

208-480-020	Appraisals required. [96-06-011, 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.] Repealed by 99-03-009, filed 1/8/99, effective 2/28/99. Statutory Authority: RCW 31.12.516 and 43.320.040.
208-480-030	Transactions for which a state-certified appraiser is required. [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. 96-06-011, 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.] Repealed by 99-03-009, filed 1/8/99, effective 2/28/99. Statutory Authority: RCW 31.12.516 and 43.320.040.
208-480-040	Transactions for which either a state-certified or state-licensed appraiser is required. [96-06-011, 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.] Repealed by 99-03-009, filed 1/8/99, effective 2/28/99. Statutory Authority: RCW 31.12.516 and 43.320.040.
208-480-050	Appraisal standards. [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. 96-06-011, 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.] Repealed by 99-03-009, filed 1/8/99, effective 2/28/99. Statutory Authority: RCW 31.12.516 and 43.320.040.
208-480-060	Appraiser independence. [96-06-011, 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.] Repealed by 99-03-009, filed 1/8/99, effective 2/28/99. Statutory Authority: RCW 31.12.516 and 43.320.040.
208-480-070	Professional association membership—Competency. [96-06-011, 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.] Repealed by 99-03-009, filed 1/8/99, effective 2/28/99. Statutory Authority: RCW 31.12.516 and 43.320.040.

Chapter 208-04 WAC

GENERAL PROVISIONS

WAC

208-04-010	Definitions.
208-04-020	Purpose; effective date.
208-04-030	Requirements for loans to department employees and the director.

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

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chapter applies to loans and material changes to loans made on or after October 1, 1993.

[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 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.
208-08-090	Submission on stipulated facts.
208-08-100	Consolidation of proceedings.

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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.

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(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.

(3) **Decision on motion.** The presiding officer may determine the extent and conditions of discovery in any adju-

dicative 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 proposed 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-

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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
208-12-020
208-12-030
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Purpose—Scope—Conflict with other regulations.
Definitions.
Description of organization of department.
Location of administrative offices.
Office hours.
Procedure to request public records.
Protection of public records.
Copying.
Exemptions.
Denials of public records requests—Review.
Records index.
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.]

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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.]

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.]

(2003 Ed.)

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

(Formerly chapter 419-18 WAC)

WAC

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

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-418-030	Hourly charge for examinations. [96-06-011, 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. [96-06-011, 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].
208-418-060	One-time special assessment for fiscal 1997. [Statutory Authority: 1996 c 274. 96-12-058, § 208-418-060, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-060, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-060, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-060, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-060, filed 9/26/83.] Repealed by 01-12-004, filed 5/23/01, effective 6/23/01. Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.
208-418-080	Scheduled increases in rate of examination and supervision charges. [96-06-011, 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 208-418-010 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

(1) Quarterly asset assessments charged to credit unions;

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

(3) Certain other fees charged by the director.

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

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

WAC 208-418-040 Quarterly asset assessments. (1) The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments.

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

M = Million K = Thousand

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

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

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

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

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

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

effective 4/1/91. Statutory Authority: RCW 31.12.320, 83-20-027 (Order 83-4), § 419-18-050, filed 9/26/83.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2003 Ed.)

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

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

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

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

Chapter 208-424 WAC REGULATORY RELIEF FOR SMALL CREDIT UNIONS

WAC

208-424-010	Definition of small credit union.
208-424-020	Timing of special membership meetings of small credit unions.
208-424-030	Frequency of regular meetings of board of directors of small credit unions.

WAC 208-424-010 Definition of small credit union.

For purposes of this chapter, a "small credit union" means a credit union with up to ten million dollars in total assets as of its most recently filed call report.

[Statutory Authority: RCW 31.12.516 (2), (3), (4), 43.17.060, 43.320.040, 02-14-038, § 208-424-010, filed 6/26/02, effective 7/27/02.]

WAC 208-424-020 Timing of special membership meetings of small credit unions. In regard to timing of special membership meetings, the last sentence of RCW 31.12.-195(3) states:

"The designated time of the membership meeting must be no sooner than twenty, and no later than thirty days after the request is received by the secretary."

A small credit union may vary from the last sentence of RCW 31.12.195(3) as provided in its bylaws, as long as it is a small credit union at the time the request for a special membership meeting is received by the secretary. However, the designated time of the special membership meeting must be no sooner than ten, and no later than one hundred twenty days, after the request is received by the secretary. In all other respects, a small credit union must comply with RCW 31.12.195.

[Statutory Authority: RCW 31.12.516 (2), (3), (4), 43.17.060, 43.320.040, 02-14-038, § 208-424-020, filed 6/26/02, effective 7/27/02.]

WAC 208-424-030 Frequency of regular meetings of board of directors of small credit unions. In regard to timing of regular board meetings, RCW 31.12.225(5) states:

"The board will have regular meetings not less frequently than once each month."

A small credit union may vary from RCW 31.12.225(5) as provided in its bylaws. However, a small credit union must have at least nine regular board meetings each calendar year, and consecutive regular board meetings must be no more than ten weeks apart. In all other respects, a small credit union must comply with RCW 31.12.225.

[Statutory Authority: RCW 31.12.516 (2), (3), (4), 43.17.060, 43.320.040. 02-14-038, § 208-424-030, filed 6/26/02, effective 7/27/02.]

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. 96-06-011, 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. 96-06-011, 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. 96-06-011, 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. 96-06-011, 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. 96-06-011, 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. 96-06-011, 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 comply 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. 96-06-011, 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

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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. 96-06-011, 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. 96-06-011, 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.]

Chapter 208-440 WAC

CREDIT UNION PARTICIPATION IN COMMERCIAL ARRANGEMENTS WITH THIRD PARTIES

(Formerly chapter 419-40 WAC)

WAC

208-440-010 Commercial arrangements with third parties.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-440-020 Endorsements of commercial products or services. [96-06-011, 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.] Repealed by 00-22-037, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 31.12.516(2), 43.320.040.

208-440-030 Offering of gifts, prizes and premiums. [96-06-011, 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].

208-440-040 Use of credit union space to advertise commercial products and services. [96-06-011, 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.] Repealed by 00-22-037, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 31.12.516(2), 43.320.040.

208-440-050 Commercial programs offered to credit union members. [96-06-011, 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.] Repealed by 00-22-037, filed 10/25/00, effective 11/25/00. Statutory Authority: RCW 31.12.516(2), 43.320.040.

WAC 208-440-010 Commercial arrangements with third parties. (1) Credit unions may enter into arrangements with third parties in order for the third party or credit union to offer the third party's products and services to the credit union's members. These arrangements are referred to in this rule as commercial arrangements.

In connection with commercial arrangements, credit unions may:

- (a) Allow third parties to offer products and services to members through the credit union;
- (b) Endorse, directly or indirectly, products and services of a third party;
- (c) Enter into group purchasing arrangements with third parties;
- (d) Receive payment from third parties for participation in commercial arrangements; and
- (e) Rent, lease or sublease portions of their land and buildings to third parties to offer products and services to members.

This list is not intended to be exhaustive.

As used in this rule, the term "third party" includes, but is not limited to, credit union service organizations.

(2) Before entering into any commercial arrangements, a credit union's board must adopt a written policy regarding such arrangements. At a minimum, the policy should provide for the:

- (a) Evaluation of potential risk of liability; and
 - (b) Approval of each arrangement, whether by the board or management pursuant to established guidelines.
- (3) Before entering into or renewing each commercial arrangement, a credit union must:

- (a) Ensure that the arrangement is a prudent one and that it does not present safety and soundness risks to the credit union;
- (b) Evaluate the potential risk of liability and ensure that the credit union takes appropriate precautions to reduce or offset such risk, including, but not limited to, the use of such devices as disclaimers/disclosures to members and bond or insurance coverage; and
- (c) Ensure that the contract evidencing the arrangement includes provision for indemnification of the credit union by the third party.

(4) Credit unions must comply with applicable laws in entering into and carrying out commercial arrangements, including, but not limited to, any applicable federal or state law on privacy of member information.

(5) This section does not apply to situations where a credit union provides its own products or services to members.

[Statutory Authority: RCW 31.12.516(2), 43.320.040. 00-22-037, § 208-440-010, filed 10/25/00, effective 11/25/00. 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. 96-06-011, 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.]

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;

(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. 96-06-011, 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 indi-

rectly, 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 3/19/98 by letter filed as WSR 98-10-072.]

Chapter 208-460 WAC MEMBER BUSINESS LOANS

WAC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) How often the credit union will reevaluate the value and marketability of collateral;

- (11) The interest rates and maturities of the loans;
- (12) General MBL procedures which include:
 - (a) Loan monitoring;
 - (b) Servicing and follow-up; and
 - (c) Collection;
- (13) Identification of those individuals prohibited from receiving member business loans; and
- (14) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

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

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

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

- (1) All member business loans must be secured by collateral in accordance with this section, except the following:
 - (a) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and
 - (b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:
 - (i) The amount of the loan does not exceed one hundred thousand dollars;
 - (ii) The aggregate of unsecured MBL under (b) of this subsection does not exceed ten percent of the credit union's net worth;
 - (iii) The credit union has a net worth of at least seven percent; and
 - (iv) The credit union submits reports to the division of credit unions with its NCUA 5300 reports, providing figures and other detail as may be requested by the director to demonstrate compliance with (b) of this subsection;
- (2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, you may grant the loan with a LTV ratio in excess of eighty percent only where the value in excess of eighty percent is:
 - (a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or
 - (b) Insured or guaranteed, or subject to advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).

In no case may the LTV ratio exceed ninety-five percent;
- (3) In the case of a member business loan secured by collateral on which the credit union will have a second or lesser priority lien, you may not grant the loan with a LTV ratio in excess of eighty percent; and
- (4) In the case of member business loans secured by the same collateral:
 - (a) On which the credit union will have a first lien as well as other lesser priority liens, you may grant the loans with a LTV ratio in excess of eighty percent only if subsection (2)(a) or (b) of this section is satisfied. In no case may the LTV ratio exceed ninety-five percent; and

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

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

WAC 208-460-070 How much may a member or associated members borrow? Unless the director grants a waiver for a higher amount, the aggregate amount of member business loans to a member or associated members may not exceed the greater of:

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

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

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

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

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

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

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

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

(1) Development and construction loan requirements under WAC 208-460-030;

(2) Loan-to-value ratios under WAC 208-460-060;

(3) Maximum loan amount to a member or associated members under WAC 208-460-070; and

(4) Appraisal requirements under Section 722.3 of NCUA rules.

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

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

(a) A copy of your member business loan policy;

(b) The higher limit sought (if applicable);

(c) An explanation of the need to raise the limit (if applicable);

(d) Documentation supporting your ability to manage this activity; and

(e) An analysis of the credit union's prior experience making member business loans, including, as a minimum:

(i) The history of loan losses and loan delinquency;

(ii) Volume and cyclical or seasonal patterns;

(iii) Diversification;

(iv) Concentrations of credit to a member and associated members in excess of fifteen percent of net worth;

(v) Underwriting standards and practices;

(vi) Types of loans grouped by purpose and collateral; and

(vii) The qualifications of personnel responsible for underwriting and administering member business loans.

(2) The director will:

(a) Review the information you provided in your request;

(b) Evaluate the level of risk to your credit union;

(c) Consider your credit union's historical CAMEL composite and component ratings;

(d) Notify you whenever your waiver request is deemed complete; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) One and three quarters times the credit union's net worth; or
- (2) Twelve and one quarter percent of the credit union's total assets.

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

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

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

ness plan, field of membership, board minutes and loan portfolio; and

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

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

Such facts must be evidenced in an NCUA call report or any equivalent documentation, such as financial statements, for a period within two years before the date of application. For example, a credit union qualifies for the exception under (d)(ii) of this subsection if, based on the outstanding balance of a credit union's loans, the credit union's loan portfolio is comprised of twenty-three percent member business loans, twenty-two percent first mortgage loans, twenty-two percent new automobile loans, twenty percent credit card loans, and thirteen percent total other real estate loans.

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

- (a) Twelve and one quarter percent of the credit union's total assets; or
- (b) Three times the credit union's net worth.

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

WAC 208-460-150 How do I obtain an exception? (1) The exception under WAC 208-460-140 (1)(a) and (b) is effective upon written notice to the director of such designation or participation.

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

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

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

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

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

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

- (1) The "amount" of a MBL includes:
 - (a) Any unfunded commitment to make the loan;
 - (b) The outstanding balance of the loan; and
 - (c) Any undisbursed proceeds of the loan.

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

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

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

- (a) Residential housing for sale;
- (b) Income property;
- (c) Commercial use;
- (d) Industrial use; or
- (e) Similar uses.

(3) "Immediate family member" is a spouse or other family member living in the same household.

(4) "Loan-to-value ratio" or "LTV ratio" is derived by dividing:

(a) The amount of all member business loans by the credit union and loans by other lenders secured by an item of collateral, by

(b) The market value of the item of collateral.

(5) "Member business loan" or "MBL" is defined in WAC 208-460-010.

(6) "NCUA" means the National Credit Union Administration.

(7) "Net worth" is retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease losses.

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

Chapter 208-472 WAC

CREDIT UNION FIELD OF MEMBERSHIP

(Formerly chapter 419-72 WAC)

WAC

- 208-472-010 Authority.
- 208-472-015 Definitions.
- 208-472-020 FOM bylaws; addition of FOM groups.
- 208-472-025 Application for addition of FOM groups—Approval of director.
- 208-472-030 Direct marketing restriction.
- 208-472-035 Application.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 208-472-012 General requirement. [96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-041 Streamlined procedure for small occupational groups. [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. 96-06-011, 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,

- 208-472-045 Inclusion of a group with a common bond of association. [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. 96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-050 Application to include a separate associational group. [96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-060 Inclusion of a community group. [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. 96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-065 Application to include a separate community group. [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. 96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-070 Application deemed complete. [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. 96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-075 Approval of application. [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. 96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.
- 208-472-080 Special circumstances. [96-06-011, 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.] Repealed by 02-04-094, filed 2/5/02, effective 3/8/02.

tive 3/8/02. Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040.

WAC 208-472-010 Authority. A credit union may admit to membership those persons qualified for membership who are within its field of membership as stated in its bylaws. A credit union may amend its field of membership bylaws to add one or more occupational groups, associational groups and communities to its field of membership, as approved by the director pursuant to this chapter. The FOM groups may be located inside or outside the state.

The director may waive any provision of this chapter as the director deems appropriate to facilitate credit union service to low and moderate income persons.

In addition to the field of membership powers or authorities reflected in this chapter, a credit union has the field of membership powers and authorities granted pursuant to RCW 31.12.404.

[Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040. 02-04-094, § 208-472-010, filed 2/5/02, effective 3/8/02; 96-06-011, 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 208-472-015 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

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

(2) "Associational group" is a group with a common bond of association related to membership in an organization, or a portion of such a group. The organization must satisfy each of the following criteria:

(a) The organization's primary purpose must be other than providing eligibility for credit union services;

(b) The organization's membership must be primarily composed of natural persons; and

(c) The organization's organizational documents must define membership eligibility.

In regard to an associational group within a credit union's FOM bylaws, the credit union may admit to membership:

(i) Members of the organization;

(ii) Directors, employees, volunteers and retirees of the organization or its subsidiaries or affiliates;

(iii) Natural persons under contract to work for the organization or its subsidiaries or affiliates;

(iv) Family members (as determined by the credit union) of any of the above-described natural persons;

(v) The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death;

(vi) The organization and its subsidiaries and affiliates;

(vii) Organizations and enterprises more than half of whose owners, members or employees are eligible to be members of the credit union; and

(viii) Other persons approved by the director.

Students of a school, college or university are deemed to be members of an organization that constitutes an associa-

tional group. In regard to such an associational group within a credit union's FOM bylaws, the credit union may admit to membership the students of the school, college or university as well as the family members (as determined by the credit union) of the students.

(3) "CAMEL" means the CAMEL rating system used by the division, or a successor rating system used by the division.

(4) "Community" is a well-defined geographic area that is recognized by those who live or work there as a neighborhood, community, or rural district, or a portion of such an area.

In regard to a community within a credit union's FOM bylaws, the credit union may admit to membership:

(a) Natural persons who live, work, worship or go to school in the community;

(b) Enterprises and organizations that have offices within the community, and natural persons under contract to work for the enterprises or organizations;

(c) Directors, employees, volunteers and retirees of the above-described enterprises or organizations;

(d) Family members (as determined by the credit union) of any of the above-described natural persons;

(e) The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death;

(f) Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the credit union; and

(g) Other persons approved by the director.

(5) "Credit union" means a credit union organized (or chartered) and operating under chapter 31.12 RCW, and an out-of-state or foreign credit union operating in this state in accordance with RCW 31.12.471.

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

(7) "Division" means the division of credit unions of the Washington state department of financial institutions.

(8) "FOM" means field of membership.

(9) "FOM groups" includes occupational groups, associational groups and communities.

(10) "Occupational group" is a group with a common bond of occupation related to employment by, or work for, an enterprise, or a portion of such a group. The group must be primarily composed of natural persons.

In regard to an occupational group within a credit union's FOM bylaws, the credit union may admit to membership:

(a) Employees of the enterprise;

(b) Directors, employees, volunteers and retirees of the enterprise or its subsidiaries or affiliates;

(c) Natural persons under contract to work for the enterprise or its subsidiaries or affiliates;

(d) Family members (as determined by the credit union) of any of the above-described natural persons;

(e) The spouse of any of the above-described natural persons if the person qualified for membership at the time of his or her death;

(f) The enterprise and its subsidiaries and affiliates;

(g) Enterprises and organizations more than half of whose owners, members or employees are eligible to be members of the credit union; and

(h) Other persons approved by the director.

(11) "Primarily" or "primary" means more than one-half.

(12) "Qualified associational group" means an associational group located wholly or partly in the state. However, if the members of the organization in Washington exceed 6,299, the group will not be considered qualified unless the group is within the FOM bylaws of another credit union or federal credit union.

An associational group that does not satisfy this definition is considered to be a nonqualified associational group.

(13) "Qualified community" means a community in the state that constitutes a:

(a) School district;

(b) City; or

(c) County with a population of no more than 75 people per square mile.

A community that does not satisfy this definition is considered to be a nonqualified community.

(14) "Qualified occupational group" means an occupational group located wholly or partly in the state. However, if the members of the enterprise in Washington exceed 6,299, the group will not be considered qualified unless it is within the FOM bylaws of another credit union or federal credit union.

An occupational group that does not satisfy this definition is considered to be a nonqualified occupational group.

(15) "SOG" means a small occupational group added pursuant to a SOG enabling amendment approved by the director prior to (the effective date of the 2002 revisions to this chapter).

[Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040. 02-04-094, § 208-472-015, filed 2/5/02, effective 3/8/02. 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. 96-06-011, 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 FOM bylaws; addition of FOM groups. (1) General. Each credit union must keep its FOM bylaws substantially in the form of the model FOM bylaws prescribed by the division. Credit unions that have not converted to the model FOM bylaws prior to (the effective date of the 2002 revisions to this chapter) must do so by December 31, 2002. Each credit union must maintain accurate, complete and up-to-date FOM bylaws.

(2) CAMEL 1s and 2s.

A credit union rated a composite CAMEL 1 or 2 by the division:

(a) May add qualified occupational groups, qualified associational groups and qualified communities to its field of membership bylaws if the credit union satisfies each of the following:

(i) If the FOM group has more than 500 employees, members or residents, as applicable, in Washington, the credit union has, before its board of directors approves the

amendment, mailed or otherwise provided notice of the addition to each credit union and federal credit union headquartered in the county(ies) in Washington in which the FOM group is primarily located; and

(ii) The credit union's board has approved the amendment, which names the underlying enterprise, organization or community, as applicable, and indicates the date that the board approved the amendment.

Additions made in accordance with this subsection (2)(a) are deemed approved by the director; and

(b) May not add nonqualified occupational and associational groups and nonqualified communities to its field of membership bylaws without the prior approval of its board of directors and the prior written approval of the director under WAC 208-472-025.

(3) CAMEL 3s, 4s and 5s. A credit union rated a composite CAMEL 3, 4 or 5 by the division may not add the following FOM groups to its field of membership bylaws without the prior approval of its board of directors and the prior written approval of the director under WAC 208-472-025:

(a) Occupational groups, except for SOGs;

(b) Associational groups; and

(c) Communities.

In general, the director will not approve:

(i) The addition of a community to a credit union's bylaws if the credit union is rated a composite CAMEL 3 by the division; or

(ii) The addition of an occupational or associational group or a community to a credit union's bylaws if the credit union is rated a composite CAMEL 4 or 5 by the division.

(4) Other changes. A credit union may, upon approval of its board of directors, amend its FOM bylaws to:

(a) Delete exclusionary clauses;

(b) Delete FOM groups that no longer exist;

(c) Delete its SOG enabling amendment;

(d) Revise its SOG enabling amendment to delete the SOG requirements other than the limitation on the number of employees, which is 500 per SOG;

(e) Aggregate communities into a larger community. For example, if a credit union has added each of the school districts within a county as communities, it may amend its FOM bylaws to designate the county as a community rather than listing each of the school districts as a community; and

(f) Make nonsubstantive changes.

The board may delegate the authority to delete FOM groups that no longer exist.

In amending its FOM bylaws under this subsection (4), other than deletions, the credit union must indicate in its bylaws the date that the board approved the amendment.

(5) A person that is a member of a credit union may continue to be a member even though the person is no longer within the field of membership bylaws of the credit union, subject to the credit union's right to terminate the person's membership. The family members (as determined by the credit union) of a credit union member continue to be eligible to join the credit union, even though the credit union member is no longer within the FOM bylaws of the credit union.

[Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040. 02-04-094, § 208-472-020, filed 2/5/02, effective 3/8/02. 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. 96-06-011, 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 for addition of FOM groups—Approval of director. (1) In order to request the approval of the director to add an FOM group to its bylaws under WAC 208-472-020 (2)(b) or (3), a credit union must submit a written application in duplicate to the director. The application must include the following items, and any other information and materials requested by the director:

(a) The name of the FOM group that the applicant desires to add to its bylaws;

(b) A copy of the resolution of its board of directors approving the bylaws amendment, certified by the board chairperson or secretary;

(c) A detailed description of the FOM group, including, but not limited to, location and number of employees, members or residents, as applicable, with supporting documentation;

(d) An explanation how the FOM group satisfies the definition of such a group in WAC 208-472-015;

(e) If the applicant is applying to add an associational group, an explanation of the qualifications for membership in the organization, and a copy of the organization's organizational documents;

(f) An explanation how the addition of the FOM group will affect the financial condition of the applicant. In addition, if the applicant is applying for a community, three year pro forma income statements and balance sheets and key ratios (including, but not limited to, return on average assets, net worth, asset growth and share growth);

(g) If the applicant is applying to add a nonqualified occupational or associational group in excess of 6,299 employees or members, as applicable, a reasoned justification why the group does not have sufficient size or resources, including individual and sponsor support, and financial, physical and human resources, to support a viable credit union of its own; and

(h) If the group has more than 500 employees, members, or residents, as applicable, a statement that the applicant has mailed or otherwise provided notice of the application to each credit union and federal credit union headquartered in the county(ies) in Washington in which the FOM group is primarily located.

The director may waive any of the items in this subsection as the director deems appropriate, such as in the case of the addition of FOM groups located wholly out-of-state.

(2) An application filed pursuant to subsection (1) of this section is deemed complete when the director has received all of the information required by subsection (1) of this section. If an incomplete application is received, the director will give written notice to the applicant no more than thirty days from the date the original application was received that additional information is necessary. The applicant will be allowed thirty days after receipt of the notice to provide the requested information. If the applicant fails to do so, the director will return the application and it will be deemed withdrawn.

(2003 Ed.)

(3) The director will give the applicant written notice of approval or denial within thirty days after the application is deemed complete. The director's determination whether to approve an application will be based on consideration of the safety and soundness of the applicant and the applicant's compliance with this chapter.

(4) To add a separate FOM group located wholly out-of-state to its field of membership bylaws, a credit union should first contact the director to determine how to proceed with the application to the director and whether the credit union is required to file an application or notice with the credit union supervisory authority in the other state.

[Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040. 02-04-094, § 208-472-025, filed 2/5/02, effective 3/8/02. 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. 96-06-011, 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 208-472-030 Direct marketing restriction. A credit union may not conduct direct marketing targeted primarily at the persons in an occupational or associational group unless:

(1) The group was included in the FOM bylaws of the credit union prior to (the effective date of the 2002 revisions to this chapter). An occupational or associational group is "included" in the FOM bylaws of a credit union if the underlying enterprise or organization, as applicable, is named or within an industry described in the credit union's FOM bylaws. A group that does not satisfy the prior sentence, but that is within a community in a credit union's FOM bylaws, is not considered "included" in the FOM bylaws of the credit union; or

(2) A management official of the underlying enterprise or organization has provided the credit union with a written statement, signed by the official, that the group desires service by the credit union.

[Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040. 02-04-094, § 208-472-030, filed 2/5/02, effective 3/8/02.]

WAC 208-472-035 Application. (1) This chapter also applies to the conversion of an out-of-state, foreign or federal credit union to a credit union chartered and operating under chapter 31.12 RCW.

(2) This chapter does not apply to mergers where the continuing credit union is organized (or chartered) and operating under chapter 31.12 RCW. The continuing credit union may amend its FOM bylaws to add the FOM groups of the merging credit union.

(3) This chapter does not restrict FOM groups added to a credit union's bylaws prior to (the effective date of the 2002 revisions to this chapter).

[Statutory Authority: RCW 31.12.382, 31.12.516 (2), (4), 43.320.040. 02-04-094, § 208-472-035, filed 2/5/02, effective 3/8/02.]

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Chapter 208-512 WAC

BANKS AND TRUST COMPANIES

(Formerly chapter 50-12 WAC)

WAC

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208-512-045	Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.
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208-512-340	Insurance agency activities—General rule.
208-512-350	Insurance agency activities—Exceptions.
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WAC 208-512-020 Characterization of "federal fund transactions." When a bank purchases funds for reserve purposes or sells excess funds to another bank so that such bank may meet its reserve requirements, these transactions between banks have been commonly referred to as "overnight borrowings," "overnight security transactions," or "federal fund transactions." "Federal fund transactions" would normally occur when member banks purchase funds for reserve purposes through the Federal Reserve System or when such banks sell excess funds through the Federal Reserve System to another member bank so that such bank may meet its reserve requirements. However, for the purpose of uniformity, all future transactions of this sort, whether through the Federal Reserve System or between banks, may be referred to as "federal fund transactions."

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-020, filed 8/22/00, effective 9/22/00; Order 3, § 50-12-020, filed 12/23/68.]

WAC 208-512-030 Definitions and characterization of time deposits. The term "time deposits" means "time certificates of deposit" and, "time deposits, open account," as defined below.

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

(a) On a certain date, specified in the instrument, not less than thirty days after the date of the deposit; or

(b) At the expiration of a specified period not less than thirty days after the date of the instrument; or

(c) Upon written notice to be given not less than thirty days before the date of repayment.

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-030, filed 8/22/00, effective 9/22/00; Order 2, § 50-12-030, filed 12/23/68.]

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

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

(i) New bank or trust company;

(ii) Conversion to a state chartered institution;

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- (iii) Alien bank to establish and operate an office or bureau in the state;
 - (iv) Certificate conferring trust powers;
 - (v) Branch;
 - (vi) Merger, consolidation, or reorganizational agreement;
 - (vii) Relocation of main office or branch;
 - (viii) An out-of-state bank holding company acquisition and control of more than five percent of the shares of voting stock or substantially all of the assets of a bank, trust company, national banking association or bank holding company, the principal operations of which are conducted within this state;
 - (ix) The purchase or sale of a branch;
 - (x) Voluntary or involuntary liquidation of a bank or trust company pursuant to chapter 30.44 RCW or for acting as conservator of a bank or trust company pursuant to chapter 30.46 RCW;
 - (xi) Conversion from a mutual savings bank to a stock savings bank;
 - (xii) Notice of change of control.
- (b) Hourly charges for opinions rendered regarding interpretations of statutes and rules.
- (c) \$100.00 for issuing the following certificates:
- (i) Branch certificate;
 - (ii) Increase or decrease of capital stock certificate;
 - (iii) Certificate of authority;
 - (iv) Certificate of good standing;
 - (v) Other.
- (d) \$100.00 for filing articles of incorporation, or amendments thereof, or other certificates required to be filed with the director.
- (e) Fifty cents per page for furnishing copies of papers filed with the director.

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

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

WAC 208-512-050 Limiting loans to officers. (1) A bank or trust company may make the following loans to any of its officers:

- (a) A loan secured by a first lien on a dwelling if at the time the loan is made:
 - (i) The dwelling secured is expected to be both owned by the officer and used by him as his residence after the loan is made; and
 - (ii) No other such loan made by the bank or trust company to the officer under the authority of (a) of this subsection is outstanding;
- (b) A loan to finance the education of an officers' children; and

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

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

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

- (a) The bank or trust company's parent bank holding company; or
- (b) Any other corporation held by the bank or trust company's parent bank holding company; or
- (c) A subsidiary of the bank or trust company; or
- (d) A subsidiary of any other corporation if such corporation is held by the bank or trust company's parent bank holding company.

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-050, filed 9/13/85; 84-03-036 (Order 58), § 50-12-050, filed 1/13/84; 79-04-042 (Order 40), § 50-12-050, filed 3/23/79; Order 31, § 50-12-050, filed 10/2/75; Order 4, § 50-12-050, filed 5/15/69, effective 6/16/69.]

WAC 208-512-060 Accounts in excess of one hundred thousand dollars. A mutual savings bank may accept or hold accounts in excess of one hundred thousand dollars on the following terms and conditions:

- (1) Such accounts in the aggregate are placed in assets of similar maturity;
- (2) The following records are maintained at all times with respect to each such account:
 - (a) The name(s) and address(es) of the depositor(s);
 - (b) The manner in which the account is held;

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- (c) The amount of the initial deposit;
- (d) The contemplated time of withdrawal, if known;
- (e) The interest rate; and
- (f) Such other information available to the mutual savings bank as the director may from time to time require in order to carry out the duties of his office;

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-060, filed 8/22/00, effective 9/22/00; Order 29, § 50-12-060, filed 10/2/75; Order 7 and Emergency Order 6, § 50-12-060, filed 1/7/70.]

WAC 208-512-070 Nonbankable assets. In determining whether an asset of a bank, mutual savings bank or trust company is bankable all of the circumstances of the asset shall be weighed, including but not limited to the following:

- (1) Character of the borrower
- (2) Capacity of the borrower
- (3) Capital of the borrower
- (4) Collateral, sufficiency of
- (5) Economic conditions pertaining to the type of business in which the borrower is engaged
- (6) Conformance to general banking standards as then currently practiced in the banking industry.

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

Within fifteen days following the next meeting of the board of directors following receipt of written notice from the director to charge off such asset, but in no event more than forty-five days following receipt of such written notice, the bank, mutual savings bank or trust company, shall write the same off as an asset or file a written statement with the director explaining why, in its opinion, the asset should not be so treated. After considering such written statement and within ten days after receipt thereof, the director will notify the bank in writing of his decision as to the treatment of the asset.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-070, filed 8/22/00, effective 9/22/00; Order 9, § 50-12-070, filed 5/9/72.]

WAC 208-512-080 Purchase or sale of United States government securities—Resale or repurchase agreement. The purchase or sale of securities of, or fully guaranteed as to principal and interest by, the United States government and agencies thereof, or a fractional undivided interest therein by a bank, under an agreement or agreements to resell or repur-

chase the interest transferred, or a portion thereof, at the end of a stated period, shall not constitute an obligation subject to the lending limit of RCW 30.04.110, an indebtedness or liability of the bank within the meaning of RCW 30.04.150, a borrowing for the purposes of reloaning within the meaning of RCW 30.04.160, nor a pledge or hypothecation of securities or assets of the bank to a depositor or creditor within the meaning of RCW 30.04.140.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 83-03-020 (Order 51), § 50-12-080, filed 1/13/83; Order 28, § 50-12-080, filed 9/10/74.]

WAC 208-512-090 Purchase or sale of United States government securities solely for customers' account not within purview of RCW 30.04.200. The provisions of RCW 30.04.200 shall not prohibit banks or the officers or employees thereof in the course of their employment from purchasing and selling securities and stocks without recourse, solely upon the order and for the account of customers of the bank, or from dealing in, underwriting and purchasing for the account of the bank obligations of, or obligations guaranteed as to principal and interest by, the United States or agencies thereof or of any state or political subdivision thereof.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 83-01-082 (Order 49), § 50-12-090, filed 12/17/82.]

WAC 208-512-100 Leasing bank premises—Limitations. A bank or trust company may lease part of the premises in which it conducts its day-to-day business pursuant to RCW 30.04.210 to persons engaged in nonbanking or nontrust business activities subject to the following limitations:

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-100, filed 9/13/85.]

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

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

(a) Obligations of the United States;

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

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

(d) Obligations of any state or political subdivision of a state if a state or political subdivision of a state having general powers of taxation has unconditionally promised to make sufficient funds available for full repayment of the obligation; and

(e) Revenue bonds issued by public improvement agencies.

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

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

(b) Obligations which finance the construction or improvement of facilities used by a hospital, provided that the hospital is a department or a division of a university, or

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otherwise provides a sufficient nexus with university purposes.

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

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

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

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

(b) A bank may, subject to the limitations set forth in (c) of this subsection, purchase a security of Type II or III for its own account although its judgment with respect to the obligor's ability to perform is based predominantly upon estimates it believes to be reliable. This subsection permits a bank to exercise a somewhat broader range of judgment with respect to a more restricted portion of its investment portfolio.

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 208-512-116 Investment securities—Investment in investment companies. A bank or trust company may invest in shares of an investment company provided that all of the following conditions are met:

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

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

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

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

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

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

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

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

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

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

WAC 208-512-120 Promulgation. The division of banks, hereinafter referred to as the "division," after due and proper notice, and pursuant to chapter 30.60 RCW hereby adopts and promulgates the following rules and regulations, effective January 1, 1986.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-120, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-120, filed 12/30/86.]

WAC 208-512-130 Purpose. This regulation is intended to encourage banks chartered under Title 30 RCW to help meet the credit needs of their local community or communities; to provide guidance to banks as to how the division will assess the records of these banks in satisfying their continuing and affirmative obligations to help meet the credit needs of the local communities, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of those banks; and to provide for proper consideration of those records in connection with certain applications.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-130, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-130, filed 12/30/86.]

WAC 208-512-140 Definitions. For purposes of interpreting and administering the provisions and procedures contained herein, the definitions of terms used shall be identical to the corresponding definitions set forth in the Community Reinvestment Act of 1977, Public Law 95-128, sections 801-806, 12 U.S.C. 2901, et seq. and regulations promulgated pursuant thereto; provided, these definitions are not inconsistent with the context used, or otherwise defined, in this regulation.

The term "division" means the division of banks of the state of Washington. The term "supervisor" means the director of the department of financial institutions.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-140, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-140, filed 12/30/86.]

WAC 208-512-150 Assessing the record of performance. In connection with its examination of a bank, the division shall assess the record of performance of the bank in helping to meet the credit needs of its entire community, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of the bank. The division will review the bank's Community Reinvestment Act statement(s) and any other written and signed reports, documents, or comments prepared or filed by the bank with the division, or one or more federal bank regulatory agencies, and will use this material as part of or in lieu of an investigation as set forth by RCW 30.60.010. The foregoing material, together with such additional information as may be deemed necessary and obtained by investigation performed by the division, will be considered in assessing the bank's record of performance, based upon the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-150, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-150, filed 12/30/86.]

WAC 208-512-160 Rating assignment. (1) Based upon the foregoing investigation and assessment, the director shall annually assign to the bank a numerical community reinvestment rating based on a one through five scoring system in accordance with RCW 30.60.010. Such numerical scores shall represent performance assessments as follows:

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-160, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-160, filed 12/30/86.]

WAC 208-512-170 Rating for period January 1, 1986 through December 31, 1986. For the period January 1, 1986 through December 31, 1986, the rating assigned to all state chartered banks shall be a "1"; provided, however, that if a bank has been assigned a CRA rating of 3 or less in the most recent compliance report prepared by the FDIC or the Federal Reserve, the division deems the ten percent limitation for this period to be excessive, and an unsafe and unsound banking practice, and the bank shall be allowed to invest only the amount which would be allowable pursuant to RCW 30.04.212 if the rating of the most recent compliance report

of the FDIC or Federal Reserve were assigned to the bank for the period January 1, 1986 through December 31, 1986.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-180, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-170, filed 12/30/86.]

WAC 208-512-180 Limitation on single investment.

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-180, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-180, filed 12/30/86.]

WAC 208-512-190 Investment in qualifying community investments. (1) An amount equal to ten percent of the aggregate amount invested in real estate by a bank pursuant to RCW 30.04.212 shall be placed in qualifying community investments as defined in subsection (3) of this section.

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

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-190, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-190, filed 12/30/86.]

WAC 208-512-200 Consideration of performance record in meeting community credit needs in approving and disapproving applications. The division shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low-income and moderate-

income neighborhoods in determining the approval or disapproval for the following applications:

- (1) For a new branch or satellite facility;
- (2) For a purchase of assets;
- (3) For a merger;
- (4) For an acquisition;
- (5) For authority to engage in a business activity;
- (6) For a conversion from a national bank to a state-chartered bank; and
- (7) Such other application as the director may consider appropriate.

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-200, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-200, filed 12/30/86.]

WAC 208-512-210 Promulgation. The division of banks, hereinafter referred to as the "division," after due and proper notice, and pursuant to the provisions of RCW 30.04.111 hereby adopts and promulgates the following rules and regulations, effective September 9, 1987.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-210, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-210, filed 9/30/87.]

WAC 208-512-220 Purpose. These rules and regulations are intended to prevent one individual, or relatively small group, from borrowing an unduly large amount of the bank's funds. Further, the intention is also to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-220, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-220, filed 9/30/87.]

WAC 208-512-230 Definitions. (1) The term "person" shall include an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

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

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

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

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

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

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

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

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

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

(9) The term "subsidiary" means:

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-230, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 88-16-066 (Order 74), § 50-12-230, filed 8/1/88; 87-20-022 (Order 69), § 50-12-230, filed 9/30/87.]

WAC 208-512-240 General limitations. The total loans and extensions of credit by a state bank or trust company to a person outstanding at one time and not fully secured

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by collateral in a manner defined in WAC 208-512-250 shall not exceed twenty percent of the capital and surplus of the bank or trust company.

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

WAC 208-512-250 General limitation—Loans fully secured by readily marketable collateral. (1) Loans or extensions of credit by a state bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus. However, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 208-512-240 exceed forty-five percent, the division of banks will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-512-240.

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-250, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-24-042 (Order 71), § 50-12-250, filed 11/25/87. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-250, filed 9/30/87.]

WAC 208-512-260 Combining loans to separate borrowers. (1) Loans or extensions of credit to one person will be attributed to other persons when:

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-260, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-260, filed 9/30/87.]

WAC 208-512-270 Loans to corporations. Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person need not be combined where the bank has determined that the person and subsidiaries involved are not engaged in a "common enterprise." If members of a corporate group (a person and all its subsidiaries) are either:

(1) Substantially financially interdependent; or

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-270, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-270, filed 9/30/87.]

WAC 208-512-280 Loans to partnerships, joint ventures, and associations. (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes

of WAC 208-512-210 through 208-512-300, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

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

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

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

WAC 208-512-290 Exceptions to the lending limits.

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

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

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

disqualification apply to any renewal or extension of either the entire loan or an installment thereof.

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

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

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

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

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

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

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

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

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

(f) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Discount of installment consumer paper.

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

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

(c) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-290, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-290, filed 9/30/87.]

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

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

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 prior to the relevant effective dates of WAC 208-512-210 through this section but are not in conformance with the rules established in WAC 208-512-210 through this section will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with WAC 208-512-210 through this section may be made on or after the effective dates of WAC 208-512-210 through this section, if the nonconformity is caused by the amendments to Title 30 RCW contained in ESSB 4917; however, all loans or extensions of credit made under such renewals or extensions must conform with WAC 208-512-210 through this section no later than April 1, 1988. Loans or extensions of credit which are not in conformance with WAC 208-512-210 through this section for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

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

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

WAC 208-512-310 Insurance agency activities—Promulgation. The division of banks, after due and proper notice, and pursuant to the general rule-making authority in RCW 30.04.030 hereby adopts and promulgates the following rules and regulations.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-310, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-310, filed 5/2/90, effective 6/2/90.]

WAC 208-512-320 Insurance agency activities—Purpose. These rules and regulations are intended to administer and interpret the provisions governing the authority of state-chartered commercial banks and trust companies to act as insurance agents pursuant to the provisions in RCW 30.04.215(1), 30.08.140(10), and 30.08.150(3).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-320, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-320, filed 5/2/90, effective 6/2/90.]

WAC 208-512-330 Insurance agency activities—Definitions. (1) "Bank" means a bank chartered under the provisions of Title 30 RCW.

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-330, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-330, filed 5/2/90, effective 6/2/90.]

WAC 208-512-340 Insurance agency activities—General rule. Except as provided in these rules, or as otherwise provided by law, a bank may not act as insurance agent.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-340, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-340, filed 5/2/90, effective 6/2/90.]

WAC 208-512-350 Insurance agency activities—Exceptions. (1) A bank located in a city of not more than five thousand inhabitants may act as insurance agent from an office in that city. A bank exercising this power may continue to act as insurance agent notwithstanding a change of the population of the city in which it is located.

(2) A trust company may act as an insurance agent pursuant to its powers under RCW 30.08.150(3) "to act as attor-

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ney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise."

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

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

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

(c) A bank may act as agent for property insurance on loan collateral, provided such insurance is limited to assuring repayment of the outstanding balance of the extension of credit and such extension of credit is not more than ten thousand dollars (twenty-five thousand dollars to finance the purchase of a residential manufactured home and which is secured by such home) increased by the percentage increase in the *Consumer Price Index for Urban Wage Earners and Clerical Workers* published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year of the extension of credit.

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-350, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-350, filed 5/2/90, effective 6/2/90.]

WAC 208-512-360 Insurance agency activities—Subsidiary. A bank or trust company may conduct insurance agency activities that are authorized to be engaged in by the bank or trust company through a subsidiary of the bank or trust company as authorized by RCW 30.04.125(8).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-360, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-360, filed 5/2/90, effective 6/2/90.]

WAC 208-512-370 Insurance agency activities—Enforcement. It shall be considered an unsafe and unsound practice in conducting the affairs of the bank or trust company if in the opinion of the director the insurance agency activities of the bank or bank subsidiary are:

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-370, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-370, filed 5/2/90, effective 6/2/90.]

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

WAC

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WAC 208-514-010 Facilitating loans—Real property. For purposes of this section the following words shall have the following meanings:

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-010, filed 8/22/00, effective 9/22/00; Order 36, § 50-14-010, filed 7/8/76.]

WAC 208-514-020 Introduction. This chapter implements the authority of the director of the department of finan-

cial institutions (the "director") under chapters 32.08, 32.34, and 34.05 RCW to enact regulations concerning the organization and operation of mutual holding companies. It addresses only those features of the organization and operation of mutual holding companies and their subsidiary stock savings banks that are not governed by Title 32 RCW. Among the provisions that must be considered are:

(1) Chapter 32.32 RCW for the chartering of a mutual savings bank and the conversion of a mutual savings bank to a stock savings bank;

(2) Title 32 RCW generally for the operations of any such savings bank; and

(3) Chapter 32.34 RCW for any merger or acquisition of assets involving a mutual holding company or banking subsidiary of a mutual holding company.

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-020, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-020, filed 2/28/92, effective 3/30/92.]

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WAC 208-514-030 Definitions—Regulations not exclusive. (1) The definitions in RCW 32.32.025 shall apply to any transaction under these rules unless the context requires otherwise and except as provided herein.

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-030, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-030, filed 2/28/92, effective 3/30/92.]

WAC 208-514-040 Authorization to form mutual holding companies. (1) Notwithstanding any other provision of law, and in accordance with the general requirements set forth in WAC 208-514-050 through 208-514-140, a mutual savings bank may reorganize under a plan of reorganization so as to cause its deposit-taking and one or more other activities to be conducted by a stock savings bank subsidiary of a mutual holding company, which subsidiary is formed for such purpose. The plan of reorganization must be adopted by the bank's trustees and submitted to and approved by the director as provided in these rules.

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-040, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05

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

WAC 208-514-050 Required approvals. (1) A reorganization of a mutual savings bank pursuant to these rules shall be approved by not less than two-thirds of the board of trustees of the mutual savings bank.

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

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

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

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

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

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

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

(c) When the director shall have determined to approve or disapprove the plan of reorganization, the director shall so advise the mutual savings bank in writing and, if appropriate, shall endorse approval on the incorporation and authorization certificates and cause the same to be filed in such manner and in the respective offices provided in chapter 32.08 RCW. Upon the filing of the authorization certificate as provided in RCW 32.08.080, the existence of the mutual holding company and/or stock savings bank, as appropriate, shall commence. As used in these rules, the term "authorization certificate" shall include an amended authorization certificate.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34.]050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-050, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34.]050. 92-06-041, § 50-14-050, filed 2/28/92, effective 3/30/92.]

WAC 208-514-060 Formation of a mutual holding company. (1)(a) The plan of reorganization may authorize the formation of a MHC by:

(i) The organization by or at the discretion or request of the mutual savings bank of a business trust or mutual corpo-

ration that shall serve as a MHC, the organization by the MHC of a stock savings bank subsidiary and the transfer to such stock savings bank of substantially all of the mutual savings bank's assets and liabilities, including all of its deposit liabilities, in accordance with these rules;

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

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

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

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

(A) The name of such savings bank.

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

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

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

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

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

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

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

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

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

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

(c) For the purposes of (a) of this subsection, WAC 208-514-080 permits a newly organized stock savings bank to issue to persons other than its parent MHC, an amount of common stock and securities convertible into common stock that, in the aggregate, does not exceed forty-nine percent of the issued and outstanding common stock of such stock savings bank upon completion of the offering. Issued and outstanding securities that are convertible into common stock shall be considered issued and outstanding common stock for purposes of computing the forty-nine percent limitation. This subsection shall not limit the authority of such stock savings bank to issue equity or debt securities other than common stock and securities convertible into common stock.

(2) In connection with the reorganization of a mutual savings bank as provided in WAC 208-514-040, the MHC may acquire assets of the mutual savings bank to the extent that such assets are not then required to be transferred to (or retained by) the stock savings bank in order to satisfy capital or reserve requirements of any applicable state or federal law or regulation.

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

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

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

If the incorporation certificate or bylaws of the stock savings bank provide that the board of directors shall be divided into two or more classes, then to the extent possible,

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each class shall contain the same number of unaffiliated directors as each other class.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-060, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-060, filed 2/28/92, effective 3/30/92.]

WAC 208-514-070 Mutual holding company powers.

(1) Upon the formation of a MHC:

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

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

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

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

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

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

(d) Convert to a stock holding company pursuant to the provisions of a plan which is approved by the director, preserves the subscription and liquidation account rights of depositors of the mutual savings bank who then remain depositors of the stock savings bank and otherwise complies with WAC 208-514-130; and

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-070, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-070, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-070, filed 2/28/92, effective 3/30/92.]

WAC 208-514-080 Offering of securities. (1) Any offering of shares of voting securities by a MHC which converts to stock form or of common stock of a stock savings bank subsidiary of a MHC that will cause the holding company to hold less than fifty-one percent of the issued and out-

standing common stock of the stock savings bank upon completion of the offering (a "subsequent offering") shall be governed by the rules prescribed in chapter 32.32 RCW, except to the extent that those rules are explicitly waived or modified by the director.

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

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

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34.]050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-080, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34.]050. 92-06-041, § 50-14-080, filed 2/28/92, effective 3/30/92.]

WAC 208-514-090 Subscription rights. (1) Upon a conversion to stock form, as such conversion is defined in WAC 208-514-030(2), by a MHC or a stock savings bank subsidiary of a MHC, depositors of the stock savings bank at the record date of the conversion to stock form who continuously have been depositors since the reorganization, or were depositors of any savings association subsequently acquired by a MHC at a time when the association was in mutual form and remained depositors of the stock savings bank, shall receive, without payment, nontransferable rights to subscribe for stock of the converted MHC or the converted stock savings bank to be sold in the subsequent offering, to the extent

that such depositors would have received those rights pursuant to RCW 32.32.045 in a stock conversion of the savings bank as prescribed in chapter 32.32 RCW; provided, however, that such depositors who are not shareholders of the stock savings bank at the record date for the subsequent offering shall have priority rights, not inconsistent with the provisions of chapter 32.32 RCW, to subscribe for shares to be issued in the subsequent offering in accordance with a plan approved by the director or made pursuant to subsequent rules to be promulgated by the director.

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

(3) Nothing in chapter 32.34 RCW or chapter 208-514 WAC shall be construed to authorize or require that depositors in a mutual savings bank that reorganizes as a MHC be offered stock in the stock savings bank subsidiary except as provided in subsection (1) of this section.

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34.]050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-090, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34.]050. 92-06-041, § 50-14-090, filed 2/28/92, effective 3/30/92.]

WAC 208-514-100 Stock issuance and stock award plans. The authority for a stock savings bank subsidiary of a MHC to issue stock shall be subject to the following limitations, unless otherwise approved by the director.

(1) The stock sold in the reorganization shall be sold at a total price equal to the estimated pro forma market value of such stock, based on an independent valuation as provided in WAC 208-514-080(2) and any stock sold in a later offering shall be sold at its fair value as determined by the board of directors of the stock savings bank.

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

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

of shares held by any insider or associate, shares held by any tax-qualified or nontax-qualified employee stock benefit plan of the savings bank that are attributable to such person shall not be counted.

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

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

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

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

(8) The aggregate amount of stock, whether common or preferred, acquired in the proposed issuance, plus all prior issuances of the savings bank, by all nontax-qualified employee stock benefit plans of the savings bank, insiders of the savings bank, and associates of insiders of the savings bank (exclusive of any stock acquired by said plans and by insiders in the secondary market) shall not exceed thirty-five percent of the stockholders' equity of the savings bank held

by persons other than the association's mutual holding company parent at the close of the proposed issuance if the savings bank has less than fifty million dollars in total assets before the issuance or twenty-five percent of such stockholders' equity if the savings bank has more than five hundred million dollars in total assets prior to the issuance. If the savings bank has between fifty million dollars and five hundred million dollars in total assets before the proposed issuance, the maximum percentage shall be equal to thirty-five percent minus one percent multiplied by the quotient of total assets less fifty million dollars divided by forty-five million dollars.

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040, 00-17-141, amended and recodified as § 208-514-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW, 93-13-142, § 50-14-100, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050, 92-06-041, § 50-14-100, filed 2/28/92, effective 3/30/92.]

WAC 208-514-110 Liquidation account. (1) The entire unconsolidated net worth of a MHC shall constitute a liquidation account for the benefit of the depositors of its subsidiary stock savings banks who continuously have been depositors since the reorganization or were depositors of any savings association subsequently acquired by a MHC at a time when the association was in mutual form and remained depositors of the stock savings bank ("eligible depositors"). The liquidation account shall not be a fixed amount but may increase (as to the entire account but not as to any individual eligible depositor) or decrease (as provided in RCW 32.32.-190 through 32.32.205, except as application of those sections is inconsistent with these rules) over time. The function of the liquidation account is to establish that upon the complete liquidation of the mutual holding company, the entire net worth of the mutual holding company will be distributed among those persons who are the eligible depositors of its subsidiary savings bank(s) as of the date of the liquidation. The designation of the mutual holding company's net worth as a liquidation account shall not operate to restrict the use or application of the mutual holding company's net worth accounts.

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-514-110, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05 RCW. 93-13-142, § 50-14-110, filed 6/23/93, effective 7/24/93. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-110, filed 2/28/92, effective 3/30/92.]

WAC 208-514-120 Reorganization into mutual holding company form. (1) The mutual holding company may retain or acquire assets of the mutual savings bank only to the extent permitted by the director.

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-120, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050. 92-06-041, § 50-14-120, filed 2/28/92, effective 3/30/92.]

WAC 208-514-130 Conversion of mutual holding company into stock holding company. (1) If approved by the director, a MHC may convert to a stock form holding company.

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

(3) The conversion must include such provisions requiring the exchange of shares of the subsidiary savings bank(s) for shares of the resulting stock holding company as the director finds to be fair to members of the MHC who possess subscription rights and to stockholders of the subsidiary banks.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-514-130, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 32.34.040 - [32.34].050 and chapters 32.08 and 34.05

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

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

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

Chapter 208-528 WAC

NEW STATE BANKS AND TRUST COMPANIES— APPLICATION AND INVESTIGATION (Formerly chapter 50-28 WAC)

WAC

208-528-010	Purpose.
208-528-020	Operations and procedures.
208-528-030	Policy and guidelines.
208-528-040	Fees.
208-528-050	Field investigation.
208-528-060	Adoption of form.
208-528-070	Payment on subscription for the capital stock.
208-528-990	Appendix I—Form—Notice of intention to organize a state bank or trust company.

WAC 208-528-010 Purpose. The purpose of this chapter shall be to provide persons desiring to incorporate a bank or trust company with the requirements and guidelines necessary to comply with statutory provisions and to insure expeditious processing of a notice of intention to organize a bank or trust company.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-528-010, filed 8/22/00, effective 9/22/00; Order 21, § 50-28-010, filed 8/6/73.]

WAC 208-528-020 Operations and procedures. A notice of intention to incorporate a bank or trust company shall be filed with the director at the division of banks in Olympia. As a matter of general procedure, it has been found desirable and is recommended that interested groups visit the office of the director for a round-table discussion of statutory and other requirements, the forms, documentation and general information needed, the fees payable to the division of banks and the secretary of state, plus a general discussion of the primary market area the applicants wish to serve and of economic resources of that area together with a brief review of existing financial institutions now serving that area.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-528-020, filed 8/22/00, effective 9/22/00; Order 21, § 50-28-020, filed 8/6/73.]

WAC 208-528-030 Policy and guidelines. The notice of intention to organize a state bank or trust company shall be filed with the director in duplicate, on a form furnished by the division of banks. It is the established policy of the division of banks to require diligent and timely completion and submission of forms, schedules, surveys, economic studies, maps and all supporting data deemed necessary and required

to conduct the statutory investigation. For the purpose of expediting the investigation and correlating said investigation with that of the Federal Deposit Insurance Corporation, in the event deposits of the proposed bank or trust company are to be insured by that agency, the schedules, statements and supporting data shall be organized under six basic general headings or factors:

(1) Financial history and condition.

(a) Pro forma statement of condition - beginning of business.

(b) Premises to be occupied by proposed bank, whether owned or leased, whether permanent or temporary, details as to description, costs, from whom purchased or leased, insurance coverage, estimated annual depreciation. If property is to be purchased or leased from a director, officer, a large shareholder, or an interest of any such, complete details should be furnished.

(c) Details as to proposed investment in and rental of furniture, fixtures and equipment.

(d) Relationships and associations with proposed bank of any of the sellers or lessors of land, buildings or equipment, either directly or indirectly.

(e) Organization expenses (which should not be borrowed from any source) - complete and detailed accounting is required for all expenses related to organization, including detailed account of actual legal work performed together with any additional costs anticipated prior to opening or costs incurred or work performed during the organization period for which disbursement has been deferred beyond the opening date.

(2) Adequacy of the capital structure.

(a) Proposed allocations within total capital structure.

(i) Amount of paid-in common capital stock (No. shares x par value).

(ii) Amount of paid-in surplus.

(iii) Amount of paid-in undivided profits.

(iv) Amount of other segregations, including the organization or expense fund, if planned.

(b) Minimum capital requirements of state law (RCW 30.08.010 as amended by chapter 104, Laws of 1973).

(c) The adequacy (deemed reasonable) of the proposed capital structure is evaluated, in part, by:

(i) The population of the community to be served.

(ii) Ratio the projected net total capital structure will bear to the estimated volume of deposits at the end of each of the first three years of operations.

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

(4) General character of management.

(a) A financial report and a biographical report for each officer and director is required together with a report by each officer and director stating the number of shares to be purchased, the total cost of such shares and details as to source and financing terms for such portion as not paid in cash. (If

disclosure of any of the proposed officers would jeopardize current employment, include the information in a special "CONFIDENTIAL SECTION.")

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

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

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

(i) Loan and/or executive committee.

(ii) Investment committee.

(iii) Audit committee.

(e) Management of the proposed bank will report:

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

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

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

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

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

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

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

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

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

(a) Demand deposits.

(b) Savings passbook accounts.

(c) Other time deposits.

(d) Public funds.

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

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

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

study has been prepared it may provide most of the information needed.)

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

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

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

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

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-528-030, filed 8/22/00, effective 9/22/00; Order 21, § 50-28-030, filed 8/6/73.]

WAC 208-528-040 Fees. The filing fee to accompany the notice of intention to organize a bank or trust company shall be that established by WAC 208-512-045, as now or hereafter amended. If the application is withdrawn by applicants before a field investigation is undertaken a refund will be made based upon retention of that portion deemed adequate to cover processing and preliminary investigation costs. The retained portion shall be the greater of:

- (1) \$500.00, or
- (2) Estimated number of hours times the current hourly rate as established by WAC 208-512-045 as devoted to processing and preliminary review and investigation.

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

WAC 208-528-050 Field investigation. The required field investigation will be undertaken promptly upon submission of the notice of intention to organize a bank or trust company accompanied by statutory fees, provided the required documentation is determined by preliminary review to be complete in all respects. If, in the judgment of the director, matters of substantive nature are missing or incomplete the notice of intent to organize and submitted documents may be returned to the correspondent of record. If the matters

deemed incomplete be of relatively minor nature the applicants may be notified in writing thereof and given a reasonable time to make corrections or submit additional information or schedules required. For purposes of section 5, chapter 104, Laws of 1973 1st ex. sess. (RCW 30.08.030), a notice of intention to organize a bank or trust company shall not be deemed to be received by the director unless and until all of the information required by the director has been provided to him.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-528-050, filed 8/22/00, effective 9/22/00; Order 21, § 50-28-050, filed 8/6/73.]

WAC 208-528-060 Adoption of form. The division of banks hereby adopts for use of all persons requesting permission to organize a state bank or trust company, the form attached hereto as Appendix No. 1, entitled "Notice of intention to organize a state bank or trust company."

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-528-060, filed 8/22/00, effective 9/22/00; Order 21, § 50-28-060, filed 8/6/73.]

WAC 208-528-070 Payment on subscription for the capital stock. The subscription agreement with prospective purchasers of the capital stock of a proposed new bank or trust company shall not contain any agreement for any amount to be paid in advance for the purpose of defraying organization costs. No payment on subscription for stock shall be made until the articles of incorporation have been approved by the director of the department of financial institutions and filed with the secretary of state.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-528-070, filed 8/22/00, effective 9/22/00; Order 30, § 50-28-070, filed 10/2/75.]

WAC 208-528-990 Appendix I—Form—Notice of intention to organize a state bank or trust company.

APPENDIX I

NOTICE OF INTENTION TO ORGANIZE A

STATE BANK OR TRUST COMPANY

To the Director of the Department of Financial Institutions:

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

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

We enclose Cashier's Check for \$2,000 to apply upon the statutory cost of investigation. If the cost of the investigation to be made exceeds \$2,000, we agree to pay such excess in accordance with WAC 208-512-040.

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

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

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Enclosure: \$2,000 Cashier's Check
Payable to the Division of Banks

(*) Please type name under signature.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-528-990, filed 8/22/00, effective 9/22/00; Order 21, Appendix I—Form (codified as WAC 50-28-990), filed 8/6/73.]

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

WAC

Table listing WAC codes and their purposes: 208-532-010 Purpose, 208-532-020 Definitions, 208-532-030 Application procedure, 208-532-040 Examination—Frequency—Scope, 208-532-050 Fees, 208-532-060 Records and books of account, 208-532-070 Branch records, 208-532-080 Agency records, 208-532-090 Reports—Required reports, 208-532-100 Notice concerning deposit insurance, 208-532-99001 Appendix I—Forms—Application for certificate authorizing an alien bank to establish and operate a branch in the state of Washington, 208-532-99002 Appendix II—Forms—Application for certificate authorizing an alien bank to establish and operate an agency in the state of Washington, 208-532-99003 Appendix III—Forms—Application for certificate authorizing an alien bank to establish and operate a bureau in the state of Washington.

WAC 208-532-010 Purpose. The purpose of this chapter is to ensure compliance with and provide the rules and regulations necessary to administer the provisions and requirements of chapter 53, Laws of 1973 1st ex. sess.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, recodified as § 208-532-010, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-010, filed 8/14/73.]

WAC 208-532-020 Definitions. For purposes of these rules and regulations, the following terms are defined as:

- (1) Act - chapter 53, Laws of 1973 1st ex. sess.
(2) Application - "Application" means an application of an alien bank to the director of the department of financial institutions for a certificate of authority to establish and operate an agency, branch or bureau in the state of Washington.

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

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

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

(6) Rules and regulations - "Rules and regulations" means all of Title 208 WAC. Alien banks in conducting authorized banking business shall be subject to such rules and regulations under the same terms and conditions as applied to banks organized under the laws of this state to the extent that such rules and regulations as applied to alien banking operations are consistent with the intent and purposes of the alien bank act and subject to limitations and restrictions imposed by these alien bank rules and regulations.

(7) Section - Section numbers referred to herein are those found in chapter 53, Laws of 1973 1st ex. sess.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-020, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-020, filed 8/14/73.]

WAC 208-532-030 Application procedure. An application by an alien bank to establish and operate an office or bureau in the state of Washington shall be made on the form prescribed in Appendices 1, 2 or 3, whichever is applicable.

An application shall not be deemed complete if, in the opinion of the director, the applicant has not supplied all of the required information or the information supplied is deficient. After receipt of the completed application, the director shall conduct his required investigation.

(1) Office. The director shall notify the applicant of denial or conditional approval of an application for a certificate for an agency or branch within 180 days of his receipt of the completed application.

If the application for a certificate for an agency or branch is conditionally approved, the applicant must supply the following documents executed by the governing board and properly sworn to before a U.S. Consular Official within 60 days of notification.

- (a) Appointment of the director of the department of financial institutions as agent
(b) Designation of bank's agent for service in Washington
(c) Letter of guaranty
(d) Appointment of depository(ies)
(e) Certificate of allocation and assignment of capital
(f) Depository agreements for assigned and allocated capital
(g) A power of attorney in favor of the person designated to be in charge of the business and affairs of the office.

The applicant shall also provide proof of fidelity bond coverage and the oath of the managing officer of the Washington office.

After receipt of these documents and after the director is satisfied that all statutory requirements have been met, he shall issue his certificate.

(2) **Bureau.** The director shall notify the applicant of denial or approval of an application for a certificate for a bureau within 90 days of his receipt of the completed application. If the application is approved, the certificate will be issued forthwith.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-030, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-030, filed 8/14/73.]

WAC 208-532-040 Examination—Frequency—Scope. The accountant selected to audit the books of account of an alien office shall be an independent accountant licensed to practice by the state of Washington and who is not an employee, officer, or holder of the securities of the alien bank or its subsidiaries. Such accountant must have knowledge and experience with respect to auditing books of international corporations. A resume' of such accountant wherein the knowledge and experience is set forth must accompany the alien bank's request that such accountant be approved by the director. The report of such independent accountant shall be based upon an audit made in accordance with generally accepted auditing standards without limitation on its scope and shall be unqualified.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-040, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-040, filed 8/14/73.]

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

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

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

WAC 208-532-060 Records and books of account. Records and books of account of an alien bank office shall be kept as though the Washington office was conducted as a separate and distinct entity with its assets and liabilities entirely separate and apart from other operations of its head office and its subsidiaries or affiliated corporations. Books and accounts shall be maintained, where possible, as are the books and accounts of banks chartered by the state of Washington, to:

(1) Facilitate the preparation of required reports of condition.

(2) Facilitate the preparation of the required report of income.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, recodified as § 208-532-060, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-060, filed 8/14/73.]

WAC 208-532-070 Branch records. An alien branch shall:

- (1) Identify United States domiciled creditors
- (2) Segregate and maintain controls for:

(a) Demand deposits.

(b) Time deposits.

for each class of depositors specified and authorized in section 11(1)(i) through (vii) of the act.

(3) Maintain loan records and controls to:

(a) Identify loan customers as to types as restricted by section 11 (2)(a)(i) through (iv) of the act.

(b) Specify the purpose of each loan or guarantee with respect to the restrictions imposed by section 11 (2)(b)(i), (ii) and (iii) of the act.

(c) Organize and maintain credit files, including appropriate comments relative to (a) and (b) above and to demonstrate the credit worthiness and standing of the customer.

(4) Maintain credit files to reflect the credit worthiness or rating of assets held as required or authorized by sections 7 and 12(2) of the act.

(5) Establish and maintain controls to reflect at all times that liquid assets held in accordance with the requirements of section 12(2) of the act are not less than one hundred eight percent of the aggregate amount of liabilities of the alien bank payable at or through its Washington office.

(6) Establish and maintain controls to reflect maintenance of additional capital equal to not less than ten percent of deposit liabilities.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, recodified as § 208-532-070, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-070, filed 8/14/73.]

WAC 208-532-080 Agency records. With consideration to the statutory requirements imposed upon an approved agency of an alien bank by section 18 of the act, an agency shall maintain controls and records relating to the making of loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets to:

(a) Readily identify the customer and basis upon which the loan or guaranty was granted;

(b) The purpose and terms of such loan or guaranty; and

(c) The precise manner in which the business of the customer is directly related to the international movement of goods and services.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, recodified as § 208-532-080, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-080, filed 8/14/73.]

WAC 208-532-090 Reports—Required reports. Each alien bank shall file the following periodic reports relating to the financial condition of the office:

(1) Examination (audit) report by an accountant approved by the director as of the last business day of the fiscal year as prescribed by section 14 of the act.

(2) Reports of resources and liabilities as required by banks chartered by the state of Washington as prescribed by RCW 30.08.180 and 30.08.190, together with proof of publication. An agency need not publish such reports.

(3) Annual report of income on calendar year basis as a special report as required of banks chartered by the state of Washington (RCW 30.08.190).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-090, filed 9/6/00, effective 10/7/00; Order 23, § 50-32-090, filed 8/14/73.]

WAC 208-532-100 Notice concerning deposit insurance. Every alien bank branch, the deposits of which are not insured by the Federal Deposit Insurance Corporation, shall display at its place of business in Washington a sign at least seven inches by three inches at each window or place where deposits are accepted stating that deposits are not insured by the Federal Deposit Insurance Corporation. A statement may be included on the same sign to the effect that deposits of U.S. domiciled depositors are partially protected by capital maintained pursuant to RCW 30.42.120(1).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, recodified as § 208-532-100, filed 9/6/00, effective 10/7/00; Order 25, § 50-32-100, filed 3/21/74.]

WAC 208-532-99001 Appendix I—Forms—Application for certificate authorizing an alien bank to establish and operate a branch in the state of Washington.

APPLICATION FOR CERTIFICATE AUTHORIZING AN ALIEN BANK TO ESTABLISH AND OPERATE A BRANCH IN THE STATE OF WASHINGTON

TO: Director of the Department of Financial Institutions
Division of Banks
Olympia, Washington 98504

The (Applicant alien bank), with its head office and principal place of business located at (Domiciliary Country) hereby initiates this application for certificate authorizing the establishment and operation of a branch to be located in the City of, County of, State of Washington.

The (Bank), is incorporated, chartered or otherwise authorized to conduct a banking business under the laws of (Domiciliary Country). We enclose a verified copy of the resolution adopted by the bank's governing board, properly sworn to before a U.S. Consular Official, authorizing the filing of this application and designating the officer(s) who is (are) to sign this application and provide the material required herein, authorizing the payment of fees required by law or regulation, and designating the managing officer(s) of the proposed branch. We enclose a bank draft for \$1,500.00 to apply upon the statutory cost of investigation. If the cost of investigation to be made exceeds \$1,500.00 we agree to pay such excess in accordance with WAC 208-512-040 together with such other costs and fees as may be legally required by statute or regulation.

Correspondence, instructions, requests for information, reports, etc., should be addressed:

-
Head Office
-
Proposed Branch

To expedite the statutory investigation the following information, schedules, certifications, resume's, etc., are furnished:

(2003 Ed.)

(a) Name of present Chief Executive Officer and Name of the Secretary

(b) The bank's fiscal year ends

(c) (English translation): Four certified copies of the most recent edition of the bank's certificate of authority or other legal authorization of your country to conduct a banking business and the bank's articles of incorporation.

(d) Date of certificate of authority or its equivalent under which presently operating and expiration date, or duration, of the certificate of authority or its equivalent

(e) Capital structure at end of last fiscal year: (i.e., equity capital, surplus, undivided profits, unallocated or contingency reserves).

(f) Two copies of last available statement of condition.

(g) Statement of object and purpose or purposes which bank proposes to pursue in the transaction of business in the state of Washington.

(h) Copy of (English translation where applicable) laws of domiciliary country under which applicant bank is organized which permits a bank with its principal place of business in the state of Washington to establish in that foreign country a branch, agency or similar operation. Attached to a copy of such laws shall be either (a) an opinion of counsel (a member of the bar in the foreign country under whose laws the applicant is organized), including references to or extracts from relevant statutes, if any, to the effect that a bank with its principal place of business in the state of Washington may be permitted to establish and maintain in such foreign country a branch, agency or similar operation, or (b) a certificate of an official of the applicant's country who is authorized under its laws to issue a license to a bank with its principal place of business in the state of Washington to maintain either a branch or agency, to the effect he is so authorized.

(i) An opinion of counsel for the applicant (a member of the bar in the foreign country under whose laws the applicant is organized) to demonstrate that this application to establish a branch is in compliance with local laws. Such opinion should state that (a) the applicant's charter authorizes it to carry on the business contemplated by the application, (b) the applicant has conducted, and is now conducting, its business as authorized by the charter and bylaws in compliance with the laws of its country of incorporation, and (c) the making of the application is in compliance with the laws of the country of incorporation.

(j) Letter or certificate from banking authorities of domiciliary country granting permission to the applicant to apply for a branch in this state.

(k) Furnished herewith:

(1) Name, title and resume' for each officer of the proposed branch in Washington.

(2) Confidential financial statement for the managing officer of the proposed branch in Washington.

(l) Deposit projections for the first three years of operations:

I. Highest deposit totals anticipated by end of first year of operations of the proposed branch \$.

II. Highest deposit totals anticipated by end of second year of operations of the proposed branch \$.

III. Highest deposit totals anticipated by the end of the third year of operations of the proposed branch \$

(m) Indicate whether eligible deposit liabilities of the branch in the state of Washington will be covered by the insurance protection of the Federal Deposit Insurance Corporation (yes or no) .

(n) Outline of background information in support of application.

(o) Copy of option or conditional lease on proposed branch site.

(p) A verified or authenticated copy of the bank's bylaws.

EXECUTED at, for the (Bank) , this day of, 19 . . .

(By the bank's chief executive officer) *
(and the secretary of the banking corporation) *

Bank Seal

*Please type name and official title under the signatures.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-99001, filed 9/6/00, effective 10/7/00; Order 23, Appendix I (codified as WAC 50-32-99001), filed 8/14/73.]

WAC 208-532-99002 Appendix II—Forms—Application for certificate authorizing an alien bank to establish and operate an agency in the state of Washington.

APPLICATION FOR CERTIFICATE AUTHORIZING AN ALIEN BANK TO ESTABLISH AND OPERATE AN AGENCY IN THE STATE OF WASHINGTON

TO: Director of the Department of Financial Institutions
Division of Banks
Olympia, Washington 98504

The (Applicant alien bank) with its head office and principal place of business located (Domiciliary Country) hereby initiates this application for certificate authorizing the establishment and operation of an agency to be located in the City of, County of, State of Washington.

The (Bank) , is incorporated, chartered or otherwise authorized to conduct a banking business under the laws of (Domiciliary Country) . We enclose a verified copy of the resolution adopted by the bank's governing board, properly sworn to before a U.S. Consular Official, authorizing the filing of this application and designating the officer(s) who is (are) to sign this application and provide the material required herein, authorizing the payment of fees required by law or regulation, and designating the managing officer(s) of the proposed agency. We enclose a bank draft for \$1,500.00 to apply upon the statutory cost of investigation. If the cost of investigation to be made exceeds \$1,500.00 we agree to pay such excess in accordance with WAC 208-512-040 together with such other costs and fees as may be legally required by statute or regulation.

Correspondence, instructions, requests for information, reports, etc., should be addressed:

Head Office
Proposed Agency

To expedite the statutory investigation, the following information, schedules, certifications, resume's, etc., are furnished:

(a) Name of present chief executive officer and name of the secretary

(b) The bank's fiscal year ends

(c) Four certified copies (English translation where applicable) of the most recent edition of the bank's certificate of authority or other legal authorization of your country to conduct a banking business and the bank's articles of incorporation.

(d) Date of certificate of authority or its equivalent under which presently operating and expiration date, or duration, of the certificate of authority or its equivalent

(e) Capital structure at end of last fiscal year: (i.e., equity capital, surplus, undivided profits, unallocated or contingency reserves).

(f) Two copies of last available statement of condition.

(g) Statement of object and purpose or purposes which bank proposes to pursue in the transaction of business in the state of Washington.

(h) Copy of (English translation where applicable) laws of domiciliary country under which applicant bank is organized which permits a bank with its principal place of business in the state of Washington to establish in that foreign country a branch, agency of similar operation. Attached to a copy of such laws shall be either (a) an opinion of counsel (a member of the bar in the foreign country under whose laws the applicant is organized), including references to or extracts from relevant statutes, if any, to the effect that a bank with its principal place of business in the state of Washington may be permitted to establish and maintain in such foreign country a branch, agency or similar operation, or (b) a certificate of an official of the applicant's country who is authorized under its laws to issue a license to a bank with its principal place of business in the state of Washington to maintain either a branch or agency, to the effect he is so authorized.

(i) An opinion of counsel for the applicant (a member of the bar in the foreign country under whose laws the applicant is organized) to demonstrate that this application to establish an agency is in compliance with local laws. Such opinion should state that (a) the applicant's charter authorizes it to carry on the business contemplated by the application, (b) the applicant has conducted, and is now conducting, its business as authorized by the charter and bylaws in compliance with the laws of its country of incorporation, and (c) the making of the application is in compliance with the laws of the country of incorporation.

(j) Letter or certificate from banking authorities of domiciliary country granting permission to the applicant to apply for an agency in this state.

(k) Furnished herewith:

(1) Name, title and resume' for each officer of the proposed agency in Washington.

(2) Confidential financial statement of the managing officer of the proposed agency in Washington.

(l) Outline of background information in support of application.

(m) Copy of option or conditional lease on proposed agency site.

(n) A verified or authenticated copy of the bank's bylaws.

EXECUTED at, for the (Bank), this day of, 19.
(By the bank's chief executive officer) *
(and the secretary of the banking entity) *
Bank Seal
*Please type name and official title under the signatures.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-99002, filed 9/6/00, effective 10/7/00; Order 23, Appendix II (codified as WAC 50-32-99002), filed 8/14/73.]

WAC 208-532-99003 Appendix III—Forms—Application for certificate authorizing an alien bank to establish and operate a bureau in the state of Washington.

APPLICATION FOR CERTIFICATE AUTHORIZING AN ALIEN BANK TO ESTABLISH AND OPERATE A BUREAU IN THE STATE OF WASHINGTON

(To be filed in duplicate)

TO: Director of the Department of Financial Institutions
Division of Banks
Olympia, Washington 98504

The (Applicant alien bank), with its head office and principal place of business located at (Domiciliary Country), hereby initiates this application for certificate authorizing the establishment and operation of a bureau to be located in the City of, County of, State of Washington.

The (Bank) is incorporated, chartered or otherwise authorized to conduct a banking business under the laws of (Domiciliary Country).

We enclose a verified copy of the resolution, adopted by the bank's governing board, specifically empowering its President (or Chief Executive Officer) and the bank's Secretary (or equivalent officer) to execute this application, pay the fees required by law or regulation, provide such information and furnish such reports and enter into such agreements as may be necessary.

Correspondence, instructions, and requests for information, reports, etc., should be addressed:

- Head Office
Proposed Bureau

To expedite the statutory investigation, the following information, schedules, documents, etc., are furnished:

(2003 Ed.)

(a) Name of present Chief Executive Officer. and name of the Secretary.

(b) The bank's fiscal year ends

(c) (English translation) Four certified copies of most recent edition of the bank's certificate of authority or other legal authorization of your country to conduct an international banking business and the bank's articles of incorporation.

(d) Date of certificate of authority or its equivalent under which presently operating. and expiration date, or duration, of the certificate of authority or its equivalent.

(e) Capital structure at end of last fiscal year: (i.e., equity capital, surplus or rest accounts, undivided profits, unallocated or contingency reserves).

(f) Two copies of last available statement of condition.

(g) Statement of object, purpose and activities which bank proposes to pursue the establishment and operation of a bureau in this state at the place designated herein.

Enclosed is a bank draft for \$300.00 to apply upon the statutory cost of investigation. If the cost of investigation to be made exceeds \$300.00, we agree to pay such excess in accordance with WAC 208-512-040 together with such other costs and fees as may be legally required by state or regulation.

EXECUTED in duplicate at for the (Legal name of applicant bank) this day of, 19.

(By the chief executive officer) *
(and the Secretary of the banking corporation) *

Bank Seal

*Please type name and official title under the signatures.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-18-103, amended and recodified as § 208-532-99003, filed 9/6/00, effective 10/7/00; Order 23, Appendix III (codified as WAC 50-32-99003), filed 8/14/73.]

Chapter 208-536 WAC
ADMINISTRATION OF TRUST COMPANIES—
INVESTMENTS, ETC.
(Formerly chapter 50-36 WAC)

- WAC
208-536-010
208-536-020
208-536-030
208-536-040
208-536-050
208-536-060
208-536-070
208-536-080
208-536-090
208-536-100
208-536-110
208-536-120

- Definitions.
Administration of fiduciary powers.
Audit of the trust department.
Collective investment funds—Funds authorized.
Collective investment funds—Administration of funds.
Collective investment funds—Valuation of assets, admissions and withdrawals.
Collective investment funds—Audit.
Collective investment funds—Financial reports.
Collective investment funds—Investments and administration.
Organization and management fees.
Certificate of interest.
Remedy of mistake made in good faith.

WAC 208-536-010 Definitions. For purposes of this chapter, the following words are defined as:

(1) "Fiduciary powers" means the power to act in any fiduciary capacity authorized by the state of Washington including, but not limited to, trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, agent, custodian, investment adviser, if the trust company receives a fee for its investment advice, escrow agent, corporate bond paying and transfer agent, escrow holder, managing agent, depository, committee of estates of incompetents, and any capacity in which the trust company possesses investment discretion on behalf of another.

(2) "Trust department" means that group or groups of officers and employees of a trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the trust company, whether or not the group or groups are so named.

(3) "Agency" means the fiduciary relationship in which title to the property constituting the agency does not pass to the trust institution but remains in the owner of the property, who is known as the principal, and in which the agent is charged with certain specific duties with respect to the property.

(4) "Agency coupled with an interest" means an agency in which the agent has a legal interest in the subject matter. Such an agency is not terminated automatically, as are other agencies, by the death of the principal but continue in effect until the agent can realize upon its legal interest.

(5) "Managing agent" means the fiduciary relationship assumed by a trust company upon the creation of an account which names the trust company as agent and confers investment discretion upon the trust company.

(6) "Trust company" as used herein shall also include banks which are authorized to exercise trust powers.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-010, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-010, filed 8/14/73.]

WAC 208-536-020 Administration of fiduciary powers.

(1)(a) The board of directors is responsible for the proper exercise of fiduciary powers by the trust company. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the trust company in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the trust company's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate.

(b) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s) or committee(s) to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The

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board shall also ensure that at least once during every calendar year thereafter, all the assets held in or for each fiduciary account where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every qualified fiduciary subject to this regulation and exercising fiduciary powers in this state shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the trust company and its trust department.

(4)(a) The trust department may utilize personnel and facilities of other departments of the trust company or its affiliates, and other departments of the trust company may utilize the personnel and facilities of the trust department or its affiliates only to the extent not prohibited by law and as long as the separate identity of the trust department is preserved.

(b) Agency agreements. Pursuant to a written agreement, a trust company exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another trust company or other entity, and may purchase services related to the exercise of fiduciary powers from another trust company or other entity.

(5) Fiduciary records shall be kept separate and distinct from other records of the trust company and maintained in compliance with the provisions of RCW 30.04.240. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the director.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-536-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-020, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-020, filed 8/14/73.]

WAC 208-536-030 Audit of the trust department.

A committee of directors, exclusive of any active officers of the trust company, shall at least once during each calendar year make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this regulation and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-030, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-030, filed 8/14/73.]

WAC 208-536-040 Collective investment funds—Funds authorized. Any trust company qualified to act as fiduciary in this state may establish common trust funds

(2003 Ed.)

(referred to in this regulation as "collective investment funds") for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the trust company procures the consent of its co-fiduciary or co-fiduciaries to such investment, and provided such investment is not in contravention with the provisions of chapter 30.24 RCW:

(a) In a common trust fund maintained by the trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the trust company in its capacity as trustee, executor, administrator, or guardian.

(b) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-040, filed 8/22/00, effective 9/22/00; Order 22, § 50-36-040, filed 8/14/73.]

WAC 208-536-050 Collective investment funds—Administration of funds. Collective investments of funds or other property held by such qualified fiduciary (and referred to in this paragraph as "collective investment funds") shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the plan) which shall be approved by a resolution of the trust company's board of directors or by a committee authorized by the board and filed with the director of the department of financial institutions. The plan shall contain appropriate provisions not inconsistent with the rules and regulations of the director of the department of financial institutions as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the trust company with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing assets in the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. A copy of the plan shall be available at the principal office of the trust company for inspection during all banking hours, and upon request a copy of the plan shall be furnished to any person.

(2) Property held by a bank in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation under any provisions of the Internal Revenue Code may be invested in collective investment funds established under the provisions of subparagraph (a) or (b) of WAC 208-536-040, sub-

ject to the provisions herein contained pertaining to such funds, and may qualify for tax exemption pursuant to section 584 of the Internal Revenue Code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts which are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of subparagraph (b) of WAC 208-536-040, if the fund qualifies for tax exemption under Revenue Ruling 56-267 and following rulings.

(3) All participants in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a trust company as fiduciary in a participation in a collective investment fund is proper, the trust company may consider the collective investment fund as a whole and shall not, for example, be prohibited from making such investment because any particular asset is nonincome producing.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-536-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-050, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-050, filed 8/14/73.]

WAC 208-536-060 Collective investment funds—Valuation of assets, admissions and withdrawals. (1) Not

less frequently than once during each period of 3 months a trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except: (a) On the basis of such valuation, and (b) as of such valuation date, (c) no participation shall be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the trust company and approved in such manner as the board of directors shall prescribe, and (d) no requests or notice may be canceled or countermanded after the valuation date. However, in the case of a fund that is invested primarily in real estate or other assets that are not readily marketable, the value of the fund's assets shall be determined at least once each year.

(2) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind, provided that all distributions as of any one valuation date shall be made on the same basis.

(3) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(4) Any trust company administering a collective investment fund shall have the responsibility of maintaining in cash and readily marketable investments such part of the assets of the fund as shall be deemed to be necessary to provide adequately for the needs of participants and to prevent inequities

between such participants, and if prior to any admissions to or withdrawals from a fund the trust company shall determine that after effecting the admissions and withdrawals which are to be made less than 40 percent of the value of the remaining assets of the collective investment fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund shall be permitted as of the valuation date upon which such determination is made: Provided, That ratable distribution upon all participations shall not be so prohibited in any case.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-060, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-060, filed 8/14/73.]

WAC 208-536-070 Collective investment funds—

Audit. A trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the trust company. In the event such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the collective investment fund.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-070, filed 8/22/00, effective 9/22/00; Order 22, § 50-36-070, filed 8/14/73.]

WAC 208-536-080 Collective investment funds—

Financial reports. (1) A trust company administering a collective investment fund shall at least once during each period of 12 months prepare a financial report of the fund which shall be filed with the director of the department of financial institutions within 90 days after the end of the fund's fiscal year. This report, based upon the above audit, shall contain a list of investments in the fund showing the cost and current market value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss and any other investment changes; income and disbursements; and an appropriate notation as to any investments in default.

(2) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. No predictions or representations as to future results may be made. In addition, as to funds described in WAC 208-536-040, neither the report nor any other publication of the trust company shall make reference to the performance of funds other than those administered by the trust company.

(3) A copy of the financial report shall be furnished, or notice shall be given that a copy of such report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of such financial report may be furnished to prospective customers. The cost of printing and distribution of these reports will be borne by the trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in WAC 208-536-040 may be

given publicity solely in connection with the promotion of the fiduciary services of the trust company.

(4) Except as herein provided, the trust company shall not advertise or publicize its collective investment fund(s); provided, however, that publication in a newspaper, periodical, or other medium of the net asset value of collective investment fund(s) for which a daily net asset value is available, shall not be considered an advertisement or publication prohibited by this section. Restraint is required in fiduciary advertisements to preclude the violation of securities laws including the Mutual Fund Reform Act.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-536-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-080, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-080, filed 8/14/73.]

WAC 208-536-090 Collective investment funds—

Investments and administration. (1) A trust company administering a collective investment fund shall have the exclusive management thereof, except as a prudent person might delegate responsibilities to others.

(2) No trust company shall have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective investment fund may be invested in stock or obligations, including time or savings deposits, of the bank or any of its affiliates: Provided, That such deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this part, funds held by a trust company as fiduciary for its own employees may be invested in a collective investment fund.

(3) A trust company may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance until the time of the next valuation date to an account holding a participation be deemed to constitute the acquisition of an interest by the bank.

(4) Any trust company administering a collective investment fund may purchase for its own account from such fund any devaluated fixed income investment held by such fund, if in the judgment of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the trust company elects to so purchase such investment, it must do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(5) Except in the case of collective investment funds described in paragraph (b) of WAC 208-536-040:

(a) No funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of 10 percent of the then market value of the fund: Provided, That in applying this limitation if two or more

accounts are created by the same person or persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one;

(b) No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any closely held corporation, as may be determined by the director of the department of financial institutions, or, of any one person, firm, or corporation if as a result of such investment the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such person, firm, or corporation would aggregate in excess of 10 percent of the then market value of the fund: Provided, That this limitation shall not apply to investments in direct obligations of the United States or its agencies or other obligations fully guaranteed by the United States or its agencies as to principal and interest: And Provided Further, That this limitation shall not apply to investments in securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as now or hereafter amended, if both of the following conditions are met:

(i) The portfolio of the investment company or investment trust is limited to such obligations of, or fully guaranteed by, the United States or its agencies and to repurchase agreements fully collateralized by such obligations; and

(ii) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian;

(6) In addition to the investments permitted under WAC 208-536-040, funds or other property received or held by a trust company as fiduciary may be invested collectively, to the extent not prohibited by law, as follows:

(a) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of such companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank fiduciary fund."

(b) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issue: Provided, That the trust company owns no participation in the loan or obligation and has no interest in any investment therein except in its capacity as fiduciary.

(c) In a common trust fund maintained by the trust company for the collective investment of cash balances received or held by a trust company in its capacity as trustee, executor, administrator, or guardian, which the trust company considers to be individually too small to be invested separately to advantage. The total investment for such fund must not exceed \$1,000,000; the number of participating accounts is limited to 100, and no participating account may have an interest in the fund in excess of \$1,000,000: Provided, That in applying these limitations if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons, such account shall be considered as one: And Provided, That no fund shall be established or operated under this subpara-

graph for the purpose of avoiding the provisions of chapter 208-536 WAC.

(d) In any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries or affiliates or by several individual settlors who are closely related: Provided, That such investment is not made under this subparagraph for the purpose of avoiding any provision of this regulation, in particular, but not limited to the provisions beginning with new section WAC 208-536-040.

(e) In such other manner as shall be approved in writing by the director of the department of financial institutions.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-536-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-090, filed 12/18/98, effective 1/18/99. Statutory Authority: RCW 30.04.030. 90-07-011, § 50-36-090, filed 3/13/90, effective 4/13/90; Order 22, § 50-36-090, filed 8/14/73.]

WAC 208-536-100 Organization and management fees. (1) A trust company administering a collective investment fund may charge reasonable expenses incurred in operating the collective investment fund but shall absorb the costs of establishing or reorganizing a collective investment fund.

(2) The trust company may charge a fee for the management of the collective investment fund provided (a) the fee is permitted under applicable law (and complies with fee disclosure requirements, if any) in the state in which the trust company maintains the fund; and (b) the amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested in the fund.

(3)(a) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the trust company administering the fund.

(b) A trust company may (but shall not be required to) transfer up to 5 percent of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account: Provided, That no such transfers shall be made which would cause the amount in such account to exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(c) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund, the reserve account shall be credited with the amount so recovered.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-100, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-100, filed 8/14/73.]

WAC 208-536-110 Certificate of interest. No trust company administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form, except to provide a withdrawing account with an interest in a segregated investment.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-110, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 99-01-119, § 50-36-110, filed 12/18/98, effective 1/18/99; Order 22, § 50-36-110, filed 8/14/73.]

WAC 208-536-120 Remedy of mistake made in good faith. No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this part if promptly after the discovery of the mistake the trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-536-120, filed 8/22/00, effective 9/22/00; Order 22, § 50-36-120, filed 8/14/73.]

Chapter 208-544 WAC

SCHEDULE OF COSTS OF EXAMINATIONS

(Formerly chapter 50-44 WAC)

WAC

- 208-544-005 Determination of collection method—Principles.
- 208-544-010 Collection of examination costs—Collection method.
- 208-544-020 Semiannual asset charge—Assessment.
- 208-544-025 Fees paid by interstate banks.
- 208-544-030 Hourly fees and charges—Regular, including extraordinary examination and special examinations.
- 208-544-039 Charges and fees effective July 1, 2001.
- 208-544-060 Banking fund—Minimum cash balance.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 208-544-037 Charges and fees effective June 25, 1999. [Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-544-037, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-544-037, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025 and 43.320.040. 99-10-024, § 50-44-037, filed 4/28/99, effective 6/25/99.] Repealed by 01-12-003, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040.
- 208-544-050 Limitations on assessments. [Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-050, filed 8/30/91, effective 9/30/91; 90-12-007, § 50-44-050, filed 5/25/90, effective 6/25/90.] Repealed by 01-12-003, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040.

WAC 208-544-005 Determination of collection method—Principles. When determining a revision to the collection method, the director shall consider but not be limited to the following principles.

(1) The revenue to be collected shall be sufficient to allow the division of banks to achieve its statutory mission to examine institutions within all required time periods.

(2) Regulatory costs shall be apportioned in a manner consistent with the state of Washington's overall policy com-

mitments to rural and economically distressed areas, promoting the delivery of financial services to those areas.

(3) No industry or institution shall bear a disproportionate share of regulatory costs.

(4) There shall be a significant correlation between assessments and examination costs across institutions.

(5) The division of banks shall have sufficient resources to maintain a competent and motivated staff.

(6) Such other principles as the director may deem relevant.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-005, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-005, filed 8/30/91, effective 9/30/91.]

WAC 208-544-010 Collection of examination costs—

Collection method. The requirement of RCW 30.04.070 and 30.08.095 that the director collect from each bank, mutual savings bank, stock savings bank, trust company, or industrial loan company, the costs of the division, shall be met in accordance with the procedures established in this chapter. Costs shall be recouped by the following methods: Semiannual asset charges in order to recoup nondirect bank examination related expenses (RCW 30.08.095, giving the director the authority to charge for other services rendered), and an hourly charge for the estimated actual cost of examination determined by a rate specified herein times the number of hours spent by division personnel in regular or extraordinary examinations.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.070 and 30.08.095. 90-12-007, § 50-44-010, filed 5/25/90, effective 6/25/90. Statutory Authority: RCW 30.04.030. 83-20-072 (Order 55), § 50-44-010, filed 10/3/83; 82-24-074 (Order 48), § 50-44-010, filed 12/1/82. Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-010, filed 12/31/81.]

WAC 208-544-020 Semiannual asset charge—

Assessment. A semiannual charge for assets will be used to recoup nondirect bank examination related expenses (RCW 30.08.095). The semiannual charge for assets will be computed upon the asset value reflected in the most recent report of condition. The rate of such charge shall be as set forth in the following schedules:

(1) Commercial banks, mutual savings banks, and stock savings banks.

The rate of such charge shall be based on the total asset value as reflected in the report of condition due for that period provided, the director may adjust such rates if the director determines that a disproportionate amount of revenue is being collected by such rate. In no event shall the amount of revenue collected from any one bank exceed one hundred thirty-three thousand four hundred ninety dollars per assessment period.

If the bank's total assets are:			The assessment is:	
Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	.00001408	0

If the bank's total assets are:		The assessment is:		
Over	But not Over	This Amount	Plus	Of Excess Over
500	1000	7040	.0000135	500
1000	—	13,790	.0000133	1000

(2) Alien banks.

The rate of such charge shall be .000035189 of the total asset value as reflected in the report of condition due for that period provided, the director may adjust such rate if the director determines that a disproportionate amount of revenue is being collected by such rate.

(3) The director's office shall forward by United States mail a notice to each financial institution showing the manner of calculating the asset charge due and a worksheet for such purposes. The notices shall be mailed each June and December. The asset charge shall be calculated by the financial institution and forwarded to the division of banks with the applicable report. A completed copy of the worksheet shall be included with the assessment. An additional two hundred dollar penalty shall be assessed if the amount is not paid by the time such report of condition or notice of assessment is due.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 43.320.010, 43.329.040 and 30.04.030. 96-04-022, § 50-44-020, filed 1/30/96, effective 3/1/96. Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-020, filed 8/30/91, effective 9/30/91; 90-12-007, § 50-44-020, filed 5/25/90, effective 6/25/90. Statutory Authority: RCW 30.04.030 and 31.04.150. 89-09-004 (Order 77), § 50-44-020, filed 4/6/89. Statutory Authority: RCW 30.04.030. 83-20-072 (Order 55), § 50-44-020, filed 10/3/83; 82-24-074 (Order 48), § 50-44-020, filed 12/1/82. Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-020, filed 12/31/81.]

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

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

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

WAC 208-544-030 Hourly fees and charges—Regular, including extraordinary examination and special examinations. Each bank, mutual savings bank, trust company, alien bank, or industrial loan company shall pay to the director the following fees:

(2003 Ed.)

(1) For regular examinations, including extraordinary examinations for the express purpose of examining unusual conditions or circumstances, including extensions of regular examinations wherein conditions may warrant extension of time required in the examination beyond normal allotted time and such other reviews as determined by the director; sixty-five dollars per hour. The director may charge the actual cost of examinations performed under personal service contracts by third parties.

(2) For electronic data processing examination, trust examination, or other examination requiring specialized expertise, ninety dollars per hour. Electronic data processing centers and trust companies are exempt from the asset assessment provisions of WAC 208-544-020(1) if such centers or companies are not a part of the assets of the bank as reported in the report of condition.

(3) The director shall submit a statement for the foregoing charges following the completion of any applicable examination, and the charges shall be paid not later than thirty days after submission of such statement.

(4) These charges shall become effective for invoicing that occurs after the effective date of this rule, provided such invoicing relates to examinations occurring on or after July 1, 1991.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-030, filed 8/30/91, effective 9/30/91; 90-12-007, § 50-44-030, filed 5/25/90, effective 6/25/90. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-44-030, filed 9/13/85. Statutory Authority: RCW 34.04.070. 82-02-037 (Order 45), § 50-44-030, filed 12/31/81.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 208-544-060 Banking fund—Minimum cash balance. The director shall maintain a minimum cash balance in the banking fund (RCW 43.19.095) of at least one month's allotment. One month's allotment is based upon the current biennium budget divided by twenty-four months. In the event the banking fund balance drops below this figure the director shall declare the next semiannual asset assessment due; payment within thirty days of such declaration. The director shall bill each institution based on the most current report of condition and payment shall be in lieu of the next regularly scheduled asset assessment.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-544-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.070 and 30.08.095. 91-18-054, § 50-44-060, filed 8/30/91, effective 9/30/91.]

Chapter 208-548 WAC

ACQUISITION OF BANKS, TRUST COMPANIES, NATIONAL BANKING ASSOCIATIONS OF BANK HOLDING COMPANIES BY OUT-OF-STATE BANK HOLDING COMPANIES

(Formerly chapter 50-48 WAC)

WAC

208-548-010	Authority and purpose.
208-548-020	Joint application.

208-548-030	Information required—Identity of applicant parties and operating subsidiaries—Designation of representative of each applicant.
208-548-040	Information required from applicant to be acquired.
208-548-050	Information required from acquiring applicant.
208-548-060	Information to be made available by acquiring applicant.
208-548-070	Information to be made available by applicant to be acquired.
208-548-080	Application to include statement of interlocking management or ownership.
208-548-090	Director may consult with and obtain information from appropriate federal regulatory authority.
208-548-100	Interstate acquisition reciprocity—States possessing.

WAC 208-548-010 Authority and purpose. These regulations are promulgated pursuant to section 9, chapter 157, Laws of 1983, to establish a procedure under which an out-of-state bank holding company which desires to acquire more than five percent of the shares of the voting stock, or all or substantially all of the assets, of a bank, trust company, national banking association or bank holding company, the principal operations of which are conducted within this state, may apply to the director for approval of such acquisition.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-010, filed 10/3/83.]

WAC 208-548-020 Joint application. An application for approval of such acquisition shall be submitted jointly by the acquiring bank holding company and the domestic institution or bank holding company to be acquired. The application need not be in any particular format, but must set forth all the information required under these regulations. The application shall include a copy of the agreement setting forth the plan of merger or acquisition, including certified copies of the resolutions of the respective boards of directors of parties to the agreement approving same. The application shall also include a statement authorizing any federal or state regulatory agency to make available to the director any and all information which such agency may have relating to the applicants or any of their subsidiaries.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-48-020, filed 9/13/85. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-020, filed 10/3/83.]

WAC 208-548-030 Information required—Identity of applicant parties and operating subsidiaries—Designation of representative of each applicant. Unless included in other information required by this chapter, the application shall set forth the name and main office address of all operating subsidiaries of both the acquiring bank holding company and the bank, trust company, national banking association or domestic bank holding company to be acquired. In addition, the application shall set forth the name, office address, and telephone of one or more persons designated by each applicant to be its official representative in connection with the application. All contact between the director's office and the applicant should, except in extraordinary circumstances, be through such representatives.

(2003 Ed.)

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-030, filed 10/3/83.]

WAC 208-548-040 Information required from applicant to be acquired. The bank, trust company, national banking association, or domestic bank holding company to be acquired shall include with the application each of the following items of information:

(a) A statement verifying that the bank, trust company, national banking association or domestic bank holding company to be acquired is in such a liquidity or financial condition as to be in danger of closing, failing or insolvency, setting forth with specificity the circumstances upon which such conclusion is based.

(b) A statement of all courses of action actively considered as an alternative to the proposed merger or acquisition; a statement of why each such course of action or combination of more than one of them was not taken; a statement as to why assistance available from the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other governmental agency either alone or in combination with other actions is not sufficient to alleviate the liquidity or financial situation so as to avoid the danger of closing, failing or insolvency; and if known, the course or courses of action which will be taken in the event the merger or acquisition is not consummated.

(c) Financial records including: (1) Copies of reports of condition required to be filed with the appropriate regulatory authorities and financial statements showing its assets and liabilities as of the end of each of the six most recent quarterly periods of operation; (2) copies of income and expense statements for each of the six most recent quarterly periods of operation; and (3) a copy of the most recent independent audit report.

Information submitted in response to this subsection shall be consolidated figures for the entire organization. If individual figures for operating subsidiaries are available, they shall also be submitted.

(d) A statement setting forth which, if any, state banks, trust companies, or national banking associations doing business in this state, or domestic bank holding companies have been solicited to make an offer for acquisition or merger. If no such solicitations have been made, the application shall include an explanation of the decision not to make such solicitations. The application shall include a summary of the terms of any bona fide offer for merger or acquisition received from any domestic bank, trust company, national banking association or bank holding company, and shall further state whether any domestic offerors have been given the opportunity to match the terms of the proposed acquisition by or merger with the out-of-state bank holding company.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-548-040, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-040, filed 10/3/83.]

WAC 208-548-050 Information required from acquiring applicant. The applicant out-of-state bank holding company shall submit with the application each of the following items of information:

(a) A copy of its most recent audited financial statement, its most recently prepared statement of assets and liabilities, including footnotes and explanations, and its most recent income and expense report.

(b) A statement of its then existing business plan, both short-range and long-range, for operation of the bank, trust company, national banking association or domestic bank holding company to be acquired. Such statement shall include comments by the acquirer as to how the proposed acquisition will meet the needs and convenience of the people of the state of Washington.

(c) A list of any other notices pursuant to the change in Bank Control Act (12 U.S.C. §1817(j)) filed on its behalf involving any other bank, trust company, national banking association or bank holding company which is presently pending. Such list shall include the date and place of filing each notice and the name and address of the institution to which each notice pertains.

(d) A statement as to what part, if any, of the funds to be used in making the acquisition or merger are borrowed from sources other than its own subsidiaries. With respect to any such funds, the applicant shall state: (1) The amount and source of borrowed funds; (2) collateral pledged, if any; (3) terms of the loan, including interest rates, amortization requirements, guarantors, endorsers, and any other arrangements or agreements among the parties to such loan transaction; (4) proposed source of funds for debt service; (5) whether and to what extent the acquiring party intends to rely on dividends, fees, etc. from the institution being acquired for debt servicing requirements.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-548-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-050, filed 10/3/83.]

WAC 208-548-060 Information to be made available by acquiring applicant. The applicant out-of-state bank holding company shall make available for review by the division of banks the following:

(a) Any current file which it or its principal banking subsidiary or subordinate is required to maintain by regulations promulgated by the appropriate federal supervisory authority (as defined in 12 U.S.C. §2902(1)) for purposes of the Community Reinvestment Act (12 U.S.C. §2902 et seq.).

(b) Copies of all internal documents having to do with the proposed merger or acquisition, including, without limitation, memoranda or analyses together with conclusions and recommendations to management and all financial or other information from which such memoranda, analyses, conclusions, recommendations or other documents were prepared.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-060, filed 10/3/83.]

WAC 208-548-070 Information to be made available by applicant to be acquired. The bank, trust company, national banking association or domestic bank holding company to be acquired shall make available to the director all internally generated reports relating to the operation of any or

[Title 208 WAC—p. 56]

all operating subsidiaries during the immediately preceding two-year period.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-070, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-070, filed 10/3/83.]

WAC 208-548-080 Application to include statement of interlocking management or ownership. The application must state whether any management official (as defined in 12 U.S.C. §3201(4)) of the acquiring out-of-state bank holding company or any of its affiliated corporations (as the term "affiliated" is defined by 12 U.S.C. §3201(3)) is also a management official of any other depository institution or holding company other than the bank, trust company, or national banking association being acquired, or whether any person, partnership or corporation who owns or controls, directly or indirectly, ten percent or more of the outstanding voting shares of the acquiring applicant also owns, directly or indirectly, ten percent or more of the outstanding voting shares of any other depository institution or holding company. If such circumstances do exist, the application shall include: (1) The name of such person or persons, partnerships or corporations; (2) name and address of the depository institution or holding company; (3) relationship triggering this reporting requirement; and (4) nature and extent of ownership interest held by such person, partnership or corporation in the applicant and other depository institution or holding company.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-548-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-080, filed 10/3/83.]

WAC 208-548-090 Director may consult with and obtain information from appropriate federal regulatory authority. The director may consult with appropriate federal regulatory agencies in connection with any application filed hereunder and shall consider any information received from such agency or agencies in ruling upon the application.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.230 as amended by 1983 c 157 § 9. 83-20-073 (Order 56), § 50-48-090, filed 10/3/83.]

WAC 208-548-100 Interstate acquisition reciprocity—States possessing. The director of the department of financial institutions, having reviewed the laws of the following states as they relate to a domestic (Washington) bank holding company acquiring more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within such states, has determined, pursuant to RCW 30.04.232, that the laws of such states allow a domestic bank holding company to acquire a bank, trust company, or national banking association, the principal operations of which are conducted within such states, and permit the operation of the acquired bank, trust company, or national banking association within such states on terms and conditions no less favorable than other banks, trust companies, or national banking associa-

tions doing a banking business within such states: (1) Alaska, (2) Arizona, (3) California, (4) Colorado, (5) Connecticut, (6) Idaho, (7) Illinois, (8) Kentucky, (9) Louisiana, (10) Maine, (11) Massachusetts, (12) Michigan, (13) Nebraska, (14) Nevada, (15) New Hampshire, (16) New Jersey, (17) New Mexico, (18) New York, (19) North Dakota, (20) Ohio, (21) Oklahoma, (22) Oregon, (23) Pennsylvania, (24) Rhode Island, (25) South Dakota, (26) Tennessee, (27) Texas, (28) Utah, (29) Vermont, (30) West Virginia, and (31) Wyoming.

Other states not listed shall be reviewed on a case-by-case basis.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-548-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.232 (1)(c). 93-07-113, § 50-48-100, filed 3/23/93, effective 4/23/93. Statutory Authority: RCW 30.04.232. 87-13-015 (Order 68), § 50-48-100, filed 6/9/87; 87-10-047 (Order 67), § 50-48-100, filed 5/5/87.]

Chapter 208-556 WAC

SMALL BUSINESS ADMINISTRATION 7(A) LOAN GUARANTY PROGRAM NONDEPOSITORY LENDERS—LICENSING AND REGULATION

(Formerly chapter 50-56 WAC)

WAC

208-556-010	Purpose.
208-556-020	Application procedures.
208-556-030	Application format.
208-556-040	Continuing operations.
208-556-050	Records.
208-556-060	Reports.
208-556-070	Examinations.
208-556-080	Fees.

WAC 208-556-010 Purpose. The purpose of this chapter shall be to provide guidelines for application for a license to operate a nondepository small business lending venture under the auspices of the federal Small Business Administration (SBA) guaranty program known as the 7(a) loan guaranty program. Specifics of the program are set forth in section 7(a) of the federal "Small Business Investment Act of 1958," 15 U.S.C., part 636(a). These rules also establish other regulatory oversight guidelines and provide for fees. These rules are promulgated under the general rule-making authority of the state director of the department of financial institutions, and are required under legislation passed by the legislature (section 3(1), chapter 212, Laws of 1989.)

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-010, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-010, filed 12/7/89, effective 1/7/90.]

WAC 208-556-020 Application procedures. An application for state license to operate a nondepository small business lending venture to qualify for participation in the SBA 7(a) program shall be filed with the director of the department of financial institutions and shall include such fees as established elsewhere in these rules. As a matter of general procedure, it is recommended that interested parties visit the office of the director prior to submitting their application to review statutory and other requirements for this action.

(2003 Ed.)

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-020, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-020, filed 12/7/89, effective 1/7/90.]

WAC 208-556-030 Application format. Applicants may use the same documentation as required by the SBA for their approval of the lender to the extent that such documentation meets the requirements of statute and these rules unless waived by the director. The application must contain the following:

- (1) Applicant's name, address, and telephone number.
- (2) A statement that the applicant is incorporated under the Washington Business Corporation Act or the Washington Nonprofit Corporation Act and a copy of applicant's Articles of Incorporation and Bylaws, properly certified.
- (3) A list of officers, directors, associates, and all holders of ten or more percent of any class of the applicant's capital stock.
- (4) A statement of personal history of all those listed in subsection (3) of this section. SBA Form 1081 or its equivalent may be used.
- (5) A copy of the most recent audited financial statement of any entity other than a natural person holding ten or more percent of any class of stock of the applicant.
- (6) An organizational chart showing the relationship of the applicant to its affiliates, as well as the applicant's internal organizational structure.
- (7) Copies of the last three audited financial statements of the applicant, and supporting tax returns.
- (8) Applicant's business plan which should include at a minimum:
 - (a) A detailed pro forma financial projection for at least three years of operations.
 - (b) A market study of the intended geographical area of operations.
 - (c) An explanation of applicant's method of funding loans, including the unguaranteed portion.
 - (d) An outline of loan servicing procedures proposed.
 - (e) Copies of written policies and procedures to be used, which must include policies requiring disclosure of conflicts of interest of affiliates, directors, officers, and employees; prohibiting false statements or representations to the director; and preventing fraud or undue influence by the licensee.
- (9) Certified copy of a resolution by the applicant's board of directors designating the person(s) authorized to act on behalf of applicant.
- (10) An opinion of independent counsel that the applicant is in compliance with applicable state and federal laws in the formation and organization of the company, with applicable securities laws, and is chartered to conduct its business in the proposed operating area.
- (11) Such marketing materials as may have been prepared that portray the nature of applicant's operations.
- (12) Copies of all bonds in effect for directors, officers, and employees.
- (13) Other such information as the director may require.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-030, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-030, filed 12/7/89, effective 1/7/90.]

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WAC 208-556-040 Continuing operations. Licensees shall maintain an adequate financial condition.

(1) Minimum capital (unimpaired paid-in capital, surplus, and undivided profits) shall be in the amount of five hundred thousand dollars or five and one-half percent of total assets, whichever is greater, or a greater amount should the director determine that applicant's business plan or economic conditions require a greater amount to conduct the business of a 7(a) lender. The director may consider and include the net worth of any corporate shareholder of the applicant if the shareholder agrees to unconditionally guarantee the liabilities of the applicant and that shareholder agrees to the reporting requirements set forth in WAC 208-556-060.

(2) Capital below the required amount precludes the presentation of additional loans to the SBA for guaranty without the written consent of the director.

(3) Licensees shall maintain a reserve for anticipated loan losses appropriate to its needs, based on the following factors:

(a) The volume and mix of the existing loan portfolio, including the volume and severity of nonperforming loans and adversely classified credits, as well as an analysis of net charge-offs experienced on previously classified loans.

(b) The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree of risk associated with such loans.

(c) The trend in loan growth, including any rapid increase in loan volume within a relatively short time period.

(d) General and local economic conditions affecting the collectibility of the licensee's loans.

(e) Previous loan loss experience by loan type, including net charge-offs as a percent of average loans over the past several years.

(f) The relationship and trend over the past several years of recoveries as a percent of previous year's charge-offs.

(g) Available outside information of a comparable nature regarding the loan portfolios of other such lenders.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-040, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-040, filed 12/7/89, effective 1/7/90.]

WAC 208-556-050 Records. Licensees shall maintain records in a fashion consistent with a financial institution and shall have them at all times readily accessible to the director. Records shall be preserved under the following schedule:

(1) Preserve permanently:

(a) All general and subsidiary ledgers reflecting asset, liability, capital stock and surplus and income and expense accounts.

(b) All general and special journals or other records forming the basis for entries in such ledgers.

(c) Articles of incorporation, bylaws, stock registers, licenses, and minutes of board of directors meetings.

(2) Preserve for at least six years following final disposition of the related loan:

(a) All applications for financing.

(b) Financing instruments.

(c) Lending participation agreements.

(d) Escrow agreements.

[Title 208 WAC—p. 58]

(e) All other documents and supporting material relating to such loans, including correspondence.

Records and other documents in subsections (1) and (2) of this section may be preserved by reproduction. Provided, however, that the licensee shall prepare a duplicate reproduction which shall be stored separately from the original for the time required. If such reproductions are used, the licensee shall maintain at all times facilities for the projection and reproduction of such records.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-050, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-050, filed 12/7/89, effective 1/7/90.]

WAC 208-556-060 Reports. Licensees shall submit the following reports to the director:

(1) Annual audits prepared in accordance with generally accepted accounting principles which shall be certified unless the director makes other provision in writing in advance.

(2) Quarterly financial reports which shall include a balance sheet and income and expense statement for both the period and year to date.

(3) A notification of any suit or proceeding involving fraud or dishonesty where the licensee or an employee may be a party, or where an adverse judgment could contribute materially to the impairment of the licensee's capital. Such notification must be forwarded with copies of the complaint within thirty days of the filing of such action.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-060, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-060, filed 12/7/89, effective 1/7/90.]

WAC 208-556-070 Examinations. The director will conduct examinations of licensees as provided by statute and will forward a report of examination to the licensee's board of directors for information and action as appropriate. These examination reports and all subsequent and related correspondence are the property of the director and will be subject to the same confidentiality requirements as established for financial institutions regulated by the division of banks.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-556-070, filed 8/22/00, effective 9/22/00. Statutory Authority: 1989 c 212 § 3(1). 90-01-001, § 50-56-070, filed 12/7/89, effective 1/7/90.]

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

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

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

(3) Business combination fee. Other business combinations must be approved by the director. Costs of investigation will be borne by the licensee and will be based on actual staff

costs of the division of banks, which are fifty dollars per hour per examiner assigned.

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

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

Chapter 208-586 WAC

EXAMINATION AND SUPERVISION FEES FOR SAVINGS AND LOAN ASSOCIATIONS

(Formerly chapter 419-14 WAC)

WAC

208-586-020	Collection of examination and supervision costs—Collection method.
208-586-030	Hourly charge for examinations.
208-586-040	Semiannual asset charge.
208-586-050	Investigation fee for new charter application.
208-586-060	Branch application fee—Domestic associations.
208-586-070	Loans to directors, officers, or employees—Maximum amount.
208-586-075	Branch application fee—Foreign associations.
208-586-080	Annual license fees.
208-586-085	Loans to one borrower.
208-586-090	Hourly charge for legal assistance.
208-586-100	Supervisory review of examination.
208-586-110	Special examinations.
208-586-120	Acquisition application fee.
208-586-140	Charges and fees effective July 1, 2001.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-586-135	Charges and fees effective June 25, 1999. [Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-586-135, filed 2/27/01, effective 3/30/01. Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-135, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030, 30.04.070, 30.08.095, 33.04.025 and 43.320.040. 99-10-024, § 419-14-135, filed 4/28/99, effective 6/25/99.] Repealed by 01-12-003, filed 5/23/01, effective 7/1/01. Statutory Authority: RCW 30.04.030, 33.04.025, 43.320.040.
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WAC 208-586-020 Collection of examination and supervision costs—Collection method. The requirement of RCW 33.28.020 that the director collect from each savings and loan association the actual costs of examinations and supervision shall be met in accordance with the procedures established in this chapter. The fee shall consist of three elements: (1) An hourly charge for the number of hours spent by division personnel in conducting an examination of the association, (2) a semiannual asset charge; and (3) an hourly charge for the number of hours of extraordinary or special services.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-586-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.28.020. 83-20-028 (Order 83-5), § 419-14-020, filed 9/26/83; 82-13-015 (Order 82-4), § 419-14-020, filed 6/7/82.]

WAC 208-586-030 Hourly charge for examinations. The hourly charge for hours spent by personnel of the divi-

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sion of banks in conducting examinations shall be assessed as follows:

(1) For division personnel classified as financial examiner, \$40.00 per hour;

(2) For division personnel classified as financial examiner senior, \$45.00 per hour;

(3) For division personnel classified as case manager or financial examiner supervisor or above, \$50.00 per hour;

In addition to the hourly examination fee, foreign associations doing business in the state of Washington will defray the costs of travel and per diem paid to division personnel in examinations performed outside the state of Washington.

The director may charge the actual cost of examinations performed under personal service contracts by third parties. The director shall submit a statement for the foregoing charges following the completion of any applicable examination, and the charges shall be paid not later than thirty days after submission of such statement.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-586-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.28.020. 91-06-063, § 419-14-030, filed 3/1/91, effective 4/1/91; 85-07-009 (Order 85-3), § 419-14-030, filed 3/8/85. Statutory Authority: RCW 33.08.110. 84-12-043 (Order 84-4), § 419-14-030, filed 5/31/84. Statutory Authority: RCW 30.28.020. 82-13-015 (Order 82-4), § 419-14-030, filed 6/7/82.]

WAC 208-586-040 Semiannual asset charge. The semiannual asset charge will be assessed at a rate of three cents per thousand dollars of assets. Asset fees will be computed on assets as of June 30 and December 31 of each calendar year, and payable no later than July 15 and January 15 next following the respective assessment dates.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-040, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.28.020. 91-06-063, § 419-14-040, filed 3/1/91, effective 4/1/91; 85-07-009 (Order 85-3), § 419-14-040, filed 3/8/85. Statutory Authority: RCW 30.28.020. 82-13-015 (Order 82-4), § 419-14-040, filed 6/7/82.]

WAC 208-586-050 Investigation fee for new charter application. The investigation fee required by RCW 33.08.-060 for submission in connection with applications to charter a new savings and loan association shall be two thousand five hundred dollars. In the event the actual costs of the investigation conducted with respect to a particular application are less than the amount of the fee, such difference between the fee and the actual costs submitted shall be refunded, provided that in no event shall more than one thousand five hundred dollars be refunded. For the purposes of this section, actual costs shall include travel and per diem expenses paid to division personnel in connection with the investigation.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.08.110. 82-13-015 (Order 82-4), § 419-14-050, filed 6/7/82.]

WAC 208-586-060 Branch application fee—Domestic associations. The fee required by RCW 33.08.110 to be submitted in connection with an application to establish a branch office of an association shall be five hundred dollars. In the event the actual costs of the investigation with respect to a particular application are less than the amount of the fee, such difference between the fee and the actual cost submitted

shall be refunded, provided that in no event shall more than three hundred fifty dollars be refunded. For the purposes of this section, actual costs shall include travel and per diem expenses paid to division personnel in connection with the investigation.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.08.110. 84-12-043 (Order 84-4), § 419-14-060, filed 5/31/84; 82-13-015 (Order 82-4), § 419-14-060, filed 6/7/82.]

WAC 208-586-070 Loans to directors, officers, or employees—Maximum amount. The total value of loans made or obligations acquired under the authority of RCW 33.12.060 (2)(f) for any director, officer, or employee of an association shall not exceed twenty-five thousand dollars, unless all applicable regulations of the Federal Deposit Insurance Corporation have been complied with, in which case loans not in excess of one hundred thousand dollars total may be made. Loans in amounts larger than one hundred thousand dollars may be made only with the prior written approval of the director has been obtained in accordance with the provisions of this section.

Requests to the director for permission to exceed the maximum loan limit shall be made at least ten days in advance of the date upon which it is anticipated that funds will be disbursed, if the loan is approved. Such requests must be accompanied by a certified copy of the authorizing resolution, which shall set forth with specificity the reasons that the board of directors believes that exceeding the loan limitation established in this section is in the best interest of the association in each instance. The authorizing resolution shall also set forth the directors' evaluation of the quality of the security for the loan, and the ability of the debtor to repay the loan in accordance with its terms.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-586-070, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.060 (2)(f). 84-09-058 (Order 84-1), § 419-14-070, filed 4/18/84; 82-13-015 (Order 82-4), § 419-14-070, filed 6/7/82.]

WAC 208-586-075 Branch application fee—Foreign associations. The fee required by RCW 33.08.110 to be submitted in connection with an application to establish a branch office of a foreign association in this state shall be two thousand five hundred dollars, nonrefundable for the first branch and five hundred dollars for each additional branch. In the event the actual costs of the investigation with respect to a particular application exceed the amount of the fee, such difference between the fee and the actual costs shall be paid by the applicant. For the purposes of this section, actual costs shall include travel and per diem expenses paid to division personnel in connection with the investigation.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-075, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.08.110. 85-07-010 (Order 85-4), § 419-14-075, filed 3/8/85; 84-12-043 (Order 84-4), § 419-14-075, filed 5/31/84.]

WAC 208-586-080 Annual license fees. Every savings and loan association organized under the laws of this state shall pay a license fee before the 31st of July each year. The license fee for each domestic association shall be fifty dollars

for the office designated as the home office or executive office and an additional fifty dollar fee for each branch.

Every foreign association doing business in the state of Washington shall pay a license fee before the 31st of July each year. The license fee shall be in the amount of fifty dollars for each branch in business within the state of Washington as of the close of business June 30th immediately preceding.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.04.020(2). 82-19-020 (Order 82-6), § 419-14-080, filed 9/8/82.]

WAC 208-586-085 Loans to one borrower. RCW 33.24.010 provides that an association may not invest more than two and one-half percent of its assets in any loan or obligation to any one person, except with the written approval of the supervisor. The director hereby gives written approval for any state chartered association to make a loan to any one borrower in an amount which, taken together with all other outstanding loans and obligation to the same borrower, does not exceed either ten percent of the institution's withdrawable accounts, or the association's net worth, whichever is less.

"One borrower" is defined as (a) any person or entity that is, or that upon the making of a loan will become, obligor on a loan; (b) nominees of such obligor; (c) all persons trusts, partnerships, syndicates, and corporations of which such obligor is a nominee or a beneficiary, partner, member, or record or beneficial stockholder owning ten percent or more of the capital stock, and (d) if such obligor is a trust partnership, syndicate, or corporation, all trusts, partnerships, syndicates, and corporations of which any beneficiary, partner, member, or record or beneficial stockholder owning ten percent of the capital stock, is also a beneficiary, partner, member, or record or beneficial stockholder owning ten percent or more of the capital stock of such obligor; and the term "total balances of all outstanding loans" means the original amounts loaned by an insured institution plus any additional advances and interest due unpaid, less repayments and participating interests sold and exclusive of any loan on the security of such institution's savings accounts or real estate, the title to which has been conveyed to a bona fide purchaser of such real estate.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-586-085, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.24.010. 84-09-058 (Order 84-1), § 419-14-085, filed 4/18/84.]

WAC 208-586-090 Hourly charge for legal assistance. The hourly charge for consultation involving an assistant attorney general shall be assessed at a rate of \$60.00 per hour. Legal assistance shall include, but not be limited to, legal research and advice pertaining to granting new charters, acquisition of savings and loan associations, conversions, stock offerings, board meetings requiring legal assistance, preparation and enforcement of removal actions, involuntary liquidations, declarations of insolvency, cease and desist orders, and other agreements or actions requiring legal advice; and to administrative hearings and preparation of memorandum opinions which relate to a specific savings and loan association.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.28.020. 91-06-063, § 419-14-090, filed 3/1/91, effective 4/1/91; 83-20-028 (Order 83-5), § 419-14-090, filed 9/26/83.]

WAC 208-586-100 Supervisory review of examination. Upon completion of each examination the examiner's report shall be reviewed and an examination letter prepared by administrative personnel. The hourly charge for the review and preparation of the examination letter shall be assessed at the rate of \$50.00 per hour.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-586-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.28.020. 91-06-063, § 419-14-100, filed 3/1/91, effective 4/1/91; 85-07-009 (Order 85-3), § 419-14-100, filed 3/8/85; 83-20-028 (Order 83-5), § 419-14-100, filed 9/26/83.]

WAC 208-586-110 Special examinations. Special examinations shall be assessed at the rate of \$50.00 per hour. Special examinations shall include, but not be limited to electronic data processing examinations, special investigations, special examinations involving the division's staff supervisory personnel, and other special examinations and reviews the supervisor deems necessary.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-586-110, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.28.020. 91-06-063, § 419-14-110, filed 3/1/91, effective 4/1/91; 85-07-009 (Order 85-3), § 419-14-110, filed 3/8/85; 83-20-028 (Order 83-5), § 419-14-110, filed 9/26/83.]

WAC 208-586-120 Acquisition application fee. RCW 33.28.020 requires the director to collect from each association a fee to cover the actual cost of supervision.

To maintain fairness to all associations the acquiring party(ies) will defray the costs involving the director and his staff as follows:

A minimum nonrefundable fee of \$5,000 payable with the acquisition application described in RCW 33.24.360. In addition direct costs involving travel and lodging of the director or his staff and legal expense billed directly to the division will be paid by the acquirers.

Savings and loan associations merging under authority of RCW 33.04.010 are not considered within the scope of RCW 33.24.360 and are therefore not included with respect to this WAC.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-586-120, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.24.360. 84-12-042 (Order 84-5), § 419-14-120, filed 5/31/84.]

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(a) On July 1, 2002, the rate of charges and fees under subsection (1)(a), (b), (c), (d), (g), (h), and (i) of this section, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135-.025.

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

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

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

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

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

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

Chapter 208-590 WAC

MERGER OR ACQUISITION OF TROUBLED ASSOCIATIONS

(Formerly chapter 419-52 WAC)

WAC

208-590-010	Purpose.
208-590-020	Merger or acquisition of a troubled foreign association by a domestic association.
208-590-030	Acquisition of a troubled domestic association by a foreign association.

WAC 208-590-010 Purpose. The purpose of this chapter is to set forth the guidelines which allow for the interstate merger or acquisition of troubled savings and loan associations.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-590-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.014. 82-08-023 (Order 82-1), § 419-52-010, filed 3/30/82.]

WAC 208-590-020 Merger or acquisition of a troubled foreign association by a domestic association. Pursuant to RCW 33.12.012 and 33.12.014, a domestic savings and loan association may acquire or merge with a foreign association under the following circumstances:

(1) The regulator of the foreign association believes that a merger is necessary to prevent the failure of the foreign association;

(2) The regulator of the foreign association believes that no adequate merger candidates exist within the regulator's jurisdiction;

(3) The regulator of the foreign association believes that it is appropriate for the foreign association to be acquired by a domestic association; and

(4) The director believes that it is appropriate for the domestic association to acquire the foreign association.

Any acquisition made under this authority shall be conducted in the same manner so outlined in RCW 33.24.350 - 33.24.380.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-590-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.014. 82-08-023 (Order 82-1), § 419-52-020, filed 3/30/82.]

WAC 208-590-030 Acquisition of a troubled domestic association by a foreign association. Pursuant to RCW 33.12.012 and 33.12.014, and notwithstanding any other law to the contrary, a foreign savings and loan association may acquire a domestic association under the following circumstances:

(1) The director believes that a merger is necessary to prevent the failure of the domestic association;

(2) The director believes that no adequate merger candidates exist in Washington;

(3) The director believes that it is appropriate for the domestic association to be acquired by a foreign association; and

(4) The regulator of the foreign association believes that it is appropriate for the foreign association to acquire the domestic association.

Any acquisition made under this authority shall be subject to RCW 33.24.350 - 33.24.380.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-590-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.014. 82-08-023 (Order 82-1), § 419-52-030, filed 3/30/82.]

Chapter 208-594 WAC

SAVINGS AND LOAN TRUST POWERS

(Formerly chapter 419-56 WAC)

WAC

208-594-010	Definitions.
208-594-020	Administration of fiduciary powers.
208-594-030	Application process.
208-594-040	Director action on application.
208-594-050	Engagement in unauthorized trust business prohibited.

208-594-060	Modification or revocation of investment practices previously authorized.
208-594-070	Investigation fee for new trust applications.
208-594-080	Audit of the trust department.
208-594-090	Examinations and fees.

WAC 208-594-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means the fiduciary relationship in which title to the property constituting the agency does not pass to the trust department but remains in the owner of the property, who is known as the principal, and in which the agent is charged with certain specific duties with respect to the property.

(2) "Agency coupled with an interest" means an agency in which the agent has a legal interest in the subject matter. Such an agency is not terminated automatically, as are other agencies, by the death of the principal but continue in effect until the agent can realize upon its legal interest.

(3) "Fiduciary powers" means the power to act in any fiduciary capacity authorized by the state of Washington including, but not limited to; trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, agent, custodian, escrow agent, corporate bond paying and transfer agent, escrow holder, managing agent, depository, committee of estates of incompetents.

(4) "Managing agent" means the fiduciary relationship assumed by a trust department upon the creation of an account which names the association as agent and confers investment discretion upon the association.

(5) "Director" means the director of the department of financial institutions.

(6) "Trust business" means the business of doing any or all of the activities specified in RCW 30.08.150 (2) through (11).

(7) "Trust department" means that group or groups of officers and employees of a savings and loan association to whom are designated by the board of directors the performance of the fiduciary responsibilities of the association, whether or not the groups or groups are so named.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-010, filed 1/6/88.]

WAC 208-594-020 Administration of fiduciary powers. (1)(a) The board of directors of the savings and loan association is responsible for the proper exercise of fiduciary powers by the trust department. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the savings and loan association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the association's fiduciary powers as it may consider proper to assign to such director(s), officer(s), employee(s), or committee(s) as it may designate.

(b) No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have designated the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within fifteen months of the last review, all the assets held in or for each fiduciary account where the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the trust department shall be adequately bonded.

(3) Every qualified fiduciary subject to this chapter and exercising fiduciary powers in this state shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the savings and loan association and its trust department.

(4) The trust department may utilize personnel and facilities of other departments of the savings and loan association, and other departments of the savings and loan association may utilize the personnel and facilities of the trust department only to the extent not prohibited by law and as long as the separate identity of the trust department is preserved.

(5) Fiduciary records shall be kept separate and distinct from other records of the savings and loan association and maintained in compliance with the provisions of RCW 30.04.240. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the director of the department of financial institutions.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-020, filed 1/6/88.]

WAC 208-594-030 Application process. Associations desiring to establish trust departments shall complete an application establishing the scope of the intended operation. Upon receiving an application from an association to engage in trust business pursuant to this chapter, the director may request such additional information as he deems necessary for the informed disposition of the application. If supplementary information is requested by the director, the application will not be complete until the supplementary information is supplied.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-030, filed 1/6/88.]

WAC 208-594-040 Director action on application. After receiving an application from a savings and loan association to engage in trust business and after having considered it, the director shall grant, grant conditionally, grant in

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modified form, or deny the application and shall inform the applicant in writing of his action and of the reasons therefor. Any application not acted upon within six months after its receipt by the supervisor shall be deemed denied unless the director, in writing, informs the applicant that he is holding the application for further review.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-040, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-040, filed 1/6/88.]

WAC 208-594-050 Engagement in unauthorized trust business prohibited. No savings and loan association shall engage in any trust business not authorized in advance by the director in accordance with this rule, unless the director informs an applicant in writing that it may engage in a trust business provisionally while he reviews the application. Failure of a savings and loan association to comply with the terms of this chapter may be grounds for supervisory action against the savings and loan, its directors, or officers.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-050, filed 1/6/88.]

WAC 208-594-060 Modification or revocation of investment practices previously authorized. The director may find that a trust business previously authorized by him is no longer a safe and prudent practice for savings and loan associations 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 savings and loan associations 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 associations engaging in such a trust business that the authority to engage in the activity has been revoked or modified. When the director so notifies any savings and loan association, its directors and officers shall forthwith take steps to cease the trust business (if authority to engage in the activity has been revoked) or to make such modifications as the director requires. The director may for cause shown grant a savings and loan association some definite period of time within which to arrange its affairs to comply with the director's orders. Savings and loan associations which continue to engage in a trust business 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 grounds for supervisory action against the association, its directors, or officers.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-060, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-060, filed 1/6/88.]

WAC 208-594-070 Investigation fee for new trust applications. The investigation fee charged under RCW 33.28.020 in connection with applications to establish a new savings and loan trust department shall be one thousand dollars. In the event the actual costs of the investigation conducted with respect to a particular application are less than

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the amount of the fee, such difference between the fee and the actual costs submitted shall be refunded, provided that in no event shall more than five hundred dollars be refunded. Expansion of the originally approved scope of trust business must also be approved by the director by additional application and fee. In the event that actual costs of processing additional applications are less than the amount of the fee, such difference between the fee and the actual cost shall be refunded, provided that in no event shall more than seven hundred dollars be refunded. For the purposes of this section, actual costs include travel and per diem expenses paid to division personnel in connection with the investigation.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-070, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-070, filed 1/6/88.]

WAC 208-594-080 Audit of the trust department. A committee of directors, exclusive of any active officers of the savings and loan association shall at least once during each calendar year and within fifteen months of the last such audit, make suitable audits of the trust department or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this rule, and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, recodified as § 208-594-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-080, filed 1/6/88.]

WAC 208-594-090 Examinations and fees. The director shall have the power to examine the affairs of a trust department of a state-chartered savings and loan association under the same general powers as outlined in RCW 33.04.-020. The report of examination of any trust department will be subject to the same restrictions as those of the parent association as outlined in RCW 33.04.110. Fees for such examinations will be charged on the same hourly basis as those for the parent association as established by administrative rule.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-594-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.12.010(24). 88-02-068 (Order 87-2), § 419-56-090, filed 1/6/88.]

Chapter 208-598 WAC

FOREIGN ASSOCIATION BRANCH APPLICATION PROCEDURES

(Formerly chapter 419-60 WAC)

WAC

208-598-010	Application procedures.
208-598-020	Information to be included in the application.
208-598-030	Approval to conduct the business of an association in Washington.

WAC 208-598-010 Application procedures. RCW 33.32.030 provides for regulatory authority by the director over the activities of foreign associations within the state of Washington, and requires that such associations conduct their business in accordance with the appropriate statutes and under the requirements set forth by the director in various rules. In order to conduct the business of a savings and loan in Washington, a foreign association must formally apply for the approval of the supervisor. Procedures for application are as follows:

(1) The application must be filed with the supervisor at the offices of the Division of Banks in Olympia, Washington.

(2) The application shall be filed in duplicate and shall be accompanied by a filing fee of five thousand dollars. In the event the actual costs of investigating the application exceed this amount, such difference between the fee and the actual costs shall be paid by the applicant. For the purposes of this section, actual costs shall include but not be limited to travel and per diem expense paid to division personnel in connection with the investigation.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-598-010, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.32.030. 88-02-067 (Order 87-1), § 419-60-010, filed 1/6/88.]

WAC 208-598-020 Information to be included in the application. An application shall include at least the following information:

(1) Name, address, and telephone number of the applicant.

(2) Name, address, and telephone number of the person to be contacted concerning the application.

(3) A summary of the applicant's history, which should include as a minimum the date and place of incorporation, the date and nature of any mergers or acquisitions, and certified current copies of the applicant's articles of incorporation and bylaws.

(4) A description of the applicant's business and corporate structure, including a listing of all branches or similar offices, and each majority owned subsidiary, and the nature and extent of the business activities of each.

(5) A business plan describing the applicant's proposed business activities in this state.

(6) A copy of the independent auditor's report for the applicant's most recent fiscal year and comparative financial statements for the prior fiscal year.

(7) The name, address, professional experience, and financial statement of the chief executive officer and principal operating officers.

(8) The name, address, and principal occupation of each director of applicant, and completed biographical and financial statements on each.

(9) A copy of the last two examination reports prepared by the Office of Thrift Supervision, the last two state examination reports, any correspondence from the relevant regulator to the board of directors discussing each report, and the board's responses thereto.

(10) A statement as to the presence or absence of any supervisory agreement or regulatory order that may be in

effect or may have been in effect in the last five years, and, if so, a copy of each such order or agreement.

(11) An opinion from the applicant's state regulatory agency which describes the conditions under which Washington associations may conduct business in such state.

(12) A statement of total shares outstanding and total number of stockholders if the applicant is a stock association. Additionally, provide a breakdown of stock ownership by officers and directors and any other entities owning five percent or more of the association's stock.

(13) A copy of the association's bond and its riders/ attachments.

(14) Any additional information that may be required by the director or deemed appropriate by the applicant.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-598-020, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.32.030. 88-02-067 (Order 87-1), § 419-60-020, filed 1/6/88.]

WAC 208-598-030 Approval to conduct the business of an association in Washington. The information required by WAC 208-598-020 must demonstrate to the satisfaction of the director:

(1) That the applicant, the directors of the applicant, and the chief officers of the applicant are each of good character and sound financial standing.

(2) That the financial history and condition of the applicant are satisfactory.

(3) That the applicant's plan to conduct the business of an association in Washington affords a reasonable promise of success.

(4) That the state in which the home office of the applicant is located permits Washington associations to conduct the business of an association in such state in substantially the same manner as the applicant proposes in this state.

[Statutory Authority: RCW 33.04.025 and 43.320.040. 00-17-140, amended and recodified as § 208-598-030, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 33.32.030. 88-02-067 (Order 87-1), § 419-60-030, filed 1/6/88.]

Chapter 208-620 WAC

WASHINGTON CONSUMER LOAN ACT

(Formerly chapter 50-20 WAC)

WAC

208-620-010	Definitions.
208-620-020	License application.
208-620-030	Surety bond.
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.
208-620-070	Change of registered agent or agent's office for out-of-state licensees.
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—Restrictions and requirements.
208-620-170	Knowledge of the law and regulations.
208-620-180	Examinations.

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

"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*.

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"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 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 208-620-190.

(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 and 31.04.165. 99-22-047, § 208-620-020, filed 10/29/99, effective 11/29/99. 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 lic-

ensee'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.]

(2003 Ed.)

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.

[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

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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.]

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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.]

(2003 Ed.)

WAC 208-620-160 Advertising—Restrictions and requirements. (1) A licensee shall advertise only under the name or names on its license.

(2) When an advertisement includes information about a consumer's current loan that did not come from a solicitation, application, or loan made or purchased by the licensee, the licensee shall provide to the consumer the name of the source from which this information was obtained.

(3) It is an unfair and deceptive act or practice and a violation of RCW 31.04.027 for a licensee to solicit using advertising that includes:

(a) An envelope or stationary that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;

(b) An envelope or stationary containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;

(c) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;

(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;

(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to subsection (2) of this section.

(4) A licensee shall maintain a copy of all advertising for a period of twenty-five months 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 31.04.165. 02-21-101, § 208-620-160, filed 10/22/02, effective 11/22/02. 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 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 208-620-190(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 and 31.04.165. 99-22-047, § 208-620-180, filed 10/29/99, effective 11/29/99. 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 \$92.51 per hour for services plus actual expenses for review of application and attendant investigation for:

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

(ii) Branch licensed locations certificate;

(iii) Relocation of main office or branch;

(iv) Notice of change of control;

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

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

(i) Certificate of authority;

(ii) Licensed location certificate;

(iii) Certificate of good standing.

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

(3) Annual assessment fee.

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

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

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

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

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

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-620-190, filed 5/29/01, effective

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

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

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

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

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

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

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

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

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

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

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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208-630-090	Audit report by licensee—Financial statements.
208-630-095	Knowledge of the law and regulations.
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WAC 208-630-005 Definitions. "Act" means chapter 31.45 RCW.

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"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 applica-

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tion. 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 208-630-023. 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, 31.45.090 and 31.45.200. 99-22-048, § 208-630-015, filed 10/29/99, effective 11/29/99. 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.]

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

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

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

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

WAC 208-630-022 Annual assessment charge. (1)

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

(2) The annual assessment rate is:

(a) For check cashers:

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

(ii) If the volume of checks cashed is over one million dollars, the annual assessment is \$513.95 per licensed location.

(b) For check sellers:

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

(ii) If the volume of checks sold is over one million dollars, the annual assessment is \$513.95 per licensed location.

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

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

(ii) If the volume of small loans made is over one million dollars, the annual assessment is \$513.95 per licensed location.

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

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

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

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

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

(1) On July 1, 2002, the fee and assessment rates under WAC 208-630-021, 208-630-022, and 208-630-023, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current

fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025. However, there will be no rate increase under this subsection (1) for assessments described in WAC 208-630-022 (2)(a)(i), (b)(i) and (c)(i).

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

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

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

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

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

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

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

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 208-630-030(2). 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 208-630-035;

(3) A current financial statement as of the most recent quarter end prepared in accordance with generally accepted

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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, 31.45.090 and 31.45.200. 99-22-048, § 208-630-025, filed 10/29/99, effective 11/29/99. 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.

(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 instru-

ment 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.**

(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 Highest Monthly Liability
Up to \$50,000	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.]

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WAC 208-630-035 Alternatives to the surety bond.

(1) **Type of alternative allowed.** In lieu of the surety bond required in WAC 208-630-030, 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 con-

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sumed 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 208-630-030 by the date specified by the director.

[Statutory Authority: RCW 43.320.040, 31.45.090 and 31.45.200. 99-22-048, § 208-630-035, filed 10/29/99, effective 11/29/99. 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 licensee. 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.

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(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;

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(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.

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(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;

(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

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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 208-630-090(2).

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[Statutory Authority: RCW 43.320.040, 31.45.090 and 31.45.200. 99-22-048, § 208-630-100, filed 10/29/99, effective 11/29/99. 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 the equivalent of ten hours investigation fees under WAC 208-660-060 for each license applied for and the equivalent of five hours investigation fees under WAC 208-660-060 for each branch office certificate applied for.

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

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

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

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

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

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

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

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

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

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

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

- Is convicted of the crime in any jurisdiction;
- Is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;

- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
- Has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

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

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

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

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

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

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

(20) "Financial misconduct" means without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(33) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(5), means any amounts prepaid by the bor-

rower for the payment of taxes, property insurance, interim interest, and similar items in regard to the security property.

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

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

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

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

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

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

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

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

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

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

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 the state of Washington 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 except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(d) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans. For purposes of this section, intent to resell residential mortgage loans is determined by the person's ability and willingness to hold the residential mortgage loans, indicated by, but not limited to, such measures as whether the person has sold loans in the past, whether the loans conform to established secondary market standards for the sale of loans, and whether the person's financial condition would reasonably allow them to hold the residential mortgage loans.

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) Any mortgage broker approved and subject to auditing by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(g) 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)(g); and

(h) A real estate broker who:

(i) In connection with a CLI 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 208-660 WAC, and WAC 208-660-125, 208-660-130, 208-660-140, 208-660-165, 208-660-190, and 208-660-200;

(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 208-660-060(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.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-020, filed 12/8/00, effective 1/8/01; 96-04-028, 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 information services and systems. (1) Definitions. "Computer loan information (CLI) 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.

"CLI system" means computer hardware or software which facilitates the provision of CLI services to consumers.

"CLI service provider" means a party who provides CLI 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).

"CLI system provider" means a party who provides a CLI system.

(2) CLI service providers may be subject to licensing. Unless otherwise exempt under RCW 19.146.020, any person providing CLI 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;

(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 CLI services must make disclosures.

If the consumer of the CLI service pays for the CLI service either directly or indirectly, the CLI service provider shall give a disclosure statement to the consumer. The disclosure statement shall state:

- (a) The amount of the CLI fee which the CLI service provider charges the consumer for the CLI service;
- (b) That the use of the CLI 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 CLI 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 CLI service provider. Each CLI service provider must give the consumer a copy of the disclosure form when the first CLI service is provided to the consumer. The consumer shall sign and date the disclosure statement as evidence that the consumer received the form. CLI 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 CLI systems—Conditions. A licensed mortgage broker may provide CLI systems. Prior to providing any CLI 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 CLI service provider, including any and all business names and addresses where CLI services will be provided;
- (b) Copies of any and all CLI disclosure statements which the CLI service provider shall give to consumers in connection with the provision of the CLI services.

(6) CLI system providers and CLI service providers responsible for violations. The department may hold both CLI service providers and CLI 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 43.320.010, 19.146.223, 01-01-044, § 208-660-025, filed 12/8/00, effective 1/8/01. 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).
- (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 208-660-080 and 208-660-08010.
- (c) The application deposit.

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(d) In regard to each principal and designated broker 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;
 - (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 principals); 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 208-660-040 (this requirement does not apply to principals).
- (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 208-660-070.

(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 208-660-130(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.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-030, filed 12/8/00, effective 1/8/01; 96-04-028, 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 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.

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[96-04-028, 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 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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-040, filed 12/8/00, effective 1/8/01; 96-04-028, 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 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 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.)

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-028, 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 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 or valid certification as a non-profit corporation under United States Tax Code that represents the interests of mortgage brokers and lenders;

(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

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.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-045, filed 12/8/00, effective 1/8/01; 96-04-028, 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.

[96-04-028, 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 \$35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

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

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

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

devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

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

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

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

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

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

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

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

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

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

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

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.

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.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-070, filed 12/8/00, effective 1/8/01; 96-04-028, 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 208-660-08010.

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 19.146.205 and 19.146.240. Borrowers shall be given priority over the state and other persons who file claims against the bond or approved alternative. The state and other persons shall not receive distributions from the remainder of the bond or approved alternative pursuant to valid claims prior to one hundred eighty days following the date a claim is made against the bond.

(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.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-080, filed 12/8/00, effective 1/8/01; 96-04-028, 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.

[96-04-028, 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 state. Each mortgage broker is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with the act.

[96-04-028, 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), unless the licensee uses an automated check writing system, in which case all checks must be numbered in sequence, 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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08015, filed 12/8/00, effective 1/8/01; 96-04-028, 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.]

(2003 Ed.)

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).

(6) A printed and dated source document file to support any changes to existing accounting records.

[96-04-028, 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 third 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 by the end of the next business day 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 third 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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08025, filed 12/8/00, effective 1/8/01; 96-04-028, 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 in full or partial payment of fees owed to the mortgage broker 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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08030, filed 12/8/00, effective 1/8/01; 96-04-028, 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 208-660-08032 Approved methods of disbursement to and from trust accounts. A mortgage broker who receives a check from closing which includes both the mortgage broker's fee and a payment or payments for third party service providers is required to disburse to and from trust accounts in accordance with WAC 208-660-08010 through 208-660-08030. The approved methods for accomplishing this, and avoiding violation of RCW 19.46.050, are:

(1) The mortgage broker at the time of deposit is to split the check at the teller window and route any moneys due to third party service providers to an approved trust account, and moneys due the mortgage broker to its general account; or

(2) The mortgage broker deposits the entire check into the trust account. After paying any and all moneys due to third party service providers and seeing to it that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may at no time before the loan is closed transfer moneys from a trust account to their general business bank account.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08032, filed 12/8/00, effective 1/8/01.]

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.

(2003 Ed.)

[96-04-028, 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 if pre-printed checks are used, or assigned sequentially if preprinted checks are not used;

(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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08040, filed 12/8/00, effective 1/8/01; 96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

(2003 Ed.)

(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.

[96-04-028, 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).

[96-04-028, 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.

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(3) A licensee shall advertise only under the name or names on its license.

(4) When an advertisement includes information about a consumer's current loan that did not come from information obtained by the licensee when soliciting or making a residential loan or assisting a person in obtaining or applying to obtain a residential mortgage loan, the licensee shall provide to the consumer the name of the source from which this information was obtained.

(5) It is an unfair and deceptive act or practice and a violation of RCW 19.146.0201 for a licensee to solicit using advertising that includes:

(a) An envelope or stationary that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;

(b) An envelope or stationary containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;

(c) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;

(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;

(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to subsection (4) of this section.

[Statutory Authority: RCW 19.146.223 and 19.146.225. 02-21-100, § 208-660-125, filed 10/22/02, effective 11/22/02; 96-04-028, 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 Disclosure 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 originators. This subsection does not apply to use of a model form promulgated by the director.

(3) A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written disclosure, unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

However, no other disclosures shall be required by this subsection if the borrower's closing costs, excluding prepaid escrowed costs of ownership, does not exceed the total clos-

ing costs in the most recent good faith estimate provided to the borrower.

In addition, no other disclosures shall be required by this subsection if any fee or set of fees that inure to the benefit of the mortgage broker, and that are calculated as a percentage of the loan amount, increase as a result of an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower;

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and, the total aggregate increase in the fee or set of fees that inure to the benefit of the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-130, filed 12/8/00, effective 1/8/01; 96-04-028, 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 twenty-five months 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 twenty-five months 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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-140, filed 12/8/00, effective 1/8/01; 96-04-028, 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. Except as otherwise required by the United States Code or the Code of Federal Regulations,

now or as amended, 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 regardless of whether the borrower has obtained a loan. 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.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-145, filed 12/8/00, effective 1/8/01; 96-04-028, 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.]

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.

[96-04-028, 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. 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:

- (1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;
- (2) Has not filed the required surety bond or approved alternative or otherwise complied with RCW 19.146.205;
- (3) 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;
- (4) Has within the prior seven years been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct;
- (5) 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:

(a) The person is or has been subject to an injunction issued pursuant to the Mortgage Broker Practices Act or the Consumer Protection Act; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a substantial history of unpaid debts;

(6) Has omitted, misrepresented, or concealed material facts in obtaining a license or in obtaining reinstatement thereof;

(7) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

(8) Has had its surety bond, approved alternative, or equivalent form of business insurance, canceled or revoked for cause;

(9) Has allowed the licensed mortgage broker business to deteriorate into a condition which would result in denial of a new application for a license;

(10) Has aided or abetted an unlicensed person to practice in violation of the Mortgage Broker Practices Act;

(11) Has demonstrated incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(12) 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;

(13) 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;

(14) Has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession;

(15) Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) 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

(b) 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;

(16) 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;

(17) Has failed to provide a required certificate of passing an approved examination;

(18) 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 208-660-040; or

(19) Has failed to provide a required certificate of satisfactory completion of an approved continuing education course.

[Statutory Authority: RCW 43.320.010, 19.146.223, 01-01-044, § 208-660-160, filed 12/8/00, effective 1/8/01; 96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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.

[96-04-028, 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;

(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.

[96-04-028, 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. [96-05-018, 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 capac-

ity 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, 96-05-018, 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, 96-05-018, 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.

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

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

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

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

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

"Conversion" means an unauthorized assumption and exercise of the right of ownership over moneys, property, or things of value belonging to another, to the alteration of the condition of, or the exclusion of the owner's rights to such moneys, property, or things of value. It includes any unauthorized act which deprives an owner of his/her property perma-

nently or for an indefinite time, including but not limited to theft, embezzlement, forgery, swindling, and unauthorized control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Chapter 208-680B WAC

ESCROW—LICENSING AND EXAMINATION

(Formerly chapter 308-128B WAC)

WAC

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

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

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

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

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

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

- (1) An escrow agent license may not be transferred.
- (2) An escrow officer's license may not be transferred.
- (3) Whenever a licensed escrow agent contemplates a transfer involving all or substantially all of its assets, the licensee shall provide written notice to the director at least thirty days prior to the effective date of the transfer. This notice must include a copy of the signed agreement between the parties, which provides in part:
 - (a) A stipulation that the transferee is responsible for obtaining a license prior to completion of the transfer;
 - (b) A stipulation that the transferee shall obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 prior to completion of the transfer;
 - (c) A stipulation indicating which of the parties shall:
 - (i) Make all payments due to principal parties on or before the effective date of the transfer;

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

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

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

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

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

WAC 208-680B-020 Fingerprint identification. (1)

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

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

(3) The director or his/her designee may, at his/her discretion, request additional background information to ascertain an applicant's honesty, truthfulness, and good reputation including but not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director or his/her designee may deem appropriate under RCW 18.44.-031(2). The department may require of any applicant, principal officer, designated escrow officer, controlling persons, and partners, such information as is deemed necessary to satisfy the director or his/her designee that the requirements set forth in RCW 18.44.031(2) have been met. The director may require that such information be reported in writing and signed by the reporting individuals.

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

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

(2003 Ed.)

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

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

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

(a) An appropriate knowledge of the English language;

(b) An understanding of the obligations between principal and agent;

(c) An understanding of the meaning and nature of encumbrances upon real property, including an understanding of the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and option agreements, leases, earnest money agreements, personal property transfers, encumbrances, and other escrow documents;

(d) An understanding of arithmetic and the principles and practices of trust accounting; and

(e) An understanding of the Escrow Agent Registration Act and other applicable law such as the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Part 3500.

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

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

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

WAC 208-680B-050 Successful applicants must

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

[Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016

(Order PM 763), § 308-128B-050, filed 9/9/88; Order RE 122, § 308-128B-050, filed 9/21/77.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680B-090, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-090, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128B-090, filed 9/9/88.]

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

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

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

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

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

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

Chapter 208-680C WAC

ESCROW—ESCROW AGENT OFFICE

(Formerly chapter 308-128C WAC)

WAC

208-680C-020	Office identification.
208-680C-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. Any fixed physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined in RCW 18.44.011(4) shall constitute an office.

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

WAC 208-680C-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.

[96-05-018, 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 at least ten business days prior to the change in business location or address, accompanied by all licenses issued to the former address or location, and all applicable fees.

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

(2003 Ed.)

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

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

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

(b) Additional notifications shall include:

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

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

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

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

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

(3) **Maintenance of records after closure.** When an escrow office closes, the records must be maintained in the state of Washington for at least six years. The records shall be available upon demand of the department during business hours and maintained in a manner to be readily retrievable.

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

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

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WAC 208-680C-050 Deceptive names prohibited. At the discretion of the director or the director's designated representative, an escrow agent may not be issued a license nor advertise in any manner using names or trade styles which are similar to currently issued licenses or imply that the agent is a nonprofit organization, research organization, public bureau or public group, or are otherwise deceptive or in violation of RCW 30.04.020, 31.12.025, 32.04.020(2), 33.08.-010, or any other statute that limits the use of names. A bona fide franchisee may be issued a license using the name of the franchisor with the firm name of the franchisee.

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

Chapter 208-680D WAC

ESCROW—RECORDS AND RESPONSIBILITIES

(Formerly chapter 308-128C WAC)

WAC

208-680D-010	Designated escrow officer responsibilities.
208-680D-020	Required records.
208-680D-030	Accuracy and accessibility of records.
208-680D-040	Agreements and closings.
208-680D-050	Expeditious performance.
208-680D-060	Disbursement of funds.
208-680D-070	Suit or complaint notification.
208-680D-080	Licensed escrow officers' responsibilities.
208-680D-090	Escrow instructions, agreements, disclosures—Prohibitions.

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

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

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

When the director or his/her designee makes a determination that there is reason to believe that the licensee's trust accounting records may not be in compliance with the requirements of WAC 208-680E-011, the director or his/her

designee may retain or instruct the licensee to retain a certified public accountant or other person acceptable to the director, to reconcile the trust account and report whether it has been maintained in compliance with WAC 208-680E-011 and report on the adequacy of the licensee's internal routine and controls prior to the acceptance of a new designated escrow officer or designated branch escrow officer.

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

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

(1) Trust account records.

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

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

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

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

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

(2) Other records.

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

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

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

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

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

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

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

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

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

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

(1) Prepare or accept an instrument of escrow instructions among the principal parties and the escrow agent. The escrow instructions shall be signed by the principal parties. Escrow instructions shall contain any and all agreements between the principals and the escrow agent or incorporate other written agreements by reference. The escrow instructions shall not be modified except by written agreement signed by the principals and accepted by the escrow agent.

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

(3) Ensure that all fees and/or justifiable costs are for bona fide services performed by the escrow agent or contrac-

tually ordered by the escrow agent to be performed by a third party to the transaction and bear a reasonable relationship in value to the services performed. No justifiable costs known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

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

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

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

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

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

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

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

(a) The date of closing.

(b) The total purchase price.

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 208-680D-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.

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(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.

[96-05-018, 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 Licensed escrow officers' responsibilities. (1) It is the responsibility of every licensed escrow officer to be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW.

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

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

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

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

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

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

(3) Obtain property by fraud or misrepresentation;

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

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

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

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

Chapter 208-680E 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 rec-

ognized 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 alternative 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. 96-05-018, 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 licensed escrow agent shall obtain and keep in effect a bond in an aggregate minimum amount of \$200,000 providing fidelity coverage on all corporate officers, escrow officers, partners, and employees engaged in escrow transactions. Such bond shall be structured to provide coverage for the total amount of all claims up to an aggregate minimum of \$200,000. A deductible of up to \$10,000 on the required fidelity bond is allowed, as long as an additional surety bond of \$10,000 is maintained by the escrow agent. In the event that a fidelity bond with no deductible is obtained by the escrow agent, no surety bond is required.

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

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

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

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

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

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

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

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

WAC 208-680F-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.

(2003 Ed.)

[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. 96-05-018, 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 license.

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

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

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

Chapter 208-680G WAC

EXAMINATIONS, INVESTIGATIONS, ENFORCEMENT, SANCTIONS, AND COSTS

WAC

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

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

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

(a) Access, during reasonable business hours, to the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and

vaults of all such persons. Access must be given to both the trust account records and general business account records;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Administration of oaths or affirmations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (5) Hold hearings; or
- (6) Make referrals to other regulatory or law enforcement agencies.

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

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

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

(2) Remove or prohibit from participation in the conduct of the affairs of any licensed escrow agent, any officer, controlling person, director, employee, or licensed escrow officer for any violation of RCW 18.44.260;

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

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

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

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

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