. If the course provider or examination administrator has not complied with the requirements of this section, the director may suspend or terminate approval and require the surrender of the certificate of approval.

[Recodified as § 208-660-045, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-045, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-045, filed 11/8/94, effective 12/9/94.]

WAC 208-660-050 Demand for criminal history information. (1) In regard to the principal or designated broker of an applicant for a license or a licensee, the director may obtain and review the criminal conviction record of the individual that is maintained by any federal, state or local law enforcement agency. For this purpose, the director may require the applicant or licensee to provide completed fingerprint cards accepted by the Washington state patrol, recent photograph, and signed authorization for background investigation on a form provided by the department.

[Recodified as § 208-660-050, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-050, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-050, filed 1/7/94, effective 2/7/94.]

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

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

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

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

[Recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

WAC 208-660-070 Branch office application procedure. Each applicant for a license or licensee required to obtain a branch office certificate shall apply to the director by filing the following:

- (1) An application in the form prescribed by the director.
- (2) The application deposit.
- (3) In regard to each branch office manager:
 - (a) Biographical information including complete and accurate employment history and a description of any material litigation involving the manager;
 - (b) A signed authorization for background investigation on a form provided by the director; and
 - (c) A certificate of satisfactory completion of an approved licensing course, or satisfactory proof of at least two years' experience in accordance with WAC 50-60-040.

A different natural person must serve as manager for each branch office. A branch office application may be submitted simultaneously with a license application, however no branch office certificate will be issued prior to the issuance of the license.

[Recodified as § 208-660-070, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-070, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-070, filed 1/7/94, effective 2/7/94.]

WAC 208-660-080 Surety bond and approved alternatives—General requirements. (1) Each applicant for a license and licensee must file and maintain on file with the director:

- (a) A surety bond in the required amount and related power of attorney issued by a bonding company or insurance company authorized to do business in this state; or
- (b) An approved alternative to a surety bond in the required amount in accordance with WAC 50-60-08010.

The required amount of the surety bond or approved alternative ranges from twenty thousand dollars to sixty thousand dollars and is based on the applicant's or licensee's monthly average number of loan originators calculated in accordance with subsection (2) of this section. The surety bond or approved alternative is subject to claims in accordance with RCW 19.146.240.

(2) The monthly average number of loan originators is calculated as follows:

(a) If the applicant or licensee has not been in the mortgage broker business at any time during the preceding twelve months, the monthly average number of loan originators is 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 or licensee will do business, and dividing this total by twelve. The projected number of loan originators must reflect at least the actual number of originators at the inception of business.

(b) If the applicant or licensee has not been in the mortgage broker business at least some portion of each of the preceding twelve months, the monthly average number of loan

originators is calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the number of months the applicant or licensee has been in business during the twelve-month period, and the projected number of loan originators to be employed or engaged each month for any additional months necessary to comprise a total of twelve months (or part thereof), and dividing this total by twelve.

(c) Otherwise, the monthly average number of loan originators as calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the previous twelve months, and dividing this total by twelve.

(3) Based upon the monthly average number of loan originators, the required surety bond amount is indicated by the following table:

Monthly Average Number of Loan Originators	Minimum Required Bond Amount
up to 3.0	\$20,000
more than 3.0, up to 6.0	\$30,000
more than 6.0, up to 9.0	\$40,000
more than 9.0, up to 15.0	\$50,000
more than 15.0	\$60,000

When calculating the required bond amount, an applicant or licensee shall use the worksheet form approved by the director.

(4) At least forty-five days prior to each anniversary of the issuance of the surety bond or approved alternative, each licensee shall calculate its required bond amount in accordance with subsections (2) and (3) of this section. If the required surety bond amount has changed, then the licensee shall within thirty days of the date of the calculation, file a new surety bond or approved alternative in the required amount or file documentation showing a change in the amount of the existing bond or alternative to the required amount.

(5) Each licensee shall use the bond form, assignment of certificate of deposit form, or irrevocable letter of credit form approved by the director.

[Recodified as § 208-660-080, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-080, filed 6/21/95, effective 7/22/95; 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 208-660-08005 Alternatives to the surety bond.

(1) In lieu of a surety bond, an applicant for a license or licensee may with the approval of the director:

(a) File with the director an assignment of a certificate of deposit in the required surety bond amount, drawn in favor of the director. The depositor shall be entitled to receive all interest and dividends on the certificate of deposit.

(b) File with the director an irrevocable letter of credit in the required surety bond amount and drawn in favor of the director. The letter of credit must provide the same measure of protection as a surety bond provides to consumers and others who may have reason to make claim on the instrument. This means, in part, that the letter of credit must be available under its terms for one year after its expiration or suspension

to pay claims arising out of violations while it was in effect. The letter of credit must be issued by a financial institution approved by the director. The licensee and the financial institution that issued the letter of credit must notify the director within two business days of any suspension, expiration, or material change in the protection provided by the letter of credit.

(2) A licensee may request in writing that an assignment of a certificate of deposit or a letter of credit be released. The director may release the assignment or letter of credit when a sufficient period of time has passed, not to exceed one year after filing a surety bond or approved alternative, or after the licensee has ceased business, to allow for claims to be presented against the certificate of deposit or letter of credit.

To ensure protection for consumers and others, the director may require that the licensee file with the director, prior to the release of the assignment or letter of credit:

(a) A surety bond or an approved alternative, in the required amount, if the licensee intends to continue in the mortgage broker business under its license;

(b) All of the licensee's licenses and branch office certificates, if the licensee intends to no longer engage in the mortgage broker business, or if the licensee intends to continue in the business but has become exempt from licensing under the Mortgage Broker Practices Act. In the latter case, the director may also require the licensee to provide proof of exemption from licensing;

(c) Copies of any agreements between the licensee and the financial institutions that issued the certificate of deposit or 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 protection enjoyed by consumers or others that 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) of this subsection; and

(g) Any other information the director may deem necessary under the circumstances.

[Recodified as § 208-660-08005, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08005, filed 6/21/95, effective 7/22/95.]

PART D TRUST ACCOUNTS AND ACCOUNTING REQUIREMENTS

WAC 208-660-08010 Establishment of trust account for borrower funds to pay third-party providers. Each mortgage broker shall as trustee hold all funds received from borrowers for payment to third-party providers. The funds may not be used for the benefit of the mortgage broker or any person not entitled to such benefit, except as may be expressly permitted by the Mortgage Broker Practices Act. Each mortgage broker shall establish a trust account(s) for the funds in a financial institution's branch located in this

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state. Each mortgage broker is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with the act.

[Recodified as 208-660-08010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08010, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08015 Designation of trust account(s). Each account holding borrower funds to pay third-party providers must be designated as a trust account in the name of the mortgage broker as it appears on its license, or if exempt from licensing, in the name of the exempt broker. All checks must be prenumbered by the supplier (printer) and bear upon the front of the check the identifying words, "trust account." Any interest earned on a borrower's subaccount shall be refunded or credited to the borrower either at closing or upon withdrawal or denial of the borrower's loan application.

[Recodified as § 208-660-08015, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08015, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08020 Required trust account records and procedures. Each mortgage broker shall establish and maintain a system of records and procedures for trust accounts as provided in the Mortgage Broker Practices Act. Any alternative records or procedures proposed for use by the mortgage broker shall be approved in advance by the director or his or her designee.

Each mortgage broker shall maintain as part of its books and records:

(1) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(2) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(3) A trust account check register consisting of a record of all deposits to and disbursements from the trust account;

(4) Reconciled trust account bank statements;

(5) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s).

The reconciled balance of the trust account(s) must at all times equal the sum of:

(a) The outstanding amount of funds received from borrowers for payment of third-party providers; and

(b) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with WAC 50-60-08025(4).

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(6) A printed and dated source document file to support any changes to existing accounting records.

[Recodified as § 208-660-08020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-08020, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08025 Trust account deposit requirements. (1) All funds received from borrowers or on behalf of borrowers for the payment of third-party providers, whether specifically identified as such or not, and regardless of when they are received, must be deposited in the trust account(s) prior to the end of the next business day following receipt. In order to satisfy this requirement in regard to the deposit of a check or money order, the mortgage broker must within one business day after receipt of the check or money order:

(a) Endorse the check or money order "for deposit only" with the broker's trust account number and mail the check postage prepaid to its financial institution; or

(b) Endorse the check or money order "for deposit only" with the mortgage broker's trust account deposit number and mail the check or money order postage prepaid to the main office of the broker. The main office shall, in turn, deposit the check or money order in its financial institution prior to the end of the next business day after receipt of the check or money order in the main office; or

(c) Deposit the check or money order into its trust account by depositing it directly at the branch where its trust account is held or at an ATM of its financial institution.

(2) All deposits to the trust account(s) must be documented by a bank deposit slip which has been validated by bank imprint, or by an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(3) Receipt of funds by wire transfer or any means other than cash, check, or money order, must be posted in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. The mortgage broker must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity.

(4) Deposits to the trust account(s) must be limited to funds delivered to the mortgage broker for payment to third-party providers, except a mortgage broker may deposit its own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of the mortgage broker's own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the Mortgage Broker Practices Act.

If a mortgage broker has deposited its own funds into its trust account, the mortgage broker may receive reimbursement for such deposit at closing into its general business bank account provided:

(a) All third-party provider's charges associated with the mortgage broker's deposit have been paid;

(b) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(c) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(d) Any funds disbursed by escrow at closing to the mortgage broker for payment of unpaid third-party providers' expenses charged or to be charged to the mortgage broker are deposited into the borrower's subaccount of the mortgage broker's trust account.

[Recodified as § 208-660-08025, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225, 95-13-091, § 50-60-08025, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08030 Trust account disbursement requirements. (1) Each mortgage broker is responsible for the disbursement of all trust account funds, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the mortgage broker's behalf.

(2) All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund, except as specified in this section. The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check.

(3) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(4) If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker shall maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

(5) Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

(6) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

Each mortgage broker shall maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn on the trust account and deposited directly into the mortgage broker's general business bank account.

(7) Borrower funds held by the mortgage broker must be remitted to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

(8) Any trust funds held by the mortgage broker for a borrower who cannot be located must be remitted in compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

[Recodified as § 208-660-08030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08030, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08035 Computerized accounting system requirements. The following requirements apply to computerized accounting systems:

(1) The system must provide the capability to back-up data files;

(2) Each computer generated trust account deposit register, trust account check register, and each trial balance ledger must be printed at least once per month and retained as part of a mortgage broker's books and records. Each borrower subaccount ledger must also be printed at the closure of each subaccount and retained as part of a mortgage broker's books and records; and

(3) Computer generated reconciliations of the trust account, as described in WAC 50-60-08020(5), must be performed and printed at least once each month and retained as a part of a mortgage broker's books and records.

[Recodified as § 208-660-08035, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08035, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08040 Automated check writing systems. If a mortgage broker uses a program which has the ability to write checks:

(1) The check number must be pre-printed by the supplier (printer) on the check and on the voucher copy;

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(2) The program may assign suffixes or subaccount codes before or after the check number for identification purposes;

(3) The check number must appear in the magnetic coding which also identifies the account number for readability by financial institution computers; and

(4) All checks written must be included within the computer accounting system.

[Recodified as § 208-660-08040, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08040, filed 6/21/95, effective 7/22/95.]

WAC 208-660-085 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.

[Recodified as § 208-660-085, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-085, filed 11/8/94, effective 12/9/94.]

PART E OUT-OF-STATE LICENSEES

WAC 208-660-090 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.

[Recodified as § 208-660-090, filed 2/1/96, effective 4/1/96. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-090, filed 1/7/94, effective 2/7/94.]

WAC 208-660-09005 Registered agent and agent's office. (1) Each out-of-state applicant or licensee must continuously maintain in this state a registered agent for service of process, notice, or demand in any judicial or administrative noncriminal suit, action, or proceeding against the licensee which arises under the Mortgage Broker Practices Act, with the same force and validity as if served personally on the licensee.

(2) Each out-of-state applicant or licensee must file with the director the agent's name, office mailing address, and consent to appointment. The agent's office address must include the number, if any, and street or building address or rural route, or, if a commonly known street or rural route address does not exist, a legal description. A registered agent's office may not be identified in the records of the department by post office box number, or a street address and box number of a private mail box company which creates the illusion of a physical office location where none in fact exists, or other nongeographic address. The address must accurately identify the actual location of the agent's office.

(3) An out-of-state applicant or licensee may not appoint a registered agent without the agent's prior written consent. In the event any person has been appointed agent without consent, that person may file a notarized statement attesting to

that fact, and the agent's name will promptly be removed from the records of the department.

[Recodified as § 208-660-09005, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09005, filed 6/21/95, effective 7/22/95.]

WAC 208-660-09010 Change of registered agent or agent's office. An out-of-state licensee may change its registered agent or its agent's office mailing address on the records of the department by delivering to the director a statement of change that sets forth:

(1) The licensee's name;

(2) If the agent's office location is to be changed, the address of the agent's new office in accordance with WAC 50-60-09005(2); and

(3) If the registered agent is to be changed, the name and new address of the new registered agent in accordance with WAC 50-60-09005(2) and the new agent's written consent to the appointment.

[Recodified as § 208-660-09010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09010, filed 6/21/95, effective 7/22/95.]

WAC 208-660-09015 Resignation of registered agent. (1) A registered agent may resign as agent on the records of the department by signing and filing with the director a statement of resignation.

(2) After filing the statement, the director shall mail a copy of the statement to the licensee at its principal place of business.

(3) The agency appointment is terminated on the thirty-first day after the date on which the statement was filed.

[Recodified as § 208-660-09015, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09015, filed 6/21/95, effective 7/22/95.]

WAC 208-660-09020 Service on licensee. (1) The registered agent of an out-of-state licensee is the licensee's agent for service of process, notice, or demand as set forth in WAC 50-60-09005(1).

(2) The director shall be an agent of an out-of-state licensee upon whom any process, notice, or demand may be served if:

(a) The licensee fails to appoint or maintain continuously a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at its office mailing address as indicated on the records of the department.

(3) Service on the director of any such process, notice, or demand must be made by delivering to and leaving with the director, or with an assistant director, the process, notice, or demand. In the event any such process, notice, or demand is served on the director, the director shall immediately cause a copy of it to be forwarded by certified mail, addressed to the licensee at the licensee's address as shown on the records of the department. Any service on the director must be returnable in not less than thirty days.

[Recodified as § 208-660-09020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09020, filed 6/21/95, effective 7/22/95.]

PART F ASSOCIATIONS

WAC 208-660-100 License standards for associations. A mortgage broker that is a member of an association and that is required to have a license may not avoid the licensing requirement because the association has applied for or received a license.

[Recodified as § 208-660-100, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-100, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-100, filed 1/7/94, effective 2/7/94.]

PART G TRANSFERS BY LICENSEES; CHANGES IN PRINCIPAL OR DESIGNATED BROKER OF LICENSEES

WAC 208-660-110 Transfers by, or changes in principal or designated broker of, a licensee. (1) A license may not be transferred.

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

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

(b) A stipulation that the transferee shall obtain a surety bond or approved alternative, in the required amount, and file the surety bond or approved alternative with the director prior to completion of the transfer;

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

(i) Make all payments due to customers and third-party providers on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 19.146.060 and WAC 50-60-125 and 50-60-140;

(iii) Provide notice of the transfer to all of the licensee's clients who have loan applications in process, or who have deposited funds with the licensee, or who have executed some other form of written agreement with the licensee; and

(iv) Provide notice to all third-party providers for whom the licensee is holding deposits from borrowers to pay their fees; and

(d) A stipulation that the transferee is either restricted from using or authorized to use, the licensee's mortgage broker business name.

(3) At least thirty days prior to a change in a principal or designated broker of a licensee, the licensee shall provide the director with all information required of a principal or designated broker when an application is made for a license as specified in WAC 50-60-030. The director shall make a determination prior to completion of the change, whether the proposed new principal or designated broker meets the requirements which must be met in order for the mortgage broker to be issued a license in accordance with RCW 19.146.210, and approve or deny the change.

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[Recodified as § 208-660-110, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-110, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-110, filed 1/7/94, effective 2/7/94.]

PART H EMPLOYEES AND INDEPENDENT CONTRACTORS OF LICENSEES

WAC 208-660-120 Employees and independent contractors of licensees. RCW 19.146.200 prohibits a person from engaging in the business of a mortgage broker without first obtaining and maintaining a license, except as an employee or independent contractor of a licensee or mortgage broker described in WAC 50-60-020 (2)(b) and (c).

[Recodified as § 208-660-120, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-120, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-120, filed 1/7/94, effective 2/7/94.]

PART I RECORDKEEPING REQUIREMENTS

WAC 208-660-125 Recordkeeping and other requirements for advertising materials. (1) Each mortgage broker shall maintain as a part of its books and records one copy of each item of all advertising material which mentions rates or fees. However, an advertising flyer is exempt from this subsection if:

(a) The flyer is prepared by mortgage brokers for specific use by real estate professionals to provide information to consumers and to offer comparisons of the financing options available to consumers;

(b) The flyer complies with all advertising requirements of the Mortgage Broker Practices Act, including without limit, the requirements of the Truth in Lending Act;

(c) The flyer provides full disclosure of rates, fees, and terms, including the annual percentage rate of any loan used for illustrative purposes; and

(d) The flyer contains the following disclosure:

"This document is not intended as an offer to extend credit nor a commitment to lend. The loan interest rates, fees, and terms presented herein are for illustrative purposes only and may not be currently available. This document has been prepared to assist real estate professionals in illustrating some of the financing options available to consumers."

(2) Each mortgage broker is responsible for the accuracy and reliability of its advertising material and its compliance with the Mortgage Broker Practices Act.

[Recodified as § 208-660-125, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-125, filed 6/21/95, effective 7/22/95.]

WAC 208-660-130 Disclosures required to borrower.

(1) Any form of disclosure required by RCW 19.146.030 (2)(d), (e), and (f) must be acceptable to the director. A model form for this purpose promulgated by the director is considered acceptable.

(2) Any lock-in agreement form or disclosure form described in RCW 19.146.030 (2)(c) must be approved by the director prior to its use by a mortgage broker or its loan orig-

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inators. This subsection does not apply to use of a model form promulgated by the director.

[Recodified as § 208-660-130, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-130, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-130, filed 1/7/94, effective 2/7/94.]

WAC 208-660-140 General recordkeeping requirements. (1) Each mortgage broker shall retain its books and records for a minimum of four years after the effective period to which the books and records relate.

However, books and records relating to a specific loan application must be maintained for a minimum of four years after a loan application is received. These books and records must be retained in all cases where a loan application has been received, any deposits or fees associated with a mortgage application have been accepted, or any written agreement has been executed.

(2) All books and records must be kept in a location in this state that is readily accessible to the department. However, a mortgage broker may store its books and records outside the state with the prior approval of the director, and after executing a written agreement with the director:

(a) To provide access to its books and records to investigate complaints against the mortgage broker; and

(b) To pay the department's travel, lodging and per diem expenses incurred in travel to examine books and records stored out-of-state.

(3) Books and records include without limitation: The original contracts for the broker's compensation, an accounting of all funds received in connection with loans, a copy of the settlement statements as provided to borrowers, a record of any fees refunded to applicants for loans that did not close, copies of the good faith estimates and all other written disclosures, and all other correspondence, papers or records relating to loan applications.

[Recodified as § 208-660-140, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-140, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-140, filed 1/7/94, effective 2/7/94.]

WAC 208-660-145 Forwarding appraisal, title report and credit report. If a borrower is unable to obtain a loan for any reason and the borrower has paid the mortgage broker for an appraisal, title report, or credit report, the borrower may request in writing that the mortgage broker mail (or otherwise furnish) a copy of the appraisal, title report or credit report to the borrower and mail (or otherwise furnish) the originals to any other mortgage broker or lender of the borrower's choice. The copies and originals must be furnished by the mortgage broker within five days after the mortgage broker has received the borrower's written request. By furnishing the originals to another mortgage broker or lender, the mortgage broker conveys the right to use the documents to the other broker or lender. The mortgage broker must, upon request by the other broker or lender, provide written evidence of the conveyance.

[Recodified as § 208-660-145, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-145, filed 6/21/95, effective 7/22/95.]

[Title 208 WAC—p. 44]

**PART J
DISCLOSURE OF SIGNIFICANT AND
ADVERSE DEVELOPMENTS AFFECTING
LICENSEES**

WAC 208-660-150 Disclosure of significant developments. (1) A licensee must notify the director in writing within thirty days after the occurrence of any of the following developments:

(a) Licensee's filing for bankruptcy or reorganization.

(b) Receipt of notification of license revocation procedures in any state against the licensee.

(c) The filing of a felony indictment or information related to mortgage brokering activities of the licensee, or any officer, director, principal, or designated broker of the licensee.

(d) The licensee, or any officer, director, principal, or designated broker of the licensee being convicted of a felony.

(e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant decline in value of an approved alternative held by the director.

(f) The filing of any material litigation against the licensee.

(2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal place of business or any of its branch offices.

(3) A licensee must notify the director in writing within five days after a change in the licensee's:

(a) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(b) Mailing address or telephone number;

(c) President, partner, designated broker, or branch office manager;

(d) Trust account (e.g., change in the status, location, or account number);

(e) State master business license; or

(f) Standing with the state of Washington secretary of state.

[Recodified as § 208-660-150, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-150, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94, effective 2/7/94.]

WAC 208-660-160 License application denial or condition; license suspension or revocation. (1) The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

(a) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;

(b) Has not filed the required surety bond or approved alternative or otherwise complied with RCW 19.146.205;

(c) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years;

(d) Has within the prior seven years been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct;

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(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 the Mortgage Broker Practices Act. The director may find that the person has failed to make the demonstration if, among other things:

(i) The person is or has been subject to an injunction issued pursuant to the Mortgage Broker Practices Act or the Consumer Protection Act; or

(ii) An independent credit report issued by a recognized credit reporting agency indicates that the person has a substantial history of unpaid debts;

(f) Has omitted, misrepresented, or concealed material facts in obtaining a license or in obtaining reinstatement thereof;

(g) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

(h) Has had its surety bond, approved alternative, or equivalent form of business insurance, canceled or revoked for cause;

(i) Has allowed the licensed mortgage broker 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 in violation of the Mortgage Broker Practices Act;

(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 its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(m) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with 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 of the conduct of the mortgage broker business or profession;

(o) Has failed to cooperate with the director, or his or her designee, including without limitation 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; or

(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;

(p) Has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or 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;

(q) Has failed to provide a required certificate of passing an approved examination;

(r) Has failed to provide a required certificate of satisfactory completion of an approved licensing course or, in the alternative, satisfactory proof of two years' experience in accordance with WAC 50-60-040; or

(s) Has failed to provide a required certificate of satisfactory completion of an approved continuing education course.

(2) The director may deny or condition approval of a branch office application, or suspend or revoke a branch office certificate, if the branch office manager has failed to provide any required items described in subsection (1)(r) and (s) of this section.

[Recodified as § 208-660-160, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225.95-13-091, § 50-60-160, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9.94-03-009, § 50-60-160, filed 1/7/94, effective 2/7/94.]

PART K

FINES AND PENALTIES; PROHIBITED PRACTICES

WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act. Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.

[Recodified as § 208-660-165, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225.95-13-091, § 50-60-165, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-165, filed 11/8/94, effective 12/9/94.]

WAC 208-660-170 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.

[Recodified as § 208-660-170, filed 2/1/96, effective 4/1/96. 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 208-660-190 Prohibited practices—Improperly influencing appraisals. Any threat, whether oral or written, direct or implied, by a mortgage broker to withhold payment of the standard appraiser's fee constitutes the making of a payment for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property, in violation of RCW 19.146.0201(9). The prior sentence does not apply if the appraiser has been notified in writing by the mortgage broker that a bona fide dispute exists regarding the performance or quality of the appraiser's work.

[Recodified as § 208-660-190, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-190, filed 6/21/95, effective 7/22/95.]

PART L MORTGAGE BROKER FEES

WAC 208-660-200 Mortgage broker fees allowed. (1) Except as otherwise permitted in this section, a mortgage broker may not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless the borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and the mortgage broker.

(2) A mortgage broker may:

(a) Charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(i) The borrower fails to close on a loan through no fault of the mortgage broker;

(ii) The fee is not otherwise prohibited by the Truth in Lending Act; and

(iii) The mortgage broker has obtained a "written loan commitment from a lender on the same terms and conditions agreed upon by the borrower and the mortgage broker." This term is defined in subsection (3) of this section; and

(b) Solicit or accept fees in advance to pay third-party providers if:

(i) The mortgage broker identifies to the borrower in writing prior to the acceptance of any fees the third-party provider goods and services for which fees are being collected;

(ii) Such fees are deposited in a trust account as required by the Mortgage Broker Practices Act;

(iii) The mortgage broker does not charge more for the third-party provider's goods and services than the actual costs of the goods and services charged by the provider; and

(iv) The mortgage broker refunds any fees collected for goods or services not provided.

(3) For purposes of this section, a "written loan commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker" means:

(a) A legally binding commitment;

(b) From a lender with which the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(2);

(c) To fund the loan on substantially the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

[Recodified as § 208-660-200, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-200, filed 6/21/95, effective 7/22/95.]

PART M MORTGAGE BROKERAGE COMMISSION

WAC 208-660-210 Mortgage brokerage commission. The mortgage brokerage commission, created by RCW 19.146.280 and appointed by the director, shall:

(1) Adopt and meet according to a regular schedule, unless otherwise called by the chairperson;

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(2) Meet, hear testimony, and advise the director on proposed changes to the Mortgage Broker Practices Act;

(3) Advise the director on approval of proposed courses of study and examinations to be administered in the course of licensing mortgage brokers;

(4) Advise the director on preparation of the department's legislatively mandated review of the number and type of consumer complaints arising from residential mortgage lending in the state, and any resulting recommendations for changes in the licensing requirements of the Mortgage Broker Practices Act; and

(5) Advise the director on departmental policy and procedures regarding enforcement actions resulting from violations of the Mortgage Broker Practices Act.

[Recodified as § 208-660-210, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-210, filed 6/21/95, effective 7/22/95.]

Chapter 208-680A WAC ESCROW—ORGANIZATION AND ADMINISTRATION (Formerly chapter 308-128A WAC)

WAC

208-680A-020	Organization.
208-680A-030	Meeting notice.
208-680A-040	Definitions.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-680A-010	Promulgation—Authority. [Recodified as § 208-680A-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128A-010, filed 9/9/88; Order RE 122, § 308-128A-010, filed 9/21/77.] Repealed by 96-21-082, filed 10/16/96, effective 11/16/96. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.
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WAC 208-680A-020 Organization. The department of financial institutions administers the Washington Escrow Agent Registration Act, chapter 18.44 RCW. The escrow commission, composed of the director or designee and five board members, appointed by the director, approve examination questions for license applicants, act in an advisory capacity to the director in the activities of escrow agents and escrow officers and perform such other duties and functions as prescribed by chapter 18.44 RCW.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680A-020, filed 10/16/96, effective 11/16/96. Recodified as § 208-680A-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128A-020, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128A-020, filed 9/9/88; Order RE 122, § 308-128A-020, filed 9/21/77.]

WAC 208-680A-030 Meeting notice. Individuals desiring to be informed as to date, time, place and agenda of the escrow commission meetings must make a written request to the Department of financial institutions.

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

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

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

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

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

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

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

"Unclaimed funds" are those funds for which the rightful owner is unknown, or the location of payee is unknown, or stale-dated checks which have not been cashed.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680A-040, filed 10/16/96, effective 11/16/96. Recodified as § 208-680A-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128A-040, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128A-040, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128A-040, filed 6/7/79; Order RE 122, § 308-128A-040, filed 9/21/77.]

Chapter 208-680B WAC

ESCROW—LICENSING AND EXAMINATION

(Formerly chapter 308-128B WAC)

WAC

208-680B-010	Credit and character report.
208-680B-020	Fingerprint identification.
208-680B-030	Notice required of intention to take examination.
208-680B-050	Successful applicants must apply for license.
208-680B-070	Misuse of escrow officer license prohibited.
208-680B-080	Escrow officer and agent fees.
208-680B-090	Dishonored checks and insufficient payment of fees.

WAC 208-680B-010 Credit and character report. Any person making application for an escrow officer license after passing an examination, or to be a designated escrow officer, shall, as an integral part of the application, supply the director with satisfactory proof of applicant's character and credit rating. Such proof shall be obtained and provided by a recognized credit reporting agency in a form approved by the department.

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

[Recodified as § 208-680B-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-010, filed 9/9/88; Order RE 122, § 308-128B-010, filed 9/21/77.]

WAC 208-680B-020 Fingerprint identification. (1)

Any person making application for an escrow officer license after passing an examination, or to be a designated escrow officer who has been convicted of a felony or misdemeanor within ten years of application, shall, as an integral part of the application, submit fingerprint identification on a form provided by the department.

(2) Any person making application for an escrow agent certificate of registration who has been convicted of a felony or misdemeanor within ten years of application, shall, as an integral part of the application, submit fingerprint identification of the natural person making the application, principal officers, designated escrow officer and partners for those persons who have been convicted of a felony or misdemeanor within ten years of application on a form provided by the department.

[Recodified as § 208-680B-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-020, filed 9/9/88; Order RE 122, § 308-128B-020, filed 9/21/77.]

WAC 208-680B-030 Notice required of intention to take examination.

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

[Recodified as § 208-680B-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-030, filed 9/9/88; Order RE 122, § 308-128B-030, filed 9/21/77.]

WAC 208-680B-050 Successful applicants must apply for license.

Any person who has passed the examination for escrow officer must apply to become licensed within one year from the date of such examination in order to be eligible for such license. Failure to comply with this provision will necessitate the taking and passing of another examination.

[Recodified as § 208-680B-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-050, filed 9/9/88; Order RE 122, § 308-128B-050, filed 9/21/77.]

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WAC 208-680B-070 Misuse of escrow officer license prohibited. An escrow officer shall not permit the use of his or her license, whether for compensation or not, to enable any person to in fact establish and carry on an escrow agency wherein the escrow officer does not have full management and supervisory responsibilities as required by RCW 18.44.200 and these regulations.

[Recodified as § 208-680B-070, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128B-070, filed 9/21/77.]

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

Title of Fee	Fee
Escrow officer:	
First examination	\$150.00
Reexamination	150.00
Original license	160.00
License renewal	160.00
Transfer of license, name or address change or license activation	25.00
Duplicate license	25.00
Escrow agent:	
Application and original certificate	345.00
Renewal	345.00
Late renewal with penalty	517.50
Transfer of certificate, name or address change	25.00
Duplicate certificate	25.00
Escrow agent branch office:	
Application and original license	345.00
Renewal	345.00
Late renewal with penalty	517.50
Transfer of license, name or address change	25.00
Duplicate license	25.00

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680B-080, filed 10/16/96, effective 11/16/96. Recodified as § 208-680B-080, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 91-11-066, § 308-128B-080, filed 5/16/91, effective 6/16/91. Statutory Authority: RCW 18.44.080 and 43.24.086. 90-03-099, § 308-128B-080, filed 1/24/90, effective 3/1/90. Statutory Authority: RCW 43.24.086. 87-18-032 (Order PM 668), § 308-128B-080, filed 8/27/87.]

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

[Recodified as § 208-680B-090, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-090, filed 9/9/88.]

Chapter 208-680C WAC

ESCROW—ESCROW AGENT OFFICE

(Formerly chapter 308-128C WAC)

WAC

208-680C-020	Office identification.
208-680C-030	Display of licenses.
208-680C-040	Change of office location.
208-680C-045	Closure of office.
208-680C-050	Deceptive names prohibited.

WAC 208-680C-020 Office identification. Any main or branch office of the escrow agent shall be identified by displaying the name, visible to the public, of the escrow agent as licensed at the address appearing on the office license.

[Recodified as § 208-680C-020, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128C-020, filed 9/21/77.]

WAC 208-680C-030 Display of licenses. Licenses of the designated escrow officer, branch escrow officer and other escrow officers shall be displayed prominently in the office located at the address appearing on the individual license.

[Recodified as § 208-680C-030, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128C-030, filed 9/21/77.]

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

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

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

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

(a) "Responsible person" means: The designated escrow officer; the owner of the firm; a controlling person as defined in RCW 18.44.010(9); and the officers, owners and partners of the entity. The department may allow a person other than a responsible person as defined in this subsection to assume these duties.

(b) The official notification to the department shall include:

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

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

(iii) The name, residence address and telephone number of the person responsible for the records.

(iv) The street address where the records are located.

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

(3) **Maintenance of records after closure.** When an escrow office closes, the records must be maintained in the state of Washington for at least six years. The records shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

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

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680C-045, filed 10/16/96, effective 11/16/96.]

WAC 208-680C-050 Deceptive names prohibited. At the discretion of the director or the director's designated representative, an escrow agent may not be issued a certificate nor advertise in any manner using names or trade styles which are similar to currently issued certificates or imply that the agent is a nonprofit organization, research organization, public bureau or public group, are otherwise deceptive, or which uses or makes reference to the existence of financial responsibility. A bona fide franchisee may be issued a certificate using the name of the franchisor with the firm name of the franchisee.

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

Chapter 208-680D WAC

ESCROW—RECORDS AND RESPONSIBILITIES

(Formerly chapter 308-128C WAC)

WAC

208-680D-010	Designated escrow officer responsibilities.
208-680D-020	Required records.
208-680D-030	Accuracy and accessibility of records.
208-680D-040	Agreements and closings.
208-680D-050	Expedient performance.
208-680D-060	Disbursement of funds.
208-680D-070	Suit or complaint notification.
208-680D-080	Escrow licensees' responsibilities.

WAC 208-680D-010 Designated escrow officer responsibilities. The designated escrow officer shall be responsible for the custody, safety, and correctness of entries

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of all required escrow records. The escrow officer retains this responsibility even though another person or persons may be assigned by the escrow officer the duties of preparation, custody, recording or disbursing.

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

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

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

WAC 208-680D-020 Required records. Escrow agents shall be required to keep the following transaction records as a minimum; and all records except the reconciled bank statements, shall identify the transaction to which they pertain:

(1) Trust account records.

(a) Duplicate receipt book recording all receipts;

(b) Prenumbered checks;

(c) Trust account receipt and disbursement records;

(d) Duplicate bank deposit slips, either validated by the bank or bearing the signature of the designated escrow officer and the date of actual deposit;

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

(2) Other records.

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

(b) Reconciled bank statements and cancelled checks for all bank accounts of the escrow agent.

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

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

(2) **Location.** The escrow agent must maintain all records available for inspection by the department for a minimum of six years at an address where the escrow agent is

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licensed to maintain an escrow office. Records of transactions may be stored at a remote location after the escrow has been completed for at least one year. Records stored at a remote location shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

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

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

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680D-030, filed 10/16/96, effective 11/16/96. Recodified as § 208-680D-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128D-030, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-030, filed 9/9/88; Order RE 122, § 308-128D-030, filed 9/21/77.]

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

(1) Prepare or accept an instrument of escrow instructions among each principal and the agent based upon a written agreement signed by the principals. The escrow instructions shall not be modified except by written agreement signed by the principals and accepted by the agent. The agent shall disclose in writing to the parties to the transaction when a profit, or the potential for a profit on fees and services provided may be realized by the escrow agent. Justifiable costs for fees and services related to the transaction may include, but not be limited to courier fees, credit reports, postage, fax services, and copying of documents. A copy of the disclosure shall be maintained in the transaction file.

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

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

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

(a) The date of closing.

(b) The total purchase price.

(c) An itemization of all adjustments, monies or things of value received or paid.

(d) To whom each item is debited and/or credited.

(e) Date each adjustment was made.

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

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

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

(5) The escrow agent shall provide a copy of the final closing statement to each real estate broker involved with the transaction.

[Recodified as § 208-680D-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128D-040, filed 1/31/94, effective 3/3/94; 88-23-049 (Order PM 790), § 308-128D-040, filed 11/14/88; Order RE 122, § 308-128D-040, filed 9/21/77.]

WAC 208-680D-050 Expeditious performance. An escrow agent shall perform all acts required of the agent by agreement as expeditiously as possible and within the time period of the agreement. Intentional or negligent delay in such performance shall be considered in violation of RCW 18.44.260(2).

[Recodified as § 208-680D-050, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128D-050, filed 9/21/77.]

WAC 208-680D-060 Disbursement of funds. The escrow agent shall disburse funds as set forth in the escrow instructions. Disbursement of any money or other items in violation of the trust or before the happening of the conditions of the escrow agreement or escrow instructions is a violation of RCW 18.44.260(5). If the ownership of the funds is in dispute or is unclear based on the written agreement of the parties, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW.

Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principals: *Provided*, That disbursement of funds may be withheld to allow for checks to clear.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680D-060, filed 10/16/96, effective 11/16/96. Recodified as § 208-680D-060, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-23-049 (Order PM 790), § 308-128D-060, filed 11/14/88; Order RE 122, § 308-128D-060, filed 9/21/77.]

WAC 208-680D-070 Suit or complaint notification. Every escrow agent and escrow officer shall, within twenty days after service or knowledge thereof, notify the department of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter therein involves any escrow or business related activity by the licensee. Notification is required regardless of any pending appeal.

[Recodified as § 208-680D-070, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128D-070, filed 1/31/94,

effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-070, filed 9/9/88; Order RE 122, § 308-128D-070, filed 9/21/77.]

WAC 208-680D-080 Escrow licensees' responsibilities. (1) It is the responsibility of every licensee to be knowledgeable of and keep current with the rules implementing chapter 18.44 RCW.

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

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

[Recodified as § 208-680D-080, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128D-080, filed 9/9/88.]

Chapter 208-680E WAC

ESCROW—TRUST ACCOUNT PROCEDURES

(Formerly chapter 308-128C WAC)

WAC

208-680E-011 Administration of funds held in trust.

WAC 208-680E-011 Administration of funds held in trust. The designated escrow officer or branch designated escrow officer on behalf of the escrow agent shall be responsible for all funds received from any principal or any party to an escrow transaction or escrow collection account and shall hold the funds in trust for the purposes of the transaction or agreement and shall not utilize such funds for the benefit of the agent or any person not entitled to such benefit. The escrow agent shall establish a trust bank account(s) in a recognized Washington state depository. The escrow agent is responsible for depositing, holding, disbursing, and accounting for funds in trust as provided herein.

(1) The trust bank account(s) shall be designated as a trust account in the name of the escrow agent as certified. Trust bank accounts shall be noninterest bearing demand deposit accounts except as follows:

(a) Interest-bearing trust bank accounts or dividend earning investment accounts containing funds pertaining to an individual escrow transaction or escrow collection account may be established by the agent if directed by written agreement signed by the principals to the transaction and specifying the manner of distribution of accumulated interest to the parties to the transaction.

(b) Interest-bearing trust bank accounts or dividend-earning investment accounts containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections may be established by the agent when directed by written agreement or directive signed by the principals: *Provided*, That all interest or earnings shall accrue to the principals as directed in the agreement.

(c) Interest-bearing trust bank accounts containing funds pertaining to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h).

(2) The agent shall establish and maintain a system of records and procedures as provided in this section. Any alter-

native records or procedures proposed for use by the escrow agent shall be approved in advance by the department.

(3) The agent is responsible for the disbursement of all funds received and held in trust, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the agents behalf. The designated escrow officer must have signatory authority on all trust bank accounts. At the discretion of the designated escrow officer, branch designated escrow officers may be delegated signature authority for trust bank accounts at their branch.

(4) All funds received for any reason pertaining to an escrow transaction or collection account shall be deposited in the escrow agents trust bank account(s) not later than the first banking day following receipt thereof except funds owned exclusively by the agent.

(5) All funds received shall be identified by the day received and by the amount, source, and purpose on either a cash receipts journal or duplicate receipt which shall be retained as a permanent record.

(6) All deposits to the trust bank account(s) shall be documented by a duplicate bank deposit slip, validated by bank imprint or attached deposit receipt which shall bear the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust bank account. Receipt of funds by wire transfer are to be posted in the same manner as other receipts and there shall be a traceable identifying name or number supplied by the financial institution or transferring entity. The agent must also make arrangements for a follow-up "hard copy" receipt for the deposit.

(7) An individual client's ledger sheet shall be established and maintained for each escrow transaction for which funds are received in trust and to which all receipts and disbursements shall be posted.

(a) Credit entries must show the date of deposit or wire transfer, amount, and name of remitter.

(b) Debit entries must show the date of check, check number, amount of check, and name of payee.

(8) The reconciled trust bank account(s) must equal at all times the outstanding trust liability to clients. The outstanding trust liability to clients must equal the trial balance of all escrows with undisbursed balances.

(9) The agent shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation will be signed by the designated escrow officer or branch designated escrow officer. Such reconciliations are to be retained as permanent records.

(10) All disbursement of trust funds shall be made by check, drawn on the trust bank account, and identified on the check as pertaining to a specific escrow transaction or collection account except as provided in (a) through (e) of this subsection. The number of each check, amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal and all data must agree exactly with the check as written.

(a) No disbursement from the trust account shall be made based upon wire transfer receipt until the deposit has been verified.

(b) The escrow agent must make arrangements with the financial institution in which the trust bank account is located to provide a follow-up "hard copy" debit memo when funds are disbursed via wire transfer.

(c) The escrow agent shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(d) Transfers between closing escrows may be made by ledger entries alone provided a transfer form is used containing the date of the transfer, the amount of the funds being transferred, the identity of the escrow accounts being debited and credited, and the signature of the person authorized to sign checks on the escrow bank account. Intra-bank debit memo transfer forms may be used only where the escrow accounts involved in the transfer are closed through the same bank account. The authorization for the transfer must be placed in each escrow file involved.

(e) Transfers between collection escrows of a recurring nature must be authorized by standing instructions on file from the appropriate parties.

(11) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(12)(a) A separate check shall be drawn on the trust bank account payable to the escrow agent for escrow and service fees for which the escrow agent is authorized payment therefor as provided in the escrow instructions. All such fees relating to the transaction may be withdrawn by a single check provided such check is supported by an itemization of the charges on the closing or settlement statement. Each check shall bear the escrow or transaction number.

(b) Collection account fees may be withdrawn by a single check provided such check is supported by a schedule of fees identified to each individual account. Such fees shall be withdrawn at least once monthly or as provided in the collection contract agreement if the fees are payable for a greater term than monthly.

(13) No deposits to the trust bank accounts shall be made of funds that do not pertain to an escrow transaction or not received in connection with an escrow collection account, or that belong to the agent, including fees to "open" the bank account or to keep the account from being closed.

(14) No disbursement from the trust bank account shall be made:

(a) For items not pertaining to a specific escrow transaction or escrow collection account;

(b) In advance of the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions, to any person or for any reason without a written release from all principals of the escrow transaction or collection account, except that if the earnest money agreement terminates according to its own terms prior to closing, disbursement of earnest money funds shall be made as provided by the earnest money agreement without a written release unless the funds are handled as provided in WAC 208-680D-060;

(c) Pertaining to a specific escrow transaction or collection account in excess of the actual amount held in the trust bank account in connection with such account;

(d) In payment of a fee owed to any employee of an agent or in payment of any business expense of the agent.

Payment of fees to employees of an agent or of any business expense of the agent shall be paid from the regular business bank account of the agent;

(e) For bank charges of any nature. Arrangements must be made with the bank to have any such charges applicable to the trust bank accounts charged to the regular business bank account, or to provide a separate statement of bank charges so that they may be paid from the agents regular business bank account: *Provided*, That bank charges may be paid from the interest on accounts allowed under subsection (1)(c) of this section;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or to any person(s) without the written authority of the lessee. Such funds are to be held until the end of the tenancy when they are to be disbursed to the person(s) entitled to the funds as provided by the terms of the rental or lease agreement and consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(h) If the financial institution's automated system does not have the ability to charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, the escrow agent shall deposit within one banking day after receipt of notice funds from the general business or other nontrust account to cover the service fee charged.

(15) The provisions of this section are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back-up all data files;

(b) Receipt and check registers will be printed at least once monthly and retained as a permanent record. Reconciliation and trial balance will be accomplished at least once monthly, printed and retained as a permanent record;

(c) The escrow agent will maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If the program has the ability to write checks, the check number must be preprinted on the check or retained voucher copy by the supplier (printer). The program may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer;

(f) All checks written must be included within the computer accounting system.

(16) Unclaimed funds are governed by the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If the agent has funds classified as unclaimed, the designated escrow officer or branch designated escrow officer shall contact the department of revenue for disposition instructions. The agent shall maintain a record of the correspondence relating to unclaimed funds for a period of five years.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680E-011, filed 10/16/96, effective 11/16/96. Recodified as § 208-680E-011, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128E-011, filed 1/31/94, effective 3/3/94; 89-07-077 (Order PM 825), § 308-128E-011, filed 3/21/89, effective 6/1/89.]

Chapter 208-680F WAC

ESCROW—FINANCIAL RESPONSIBILITY

(Formerly chapter 308-128C WAC)

WAC

208-680F-010	Bond.
208-680F-020	Errors and omissions policy.
208-680F-040	Return of cash deposit or securities.
208-680F-050	Claim on cash deposit or securities.
208-680F-060	Cash deposit, securities—Full force and effect.
208-680F-070	Cancellation of errors and omissions policy, new policy required.

WAC 208-680F-010 Bond. Each certificated escrow agent shall obtain and keep in effect a bond in an aggregate minimum amount of \$200,000 providing fidelity coverage on all corporate officers, escrow officers, partners, and employees engaged in escrow transactions. Such bond shall be structured to provide coverage for the total amount of all claims up to an aggregate minimum of \$200,000.

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

WAC 208-680F-020 Errors and omissions policy. Each certificated escrow agent shall obtain and keep in effect an errors and omissions policy providing coverage in the minimum aggregate amount of \$50,000 or, alternatively, cash deposit or securities in the principal amount of \$50,000. Securities used as an alternative to an errors and omissions policy shall be effectively delivered to the director. For the purpose of fulfilling the requirements of chapter 18.44 RCW and these rules, the escrow agent shall execute an irrevocable assignment and any supporting documentation as required by the director. Securities which are stocks or other interest in the registered escrow agency are not acceptable securities for the purposes of fulfilling the requirements of chapter 18.44 RCW and these rules.

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

WAC 208-680F-040 Return of cash deposit or securities. (1) The cash deposit or securities shall be returned to the escrow agent upon the date of expiration, cancellation, or revocation of the escrow agent's certificate of registration: *Provided*, That the director may hold the cash deposit or securities for a longer period in order to satisfy any actions commenced under WAC 208-680F-050 prior to the expiration, cancellation, or revocation of the escrow agent's certificate of registration.

(2) The cash deposit or securities shall be returned to an applicant within thirty days of the director's denial of an ini-

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tial application for an escrow agent's certificate of registration.

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

WAC 208-680F-050 Claim on cash deposit or securities. (1) Upon receipt of notification of a legal action for which notice is required to be given to the department under WAC 208-680D-070, the department shall notify the complaining party of the existence of any cash deposit or securities and the provisions of this chapter.

(2) A claim against the cash deposit or securities shall be in the form of certified copy of a final judgment from a court of competent jurisdiction. Upon receipt of a claim, the department shall release the cash deposit or securities sufficient to pay the final judgment.

(3) The department shall notify the agent of the receipt of the claim and advise the agent that the agent must deposit cash or securities with the department to maintain the principal amount of \$50,000 after payment of the claim.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680F-050, filed 10/16/96, effective 11/16/96. Recodified as § 208-680F-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128F-050, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-050, filed 6/7/79.]

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

[Recodified as § 208-680F-060, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 79-07-009 (Order RE 126), § 308-128F-060, filed 6/7/79.]

WAC 208-680F-070 Cancellation of errors and omissions policy, new policy required. In the event of cancellation or expiration of an errors and omissions policy or fidelity bond, the escrow agent shall file a new policy or bond. Failure to file a new policy or bond shall be sufficient grounds for the suspension or revocation of the escrow agent's certificate of registration. During the time the escrow agent does not have an errors and omissions policy or fidelity bond coverage in effect, the escrow agent may not transact business pursuant to RCW 18.44.050.

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