

Chapter 284-160 WAC
GUARANTEED ASSET PROTECTION WAIVER

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RULES FOR THE GUARANTEED ASSET PROTECTION WAIVER PROGRAM

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|-------------|---|
| 284-160-010 | Purpose of this chapter. |
| 284-160-020 | Definitions. |
| 284-160-030 | Persons required to register. |
| 284-160-050 | Use of legal name and address. |
| 284-160-060 | Guaranteed asset protection waiver program registration requirements. |
| 284-160-070 | Required notices and disclosures. |
| 284-160-080 | Payment of refund on canceled guaranteed asset protection contracts. |
| 284-160-090 | Registrant documentation. |
| 284-160-100 | Use of the term "insurance." |

RULES FOR THE GUARANTEED ASSET PROTECTION WAIVER PROGRAM

WAC 284-160-010 Purpose of this chapter. (1) The purpose of this chapter is to adopt processes and procedures for creditors to use when they register with the commissioner under chapter 48.160 RCW, and otherwise implement the chapter.

(2) This chapter is effective on January 1, 2010. All guaranteed asset protection waiver creditors must comply with this chapter on or after that date. Applicants registered before the effective date of this chapter do not need to refile their application to be in compliance.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-010, filed 1/6/10, effective 1/6/10.]

WAC 284-160-020 Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Complete filing" means the package of information containing the registration application, other supporting documents requested by the commissioner, and fees.

(2) "Creditor" means the same as in RCW 48.160.010(3), and includes any person acting as an obligor for a guaranteed asset protection waiver.

(3) "Days" means calendar days including Saturday and Sunday and holidays unless otherwise specified.

(4) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(5) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which a creditor maintains its principal place of residence or principal place of business and is licensed to do business.

(6) "Registrant" means a person registering with the commissioner under the guaranteed asset protection waiver program as required by chapter 48.160 RCW.

(7) "Written" or "in writing" means any retrievable method of recording an agreement or document, and unless otherwise specified, includes paper and electronic formats.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-020, filed 1/6/10, effective 1/6/10.]

WAC 284-160-030 Persons required to register. Any person offering or selling guaranteed asset protection waivers to residents of the state of Washington or borrowers in the state of Washington, or acting as an obligor for guaranteed asset protection waivers sold to residents of this state, must register with the commissioner as required by RCW 48.160.020 unless:

- (1) The person is exempt under RCW 48.160.001(2);
- (2) The person is a retail seller of motor vehicles assigning:
 - (a) More than eighty-five percent of guaranteed asset protection waiver agreements within thirty days of such agreements' effective date; and
 - (b) One hundred percent of guaranteed protection waiver agreements within forty-five days of each agreement's effective date; or
- (3) The person is an insurer authorized to transact insurance business in Washington state.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-030, filed 1/6/10, effective 1/6/10.]

WAC 284-160-050 Use of legal name and address. (1) Every guaranteed asset protection waiver contract issued to a resident of Washington state or in Washington state must conspicuously disclose the legal name, home office address, and local contact address of the creditor.

(2) Upon any assignment or transfer of the waiver, as allowed under RCW 48.160.030, the disclosure provided to the consumer must conspicuously include:

(a) The legal name and home office address of both the person or entity transferring the obligation;

(b) The legal name and home office address of the assignee for the guaranteed asset protection waiver; and

(c) The local address, telephone and email contact information for the assignee for the guaranteed asset protection waiver.

(3) The contract must not use a trade name, a group designation, name of a parent company, name of a particular division, service mark, slogan, symbol, or other device or reference without also disclosing the legal name of the creditor, or in such a manner that it would have the capacity or tendency to mislead or deceive as to the true identity of the creditor or create the impression that a company other than the creditor would have any responsibility for the financial obligation under the contract.

(4) No contract, solicitation or marketing document or disclosure notice to a consumer may use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective consumers into believing that the program or contract is

in some manner connected with such government program or agency. Creditors may disclose that they are registered with the commissioner.

(5) The commissioner will use the last mailing address provided by the registrant to the commissioner as the address of record. Registrants must advise the commissioner of any change of address within thirty days after the end of the month in which the change of address occurs. This includes any change in the registrant's mailing, business or email address. Failure to advise the commissioner of a change of address may subject a registrant to disciplinary action under RCW 48.160.070.

(6) When communicating with the commissioner's office for any reason, applicants and registrants must use their legal name.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-050, filed 1/6/10, effective 1/6/10.]

WAC 284-160-060 Guaranteed asset protection waiver program registration requirements.

(1) An applicant for registration to issue guaranteed asset protection waivers must file a completed application as required by the commissioner on the application form and its accompanying instructions. The application form and instructions for completing the form are available on the commissioner's web site at www.insurance.wa.gov. The application form and any required documents must be completed and submitted to the commissioner electronically, unless the applicant receives prior approval to file a paper copy of the application and documents.

(2) In order to transact the business of issuing and administering guaranteed asset protection waiver contracts in the state of Washington, the commissioner must have approved the registration application packets filed by an applicant for registration. Applicants must submit packets that comply with chapter 48.160 RCW and with these rules.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-060, filed 1/6/10, effective 1/6/10.]

WAC 284-160-070 Required notices and disclosures. When a registrant under this chapter provides notice to a borrower of the sale, transfer or any type of assignment of the waiver obligation, they must comply with the requirements in RCW 48.160.030.

(1) The selling, transferring or assigning creditor must mail the notice to the borrower's last known address using U.S. mail. The selling, transferring or assigning creditor may also provide electronic notice to the borrower, but such notice does not satisfy the notice requirement under the statute.

(2) The notice of transfer, assignment or sale of the waiver obligation must contain the legal name and official business address, and if different, the local business address of the new person or entity responsible to the borrower for waiver benefits. If that person or entity is different from the contact person or entity to apply to for benefits, then the notice must also contain the legal name, official business and local business addresses for the contact person.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-070, filed 1/6/10, effective 1/6/10.]

WAC 284-160-080 Payment of refund on canceled guaranteed asset protection contracts. When a borrower cancels a guaranteed asset protection contract and a refund is due that is payable to the borrower, the current obligor on the guaranteed asset protection contract must refund the amount due, and must not require the borrower to request the refund from the original or a prior obligor on the contract.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-080, filed 1/6/10, effective 1/6/10.]

WAC 284-160-090 Registrant documentation. For each guaranteed asset protection contract entered into, registrants must retain records, preferably in electronic format, of all transactions associated with the contract, including correspondence from the borrower, notices sent to the borrower, and agreements or contracts associated with the sale or transfer of the guaranteed asset protection obligation. Creditors must retain the records for the duration of the waiver agreement and for an additional two years after its termination date. Termination occurs when a contract expires, is canceled by either party, or waiver under the agreement on behalf of a borrower occurs.

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-090, filed 1/6/10, effective 1/6/10.]

WAC 284-160-100 Use of the term "insurance." A guaranteed asset protection program must not use the term "insurance" to describe the program in its advertisements, marketing efforts, promotions, marketing materials, guaranteed asset protection program documents, brochures, or contracts, except when referring to the borrower's automobile insurance policy, or making the statement that the waiver is not insurance as required in RCW 48.160.050(10).

[Statutory Authority: RCW 48.02.060 and 48.160.070. WSR 10-02-111 (Docket Number R 2009-15), § 284-160-100, filed 1/6/10, effective 1/6/10.]