

# Title 208 WAC

## FINANCIAL INSTITUTIONS, DEPARTMENT OF

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### Chapter 208-476 WAC

#### CREDIT UNION—OTHER REAL ESTATE OWNED (Formerly chapter 419-72 WAC)

### WAC

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**WAC 208-476-010 Reason for rule.** Why do credit unions need a rule on the handling of "other real estate owned" (OREO), property legally owned by the credit union as the result of foreclosure, or acquired as the result of default on a loan collateralized by real property? Although most financial institutions that do real estate lending have experienced an occasional foreclosure, the volume and asset value of foreclosed property has significantly increased recently. Due to the economic downturn that began in the fourth quarter of 2007, credit unions are now experiencing a greater number of foreclosures and acquiring portfolios of OREO. Because this type of economic effect is cyclic, it is useful for credit unions to be prepared to handle OREO property in a safe and sound manner. Some credit unions may find their number of OREO properties is becoming more difficult to manage. Some credit unions may be dealing with OREO properties for the first time.

The department of financial institutions (DFI), division of credit unions, is responsible for regulating to protect the integrity of credit unions as cooperative institutions, and to ensure that they remain viable and competitive. RCW 31.12.015. It is important to provide regulatory standards for safe and sound management of OREO. RCW 31.12.005(24).

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-010, filed 11/24/09, effective 12/31/09.]

**WAC 208-476-020 Rule-making authority.** What is DFI's rule-making authority for these OREO rules? The division of credit unions is delegated rule-making authority by the director of DFI. The director's rule-making authority is based upon the Washington Credit Union Act (WCUA),

RCW 31.12.516(2), which allows the director to adopt rules that are reasonable and necessary to carry out the purposes of the WCUA. The director has the power and broad administrative discretion to administer and interpret the provisions of the WCUA. RCW 31.12.516(4). In addition, the director has specific rule-making authority regarding secured or unsecured loans to members. RCW 31.12.426(1).

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-020, filed 11/24/09, effective 12/31/09.]

**WAC 208-476-030 Authority of director to require reports.** What legal authority does DFI have to require special reports from credit unions, accounting for OREO? The director has the statutory authority to require a credit union to file any financial or statistical report the director may require. The director, therefore, has the authority to require special reports on OREO properties held by Washington state chartered credit unions. RCW 31.12.567.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-030, filed 11/24/09, effective 12/31/09.]

**WAC 208-476-040 Authority for credit unions to hold real estate.** What is the legal authority for a credit union to acquire, hold and dispose of OREO? A Washington state chartered credit union is permitted to own foreclosed and other OREO property, based on its statutory power to make secured and unsecured loans to its members. RCW 31.12.-426(1). If the borrower defaults on a loan secured by real property, the credit union has the authority to obtain title to the property as a power incidental to its normal course of business.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-040, filed 11/24/09, effective 12/31/09.]

**WAC 208-476-050 Definitions.** For purposes of these rules, the following definitions apply:

"Appraisal" means a written report by a certified or licensed appraiser containing sufficient information to support the credit union's evaluation of OREO, taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards, unless principles of safe and sound credit union practices require stricter standards.

"DCU" means the division of credit unions of the Washington state department of financial institutions.

"DFI" means the Washington state department of financial institutions.

"Director" means the director of the department of financial institutions, or the director's designee, typically the assistant director of the division of credit unions. RCW 43.320.-050.

"Fair value" and "fair market value" mean the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale, in which the buyer and the seller are each acting prudently, knowledgeably and under no necessity to buy or sell. An appraisal at "fair value" primarily relies upon an estimate of the cash price that might be received upon exposure to the open market for a reason-

able time, considering the property type and local market conditions. This is known as the "market data approach." However, an appraisal at "fair value" may, in appropriate circumstances, be based upon the "cost approach" with regard to real estate improvements, including current replacement cost.

"Foreclosure" means:

(a) The involuntary termination of all rights of a trustor/grantor or mortgagor in the property covered by a deed of trust or mortgage, by means of statutory power of sale or judicial foreclosure; or by

(b) A deed in lieu of foreclosure, the voluntary transfer (usually by quitclaim) of a trustor/grantor's or mortgagor's interest in real estate to the beneficiary of a deed of trust or mortgagee, in lieu of the beneficiary or mortgagee exercising the statutory power of sale or obtaining a judicial decree of foreclosure.

"GAAP" means "generally accepted accounting principles," as codified in the financial accounting standards board accounting standards codification (FASB ASC).

"Other real estate owned" (OREO) means real estate acquired by a credit union in whole or partial satisfaction of a debt owed to a credit union, by means of:

(a) Foreclosure or deed in lieu of foreclosure of the credit union's deed of trust or mortgage; or

(b) Acquisition by the credit union and subsequent foreclosure, or deed in lieu of foreclosure of a superior lien interest.

OREO is then held in inventory until sold.

"OREO" does not mean real property held for the credit union's own business use or expansion under RCW 31.12.-438.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-050, filed 11/24/09, effective 12/31/09.]

#### **WAC 208-476-100 Limitations on holding of OREO.**

**How long is a credit union allowed to hold OREO?** OREO must be disposed of as soon as prudent business judgment dictates, and in no case longer than five years, absent special circumstances and discretionary approval by the director. The longer real estate is held, the more speculative an investment it becomes.

**When does the holding period begin?** The holding period begins on the date that the credit union takes title to the OREO property.

**What if the OREO is not sold within the initial holding period?** An application to hold other real estate owned beyond the five year initial holding period must be filed no less than six months prior to the end of the initial five years, on a form provided by DFI. In addition to the form, the director may require justifying information, data and reports. The granting of an additional holding period of up to five years is at the regulatory discretion of the director.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-100, filed 11/24/09, effective 12/31/09.]

**WAC 208-476-200 Accounting for OREO. What accounting and reporting procedures are credit unions required to follow when accounting for OREO?** Accounting and reporting for OREO must comply with GAAP.

GAAP applies to accounting and reporting for OREO, regardless of materiality.

**Where can GAAP be accessed and researched?** The definitive text of U.S. GAAP, as codified, may be found at <http://asc.fasb.org> or as a link from [fasb.org](http://fasb.org).

**Can the DCU require charge offs or special reserves for OREO property?** Yes, the DCU has authority to require a credit union to charge off or set a special reserve for OREO property. RCW 31.12.545 (2)(c).

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-200, filed 11/24/09, effective 12/31/09.]

**WAC 208-476-300 Minimal standards for safe and sound OREO management. (1) What basic standards are used to determine the initial and ongoing regulatory acceptability of holding OREO?** Holding requirements include, at a minimum, compliance with the following:

(a) Accurate accounting for OREO. Refer to the accounting section of this rule at WAC 208-476-200;

(b) Obtaining independent written appraisals, or determinations of fair value, depending upon the nature of the loan, and updated periodically, to reflect changed market conditions;

(c) Diligent marketing efforts, including a written marketing plan, updated periodically to reflect changed market conditions;

(d) Compliance with any determination, order or directive issued by the director regarding the acquisition, holding, management or disposition of OREO.

**(2) Are there requirements for credit union management of OREO?** Yes. A credit union that is managing OREO property must have a board-approved policy that assures that the board is regularly informed of the nature and extent of the credit union's OREO holdings. In most cases, this requirement may necessitate the creation of a special assets committee, or some combination of executive staff, to oversee OREO management and report to the board, no less than quarterly.

**(3) Are credit unions required to have a written OREO policy?** Yes, if a credit union has OREO, the credit union must have a written OREO policy.

**(4) What should be included in a credit union OREO policy?** At a minimum, the following elements should be covered in a credit union's written OREO policy:

(a) The credit union's staffing requirements for qualified management of OREO;

(b) The credit union's plan to obtain legal advice from an attorney regarding the acquisition, holding and disposition of OREO;

(c) The credit union's intended holding period for OREO;

(d) The appraisal policy, or fair value methodology, for OREO;

(e) The credit union's authorization to expend funds to improve and protect OREO;

(f) The plan to market and dispose of OREO;

(g) Identification of the person responsible for OREO management;

(h) The OREO property management plan;

(i) OREO internal controls;

(j) Special assets committee (or other OREO reporter) responsibilities, including monitoring and reporting plan, and frequency of review by board and management;

(k) The accounting policy for the acquisition, holding and disposition phases of OREO;

(l) Independent audit policy for OREO;

(m) Responsibility for OREO file maintenance, document organization, storage, retrieval and retention.

DFI recognizes that not all of the elements of the policy will apply to every OREO property.

(5) **What should a credit union do if there are questions about the management of OREO?** A credit union may call the division of credit unions at 360-902-8701, if questions arise during the life cycle of OREO ownership. Information is also available on the DCU web site [www.dfi.wa.gov/cu/default.htm](http://www.dfi.wa.gov/cu/default.htm) and in the DCU "OREO Owner's Manual" guidance book.

[Statutory Authority: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, and 31.12.516. 09-24-050, § 208-476-300, filed 11/24/09, effective 12/31/09.]

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

**WAC**  
208-544-039 Charges and fees effective October 6, 2008.

**WAC 208-544-039 Charges and fees effective October 6, 2008.** (1) Effective October 6, 2008, 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 \$111.64 per employee hour expended.

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

If total assets are:			The assessment is:	
Over Million	But not Over Million	This Amount	Plus	Of Excess Over Million
0	500	0	0.000017464	0
500	1,000	8,732	0.000016746	500
1,000	10,000	17,105	0.000016495	1,000
10,000	—	165,560	.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 \$80.60 per hour.

(g) WAC 208-544-030(2) - The fee shall be \$111.64 per hour.

(2) 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.

(3)(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 CFCR 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 CFCR 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: 2008 c 285 § 30, RCW 30.04.030, 43.320.040, and 34.05.353 (1)(c). 09-15-191, § 208-544-039, filed 7/22/09, effective 8/22/09. Statutory Authority: 2008 c 285, RCW 30.04.030, [30.04.]070, 43.320.040. 08-18-079, § 208-544-039, filed 9/3/08, effective 10/6/08. 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.]

### Chapter 208-620 WAC

#### WASHINGTON CONSUMER LOAN ACT

(Formerly chapter 50-20 WAC)

#### WAC

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208-620-245	Does the Consumer Loan Act allow me to make one or two loans without being licensed?
208-620-260	If I am licensed under the Consumer Loan Act, can I broker loans in the state of Washington?
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208-620-280	How do I apply for a consumer loan license?
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208-620-282	How do I withdraw my application for a license?
208-620-284	What are my rights if the director denies my application for a license?
208-620-290	What fees must I pay for my application for a consumer loan license?
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208-620-499	What are my reporting requirements if I want to close my company or surrender my license?
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208-620-505	In addition to the Consumer Loan Act, what other laws do I have to comply with?
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208-620-507	What elements of an ability to repay analysis must be part of my underwriting policy of a conventional residential mortgage loan?
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208-620-520	How long do I have to maintain my records under the Consumer Loan Act?
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208-620-570	What are the grounds for suspending or revoking a consumer loan company license?
208-620-601	What assistance may the department seek in conducting an investigation or examination of my business?
208-620-613	When I develop policies and procedures to implement the federal guidelines on applicable conventional residential mortgage loans, what topics must be included?
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208-620-620	How do I have to identify my business when I advertise?
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208-620-805	Does this section apply to the FHA approved home equity conversion mortgage (HECM) product?
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208-620-825	What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages?
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208-620-850	What is the process I must follow to obtain the department's approval of my proprietary reverse mortgage product?

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

208-620-270	Can I make a loan subject to the act without first getting a license? [Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.-175. 06-04-053, § 208-620-270, filed 1/27/06, effective 2/27/06.] Repealed by 09-24-090, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149.
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- 208-620-285 If my application is incomplete when I file it with the department, what will happen? [Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-285, filed 1/27/06, effective 2/27/06.] Repealed by 09-24-090, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149.
- 208-620-410 May I sell other types of products from my licensed location? [Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-410, filed 1/27/06, effective 2/27/06.] Repealed by 09-24-090, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149.
- 208-620-470 Do I need to notify the department if I move the location of my office? [Statutory Authority: RCW 43.320.040, 08-15-125, § 208-620-470, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-470, filed 1/27/06, effective 2/27/06.] Repealed by 09-24-090, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149.
- 208-620-475 Must I notify the department if I cease doing business in this state if I am doing business in other states? [Statutory Authority: RCW 43.320.040, 08-15-125, § 208-620-475, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-475, filed 1/27/06, effective 2/27/06.] Repealed by 09-24-090, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149.
- 208-620-512 If I pull a credit report on a consumer who has identified a specific property on a purchase and sales agreement or contract, or is refinancing a specific property, is that enough to trigger the required disclosures under RESPA and TILA? [Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-512, filed 1/27/06, effective 2/27/06.] Repealed by 09-24-090, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149.

**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.

"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.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the sub-

mission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

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

"Borrower" means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

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

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section 1692.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

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

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes step-parents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a

residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"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.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

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

"License number" means your NMLSR unique identifier displayed as prescribed by the director.

"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 or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan modification" means a change in one or more of the residential mortgage loan conditions and includes forbearances; repayment plans; a change in interest rates; loan term (length); loan type (fixed or adjustable); the capitalization of arrearages; and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator" means the same as mortgage loan originator.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 31.04 RCW.

A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license.

"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.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.-010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan.

"Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

"Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

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

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

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

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

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

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing

with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 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.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

"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 must 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 must not be payable in advance or compounded.

"State" means the state of Washington.

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

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"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 (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-010, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-010, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-010, filed 1/27/06, effective 2/27/06. 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 208-620-104 Who is exempt from licensing as a consumer loan company? See RCW 31.04.025.**

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-104, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act? The following are exempt from licensing as a mortgage loan originator:**

(1) Registered mortgage loan originators employed by an entity that is exempt from the act;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(5) Individuals that do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-105, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-230 Do I need a consumer loan license if I am lending money in the state of Washington? If you are in the business of making secured or unsecured loans of money or credit and you do not qualify for an exception under RCW 31.04.025, you must hold a license under this act.**

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-230, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-230, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-230, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-235 Is there a maximum rate of interest allowed under the act? Yes. The maximum rate of interest may not exceed twenty-five percent per annum.**

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-235, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-235, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-235, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-240 Once I am licensed, does the act apply to all loans I make?** Yes. All loans you make to Washington residents and loans secured by Washington residential real estate are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-240, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-240, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans without being licensed?** No. The act does not provide an exemption for a de minimis number of loans. See WAC 208-620-230.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-245, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-245, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker loans in the state of Washington?** Yes. You may broker loans under the Consumer Loan Act or Mortgage Broker Practices Act.

(1) If you broker loans under the Consumer Loan Act license, you are subject to the act and the loans are subject to the annual assessment under WAC 208-620-240.

(2) If you are licensed under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act. If you do hold that additional license, the loans you broker are subject to that act and are not subject to the annual assessment under this act.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-260, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-260, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-260, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-271 Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-271, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-280 How do I apply for a consumer loan license?** (1) Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(2) Upon application and periodically upon license renewal, each officer, director, and owner applicant must provide information concerning:

(a) Identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check;

(b) Personal history;

(c) Experience;

(d) Business record; and

(e) Other pertinent facts, as the director may reasonably require.

(3) Each principal, officer and director of the entity that is applying for a license is deemed responsible for the information submitted as part of the application.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-280, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-280, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-281 What will happen if my license application is incomplete?** The department will only process complete applications. If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-281, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-282 How do I withdraw my application for a license?** You may withdraw the application through the NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-282, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-284 What are my rights if the director denies my application for a license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied. See WAC 208-620-615.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-284, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-290 What fees must I pay for my application for a consumer loan license?** (1) **NMLSR fees.** You must pay the NMLSR system fee when you submit your application.

(2) **DFI fees.** You must pay \$95.55 per hour for review and investigation of the following:

(a) New consumer loan company license;

(b) New branch office license;



(c) Notice of change of control; or  
 (d) Opinions rendered regarding interpretations of statutes and rules.

(3) **Licenses.** You must pay \$106.71 for issuance of the following licenses:

- (a) New or replacement main office licenses; or
- (b) New or replacement branch licenses.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-290, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-290, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-300 If I want to open more than one office, do I have to file an application for each location?** Yes. You must submit a branch office application through the NMLSR for each consumer loan company branch office, loan servicing location, or direct solicitation location, and provide evidence of surety bond coverage for each branch.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-300, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-320 What is the amount of the bond required for my consumer loan license?** The bond amount is based on the annual dollar amount of loans you originate. See the following chart:

1. Zero to twenty million in loans originated:	\$30,000
2. Twenty million to forty million:	\$50,000
3. Forty million to fifty million:	\$100,000
4. Fifty million and above:	\$150,000

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-320, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-320, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-320, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-320, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-325 What will my bond amount be in the first year of licensing?** Your initial bond amount will be based on either your prior year's loan origination volume in Washington or one hundred thousand dollars. See the bonding chart in WAC 208-620-320.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-325, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-327 How often will my bond amount change?** Your bond amount may change annually depending on your volume of loan origination in Washington.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-327, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-328 How often must I report my loan origination volume?** You must report your loan origination volume each quarter when filing your call report (see WAC 208-620-431) and each year during the annual assessment period. By March 1st of each year, you must determine your

required bond amount and provide DFI with proof of having an adequate bond.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-328, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-340 Do I have any alternative to maintaining a surety bond?** You may use a bond substitute, as defined in WAC 208-620-010, that meets the following requirements:

(1) The company must be a Washington business corporation.

(2) The company's unimpaired capital must be maintained in an amount so that the aggregate sum of the company'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.

(3) The company's long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the company's debt for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the company'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.

(4) The company may not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. 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.

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

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-340, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-340, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-341 If my company relies on the bond alternative, must my licensed mortgage loan originators obtain an individual bond?** Yes. They must each obtain individual bonds based on their mortgage loan origination volume. See WAC 208-620-710 (3)(h).

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-341, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-360 What if I use a bond substitute and my unimpaired capital falls below the minimum?** A company that does not maintain a sufficient bond substitute must notify the director within ten days of the decrease in unimpaired capital. The department will then direct you to obtain and file a surety bond in the amount required by WAC 208-620-320. You must comply within twenty days. If you obtain a surety bond under this section you 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.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-360, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-360, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015,

31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-360, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-370 What are the grounds for denying or conditioning my consumer loan company license application?** The director may deny or condition approval of a license application if the applicant or any principal, officer, or board director of the applicant:

(1) Fails to pay a fee due the department or the NMLSR;  
 (2) Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan 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 or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a history of unpaid debts; or

(c) The person is the subject of a criminal felony indictment, or a criminal misdemeanor charge involving dishonesty or financial misconduct; or

(d) The person is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(3) Has misrepresented, omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-370, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-370, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked or suspended?** No. Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(1) During the seven-year period preceding the date of the proposed employment; or

(2) At any time preceding the date of the proposed employment, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(3) For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or

employee who will or does originate loans, supervise loan originators, or manage the loan production activities of the licensee. Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee who has had a license to engage in lending, or performance of a settlement service related to lending, revoked or suspended in this state or any state. The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee to originate loans, supervise loan originators or manage the loan production activities of the licensee without first conducting a background check.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-371, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-372 Am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-372, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-373 What happens to loans in the pipeline if a mortgage loan originator leaves my company?** Existing loan applications must be processed by another licensed loan originator in the company. At the borrower's written request, the loan must be transferred to another licensed entity.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-373, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-374 What action must I take in the NMLSR if I fire a loan originator or if the loan originator quits?** You must file a relationship termination through the NMLSR within ten days of firing someone or the person quitting.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-374, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-380 Are there any additional requirements for out-of-state licensees?** (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(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 and pay the hourly rate plus travel costs pursuant to WAC 208-620-590.

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-380, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085,

31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-380, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee?** Each year you are required to file a consolidated annual report on a form provided by the department. You must also pay a fee (assessment) based on your loan portfolio balance at the end of the prior calendar year, plus the loan activity conducted during the reporting year.

(1) **Annual report and assessment due March 1st.** You must provide the completed consolidated annual report, through the NMLSR by March 1st of each year. The worksheet and annual fee must be provided directly to the department by March 1st of each year.

(2) **Late penalties.** A licensee that fails to submit the required annual report, worksheet, and assessment by March 1st is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty. The maximum late penalty that will be assessed is five thousand dollars per year.

(3) **Failure to file.** If a licensee fails to pay its annual assessment and file a worksheet by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

- (a) The assessment paid the previous year;
- (b) The average annual assessment paid in the previous two years; or
- (c) Fifteen hundred dollars.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-430, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.-045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-430, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-431 What are my quarterly call report filing requirements if I make residential mortgage loans?** When the NMLSR develops the call report functionality you will be required to file quarterly call reports on the dates and in a form prescribed by NMLSR.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-431, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-432 Will the filing of the fourth quarter call report satisfy the consolidated annual report (CAR) requirement of WAC 208-620-430?** Reserved.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-432, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-440 How do I calculate my annual assessment for activity in Washington?** (1) **Calculation of the annual assessment.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is deter-

mined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all first and junior lien Washington loans both under and over twelve percent interest, you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

- (a) The dollar amount of advances made; and
- (b) The dollar amount of accrued interest.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-440, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-440, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.-045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-440, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business?** (1) **Prior notification required.** You must amend your NMLSR record at least ten days prior to a change of your:

- (a) Principal place of business or any of branch offices;
- (b) Name or legal status (e.g., from sole proprietor to corporation, etc.);
- (c) Name and mailing address of your registered agent if you are located outside the state;
- (d) Legal or trade name; or
- (e) A change of ownership control of ten percent or more; or
- (f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your NMLSR record within ten days after an occurrence of any of the following:

- (a) Change in mailing address, telephone number, fax number, or e-mail address;
- (b) Cancellation or expiration of your Washington state master business license;
- (c) Change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;
- (d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;
- (e) Receipt of notification of cancellation of your surety bond;
- (f) Termination of sponsorship of loan originator; or
- (g) Receipt of notification of a claim against your bond.

(3) **Post notification within twenty days.** You must amend your NMLSR record within twenty days after the occurrence of any of the following developments:

- (a) Receipt of notification of license revocation procedures against your license in any state;
- (b) The filing of a felony indictment or information related to lending or brokering activities against you or any officer, board director, or principal or an indictment or infor-

mation involving dishonesty against you or any officer, board director, or principal;

(c) Conviction of you or any officer, director, or principal for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the company.

(4) See WAC 208-620-499 for the requirements when you close your business.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-490, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-490, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license?** If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLSR within ten days of closing the company or surrendering the license;

(2) File the final closure form, annual report, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action; and

(3) Return you license to the department.

Any Washington loans in your portfolio and CLA activities remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-499, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices?** If you close a branch office, you must submit a surrender request through the NMLSR at least ten days prior to the branch closing.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-500, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-500, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-500, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with?** You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the S.A.F.E. Act, and the Federal Trade Commission Telephone Sales Rule, 16 C.F.R. Part 310.

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[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-505, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-505, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-506 Must my underwriting analysis of a borrower's residential mortgage loan application include a determination of the borrower's ability to repay the loan?** Yes. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of the borrower's ability to repay the obligation. The analysis of a borrower's repayment capacity must include the debt to income ratio; the assets, net worth, or equity; and any prepayment penalty clauses. If the residential mortgage loan is underwritten to the guidelines of Fannie Mae, Freddie Mac, FHA, VA, or USDA and you have met the underwriting standards of an ability to repay analysis for those loans types, you are in compliance with this section.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-506, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-507 What elements of an ability to repay analysis must be part of my underwriting policy of a conventional residential mortgage loan?** (1) Your underwriting policy must include:

- A procedure for evaluating and documenting a borrower's ability to repay.
- Standards used to evaluate the borrower's ability to repay by final maturity at the fully indexed rate.
- A policy that provides the assumption of a fully amortizing repayment schedule in determining the borrower's ability to repay.
- An evaluation of any negative amortization on a borrower's ability to repay.
- Standards for verifying the borrower's income, current employment and reasonably expected future income.
- Standards for verifying the borrower's assets, net worth or equity in the subject property.
- Standards for an acceptable range for the borrower's debt to income ratio based on the loan type (conventional, reduced documentation, stated income).
- Demonstration that the debt to income ratio includes all of the borrower's contractual obligations, or that an allowance has been made within the ratio to take into account ancillary borrower contractual obligations (utility, cell phone contracts, etc.).
- Standards for counseling borrowers on the impact of their decision to accept a mortgage with an adjustable rate, balloon payment, or other alternative product or feature.
- Standards on the substitution of a credit score in place of income, assets, or net worth.
- Standards for due diligence of third-party originators including preresult review, verifications of borrower information, responsibility for initial RESPA compliance, responsibility for adverse action notice compliance, and post-closing reviews.
- Procedures for notifying borrowers about prepayment penalties.

(2) You must demonstrate consistent and uniform application of the elements in subsection (1) of this section in your in-house compliance and audit departments.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-507, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-510 What are my disclosure obligations to consumers? (1) Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Rate locks.** Within three days, including Saturdays, of receipt of a loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(b) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following:

- (i) The length of the lock-in period;
- (ii) The expiration date of the lock-in rate;
- (iii) The lock-in interest rate;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

- (v) Any other terms of the lock-in agreement.

**(4) Brokered loans.**

(a) Within three business days following receipt of a loan application you must provide to each borrower a good faith estimate that conforms with RESPA 24 C.F.R. 3500.

(b) Within three business days following receipt of a loan application you must provide to each borrower a truth in lending disclosure that conforms with Regulation Z, 12 C.F.R. Section 226.

(c) Whether a lock-in agreement has been entered into with the borrower.

(d) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(e) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following:

- (i) The length of the lock-in period;
- (ii) The expiration date of the lock-in rate;
- (iii) The lock-in interest rate;
- (iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and
- (v) Any other terms of the lock-in agreement.

(5) **Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

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

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-510, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-511 What is the disclosure required under RCW 19.144.020 for residential mortgage loans?**

(1) You must provide the borrower with a clear, brief one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(2) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(3) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(4) You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part 226, currently in effect,

which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(5) The department has developed model forms that comply with this provision. See the department's web site. See also RCW 19.144.020 and WAC 208-600-200.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-511, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78, 09-01-159, § 208-620-511, filed 12/23/08, effective 1/23/09.]

**WAC 208-620-515 What authority do I have as a licensee?** As a licensee you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as provided in RCW 31.04.115.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-515, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 08-15-125, § 208-620-515, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.-045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175, 06-04-053, § 208-620-515, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-520 How long do I have to maintain my records under the Consumer Loan Act? What are the records I must maintain?**

(1) **General records.** Each licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months after making the final entry on that loan at a location approved by the director. Mortgage transaction documents have a different retention period; see subsection (3)(a) of this section.

(2) **Advertising records.** These records 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.

(3) **Specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) **Mortgage transaction documents.** These documents must be retained for three years or the period of time required by federal law, whichever is longer;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 or HUD-1A);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(n) All documents used to support the underwriting approval.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-520, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175, 06-04-053, § 208-620-520, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-550 What business practices are prohibited?** Under RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within five business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(5) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the

independent judgment of the appraiser with respect to the value of the property;

(7) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(8) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(9) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(10) Willfully filing a lien on property without a legal basis to do so;

(11) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(12) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;

(13) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

(14) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

(15) Failing to indicate on all residential mortgage loan applications the company's unique identifier, the loan originator's unique identifier, and the date the application was taken.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-550, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 08-15-125, § 208-620-550, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.-045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-550, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-555 What fees are allowed under the Consumer Loan Act?** (1) Origination fees. On first lien mortgage loans, licensees that are not "creditors" under Depository Institutions Deregulatory and Monetary Control Act may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) On nonmortgage loans and junior lien mortgage loans, all licensees may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first

twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) Mortgage broker fee. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(4) Third-party fees.

(a) When agreed to in writing by the borrower, the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan.

(b) However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(c) You must 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. You 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.

(5) Rate lock fee. When agreed to in writing by the borrower, a nonrefundable rate lock fee. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, or if the borrower does not qualify for a loan.

(6) Underwriting. On first lien mortgages made by licensees that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, an underwriting fee.

(7) Penalties. Not more than ten percent of any installment payment delinquent ten days or more.

(8) Attorneys' fees. Reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(9) The fees allowed in subsections (5) and (6) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-555, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-560 What fees are not allowed under the Consumer Loan Act?** (1) **Filing fees.** You must not

charge or collect any funds from the borrower 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. Any fee you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) **Dishonored check fees.** You must not charge or collect a fee in excess of the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the financial institution drawn upon. Only one fee may be collected with respect to a particular check, draft, ACH, or other transfer even if it has been returned or denied more than once.

(3) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and non-credit 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 and the borrower's confirmation is obtained by signature on the disclosure form.

(b) You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(4) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if you make a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line must be limited as follows:

(a) You must only charge an origination fee on that part of the new loan not used to pay the amount due on the previous loan;

(b) You must only charge an origination fee on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if you refund the origination fee on the existing loan or credit line;

(d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

(5) **Discount points.**

(a) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(b) Any applicable program add-on fees must be disclosed as part of the discount points.

(6) **Administrative fees.** On nonmortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, you must not collect a document preparation fee, a processing fee, an administrative fee, an application

fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

(7) **Underwriting fees.** On nonmortgage and junior lien mortgage loans you must not collect an underwriting fee.

(8) **Prepayment penalty.** You must not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan;

(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040;

(c) Any junior lien mortgage loan; or

(d) Any loan you made if you are not a "creditor" under DIDMCA.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-560, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-560, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.-115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-560, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-561 What fees can I collect on VA loans?** Reserved.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-561, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-565 What fees am I allowed to charge or receive when acting as a broker under the act?** (1) A broker's fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount credited to the borrower on the good faith estimate and as applicable on the settlement statement.

(3) A processing fee when paid to an independent third-party processor.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-565, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-565, filed 12/23/08, effective 1/23/09.]

**WAC 208-620-566 What fees am I not allowed to charge or receive when brokering residential mortgage loans under the act?** (1) Fees for discount points;

(2) An underwriting fee; or

(3) Applicable fees in WAC 208-620-560(6).

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-566, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-570 What are the grounds for suspending or revoking a consumer loan company license?** The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;



(3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;

(4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines;

(5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

(6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;

(7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which would result in denial of a new application for a license;

(8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;

(9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;

(10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, 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;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing records requested by the director for purposes of conducting a lawful 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;

(14) **Interference with investigation.** Has interfered with a lawful 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.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-570, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-570, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-601 What assistance may the department seek in conducting an investigation or examination of my business?** In order to carry out the purposes of RCW 31.04.145, the director may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this act;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(6) Assess the licensee, individual, or person subject to this act the cost of the services in this subsection.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149, 09-24-090, § 208-620-601, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines on applicable conventional residential mortgage loans, what topics must be included?** The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker residential mortgage loans under your CLA license, your policies and procedures must comply with WAC 208-660-500. For purposes of this section, the definition of "subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

(1) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

(a) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

(b) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

- Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent

monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.

- Very high or no limits on how much the payment amount or the interest rate may increase.

- Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

- Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

- Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the underwriting decision and the borrower's repayment capacity.

(c) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

(2) Risk management. The scope of the risk management activities should be determined by the volume of nontraditional mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

(a) Acceptable product attributes;

(b) Production, sales and securitization practices;

(c) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;

(d) Growth and volume limits by loan type;

(e) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;

(f) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Per-

form due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting, or terminating the third party originator;

(g) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

(3) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

- Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.

- Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.

- If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum payments.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

- Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

(4) Control standards.

(a) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(b) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-613, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-613, filed 12/23/08, effective 1/23/09.]

**WAC 208-620-614 What Washington law protects my rights when my license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-614, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-615 Application of the Administrative Procedure Act.** (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings may be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 31.04.247;

(b) Whether an applicant for a consumer loan company license meets the requirements of RCW 31.04.045; and

(c) Whether a consumer loan company has failed to maintain the bond required by RCW 31.04.045(6).

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department

provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director designates a presiding officer to conduct the brief adjudicative proceedings. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-615, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-620 How do I have to identify my business when I advertise?** You must either identify the business using your Washington consumer loan license num-

ber or use the name on your Washington main office consumer loan license.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-620, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-620, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-630 What are the advertising restrictions? (1) Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:**

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) 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.

**(2) When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR must be at least equivalent to any other rates disclosed in the advertisement.

**(3) The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

**(4) Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

**(5) May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

**(6) May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

**(7) If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

**(8) Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 31.04.027 (2), (7), and (10). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1 (g) (2003).

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-630, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-630, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.-040. 08-15-125, § 208-620-630, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-630, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-640 What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act?** You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-640, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-640, filed 7/22/08,

effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.-045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-640, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-700 Loan originator—General. (1) May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main office, or any licensed branch.

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY. YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by who is licensed or exempt from licensing under Washington law.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors whose work is related to the consumer loan company's activities.

(9) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt consumer loan company and do not hold themselves out as able to conduct the activities of a loan originator.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-700, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-710 Loan originator—Licensing. (1) Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry (NMLSR).

(2) **How do I apply for a loan originator license?** Your application consists of filing an on-line application through the NMLSR and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLSR system.

(3) **What are the eligibility requirements to become a licensed loan originator?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or three years work experience in the industry.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company.

(iii) In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(c) **Demonstrate financial responsibility.** For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(d) Complete twenty hours of prelicensing education from an NMLSR approved provider. See WAC 208-620-720.

(e) **Pass a licensing test.** You must take and pass the NMLSR tests that assess your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(f) **Submit an application.** You must complete an application through the NMLSR and provide information directly to DFI. You must pay application and filing fees to the NMLSR.

(g) **Prove your identity.** You must provide information to prove your identity.

(h) **Provide a bond.**

(i) If you are employed by a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond. The bond must be in the following amount:

- |  |          |
|--|----------|
| 1. Zero to twenty million in loans originated: | \$20,000 |
| 2. Twenty million to thirty million:           | \$30,000 |
| 3. Thirty million to forty million:            | \$40,000 |
| 4. Forty million and above:                    | \$50,000 |

(ii) If you are employed by a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs with the primary purpose of assisting low-income borrowers with purchasing or repairing housing or for the development of housing for low-income Washington state residents, the bond must be in the following amounts:

- |   |          |
|---|----------|
| 1. Zero to fifty million in loans originated: | \$10,000 |
| 2. Fifty +:                                   | \$20,000 |

(i) File a quarterly call report. Reserved.

**(4) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken

against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(5) **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

(6) **How do I withdraw my application for a loan originator license?**

(a) Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLSR.

(7) **When will the department consider my loan originator license application to be abandoned?** If you do not respond within fifteen days and as directed by the department, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** See WAC 208-620-615.

(9) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) **How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

(11) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

(12) **When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the

director's authority even if you are not doing any activity covered by the act.

**(13) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(14) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

**(15) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and the sponsoring company if approved.

**(16) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

**(17) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

**(18) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Paying the annual assessment fee; and
- (ii) Meeting the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

**(19) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

**(20) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

**(21) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

**(22) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omissions occurring before the license surrender.

**(23) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

**(24) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the company you represent, on the web site.

**(25) Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

**(26) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

**(27) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-710, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-720 Loan originator—Prelicensing education. Must I complete prelicensing education in order to receive a loan originator license?** Yes.

(1) You must complete at least twenty hours of prelicensing education approved by the NMLSR. The prelicensing education must include:

(a) Three hours of federal law and regulations;

(b) Three hours of ethics, which includes instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) At least two hours of training specifically related to Washington law.

(2) You will receive credit for having completed the prelicensing education for every state once you have successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-720, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-725 Loan originator—Testing. Must I pass a test prior to becoming a loan originator? Yes.**

(1) You must take and pass the NMLSR sponsored loan originator test. The test has two parts; one on federal law and regulation, and one on Washington specific law and regulation. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** The NMLSR web site will publish the names and contact information of approved testing providers.

(3) **How much does the loan originator test cost?** Testing costs are set by the test provider and the NMLSR and may be modified from time to time. The NMLSR web site will publish the current testing fee with the testing provider contact information.

(4) **How do I register to take the loan originator test?** Register through the NMLSR web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

(6) **After passing the NMLSR loan originator test, will I have to take it again?** If you fail to maintain a valid license for a period of five years or longer you must retake the test, not taking into account any time during which you were a registered mortgage loan originator.

(7) **How soon after failing the loan originator test may I take it again?** After taking and failing the test you must wait thirty days before taking it again. After failing three consecutive times, you must then wait at least six months before taking the test again.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-725, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-730 Loan originator—Continuing education.** (1) **How many clock hours of loan originator continuing education must I have each year?** You must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics (which must include instruction on fraud, consumer protection, and fair lending issues); and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the

same approved course in the same or successive years to meet the annual requirements for continuing education.

(3) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(4) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(5) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-620-XXX to renew your license if you miss the December 31st renewal deadline.

(6) **How will I know which courses and providers satisfy the continuing education requirement?** NMLSR will publish information about approved continuing education providers on their web site.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For SAFE required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-730, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-800 What definitions are applicable to this section?** (1) Advance. A payment from the lender to the borrower.

(2) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of Housing and Urban Development.

(3) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(4) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(5) "Reverse mortgage broker or lender" means a licensee under the Washington state Consumer Loan Act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(6) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest is created in the borrower's dwelling securing one or more advances;



(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

- (i) The consumer dies;
- (ii) The dwelling is transferred; or
- (iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-800, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-805 Does this section apply to the FHA approved home equity conversion mortgage (HECM) product?** No. This section does not apply to the HECM product or to any federally administered reverse mortgage product.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-805, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-810 What requirements must I meet before offering or making proprietary reverse mortgages to Washington residents?** You must meet the following requirements before offering proprietary reverse mortgage loans to Washington residents:

(1) Obtain and maintain an irrevocable standby letter of credit in your favor in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans on your books plus those expected to be made over the next twelve months, or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years. The letter of credit must be from a financial institution approved by the director.

(a) The financial institution that provides the letter of credit required in subsection (1) of this section may not be affiliated with you.

(b) If you have had a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years you are exempt from the requirements in subsection (1) of this section.

(2) Maintain a minimum capital of ten million dollars.

You may rely on the capital of your parent to satisfy this requirement. However, for any year in which you rely on your parent's capital, you must provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the parent to you making a minimum of ten million dollars available to you as a capital contribution in connection with your reverse mortgage lending program.

(3) Subsections (1) and (2) of this section do not apply to you if you:

(a) Only originate proprietary reverse mortgage loans with full disbursement of the proceeds; or

(b) Only originate proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. You must obtain a written commitment to purchase from the investor prior to the loan closing and must arrange for the delivery of the loans to the investor within ten days of the loan closing.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-810, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-820 What specific loan terms and conditions are allowed or required in the proprietary reverse mortgages I make to Washington residents?** (1) Loan prepayment.

(a) Prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, must be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this subsection, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender.

(b) You may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrower.

(c) If a prepayment penalty is imposed under the circumstances described in (a) of this subsection you must disclose the prepayment penalty to the borrower.

(2) Interest rate. A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) Late advances. A late advance is a scheduled monthly advance that you do not mail or electronically transfer to the borrower on or before the first business day of the month, or within five business days of the date you receive the borrower's request, or such other regularly scheduled contractual date.

(a) If you make a late advance you must pay a late charge of ten percent of the entire amount that should have been advanced to the borrower.

(b) For each additional day you fail to make the advance, you must pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. You must pay late charges from your funds and they may not be added to the unpaid principal balance of the borrower's loan or in any other way collected from the borrower.

(c) You forfeit the right to interest and monthly servicing fees for any months you fail to make a timely advance.

(4) Loan acceleration. The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents.

(5) Repayment. Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a satisfactory manner, as specified in the loan documents;

(c) Your right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations commences on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement;

(d) If the borrower mortgaged one hundred percent of the full value of the house, the amount owed will be the lesser amount of:

(i) The fair market value of the house, minus the sale costs; or

(ii) The outstanding balance of the loan.

(e) If the borrower mortgaged less than one hundred percent of the full value of the house, the amount owed by the borrower must not be greater than the outstanding balance of the loan or the percentage of the fair market value (minus sale costs, as provided in the contract), whichever amount is less;

(f) The lender must enforce the debt only through the sale of the property and must not obtain a deficiency judgment against the borrower.

(6) Fee disclosure. Using conspicuous, bold sixteen-point or larger type, you must disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(7) Deed of trust disclosure. The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan."

(8) Ancillary products. You or any other party that participates in the origination of a reverse mortgage loan must not require an applicant for a reverse mortgage to purchase an annuity, insurance, or other financial product as a condition of obtaining a reverse mortgage loan. You or the broker of a reverse mortgage loan must not:

(a) Offer an annuity, insurance, or other financial product to the borrower prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity, insurance, or other financial product prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(c) Provide marketing information or sales leads to anyone regarding the prospective borrower or receive any compensation for such an annuity, insurance, or other financial product sale or referral; or

(d) You or any other party that participates in the origination of a reverse mortgage loan must maintain safeguards,

acceptable to the department of financial institutions, to ensure that you do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product.

(9) Borrower counseling. Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, you must refer the prospective borrower to an independent housing counseling agency approved by the federal department of Housing and Urban Development for counseling. The counseling must meet the standards and requirements established by the federal department of Housing and Urban Development for reverse mortgage counseling. You must provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone. Telephone counseling will only be used for counseling at the borrower's request. You must create and maintain a form that includes the borrower's signature for telephone counseling requests.

(10) Counseling certification. You must not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. You must maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage plus three years.

(11) Minimum age. You may not make a reverse mortgage loan to any Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan.

(12) Advances. Except for the initial disbursement of moneys to the closing agent, you must issue advances directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

(13) Rescission rights. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the Truth in Lending Act, Regulation Z, 12 C.F.R. Sec. 226.

(14) Property appraisals. Prior to execution of the loan and at the end of the loan term, you must obtain an independent appraisal of the property value, or use the current year's tax assessment valuation of the property. You must provide copies of these appraisals to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-820, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-825 What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages?** (1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

(a) All costs and charges to the consumer;

(b) All advances to and for the benefit of the consumer;

(c) Any shared appreciation or equity in the dwelling that you are entitled to receive under the contract to receive;

(d) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);

(e) Each of the assumed annual appreciation rates for the dwelling:

(i) Zero percent;

(ii) Four percent;

(iii) Eight percent;

(f) Each of the following assumed loan periods:

(i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday;

(g) Reserved.

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policies.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-825, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-830 What disclosures or statements must I provide to a borrower?** In addition to any disclosures required by federal law, you must provide, at a minimum, the following:

(1) Counseling disclosure. You must provide the following plain language statement in conspicuous bold sixteen-point type or larger, prior to receiving a complete and final loan application: "Important notice to reverse mortgage loan applicant: A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity. If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate. It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering

into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

(2) Loan statements. You or the loan servicer must provide an annual, or more frequent, disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-660-830 [208-620-830], filed 12/1/09, effective 1/1/10.]

**WAC 208-620-850 What is the process I must follow to obtain the department's approval of my proprietary reverse mortgage product?** Reserved.

[Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-850, filed 12/1/09, effective 1/1/10.]

**Chapter 208-630 WAC**

**REGULATION OF CHECK CASHERS AND SELLERS AND SMALL LOANS (PAYDAY LENDERS)**

(Formerly chapter 50-30 WAC)

**WAC**

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208-630-545	May I use a name or place of business other than that named on the license or small loan endorsement?	10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-546	What is the limit on the number of checks I may hold from one borrower?	208-630-750
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208-630-548	May I hold postdated checks for the installment plan payments?	208-630-770
208-630-549	May I charge the borrower additional fees if the borrower defaults on an installment plan?	May a licensee allow a borrower to refinance or "roll-over" a small loan with another small loan? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-770, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-551	May I charge a fee to cash monetary instruments I issue as proceeds of a small loan?	208-630-780
208-630-555	What is the purpose of the data base?	May a licensee use a name or place of business other than that named on the license or small loan endorsement? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-780, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-556	How do I use the data base system for small loan transactions?	208-630-790
208-630-560	What disclosures must I make to a borrower?	What is the limit on the amount of checks a licensee may hold from one borrower? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-790, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-570	What must be included in the disclosure referred to in WAC 208-630-560(2)?	208-630-800
208-630-580	In addition to providing disclosures to the borrower, must I post any disclosures?	May a licensee holding a borrower's check for a period longer than the statutory limit of forty-five days charge additional fees? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-800, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-590	How must I format disclosures?	208-630-810
208-630-601	Must I provide any information about the changes to the law to borrowers?	May a licensee charge additional fees to cash monetary instruments issued as part of a small loan? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-810, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-610	What accounting and financial records must I keep?	208-630-820
208-630-670	If I have a small loan endorsement on my license, what information must I keep in every loan file?	May a licensee charge any fees if a borrower decides to convert their loan to a payment plan? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-820, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-700	When may I deposit a monetary instrument accepted in the course of making a small loan?	
208-630-740	What obligation do I have to assure that employees comply with the laws and rules regarding payday lending and check cashing and selling?	
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208-630-836	When ceasing business, what information must I file before I close the business?	
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208-630-890	If I am not a check seller what must I report when my license is surrendered or revoked?	
208-630-910	May I request an extension of time to comply with the reporting requirements?	
208-630-950	What trust accounting requirements must I comply with?	

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

208-630-430	When may a licensee expect a fee increase? [Statutory Authority: RCW 43.320.040, 07-23-094, § 208-630-430, filed 11/20/07, effective 12/21/07. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-430, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-440	How will a licensee know about fee increases? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-440, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-460	When must a licensee inform the director of significant changes in business? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-460, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-540	Must a licensee comply with the federal Truth in Lending Act when entering into a payment plan? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-540, filed 10/21/05, effective 11/21/05.] Repealed by 09-24-089, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510.
208-630-550	May the licensee and the borrower enter into a payment plan prior to the fourth consecutive loan? [Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-550, filed

**WAC 208-630-110 What definitions are required to understand these rules?** The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"ACH" means automated clearing house, an electronic network for financial transactions that processes credit and debit transactions.

"Act" means chapter 31.45 RCW.

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

"Agent" for purposes of RCW 31.45.079 means a person who, pursuant to the terms of a written agreement and for compensation, performs small loan agent services on behalf of an exempt entity.

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part 226 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at <http://www.occ.treas.gov/aprwin.htm>.

"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" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

"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.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

"Default" means:

(1) The borrower's failure to repay a small loan in compliance with the terms contained in the small loan agreement or note; or

(2) Failure to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. See WAC 208-630-556 (12)(b).

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"Gross monthly income" means an individual's total personal income earned during a month prior to any taxes or deductions.

"Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"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.

"Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

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

"Paid" means that moment in time when the licensee deposits the borrower's check, accepts cash, or initiates an

ACH withdrawal from the borrower's account for the full amount owed on a valid small loan. If the borrower's check is dishonored and returned unpaid by the borrower's bank, the loan is not paid. If an ACH authorization is denied, the loan is not paid.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

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

"Small loan" or "loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

"Small loan agent services" means all or substantially all of the following services:

- (1) Marketing and advertising small loans;
- (2) Taking small loan applications;
- (3) Assisting customers in completing small loan documentation;
- (4) Providing required disclosures;
- (5) Disbursing small loan proceeds;
- (6) Collecting small loans;
- (7) Retaining documents and records; and
- (8) Making reports.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would materially impair the net worth of a licensee or create an abnormal risk of loss to its customers.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-110, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 07-23-094, § 208-630-110, filed 11/20/07, effective 12/21/07. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-110, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-120 What does a business have to do to operate as a check casher and seller or to make small loans as a payday lender?** (1) In order to engage in the business of check cashing and selling, a business must apply for and obtain from the department a check cashing or selling license.

(2) In order to make payday loans (small loans), a business must first obtain a license as a check casher or seller and then obtain a small loan endorsement to that license.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-120, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-120, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-180 Is there a bond requirement for my license?** If you sell checks, drafts, or money orders or if you have a small loan endorsement under chapter 31.45 RCW you must obtain and maintain a bond. The bond must run to the benefit of the state and any person or persons who suffer loss as a result of your actions. You must file the bond

with the director at the beginning of each calendar year. The bond must be issued by a surety that meets the requirements of chapter 48.28 RCW. The bond form must be acceptable to the director. You may obtain a copy of an acceptable form from the department.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-180, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-180, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-190 What type of bond is necessary and what are the conditions?** The bond must be continuous and conditioned upon your compliance with chapter 31.45 RCW and all rules in this chapter. The bond must also be conditioned upon you paying to persons who purchase monetary instruments 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 is only liable for the face value of the dishonored monetary instrument, and not for any interest or consequential damages. If you have a small loan endorsement, the bond must run to the benefit of the state and any person or persons who suffer loss due to your violation of chapter 31.45 RCW or this chapter.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-190, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-190, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-230 What must I do if there are claims against the bond?** You must notify the department of any claim against the bond within ten days of receiving notice of a claim.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-230, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-230, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-260 Do I have any alternative to maintaining a surety bond?** With the approval of the director, you may substitute one of the following alternatives for the surety bond required under this chapter. Any alternative to the surety bond must secure the same obligations the surety bond would. The amount of a bond alternative substituted under subsection (1) or (2) of this section must be equal to or greater than the amount of the required surety bond.

(1) **Time deposit.** You may purchase and maintain a certificate of deposit assigned in favor of the director. The certificate of deposit must be issued by a financial institution in the state and whose deposits or shares are insured by an agency of the government of the United States. The deposit must be in an amount equal to or greater than the required surety bond. You are entitled to receive all interest and dividends on the certificate of deposit.

(2) **Demonstration of sufficient net worth.** You must demonstrate net worth of at least three times the amount of the required bond. You must notify the director within ten business days of any date upon which your net worth decreases below the required amount. If you fail to maintain the required level of net worth and continue to operate under a small loan endorsement, you must immediately obtain a surety bond and maintain it 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.

(3) **Reports required.** If you maintain net worth in lieu of a surety bond, you must submit to the director an annual audited financial statement and a supplementary year-to-date financial statement within forty-five days after the close of each quarter, both 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 you comply with this section.

(4) **Bad debts and judgments.** If you maintain net worth in lieu of a surety bond you must not consider bad debts and certain judgments as assets. The director may approve exceptions in writing. You must charge off your books any debt upon which any payment is six months or more past due. You may not count as an asset any unpaid judgment more than two years old. Time consumed by an appeal from a judgment is not counted in the two-year limit.

(5) **Noncompliance.** If you do not comply with this section you must obtain and file with the director a surety bond in the required amount in WAC 208-630-240 and 208-630-250 by the date specified by the director.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-260, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-260, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-360 When may the director conduct an investigation?** The director or designee may conduct investigations at any time, in or outside of the state, to determine whether any person has violated or is about to violate chapter 31.45 RCW, these rules, or any order issued under these laws and rules. This includes a licensee or a business that may be conducting transactions requiring a license. For these purposes the director or designee may conduct inquiries, interviews and examinations of any person relevant to the investigation.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-360, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-360, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-461 What is the maximum amount that all licensees may lend to a borrower?** The total outstanding principal of all small loans made by all licensees to a single borrower may not exceed seven hundred dollars or thirty percent of the borrower's gross monthly income, whichever is lower.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-461, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-462 What documentation is acceptable as proof of the borrower's gross monthly income?** (1) A record of the borrower's pay stub or payroll receipt;

(2) A record of the borrower's receipt documenting payment of government benefits; or

(3) Other documentation as approved by the director, including, but not limited to, records of bank statements that show regular direct deposits from an identified source and verified to be in favor of the borrower, check cashing history, or an employer's verbal confirmation of the borrower's employment status and current gross income;

(4) You must obtain independent verification of a borrower's gross monthly income every one hundred eighty days;

(5) On loans made without independent verification of the borrower's gross monthly income, you must obtain from the borrower a written declaration of change or no change in their gross monthly income since the last independent verification.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-462, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-463 What is the maximum number of small loans that may be made to a single borrower in any twelve-month period?** The maximum number of loans that all licensees may make to a single borrower in any twelve-month period is eight loans.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-463, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-464 What documentation is acceptable as proof of the borrower's identity?** (1) For small loans made in person you must use one of the following forms of identification which must contain a photograph of the borrower:

(a) Driver's license issued in the United States, Canada, or Mexico;

(b) Any state's state identification card;

(c) Matricula consular;

(d) Tribal identification;

(e) Passport;

(f) Military identification; or

(g) Other forms or methods of verifying identification, as approved by the director, that provide a reliable means of verifying the borrower's identity.

(2) For loans made over the internet you must use a method of verifying identification, as approved by the director, that provides a reliable means of verifying the borrower's identity.

(3) You must keep a record of the identification information you accepted or a record of the results of the method of verifying identification you used as proof of the borrower's identity in the loan file.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-464, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-466 What fees can I charge on a small loan?** (1) You may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal.

(2) If the principal exceeds five hundred dollars, you may charge interest or fees not to exceed in the aggregate ten percent of the portion of the principal in excess of five hundred dollars.

(3) If you make more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, you may charge interest or fees not to exceed in the aggregate ten percent on the portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-466, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-501 How must I determine the due date on the loan?** (1) The earliest due date for repayment is on or after the borrower's next pay date unless the pay date is within seven days of the date of the small loan. If the pay date falls within the seven days, you must set the repayment date on or after the borrower's second pay date after the date of the small loan. With the small loan origination date being day zero, count seven days out to determine the first available due date.

(2) A loan's due date must be forty-five days or fewer from the origination date on the loan unless the term of the loan is extended by written agreement between you and the borrower at no additional cost to the borrower.

(3) If a small loan's due date falls on a date your business is not open, you must automatically extend the due date to your next business day.

(4) For purposes of this section, "pay date" means the borrower's scheduled pay date or the date the borrower's account is credited with any direct deposit or other electronic transfer of funds into their bank account, whichever is later.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-501, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-505 What process must I follow when a borrower pays off a small loan, or makes a payment toward an installment plan, with cash?** You must prepare a receipt with information that includes, but is not limited to, the date of the payment, the borrower's name, the amount of cash received, an indication that the payment was made in cash, an indication that the payment was made on a loan or towards an installment plan, and an authorized signature, stamp, or other authenticating mark confirming you received the payment.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-505, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 07-23-094, § 208-630-505, filed 11/20/07, effective 12/21/07.]

**WAC 208-630-506 What are my obligations if the borrower notifies me that he or she will be or is unable to pay the small loan on time?** You must inform the borrower that he or she has a right to convert the small loan to an installment plan. See WAC 208-630-520.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-506, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-510 When does a borrower have a right to enter into an installment plan?** (1) The borrower has the right to convert a small loan into an installment plan upon request made on or before the small loan's due date. If the request is made on the small loan's due date, it must be made before the close of business, or at another time on the

due date as agreed to in the written small loan agreement, but in no event can the agreed upon time be earlier than three o'clock p.m. on the due date.

(2) If you extend a small loan's due date, the borrower's right to request an installment plan on that loan follows the extended date.

(3) If you extend a small loan's due date, you must update the data base with that new date as soon as practicable.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-510, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-520 If a borrower and licensee enter into an installment plan, what are the terms of the installment plan?** An installment plan under RCW 31.45.084 must contain the following terms:

- (1) The plan must be in writing;
- (2) If the small loan is four hundred dollars or less the term must be for a period of at least ninety days;
- (3) If the small loan is over four hundred dollars the term must be for a period of at least one hundred eighty days;
- (4) The borrower may pay off the total amount due at any time without additional penalty, fee, or charge for prepayment; and
- (5) You may enter into a written installment plan with a borrower on terms other than these as long as the terms are not less favorable to the borrower and there is no charge to the borrower.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-520, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-520, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-530 If a borrower and licensee enter into an installment plan, how must the payments be structured?** All installment plans under RCW 31.45.084 must:

- (1) Be in writing and acknowledged by both the borrower and licensee; and
- (2) Provide for at least three payments; and
- (3) Provide for an installment plan length of not less than ninety days for a loan amount of up to and including four hundred dollars; or
- (4) Provide for an installment plan length of not less than one hundred eighty days for a loan amount over four hundred dollars; and
- (5) Be equal to the total amount of the installment plan balance divided by the number of payments subject to reasonable rounding.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-530, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-530, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-531 May I charge any fees if a borrower decides to convert their loan to an installment plan?** No. You may not charge any fee or interest to the borrower for converting the small loan to an installment plan as provided under RCW 31.45.084.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-531, filed 12/1/09, effective 1/1/10.]

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**WAC 208-630-532 May I make a small loan to a borrower who is in default on another small loan?** No. You are prohibited from making a small loan to a borrower who is in default on another small loan originated on or after January 1, 2010. This prohibition expires if the small loan is paid in full or two years have passed from the origination date of the small loan, whichever occurs first.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-532, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-533 May I make a small loan to a borrower who is in an installment plan?** No. You are prohibited from making a small loan to a borrower who is making payments as part of an installment plan with any licensee until after that loan is paid in full or two years have passed from the initiation date of the installment plan, whichever occurs first.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-533, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-542 What fees may I charge or collect when a borrower defaults on a small loan?** If the small loan is not in an installment plan, you may 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. See WAC 208-630-549 for allowable default fees charged on small loans in an installment plan. On any one loan you can only charge the borrower twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-542, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-543 What are the specifications required of the communication log in RCW 31.45.082(4)?** The communication log must contain:

- (1) The date, time, and brief description of all telephone communications initiated by the licensee for collection purposes; and
- (2) The date, time, and brief description of all written communications initiated by the licensee for collection purposes.

Returning a communication from a borrower is not initiating a communication with the borrower; however, the response must not violate any of the provisions of RCW 31.45.082.

The communication log may be in hard copy or electronic form, and must indicate the borrower's name.

The log must be maintained in a manner that will allow the examiner to review all collection communications covered under RCW 31.45.082 made during a period of time.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-543, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-544 May I allow a borrower to refinance a small loan with another small loan?** No. You may not allow a borrower to use a new small loan to pay off an



existing small loan by the same lender or an affiliate of the lender. Licensees may not apply the proceeds from any small loan to any other loan from the same lender or affiliate of the lender.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-544, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-545 May I use a name or place of business other than that named on the license or small loan endorsement?** No. You may 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.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-545, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-546 What is the limit on the number of checks I may hold from one borrower?** You may not hold more than one check per small loan unless the loan is in an installment plan.

(1) If you have made multiple loans to a single borrower, you may not hold checks that total more than the lower of:

- (a) Seven hundred dollars plus the allowable fees; or
- (b) Thirty percent of the borrower's gross monthly income plus allowable fees.

(2) For purposes of this section, to "hold a check" does not include a check that has been deposited in your bank and subsequently returned unpaid by the borrower's bank.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-546, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-547 May I continue to hold the borrower's original check or ACH authorization once the borrower has converted the loan to an installment plan?**

(1) No. At the initiation of an installment plan, you must either return or, at the borrower's request, destroy any post-dated check securing the original small loan.

(2) The initiation of an installment plan voids your authorization to use the borrower's original ACH authorization. You may accept another ACH authorization or authorizations consistent with the payment terms of the installment plan.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-547, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-548 May I hold postdated checks for the installment plan payments?** Yes. You may take post-dated checks at the time the installment plan is originated. The checks may not be written for a value more than the amount of the borrower's installment plan payments. If any of the checks are later dishonored, you may not charge the borrower any fee for the dishonored check or checks. Exception, see WAC 208-630-549.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-548, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-549 May I charge the borrower additional fees if the borrower defaults on an installment plan?** Yes. You may charge the borrower a one time default fee of twenty-five dollars. A borrower defaults on an install-

ment plan when the borrower fails to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. On any one loan you can only charge the borrower twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-549, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-551 May I charge a fee to cash monetary instruments I issue as proceeds of a small loan?** No. You may not charge a fee to cash a monetary instrument you or your affiliate issue as proceeds of a small loan you or an affiliate make under chapter 31.45 RCW.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-551, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-555 What is the purpose of the data base?** The purpose of this data base system is to:

(1) Prevent the practice of refinancing a small loan with another small loan;

(2) Prevent multiple licensees from making simultaneous small loans to an individual borrower so that the loans' total principal balance is the lesser of seven hundred dollars or thirty percent of the borrower's gross monthly income;

(3) Prevent licensees from making more than eight loans to any one borrower in any twelve-month period;

(4) Prevent a licensee from making a loan to a borrower who already has an outstanding small loan principal balance of the lesser of seven hundred dollars or thirty percent of their gross monthly income;

(5) Prevent licensees from making a loan to a borrower who is in default on a small loan or is in an installment plan; and

(6) Ensure that licensees set the small loan due date no earlier than the borrower's next pay date that is more than seven days from the origination date.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-555, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-556 How do I use the data base system for small loan transactions?** (1) Beginning January 1, 2010, each small loan transaction must be registered with the data base system and receive a data base system-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been recorded in the data base prior to you making the small loan to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the data base system?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response. It is also possible to interface directly with the data base system; the data base vendor can provide you with information about that process.

**(3) How and when may I access the data base system?**

(a) The data base system is the means by which real-time access to the data is made available to you through your internet connection.

(b) You must use a computer and the internet to access the data base system.

(c) The data base system will be accessible twenty-four hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the data base vendor.

**(4) What must I do to maintain confidentiality of the borrower's information provided to the data base?**

In order to maintain the confidentiality and security of the borrower's information, you must not transmit information to the data base system using publicly accessible computers, computers that are not under your control, unsecured wireless connections, or other connections that are not secure. Maintaining a secure connection includes, but is not limited to, installing and regularly updating antivirus and antispyware software and a firewall.

**(5) How do I use the data base system to determine a borrower's eligibility for a small loan?**

You must:

(a) Access the data base system using the assigned user identification and password provided by the security administrator of your company;

(b) Enter the borrower's Social Security number, individual tax identification number (ITIN), or alien identification number, and the borrower's gross monthly income into the system.

**(6) What information will the data base system give me when an eligibility search is conducted?** The data base system will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the data base system will provide the dollar amount the borrower is eligible to receive.

**(7) What must I do once the initial search determines that the borrower is eligible for a small loan?**

(a) If you receive an initial indication from the data base vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the data base, as prescribed by the data base vendor.

(b) When the required information has been submitted to the data base, the data base system will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and assigned a transaction authorization number evidencing that the transaction has been authorized by the data base system. You must place the transaction authorization number on the small loan agreement.

**(8) What must I do if the borrower is determined to be ineligible for a small loan?** If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support number of the data base vendor. You must provide a copy of the printable message to the borrower.

**(9) If I make a mistake entering data and must void the transaction, what do I do?** Follow the data base vendor's instructions to administratively void the transaction.

**(10) If the data base system is inaccessible via the internet, how do I access the data base?**

(a) You will be given at least twenty-four hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the data base vendor's web site.

(b) In the event the data base system is unavailable, you must adhere to the following procedures:

(i) Confirm that the data base system remains unavailable by attempting to access the data base system with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the data base vendor of an expected period of time necessary to correct whatever problem is causing the data base system to remain unavailable;

(ii) Contact the data base vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the data base vendor; and

(iii) Enter the remaining transactional data into the data base system within twenty-four hours of obtaining the temporary transaction authorization number from the data base vendor.

(c) In the event that either the department of financial institutions or the data base vendor notifies you that the data base system is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the data base vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the data base within twenty-four hours of notification that the data base system is available; provided, however, that if the data base system is unavailable for more than twenty-four hours, then the period for registration shall be extended by twenty-four hours for each additional twenty-four-hour period of unavailability.

(e) Once the transaction has been registered with the data base, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

**(11) Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086?** A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close the transaction on the data base as soon as practicable after the borrower rescinds the small loan transaction. A loan that has been rescinded does not count toward the eight loan limit; nor will you incur a one dollar transaction fee on that loan.

**(12) When must I update information on the data base system?**

(a) When a borrower's small loan is paid (date of cash received, check deposited, or ACH authorization initiated), you must update open transactions on the data base system as soon as practicable to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a small loan that was in default is paid, it is considered paid when the loaned amount and default fee is paid.

(c) When a loan is in default, you must mark the loan in the data base as in default as soon as practicable after the default as follow:

(i) A small loan is in default if not paid on the date and by the time indicated in the small loan agreement. If no time is indicated the small loan is in default the first day after the due date.

(ii) A small loan in an installment plan is in default if unpaid on the 11th day after the due date, with the due date being day zero. If the due date for an installment plan payment is January 1st and is not paid, the loan is considered in default and the data base must be updated on January 11th.

**(13) How much will each data base transaction cost me?** The data base vendor's transaction fee is one dollar per loan registered. The data base vendor will assess this fee for each transaction that has been registered on the data base.

**(14) What happens if I do not pay the data base fees to the data base vendor?** The data base vendor will lock you out of the data base system.

**(15) What happens if I do not receive training and become certified in using the data base?** If you or another designated person in the company do not receive training and certification to use the data base, you will not be given an access number for the data base.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-556, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-560 What disclosures must I make to a borrower?** (1) You must deliver to the borrower at the time you make a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act. Compliance with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this subsection.

(2) You must deliver to the borrower at the time you make the small loan a disclosure of the right to rescind the loan and the right to convert the loan to an installment plan. See WAC 208-630-570.

(3) You must include a statement on the front page of the application for a small loan that is in at least twelve point type and is substantially similar to the following: "At the time you repay this loan, you should have sufficient funds to meet your other financial obligations. If you cannot pay other bills because you are paying off this debt, you should enter the installment plan offered in connection with this loan."

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-560, filed 12/1/09, effective 1/1/10. Statutory Authority:

RCW 43.320.040. 07-23-094, § 208-630-560, filed 11/20/07, effective 12/21/07. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-560, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-570 What must be included in the disclosure referred to in WAC 208-630-560(2)?** The disclosure must be substantially in the following form:

**Your right to rescind (cancel) this loan. You have the right to rescind this loan** by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you, or at your request destroy any postdated check or electronic equivalent authorization you have given to us. If the ACH authorization cannot be destroyed it becomes void if you cancel the loan.

**Your right to pay an installment plan when you are unable to pay your small loan when it is due.**

If you will be or are unable to pay your loan when it is due, you may convert your loan to an installment plan with us by notifying us on or before the loan's due date. If your loan amount is four hundred dollars or less, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over ninety days. If your loan amount is more than four hundred dollars, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over one hundred eighty days.

**An installment plan will allow you** to pay all that you owe without having to pay any additional fees, interest charges or other charge for converting your small loan into an installment plan.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-570, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-570, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-580 In addition to providing disclosures to the borrower, must I post any disclosures?** (1) If you make small loans you must post the following notices conspicuously at each location where small loans are made:

(a) A notice substantially in the form set forth in WAC 208-630-570; and

(b) A notice of how consumers may contact the department, substantially in the following form: "If you have questions about your rights and responsibilities when taking out a payday loan, contact the Department of Financial Institutions at 1-800-RINGDFI (1-877-746-4334), or 360-902-8700, or 150 Israel Road S.W., Tumwater, Washington, 98501."

(2) If you make small loans using the internet you must post the notices required by subsections (1) and (2) of this section in a conspicuous location on your web sites.

(3) You may download a copy of the notice required by subsection (1)(b) of this section from the department's web site or by contacting the department directly.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-580, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 07-23-094, § 208-630-580, filed 11/20/07, effective 12/21/07. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-580, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-590 How must I format disclosures?**

All disclosures must be presented in a manner and physical format that is clear, conspicuous and designed to call attention to each right and responsibility of the borrower and lender being disclosed. Except for the disclosure that is required on the application (see WAC 208-630-560(3)), such disclosures may be provided separately or included within the note or loan agreement.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-590, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-590, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-601 Must I provide any information about the changes to the law to borrowers?** Yes. Throughout 2010, when you take a small loan application or use any other form to initiate a small loan, or upon request by a borrower who has not yet made application for a small loan, you must provide to the borrower a written notice with content produced by the department, that describes the changes to the payday lending law due to chapter 510, Laws of 2009 (ESHB 1709). On subsequent loans to the same borrower, during 2010, you must make the information in the notice available to the borrower by providing the information in the lobby area accessible by the borrower in each licensed location or by inquiring whether the borrower would like another copy of the written notice. If you make small loans over the internet, you must make the content provided by the department available on your web site throughout 2010. The department will provide the content of the notice in Spanish to be made available in the same manner described above. If the notice becomes available in other languages the department will notify all licensees and provide guidance as to its use.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-601, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-610 What accounting and financial records must I keep?** You must maintain the records in this section for at least two years.

(1) A record of transactions conducted. The record may be limited to the following provided a sufficient audit trail is available through records obtainable from your bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;
- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) Installment plan payment due dates;
- (l) Application information as required by rule;
- (m) Records of cash payments made on small loans. The record must include the date of the payment, the borrower's name, the amount of cash received, the identity of the employee who received the cash, and whether the payment was applied to a loan or installment plan;

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(n) Copies of receipts required under WAC 208-630-505.

(2) You must maintain a cash reconciliation 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 must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) You must keep records of the disbursement of loan proceeds and the receipts of all payments on the balance of small loans. The receipt must indicate the date of the transaction, the borrower's name, amount of receipt, and whether the disbursement or payment is on a loan or installment plan.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-610, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 07-23-094, § 208-630-610, filed 11/20/07, effective 12/21/07. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-610, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-670 If I have a small loan endorsement on my license, what information must I keep in every loan file?** (1) If you have a small loan endorsement, each loan file must contain at least a record of the application, a record of the note or loan agreement, a record of the documentation used to substantiate the borrower's gross income, a record of the borrower's identification verification, a record of any disclosure statements, a record of an installment plan entered into, and records of the receipts required in WAC 208-630-505. As used in this section, "application" means any information you received from the borrower for the purposes of making a lending decision, including, but not limited to, personal employment history and credit history;

(2) Records required to be maintained may be in paper form or on any electronic, magnetic, optical or other storage media, or any combination thereof, so long as the licensee maintains the necessary technology to permit access to the records by the department for the period required by law.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-670, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-670, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-700 When may I deposit a monetary instrument accepted in the course of making a small loan?** (1) If you have a small loan endorsement you may not deposit a monetary instrument accepted in the course of making a small loan under the act prior to the due date of the small loan or any date disclosed on the note or small loan agreement.

(2) If the borrower notifies you that he or she is unable to repay the loan when it is due and an installment plan is initiated, you must return or destroy any postdated check or ACH authorization the borrower has given you prior to entering into the installment plan. If destruction of an ACH authorization is not possible, the initiation of an installment plan voids your authorization to use the original ACH authorization. You may accept another ACH authorization or authorizations from the borrower consistent with the payment terms of the installment plan.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-700, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-700, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-740 What obligation do I have to assure that employees comply with the laws and rules regarding payday lending and check cashing and selling?**

You must ensure that any employee or person who engages in business on your behalf under the authority granted by chapter 31.45 RCW has sufficient understanding of the law and rules to assure compliance.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-740, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-740, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-8201 What business practices are prohibited?** (1) It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement;

(e) Directly or indirectly refer a borrower, or encourage a borrower, to use the services of more than one payday lending business that results in an amount outstanding that exceeds the loan limit in RCW 31.45.073;

(f) Directly or indirectly structure a loan transaction in order to exceed the loan limit in RCW 31.45.073;

(g) Directly or indirectly pressure a borrower to not enter into an installment plan;

(h) Directly or indirectly pressure an applicant or borrower to borrow more money than they state they want; provided, it is not a violation of this subsection for a licensee to inform a borrower as to his or her maximum loan amount or that he or she is subject to a limit of eight loans per twelve-month period;

(i) Cash a postdated check before the date written on the check except as permitted by RCW 31.45.070(2);

(j) Make a loan without processing it through the data base system except as specifically allowed in law or rule;

(k) Refuse to provide an installment plan to a borrower who has notified you before the due date of the small loan that they cannot pay the small loan; and

(l) Engage in any device or subterfuge to evade the requirements of the act.

(2) In addition to any other penalties, any transaction in violation of subsection (1)(d) of this section is uncollectible and unenforceable.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-8201, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 07-23-094, § 208-630-8201, filed 11/20/07, effective 12/21/07.]

**WAC 208-630-830 What are my annual reporting requirements?** On or before April 15th of each year, you must submit the following reports:

(1) Annual financial statements. The financial statements must include at least a balance sheet and a statement of income prepared in accordance with generally accepted accounting principles. If you have established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.

(2) Annual assessment report (AAR). You must submit an AAR on your Washington activities, in a form prescribed by the director. The AAR must contain the following:

(a) The total dollar volume of checks cashed during the period, if applicable; and

(b) The total dollar volume of checks sold during the period, if applicable; and

(c) The total dollar volume of small loans made during the period, if applicable; and

(d) The annual assessment fee calculation. See WAC 208-630-400.

(3) Consolidated annual report (CAR). You must submit a CAR on your Washington activities, in a form prescribed by the director. The CAR must contain at least the following:

(a) For all licensees, the CAR must contain:

(i) The total number of employees and annual payroll during the period;

(ii) The total number and dollar volume of transactions during the period;

(iii) The total dollar amount of fees collected during the period;

(iv) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;

(v) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;

(vi) The total number and dollar amount of charge-offs (losses), net of any recoveries, for the period; and

(vii) The total dollar amount of net income before and after taxes earned under authority of this chapter.

(viii) Such other relevant information as the director may require, in a form prescribed by the director.

(b) For all licensees with a small loan endorsement, the CAR must contain:

(i) The total dollar volume of small loans made during the period, including payment plans made prior to December 31, 2009, and installment plans made after January 1, 2010;

(ii) The total number of loans made for the period;

(iii) The total number of borrowers for the period;

(iv) The number of borrowers whose accounts were referred to collection agencies;

(v) The number of loans rescinded during the period;

(vi) For reporting year 2010, the number of borrowers who entered into a payment plan during 2009;

(vii) The number of installment plans entered into for the period;

(viii) The number of borrowers who defaulted;

(ix) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;

(x) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and

(xi) The number of active military borrowers during the period.

(c) For all licensees with small loan endorsements and total loan volume of at least ten million dollars in principal for the reporting period, the CAR must contain the following:

(i) The number of loans per borrower for the period;

(ii) The number of loans per military borrower during the period; and

(iii) The number of loans with terms in each of the following categories for the period:

(A) One to seven days;

(B) Eight to fourteen days;

(C) Fifteen to twenty-one days;

(D) Twenty-two to thirty-one days; and

(E) Thirty-two or more days.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-830, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-16-092, § 208-630-830, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-830, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-8301 What happens if I am late filing the annual reports and paying the annual assessment?** If you do not file the financial statements (if due at that time), assessment report, consolidated annual report, and pay the annual assessment fee by April 15 of each year, the director will send you a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after April 15, unless the department is not open for business on that date, then the reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the next day the department is open for business.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-8301, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-16-092, § 208-630-8301, filed 8/5/08, effective 9/5/08.]

**WAC 208-630-835 When must I inform the director of significant changes in my business?** (1) You must notify the director in writing within five days of the occurrence of any of the following significant developments:

(a) Your company filing for a chapter 7 or 11 bankruptcy;

(b) Your company receiving notification of a license revocation procedure against it in any state;

(c) You, or a director, officer, partner, member or controlling person of the company being convicted of a crime;

(d) You, or a director, officer, partner, member or controlling person of the company receiving notification of the filing of criminal charges or a criminal indictment or information, in any way related to check cashing, check selling or small loan activities.

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(2) You must notify the director in writing at least fifteen days prior to 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 fifty 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 means any change in controlling persons of the organization, either active or passive. Change of control investigation fees are billed to the persons or group at the rate billed for applications.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-835, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-836 When ceasing business, what information must I file before I close the business?** (1)

You must notify the department at least thirty days before ceasing operations. The notice must be in writing, signed by a principal of the small loan licensee, and include the following:

(a) The date you will cease small loan activity;

(b) A list of all open and pending transactions;

(c) Your contact address and e-mail address; and

(d) Your plan for the orderly closure of open loans on the data base system.

(2) For purposes of this section, the term "ceasing operations" means that you have closed the offices to the public or have removed public access to the web site, if such access is the sole means of communication with customers. This provision does not apply if you have given customers a reasonable alternative for communications and payments.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-836, filed 12/1/09, effective 1/1/10.]

**WAC 208-630-880 As a check seller what must I report when my license is surrendered or revoked?** If you are engaged in the business of selling monetary instruments

you must submit to the director, at your own expense, a closing annual report containing audited financial statements as of the effective date of the surrender or revocation. The director must receive the closing annual report on or before one hundred five days after the effective date of the surrender or revocation. The closing annual report must cover the twelve months ending with the surrender or revocation date or for such other time 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 you to take such action as appropriate to permit an independent accountant to remove any qualification from the report, certificate, or opinion. The report shall include relevant information specified by the director.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-880, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-880, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-890 If I am not a check seller what must I report when my license is surrendered or revoked?**

If you are not engaged in the business of selling monetary

instruments you must submit to the director at your own expense a closing annual report covering the twelve months ending with the surrender or closure date, or for such other time period as the director may specify. The closing annual report must be received by the director on or before one hundred five days after the effective date of surrender or revocation. Financial statements contained in this closing report may be prepared by outside accountants or by your own accountants.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-890, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-890, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-910 May I request an extension of time to comply with the reporting requirements?** For good cause and upon written request, the director may extend the time for compliance with reporting requirements if you make the request at least ten days prior to the date the report is due.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-910, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-910, filed 10/21/05, effective 11/21/05.]

**WAC 208-630-950 What trust accounting requirements must a I comply with?** (1) At least monthly a licensee in the business of selling checks must 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 financial institution holding the trust account to charge back checks or drafts deposited to the trust account and subsequently dishonored against the trust account.

(3) A licensee whose license has expired or been suspended or terminated must not make withdrawals from the trust account without the director's consent, until a closing report has been received according to these rules.

[Statutory Authority: RCW 43.320.040, 31.45.200, and 2009 c 510. 09-24-089, § 208-630-950, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 43.320.040, 31.45.030, 31.45.050, 31.45.200. 05-22-009, § 208-630-950, filed 10/21/05, effective 11/21/05.]

## Chapter 208-660 WAC

### MORTGAGE BROKERS AND LOAN ORIGINATORS—LICENSING

(Formerly chapter 50-60 WAC)

#### WAC

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208-660-600	Administration and facilitation of prelicensing and continuing education.

**WAC 208-660-005 Purpose, scope and coverage. (1) What is the purpose of the Mortgage Broker Practices Act?** The purpose of the Mortgage Broker Practices Act is to establish a state system of licensure and rules of practice and conduct for mortgage brokers and loan originators, to promote honesty and fair dealing with citizens, and to preserve public confidence in the lending and real estate community.

**(2) What is the purpose of the Mortgage Broker Practices Act rules?** The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators, and other persons subject to the act.

**(3) What is the scope and coverage of the Mortgage Broker Practices Act and these rules?** There are four criteria to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the criteria must be met in order for a person or entity to fall under the scope and coverage of the act and these rules. The criteria are:

- (a) The persons or entities conducting business;
- (b) The type of transactions performed when conducting the business;
- (c) The identification of residential real estate; and
- (d) The location of the mortgage broker, loan originator, potential borrower, and residential real estate.

**(4) What persons or entities are covered?** The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers or loan originators under RCW 19.146.010. However, certain mortgage brokers and loan originators may be exempt from all or part of the act under RCW 19.146.020 as discussed in WAC 208-660-008.

**(5) What types of transactions are covered?** The Mortgage Broker Practices Act and these rules cover the assisting to obtain any "residential mortgage loan" defined in RCW 19.146.010 and WAC 208-660-006. Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions.

**(6) What is residential real estate?** Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling, or multiple family dwelling of four or less units. See examples in WAC 208-660-006, "residential real estate."

**(7) Does the location of the mortgage broker, loan originator, potential borrower, and residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act?** If the mortgage broker, loan originator, potential borrower, or residential real estate is located in Washington, the transaction is covered by the

Mortgage Broker Practices Act and these rules. However, the director may choose to defer to other jurisdictions where doing so would, in the director's sole discretion, achieve the purposes of the Mortgage Broker Practices Act.

**(8) What are some examples of transactions falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?**

(a) A loan originator employed with Mortgage Broker, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. Mortgage Broker, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020. The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

(b) A loan originator with a physical office in Spokane, Washington takes a loan application from a Yakima, Washington resident for the purchase of a home located in Oregon. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020. The home located in Oregon meets the definition of residential real estate and the purchaser intends to reside in the home.

(c) A loan originator with a physical office in Reno, Nevada working for a Nevada mortgage broker takes a loan application from a Nevada resident for the purchase of a home located in Olympia, Washington. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020. The home located in Washington meets the definition of residential real estate and the purchaser intends to reside in the home.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-005, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-005, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-006 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

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

"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted,

including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"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.

"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.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

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

"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.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or



other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;
- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;
- Has been convicted of a crime which, if committed within this state would constitute 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 a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate and settlement statement as a dollar amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual

is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 CFR Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 CFR Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 CFR Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 CFR Part 3500 et seq.

- "S.A.F.E." means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 CFR Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 CFR Part 226 et seq.

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

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;

- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

- Any 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; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"License number" means the NMLSR unique identifier displayed as prescribed by the director.

"Licensee" means:

- A mortgage broker licensed by the director; or
- The principal(s) or designated broker of a mortgage broker; or
- A loan originator licensed by the director; or
- Any person subject to licensing under RCW 19.146.200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"Loan modification" means a change in one or more residential mortgage loan terms or conditions and includes forbearances, repayment plans, a change in interest rates, loan term (length), loan type (fixed or adjustable), the capitalization of arrearages, and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- Takes a residential mortgage loan application for a mortgage broker; or
- Offers or negotiates terms of a mortgage loan.

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution

of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"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 at which it will make a loan available to that borrower.

"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500 (2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

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

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or 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.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"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.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

- A single family home;
- A duplex;
- A triplex;
- A fourplex;
- A single condominium in a condominium complex;
- A single unit within a cooperative;
- A manufactured home when the home and real property together will secure the residential mortgage loan; or
- A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

- An apartment building or dwelling of five or more units;
- A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or
- Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker 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.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-006, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-006, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-11-103, § 208-660-006, filed 5/20/08, effective 6/20/08; 08-05-126, § 208-660-006, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-006, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-007 Good standing.** (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient 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 act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

- (a) Whether the applicant or licensee has paid all fees due to the director or the NMLSR.
- (b) Whether the mortgage broker licensee has filed their mortgage broker annual report.
- (c) Whether the mortgage broker licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.
- (d) Whether the mortgage broker licensee has maintained a designated broker in compliance with the act and these rules.
- (e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.
- (f) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

- (i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

- (ii) A felony within the prior seven years; or

- (iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

- (g) Whether the licensee or other person subject to the act, is, or has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

- (h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

- (i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

- (j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

- (k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

- (l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or 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.

(2) **Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage broker?** The department may conduct a good standing review when:

- (a) Processing an application for a new mortgage broker branch office license.

- (b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

- (c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020.

(3) **When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?** If the department conducts a good standing review, the department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section. For purposes of the notice required by this

section, a statement of charges filed and served on the licensee is sufficient notice of a lack of good standing.

(4) **What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing?** The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination. See WAC 208-660-009.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528, 09-24-091, § 208-660-007, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 08-05-126, § 208-660-007, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19, 06-23-137, § 208-660-007, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-008 Exemptions.** (1) **Who is exempt from all provisions of the act?** Any person doing business under the laws of the state of Washington or the United States and any federally insured depository institution doing business under the laws of any other state relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof.

(2) **Who is exempt from licensing as a mortgage loan originator?**

(a) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; or

(b) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(3) **If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(4) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(5) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

(6) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(e) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(7) **Are independent contractor loan originators exempt from licensing?** No. An independent contractor working as a loan originator must hold a loan originator license.

(8) **What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) 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 these entities in this subsection (b).

(c) Registered mortgage loan originators, or any individual required to be registered, employed by entities exempt from the act.

(d) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

(9) **When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), or (f); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

**(10) When is a CLI provider required to have a mortgage broker license?**

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed

(and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

**(11) Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) 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.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

**(12) Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-008, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-008, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-11-103, § 208-660-008, filed 5/20/08, effective 6/20/08; 08-05-126, § 208-660-008, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-008, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-009 Application of Administrative Procedure Act.** (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less

formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings shall be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 19.146.310 (1)(a), (b), (c), (d), (e), or (h);

(b) Whether an applicant for a mortgage broker license meets the requirements of RCW 19.146.210 (1)(a), (b), (c), (d), or (e); and

(c) Whether a mortgage broker has failed to maintain the bond required by RCW 19.146.205.

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director shall designate a presiding officer to conduct the brief adjudicative proceedings. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date

and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

[Statutory Authority: RCW 43.320.040, 09-12-111, § 208-660-009, filed 6/2/09, effective 7/3/09.]

**WAC 208-660-155 Mortgage brokers—General. (1) May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time, one loan" exception.

**(2) May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person. Two individually licensed mortgage brokers may originate a loan. Each licensee is itemized in the disclosures and is paid their proportionate share of fees in relation to the work provided at the loan closing. Federal laws may prohibit this cobrokering.

**(3) As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

**(4) Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

**(5) What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

**(6) May I charge upfront broker fees when assisting the borrower in applying for a loan?** No. You may only

charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by you and the borrower.

**(7) May I charge fees when the loan does not close, or does not close on the terms and conditions agreed upon by me and the borrower?** You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower; and

(b) The borrower fails to close on a loan through no fault of yours; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

**(8) As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

**(9) What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

**(10) How do I sponsor a loan originator?** You must file a sponsorship request through the NMLSR.

**(11) What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must process the termination through the NMLSR.

**(12) When must I update my record in the NMLSR after I terminate employment with a loan originator?** You must process the termination through the NMLSR within five business days of the termination.

**(13) Are there any loan originator compensation models I am prohibited from using?** Yes. You are prohibited from using a compensation model for loan originators based on a loan's interest rate or other terms. You are not prohibited from basing compensation on the principal balance of a loan.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-155, filed 12/1/09, effective 1/1/10. Statutory Authority:

RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-155, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-155, filed 11/21/06, effective 1/1/07.]

### **WAC 208-660-163 Mortgage brokers—Licensing.**

**(1) How do I apply for a mortgage broker license?** Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must complete an on-line application through the NMLSR.

(c) **Pay the application and license fees.** You will have to pay application fees to cover the costs of processing the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond based upon the annual loan origination volume of the mortgage broker. See WAC 208-660-175 (1)(e).

**(2) What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

**(3) Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

**(4) What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, or restricted within the prior five years.

(b) Whether the applicant has ever had a license revoked under this chapter or any similar state statute, including a license for insurance, securities, consumer lending, or escrow.

(c) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.



(d) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(e) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(f) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(g) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(h) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(i) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or 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.

**(5) What will happen if my mortgage broker license application is incomplete?** If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

**(6) How do I withdraw my application for a mortgage broker license?** You may request to withdraw the application through the NMLSR.

**(7) When will the department consider my mortgage broker license application abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

**(8) What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing. See also WAC 208-660-009.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund

any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

**(9) What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.

**(10) May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, non-exempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

**(11) May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

**(12) How do I change information on my mortgage broker license?** You must file a license amendment application through the NMLSR. See also WAC 208-660-400.

**(13) When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

**(14) When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

**(15) How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report and any other required notices, with the director. See WAC 208-660-400.

(ii) Complete a renewal request through the NMLSR.

(iii) Show evidence that your designated broker completed the required annual continuing education.

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

**(16) If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an expired license. However, if you renew your license after the expiration, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (15) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by March 1st of each year, you must apply for a new license.

**(17) May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

**(18) What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by submitting a surrender request through the NMLSR and submitting a completed departmental closure form. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

**(19) May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

**(20) Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-163, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-163, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223, 08-05-126, § 208-660-163, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-163, filed 11/21/06, effective 1/1/07.]

#### **WAC 208-660-175 Mortgage brokers—Surety bond.**

**(1) What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the mortgage broker's full name, unified business identifier (UBI), and NMLSR unique identifier.

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual loan origination volume of the licensee in the state of Washington:

Loan Volume in Millions	Bond Amount
\$40+	\$60,000
\$20 to \$40	\$40,000
\$0 to \$20	\$20,000

**(2) Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

**(3) What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond and include the surety bond and the attached power-of-attorney with your license application package.

**(4) What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

**(5) May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

**(6) Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by you or your employees or independent contractors.

**(7) Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

**(8) How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

**(9) How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

**(10) When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-175, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-175, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-176 Mortgage brokers—Recovery fund in lieu of surety bond.** **(1) What if the surety bond required in WAC 208-660-175 is not reasonably available in the insurance market?** If the director determines that the bond required is not reasonably available due to the insurance

market or other product availability issue, the director must waive the requirements for the bond.

(2) **If a recovery fund is created, how will it be funded?** All licensees will pay a fee at application and renewal, in addition to all license application fees, through the NMLSR, to fund the recovery fund.

(3) **How much will the recovery fund fees be?**

(a) Two hundred fifty dollars for the main office location;

(b) One hundred fifty dollars for each branch office; and

(c) One hundred dollars for each mortgage loan originator.

(4) **Will the fund have a cap or maximum?** After the fund has been in existence for three years, and periodically thereafter, the director may determine the maximum fund amount needed based upon claims made.

(5) **What happens to any interest that accrues on the mortgage recovery fund balance?** All interest that accrues in the fund will be added to the balance of the fund.

(6) **Can the department use any of the recovery fund money?** Yes. On an annual basis the department may apply up to fifty thousand dollars to fund the department's expenses in administering the mortgage recovery fund.

(7) **What is the procedure for recovery from the fund?**

(a) A claimant must obtain a money judgment from a superior court that includes findings of violations of this act against a mortgage broker or mortgage loan originator.

(b) The final money judgment must be obtained after January 1, 2010, after execution has been returned unsatisfied and the judgment has been recorded.

(c) The person in (a) of this subsection must file a verified claim with the court in which the judgment was entered, and on twenty days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment.

(d) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (a) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all requirements of this section.

(e) If the court finds that the aggregate amount of claims against a mortgage broker or mortgage loan originator exceeds the limits set forth in WAC 208-660-175, the court must reduce proportionately the amount the court finds payable on the claim.

(f) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he or she deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(g) The department must provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

(8) **What must a person show at the hearing on the recovery fund claim?** The person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under the act;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this or any state to satisfy the judgment.

(9) **What may recovery funds obtained be used for?**

(a) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund must be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(b) A recovery from the fund will not include punitive damages awarded by a court.

(10) **What is the statute of limitations for a claim from the recovery fund?** A verified claim against the recovery fund must be filed within one year of the date of termination of all court proceedings concerning the judgment, including appeals.

(11) **What types of claims will the fund award money on?**

(a) The fund will be used to reimburse persons awarded actual damages resulting from acts constituting violations of the act by a mortgage broker or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(b) Payments from the mortgage recovery fund may not be made to:

(i) Any licensee whose acts were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(ii) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(iii) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

(12) **Will the department revoke my license if a claim is made against the recovery fund based on my actions?**

(a) The director may revoke a license issued under this chapter if the director is required by court order under this section to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(b) A person whose license has been revoked under this subsection is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in

full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(c) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-176, filed 12/1/09, effective 1/1/10.]

#### **WAC 208-660-180 Mortgage brokers—Main office.**

**(1) Must a licensed mortgage broker have a designated broker?** Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

**(2) How many designated brokers may a mortgage broker have?** The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

**(3) If my designated broker leaves, may I continue to operate my mortgage broker business?** Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days of the loss or change of the designated broker. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

**(4) What must I do to replace my designated broker?** You must apply through the NMLSR for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1). You and the new designated broker must meet the good standing requirements of WAC 208-660-007.

**(5) What must I do if I sell all or part of my mortgage broker company?** See WAC 208-660-400(13).

**(6) After my mortgage broker license is approved, may I change my business structure?** Yes. See WAC 208-660-400 (7)(a)(iv).

**(7) May a licensed mortgage broker share an office with a licensed real estate broker?** Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

**(8) If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?** The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

**(9) May I add a trade name (or "DBA") to my mortgage broker license?** Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker license number together with the trade name.

**(10) May the department deny an application for a proposed DBA name because it is similar to an existing licensee name?** Yes. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

**(11) May I conduct my mortgage broker business from more than one location?** Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-180, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-180, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-180, filed 11/21/06, effective 1/1/07.]

#### **WAC 208-660-195 Mortgage brokers—Branch offices.**

**(1) May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLSR to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

**(2) If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

**(3) If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

**(4) How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply for a branch office license through the NMLSR and receive approval from the department before operating from any location other than your licensed location. You must be in good standing. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the physical address listed in the application can be verified as a branch office location.

(6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

(7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLSR at least ten days prior to the change occurring.

(9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must submit an on-line renewal and pay the branch office annual assessment fee through the NMLSR.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal by February 28th, each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (10) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by February 28th, each year, you must apply for a new license.

(12) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(13) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(14) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch

office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

(c) See WAC 208-660-180(10).

(15) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(16) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(17) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. You and the designated broker are responsible for the business conducted at all locations.

(18) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(19) **Must I have a designated broker at each branch?** No. You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(20) **If I want to move my licensed company under the sponsorship of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office with the NMLSR, has sponsored each of the licensed loan originators through the NMLSR and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-195, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-195, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-195, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-195, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-250 Designated brokers—General. (1) How do I become a designated broker?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the Washington designated broker test. See WAC 208-660-260, Designated brokers—Testing. If you will originate loans, you must also take and pass the loan originator national and Washington specific tests and apply for and receive a loan originator license.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLSR.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department; or

(g) Demonstrate financial responsibility, character and general fitness.

(2) **How do I demonstrate financial responsibility?** The department will review your credit history to determine if you have outstanding judgments (except judgments involving medical expenses); current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

Specifically, you are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) **May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

(4) **As the designated broker, must I hold a loan originator's license?** Yes. If you perform any of the functions of

a loan originator, you must apply for and receive a loan originator license.

(5) **May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must amend your license information through the NMLSR to reflect the new relationship and the second company must sponsor you. Federal law may prohibit a mortgagee from hiring employees who work for more than one mortgage broker or who have multiple employers.

(6) **May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(7) **As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-250, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-250, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-250, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-250, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-260 Designated brokers—Testing. (1) Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass the Washington designated broker test. See subsection (3) of this section if you are going to originate loans. See WAC 208-660-250(1) if you have never been a designated broker.

(2) **If I am currently a designated broker, will I have to take the test again?** You will only have to retake tests if you stop working in the industry for five years or longer.

(3) **If I am currently a designated broker that originates loans, will I have to take the loan originator test and obtain a loan originator license?** Yes. You must take and pass the national and state NMLSR tests and obtain the necessary prelicensing education prior to acting as a loan originator.

(4) **Where can I get information about the designated broker test?** Go to the department's web site for information about the designated broker test: [http://www.dfi.wa.gov/cs/mb\\_testing.htm](http://www.dfi.wa.gov/cs/mb_testing.htm).

(5) **What topics may be covered in the designated broker test?** See WAC 208-660-600(3).

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-260, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-260, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-260, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-260, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-270 Designated brokers—Continuing education.** (1) **Where can I get information about continuing education?** The NMLSR will publish a list of approved courses and providers. The providers will have detailed information about the continuing education courses they offer. The department will accept the continuing education courses approved by the NMLSR for designated broker continuing education.

(2) **As a designated broker, how many hours of continuing education must I have?**

(a) The continuing education requirement for designated brokers is nine hours.

(b) You will receive one credit hour by attending one or more mortgage broker commission meeting(s).

(3) **As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach a continuing education course approved by the NMLSR, may I use my course as credit toward my annual continuing education requirement?** Yes. As an instructor of a NMLSR approved continuing education course, you may receive credit for your annually required designated broker continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) **Is ethics a required continuing education topic for designated brokers?** Yes. You must take two hours of ethics each year you act as a designated broker. The ethics course must include the topics of fraud, consumer protection, and fair lending. You must not take the same course in the same or successive years.

(6) **If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For S.A.F.E. required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

(8) **If I fail to complete the required continuing education, what happens to my license?** When your license expires, the department will not renew it and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within two months after expiration.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-270, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-270, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-300 Loan originators—General.** (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the NMLSR, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The NMLSR will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) **Who owns loan files?** Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents.

(7) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY. YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

(8) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

(9) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

**(10) As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:

- (i) Your name as it appears on your loan originator license;
- (ii) Your loan originator license unique identifier; and
- (iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

**(11) May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

**(12) May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker who sponsors you and who is licensed under Washington law.

**(13) May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

**(14) Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. Independent contractor loan processors must be licensed as a mortgage broker, mortgage broker branch office, or loan originator.

**(15) May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

- (a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.
- (b) The loan processor does not conduct any of the activities of a licensed loan originator.
- (c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-300, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-300, filed 2/20/08, effective 3/22/08.]

Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-300, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-350 Loan originators—Licensing. (1) How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system. You also must:**

- (a) **Be eighteen years or older.**
- (b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass the national and state components of the NMLSR tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must submit an on-line application through the NMLSR.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLSR. See WAC 208-660-550, Department fees and costs.

**(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.**

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of this subsection, a "similar statute" may include states involving other financial services, such as insurance, securities, escrow or banking.

(c) **Criminal history.**

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.



**(d) Financial background.**

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or other government liens and filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

**(3) What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will notify you of any application deficiencies.

**(4) How do I withdraw my application for a loan originator license?** Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

**(5) When will the department consider my loan originator license application to be abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

**(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. **See also WAC 208-660-009.**

**(7) How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A license sent to you electronically that you may print.

(b) A license verification available on the department's web site and accessible for viewing by the public.

**(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

**(9) How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

**(10) What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. If a

licensed loan originator works for a consumer loan company (chapter 31.04 RCW) as a W-2 employee, they may continue to do business under their inactive license until June 30, 2010, or until the company goes onto the NMLSR and sponsors their license.

**(11) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(12) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.

**(13) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

**(14) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

**(15) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

**(16) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (15) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp prior to March 1st each year. If you fail to comply with the renewal request requirements prior to March 1st, you must apply for a new license.

**(17) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying

the continuing education requirements from the prior license period.

**(18) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

**(19) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

**(20) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

**(21) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

**(22) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

**(23) Must I include my license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

**(24) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

**(25) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

**(26) Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

**(27) Will I have to file quarterly call reports if I have an individual bond?** Reserved.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-350, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 09-12-111, § 208-660-350, filed 6/2/09, effective 7/3/09. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-350, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-350, filed 2/20/08, effective

3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 07-13-079, § 208-660-350, filed 6/18/07, effective 7/19/07; 06-23-137, § 208-660-350, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-355 Loan originators—Prelicensing education. (1) Must I obtain prelicensing education before I will be given a license?** Yes. You must take 20 hours of prelicensing education from an NMLSR approved provider. The prelicensing education must include at least three hours of federal law and regulations; three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; two hours related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

**(2) Who provides prelicensing education?** The NMLSR approves course providers and courses for prelicensing education. See the NMLSR Resource Center for a list of approved providers and courses.

**(3) Must I take continuing education in the year I complete the prelicensing education?** No. You will not have a continuing education requirement in the year in which you complete prelicensing education.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-355, filed 12/1/09, effective 1/1/10.]

**WAC 208-660-360 Loan originators—Testing. (1) Must I pass a test prior to becoming a loan originator?** Yes. You must take and pass the NMLSR national and state tests prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

**(2) Where may I find information about the loan originator test?** The NMLSR contracts for its test provider. You will find information on the test provider on the NMLSR web site at [www.stateregulatoryregistry.org](http://www.stateregulatoryregistry.org).

**(3) How much does the loan originator test cost?** Testing costs are set by contract between the test provider and the NMLSR and may be modified from time to time. The department will publish the current testing fee on its web site or you may find it on the NMLSR web site at [www.stateregulatoryregistry.org](http://www.stateregulatoryregistry.org).

**(4) How do I register to take the loan originator test?** The department will provide a link to the NMLSR test provider on its web site.

**(5) What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

**(6) After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

**(7) If I have taken and passed the state loan originator test, must I take the NMLSR state test?** If you are licensed on or before July 30, 2009, and you took your loan originator test after May 2007, you will not be required to take the NMLSR state test if you remain licensed.

**(8) How soon after failing the loan originator test may I take it again?** You may retake a test three consecutive times with each consecutive taking occurring at least thirty

days after the preceding test. After failing three consecutive tests, you must wait at least six months before taking the test again.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-360, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-360, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223, 2006 c 19. 06-23-137, § 208-660-360, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-370 Loan originators—Continuing education. (1) How many hours of continuing education must I have each year to renew my license?**

(a) You must have at least eight hours to satisfy the federal requirement. The eight hours of education must include three hours of federal law and regulations; two hours of ethics on fraud, consumer protection, and fair lending issues; and two hours on lending standards for the nontraditional mortgage product marketplace.

(b) You must have at least one additional hour of continuing education to satisfy the Washington requirement.

**(2) Who approves the continuing education for loan originators?**

(a) The NMLSR approves all education that meets the federal requirement.

(b) Washington has approved providers and courses that can provide education to meet the Washington requirement until the end of 2010.

**(3) Where may I get information about continuing education for loan originators?**

(a) The NMLSR web site will have information about the approved NMLSR courses.

(b) Washington will have information about the Washington approved courses and providers meeting the Washington requirement on its web site through 2010.

**(4) As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

**(5) If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. Up until December 31, 2009, as an instructor of an approved continuing education course, you may receive two continuing education credits for each course hour you teach. If approved as an NMLSR course provider you may receive two credit hours for each one hour taught.

**(6) How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license at the end of 2009 and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

**(7) Is ethics a required continuing education course for loan originators?** Yes. You must take at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.

**(8) If I take a loan originator continuing education course approved by the NMLSR will the department**

**accept it as part of my continuing education requirement?** Yes. The NMLSR approved continuing education courses will satisfy the federal requirement. Individual states will have individual state specific requirements.

**(9) Can I receive credit for continuing education by attending the Mortgage Broker Practices Act Commission meetings?** Yes. You will receive one credit hour by attending one or more mortgage broker commission meeting(s).

**(10) If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

**(11) If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350(16) to renew your license within two months of it expiring. See also, WAC 208-660-350(15).

**(12) How do I provide the department with proof of the continuing education courses I have completed?** For the federal continuing education, the NMLSR will provide the process for receiving and calculating your continuing education. For Washington specific continuing education, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-370, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-370, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-370, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-370, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-400 Reporting requirements and notices to the department. (1) As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year. In the case of an open or closed end home equity line of credit, the amount to be reported is the loan or line of credit limit.

**(2) When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by March 31st of each year.

**(3) What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

**(4) What action will the department take if I fail to file my mortgage broker annual report?**

(a) The department may begin an enforcement action against you if you fail to file the report on time.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

(5) **What are my quarterly filing requirements?** Reserved.

(6) **Will the filing of the fourth quarter call report satisfy the annual report requirement?** Reserved.

(7) **As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?**

(a) **Prior notification required.** You must notify the director through amendment to the NMLSR twenty days prior to a change of:

(i) Principal place of business or any of its branch offices;

(ii) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(iii) Legal or trade name; or

(iv) A change of ownership control of ten percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(b) **Post notification within ten days.** You must notify the director through the NMLSR or in writing to the director within ten days after an occurrence of any of the following:

(i) Change in mailing address, telephone number, fax number, or e-mail address;

(ii) Cancellation or expiration of its Washington state master business license;

(iii) Change in standing with the Washington secretary of state;

(iv) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(v) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(vi) Receipt of notification of cancellation of your surety bond;

(vii) Receipt of notification of license revocation proceedings against you in any state;

(viii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(ix) Name and mailing address of your registered agent if you are out-of-state.

(c) **Post notification within twenty days.** You must notify the director in writing within twenty days after the occurrence of any of the following developments:

(i) The filing of a felony indictment or information related to lending or brokering activities against you, or any officer, board director, or principal, or an indictment or information involving dishonesty against you, or any officer, board director, or principal;

(ii) The receipt of service of notice of the filing of any material litigation against you; or

(iii) The change in your residential address or telephone number.

(8) **Must I notify the department of the physical address of my mortgage broker books and records?** Yes. You must provide the physical address of your mortgage broker books and records in your initial license application

through NMLSR. If the location of your books and records changes, you must provide the department, through the NMLSR, with the new physical address within five business days of the change.

(9) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, through NMLSR, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(10) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(11) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Update and file all required information through the NMLSR for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(d) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(12) **Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your MUI record through the NMLSR, and filing your Mortgage Broker annual report directly with DFI.

(13) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(14) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Notify the director within ten business days after filing the bankruptcy.

(b) Respond to the department's request for information about the bankruptcy.

(15) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(16) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(17) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(18) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(19) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(20) **Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(21) **Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-400, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-400, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-400, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-400, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-410 Trust accounting.** (1) **What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

(2) **Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

(3) **Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?** Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

(4) **Must I have a trust account if I do not receive any trust funds?** No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

(5) **Must I have a trust account if I am a mortgage broker exempt from licensing under the act?** Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), and (g) are not required to have a trust account even if they receive trust funds.

(6) **What does it mean to receive trust funds "on behalf of borrowers"?** Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

(7) **What forms of payment must trust funds take?** Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds, including, but not limited to bank wires, ACH authorization, credit card or debit transactions, or on-line payments through a web site.

(8) **How do I receive trust funds through electronic transmission?**

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

(9) **When must I deposit trust funds?** You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

(10) **How must I document deposits?**

(a) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or 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).

(b) You must post the deposit of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(11) **May I deposit funds other than trust funds into my trust account?** You may advance your 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 your 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 act and these rules.

(12) **May a loan originator accept trust funds?** A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(13) **May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party provider services without depositing the check into a trust account?** Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12).

(14) **May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services?** A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage bro-

ker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(15) **Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a third party?** A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(16) **If a mortgage broker receives funds from a third party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party provider services, are these funds considered trust funds?** Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.

(17) **What books and records must I keep regarding my trust account?** You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) 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 or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, 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;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) 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:

(i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and

(ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

(18) **What is a "subaccount"?** A "subaccount" is a recordkeeping segregation of each borrower's funds held in

the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

**(19) May I transfer funds between a borrower's subaccounts?** If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must 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.

**(20) May I be reimbursed for funds that I have advanced into the trust account?**

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(i) All third-party provider's charges associated with your deposit have been paid;

(ii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(iii) 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

(iv) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

**(21) May I disburse trust funds through electronic transmission?** Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

**(22) How must I handle trust account disbursements?**

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as specified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) 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.

**(23) What are the requirements concerning the checks I write from my trust account?** You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

**(24) What disbursements are prohibited?** 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).

**(25) When may a mortgage broker transfer excess funds from a borrower subaccount?**

(a) 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.

(b) Each mortgage broker must 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 or electronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

**(26) What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?** Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

**(27) What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?** The mortgage broker must follow the procedures provided by the department of revenue's unclaimed

property division to handle any trust funds held for a borrower who cannot be located.

(28) **Is a mortgage broker responsible for all disbursements out of the trust account?** Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

(29) **If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds?** The mortgage broker may either:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due it to its general account; or

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party providers and insuring 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 not transfer moneys from the trust account to its general business bank account before the loan is closed.

(30) **Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider?** The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

(31) **How do I pay a third-party provider's fees if escrow disburses the funds to me and I don't have a trust account?** You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.

(32) **If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check to me after closing that has fees in it for third-party providers, may I deposit the check into my business account and pay those third-party providers immediately?** No. You must not deposit those fees into your business account under any circumstances.

(33) **After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third-party providers, will the department take action against me for a violation of the trust fund requirements?** Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:

(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or

(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.

(34) **How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?** When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

(35) **May mortgage brokers using an interest-bearing trust account keep the interest?** No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

(36) **Are there any separate requirements for a computerized accounting system?** Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

(A) Trust account deposit register;

(B) Trust account check register;

(C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

(37) **Are there penalties for violating trust account requirements under RCW 19.146.050?** A violation of this section is a class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-410, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-410, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and out-**



**side of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

**(3) May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

**(4) May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

**(5) May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

**(6) If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

**(7) What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLSR, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

**(8) How do I change the information about my registered agent?** You must update the information in the NMLSR within ten business days from the change.

**(9) If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-420, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-420, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223, 2006 c 19. 06-23-137, § 208-660-420, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

**(2) What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

**(3) What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider ser-

VICES are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(4) **What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

(5) **How do I disclose my yield spread premium (YSP) from the lender?**

(a) You must disclose the YSP as a dollar amount credited to the borrower on the GFE.

(b) You must direct the settlement service provider to disclose the YSP on line 802 on the HUD-1 or equivalent settlement statement. The YSP must be expressed as a dollar amount.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) **Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

(7) **What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(8) **Will a lock-in agreement always guarantee the interest rate and terms?** No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

(9) **Must a mortgage broker enter into a lock-in agreement with a borrower?** No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the depart-

ment published model disclosure forms that can be found on the department's web site.

(11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), 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.

(12) **Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(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

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) **What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

(14) **May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith esti-

mate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

**(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department may request, direct, or order you to refund fees.

**(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

**(17) If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take?** If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

**(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

**(19) Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

**(20) If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

**(21) Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

**(22) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-430, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-430, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-430, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-450 Recordkeeping requirements. (1) What business books and records must I keep to comply with the act?** The following books and records for your business must be available to the department.

(a) **Mortgage transaction documents.**

(i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(ii) The initial rate sheet or other supporting rate information;

(iii) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclo-

tures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(v) Documents and records of compensation paid to employees and independent contractors;

(vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(viii) Settlement statements (the final HUD-1 or HUD-1A);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(x) Records of any fees refunded to applicants for loans that did not close;

(xi) All file correspondence and logs; and

(xii) All mortgage broker contracts with lenders and all other correspondence with the lenders.

(b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must 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. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's *Mortgage Broker Examination Manual*, available on the department web site.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(b) You must keep the mortgage transaction documents described in subsection (1)(a) of this section for a minimum of three years. It may be a prudent business practice to keep your books and records longer. For example, if a consumer's loan becomes an adjustable rate mortgage, the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department

may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?**

Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a nonrewritable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-450, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-450, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-500 Prohibited practices. (1) What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or

other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(5).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(z) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(aa) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

**(4) What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

**(5) What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

**(6) When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

**(a) Consumer protection.**

**Communication with borrowers.** Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to

experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

**(b) Control standards.**

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

**(7) May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

**(8) What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

**(9) How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate and HUD-1/1A Settlement Statement or similar document.

**(10) May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have 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. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-500, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-500, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-500, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-500, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-510 Director and department powers—Examination authority. (1) Why is the department authorized to examine my business?** The department is

authorized to examine your business to determine your compliance with the act.

(2) **When may the department examine my business?** The department may examine your business at any time.

(3) **Will the department give me advance notice of an examination?**

(a) The department will generally give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

(4) **What are the protocols for an examination of my business?** The examination protocols are detailed in the department's Mortgage Broker Examination Manual. A summary of the manual is available on the department's web site.

The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compliance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

- (i) The history of licensing;
- (ii) Known enforcement issues or problems;
- (iii) The number and severity of complaints;
- (iv) The licensee's responsiveness to department inquiries;
- (v) The licensee's volume of loan activity;
- (vi) The number of licensed locations and staff size;
- (vii) Prior examination or investigation results; and
- (viii) The existence of internal and external systems and controls to ensure compliance.

(b) **Advance notice.** You will generally receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.

(c) **A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(d) **The on-site review at your business.** The department examiner will conduct the examination of your business.

(e) **An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After receiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

(f) **Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you unless the violations are deemed serious and the file is delivered to enforcement.

(g) **Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies unless the violations are deemed serious or are repeat violations and the file is delivered to enforcement.

(h) **A possible referral to enforcement.** While any violation of the act or these rules may be referred to enforcement, it is usually the case that only serious or repeat violations are referred. An enforcement action may result in a suspension or revocation of your license, the imposition of fines, the payment of restitution, or a ban from the mortgage broker industry.

(5) **What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

- (a) Reviewing trust accounting compliance.
- (b) Reviewing loan files.
- (c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.
- (d) Reviewing the business books and records, including employee records.

(6) **When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

- (a) When the department finds an apparent violation of trust accounting.
- (b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.
- (c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

(7) **Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection (6) of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

(8) **Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals,

and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

(c) If your examination was the result of a referral from enforcement, the department may charge an investigative fee. The department will not charge an investigation fee in an investigation or examination if it is determined that no violation occurred, or when the mortgage broker or loan originator implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination and the travel costs. See WAC 208-660-550, Department fees and costs.

**(9) May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business?** Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's *Mortgage Broker Examination Manual*). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

**(10) What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination?** The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

(a) Early notice of problems you may encounter during an examination;

(b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;

(c) The early implementation of a sound compliance program; and

(d) The ability to control the timing for your convenience.

**(11) If I want the department to consider an independent certified professional's report instead of examining my business, how must I make that request, and who submits the report to the department?** When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

**(12) How may the department determine if the independent certified professional's report meets the standards of examination established by the department?** The department will compare the sufficiency of the report submitted by the independent certified professional to the requirements in the department's examination manual. If the report is

missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

**(13) If the independent certified professional's report is missing information, how may the department obtain the missing information?** The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

**(14) What will the department do if the independent certified professional's report is not sufficient?** If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

**(15) What will the department do if the independent certified professional's report is sufficient?** If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

**(16) May the department retain professionals or specialists to examine a licensee?** Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

**(17) Do I receive any reports from the examination?** Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

**(18) Must I do anything as a result of the examination?** Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

**(19) How do I respond to findings in a report of examination?** You must respond in writing within thirty days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

**(20) What will happen if I do not respond to the report of examination?** If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-510, filed 11/21/06, effective 1/1/07.]

#### **WAC 208-660-550 Department fees and costs. (1) Mortgage broker licenses.**

Mortgage broker - license application fee	\$371.00
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Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	\$530.00
Mortgage broker late renewal assessment (fifty percent of annual assessment)	\$265.00
Mortgage broker branch office - license application fee	\$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	\$530.00
Mortgage broker - license amendment	No fee
Mortgage broker - change of designated broker	\$25.00

**(2) Loan originator licenses.**

Loan originator - license application fee	\$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee)	\$125.00
Loan originator late renewal assessment (fifty percent of annual assessment)	\$62.50
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment - add a mortgage broker relationship	\$50.00
Loan originator - license amendment - other	No fee

**(3) Examinations.**

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination unless the examination is a referral from enforcement. See WAC 208-660-510(8).

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

**(4) Investigations.**

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

(5) **Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs

include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

**(6) How is the annual assessment calculated?** The assessment is a flat rate per license.

**(7) How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-550, filed 12/1/09, effective 1/1/10. Statutory Authority: Chapters 43.320, 19.146 RCW. 08-14-114, § 208-660-550, filed 6/30/08, effective 7/31/08. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-550, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-550, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-600 Administration and facilitation of preclicensing and continuing education. (1) Who may offer preclicensing and continuing education courses to principals, designated mortgage brokers, and loan originators?** Preclicensing and continuing education is offered by course providers and courses approved through NMLSR.

**(2) On what topics of education will I be tested?**

(a) **Prelicensing education.** The topics of education will be federal law and regulations, ethics (fraud, consumer protection, fair lending) and lending standards for the nontraditional mortgage marketplace.

(b) **Continuing education.** The topics of education will be the same as for preclicensing education, plus Washington specific topics.

**(3) What specific topics should I study in preparation for any of the required tests?**

**(a) General.**

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

**(b) Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

**(c) Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

**(d) Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach-Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The S.A.F.E. Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

**(e) Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-600, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-600, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-600, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-600, filed 11/21/06, effective 1/1/07.]