

WSR 16-08-007
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 24, 2016, 3:09 p.m., effective April 24, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To provide further clarity to the department's interpretation of terms used in the administration of law enforcement officers' and firefighters' (LEOFF) retirement benefits. Terms being clarified include: Full-time employee, fully compensated employee, and supervisory firefighter personnel.

Citation of Existing Rules Affected by this Order: Amending WAC 415-104-011 Definitions and 415-104-225 Am I a LEOFF member?

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-05-037 on February 9, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2016.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-104-011 Definitions. All definitions in RCW 41.26.030 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(1) **Commissioned** means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

(2) **Director of public safety** means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a director of public safety.

(3) **Elective employer** means the employer of the LEOFF Plan 1 elected official during the member's leave of

absence from the LEOFF employer for the purpose of serving in elective office.

(4) **Full-time employee** means an employee who is ~~((regularly scheduled))~~ normally expected to earn basic salary from an employer for a minimum of one hundred sixty hours ~~((each))~~ in a calendar month.

(5) **Fully compensated employee** means an employee who is normally expected to earn((s)) a basic monthly salary ~~((and benefits from an employer in an amount comparable to the salary received by other full-time employees of the same employer who:~~

~~(a) Hold the same or similar rank; and~~

~~(b) Are employed in a similar position))~~ no less than one hundred sixty times the state minimum hourly wage. Nominal sums including, but not limited to, stipends or ancillary benefits such as insurance or leave accrual, provided to volunteer firefighters are not compensation for the purpose of determining whether a firefighter is fully compensated.

(6) **LEOFF** means the law enforcement officers' and firefighters' retirement system established by chapter 41.26 RCW.

(7) **LEOFF employer** means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or firefighter.

(8) **LEOFF Plan 1 elected official** means a LEOFF Plan 1 member who is a civil service employee on leave of absence because he or she has been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

(9) **Plan 1 and Plan 2.**

(a) "Plan 1" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(b) "Plan 2" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(10) **Public safety officer** means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and firefighter duties.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a public safety officer.

(11) **Uniformed firefighter position** means a position which may only be filled by uniformed personnel as that term is defined in RCW 41.56.030 (7)(e) as in effect on July 1, 1995. A position only qualifies as a uniformed firefighter position if the employer has identified it as such for all purposes. An employer may designate a position as uniformed regardless of whether the employer is covered by public employees' collective bargaining under chapter 41.56 RCW.

AMENDATORY SECTION (Amending WSR 09-05-011, filed 2/6/09, effective 3/9/09)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a full-time, fully compen-

sated law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) Law enforcement officers.

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

- (i) City police officer;
- (ii) Town marshal or deputy marshal;
- (iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) Firefighters.

(a) You are a firefighter if you are employed in a uniformed firefighter position by an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protection activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a firefighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Administrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emer-

gency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Commissioned" - WAC 415-104-011.
- (b) "Director of public safety" - WAC 415-104-011.
- (c) "Employer" - RCW 41.26.030.
- (d) "Firefighter" - RCW 41.26.030.
- (e) "Full time" - WAC 415-104-011.
- (f) "Fully compensated" - WAC 415-104-011.
- (g) "Law enforcement officer" - RCW 41.26.030.
- (h) "Member" - RCW 41.26.030.
- (i) "Public safety officer" - WAC 415-104-011.
- (j) "Uniformed firefighter position" - WAC 415-104-011.

011.

WSR 16-08-008
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 24, 2016, 3:09 p.m., effective April 24, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: When a member in certain retirement plans (LEOFF 2, PERS 3, SERS 3, TRS 3) has at least twenty years of service credit, and leaves employment, their defined benefit increases by approximately three percent for each year they delay receiving it. These rules clarify how the department applies this benefit when the member retires from more than one retirement plan. This revision also removes references to gainsharing from chapter 415-02 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-113-084 How will my benefit be computed if I retire retroactively from LEOFF Plan 2?; and amending WAC 415-02-030 Definitions and 415-02-550 What happens to my defined contributions if I transfer to Plan 3 after the department of retirement systems accepts my property division dissolution order?

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-05-036 on February 9, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2016.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW((s)) and WAC((s)).

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37-010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily

defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into ~~((an))~~ investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions ~~((rate))~~ and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) ~~((Gainsharing is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.~~

~~((19))~~ **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

~~((20))~~ (19) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

~~((21))~~ (20) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(21) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(22) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

~~((22))~~ (23) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

~~((23))~~ (24) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

~~((24))~~ (25) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

~~((25))~~ (26) **Participant** means an eligible employee who participates in a deferred compensation ~~((or dependent care assistance))~~ plan.

~~((26))~~ (27) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation ~~((or dependent care assistance))~~ plan.

~~((27))~~ (28) **Pension plan** is a plan that provides a life-long post retirement payment of benefits to employees.

~~((28))~~ (29) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

~~((29))~~ (30) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

~~((30))~~ (31) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((31))~~ (32) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

~~((32))~~ (33) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((33))~~ (34) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

~~((34))~~ (35) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((35))~~ (36) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((36))~~ (37) **Public record** is defined in RCW 42.17.020(41).

~~((37))~~ (38) **Restoration** is the process of restoring a member's service credit for prior periods.

~~((38))~~ (39) **Retirement system employer - See "employer."**

~~((39))~~ (40) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((40))~~ (41) **Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

~~((41))~~ (42) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((42))~~ **(43) Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((43))~~ **(44) Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((44))~~ **(45) Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((45))~~ **(46) Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

~~((46))~~ **(47) TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((47))~~ **(48) The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((48))~~ **(49) WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 08-10-025, filed 4/25/08, effective 5/26/08)

WAC 415-02-550 What happens to my defined contributions if I transfer to Plan 3 after the department of retirement systems accepts my property division dissolution order? (1) Who may use this section? You may use this section if you were a member of PERS Plan 2, SERS Plan 2, or TRS Plan 2 and *first* obtained a property division dissolution order using the language in RCW 41.50.670(2) and WAC 415-02-510 or 415-02-520, and *then* transfer to Plan 3.¹

(2) What happens if the property division dissolution order (using the language in RCW 41.50.670(2) and WAC 415-02-510) did not split my account? Refer to WAC 415-02-530 for information about your defined benefit account and about your and your ex-spouse's defined contribution accounts after you transfer to Plan 3.

(3) What happens if the property dissolution order used the language in WAC 415-02-520 and did split my account?

(a) Your *ex-spouse's* account will remain in Plan 2. Your ex-spouse is ineligible to transfer to Plan 3.

(b) The balance of your accumulated contributions remaining in your Plan 2 account after it was split will be transferred to your Plan 3 defined contributions account. (Refer to chapter 415-111 WAC for information about your defined contribution account.)

~~(4) **(How will gainsharing be applied to my account?** Gainsharing is not applied to Plan 2 member accounts. If gainsharing is applied after you have transferred to Plan 3, only you will receive the gainsharing amount.~~

~~(5)) **Terms used:**~~

~~(a) Dissolution order - RCW 41.50.500.~~

~~(b) Ex-spouse - WAC 415-02-030.~~

~~(c) **(Gainsharing - Chapter 41.31 RCW (Plan 1); chapter 41.31A RCW (Plan 3); WAC 415-02-030; 415-111-440.**~~

~~(d)) PERS - Public employees' retirement system.~~

~~((e))~~ **(d) Plan 3 retirement systems** - WAC 415-111-100.

~~((f))~~ **(e) SERS** - School employees' retirement system.

~~((g))~~ **(f) Split accounts** - WAC 415-02-030.

~~((h))~~ **(g) TRS** - Teachers' retirement system.

Footnote to section:

¹The section does not apply to retirees, because retirees cannot transfer to Plan 3.

NEW SECTION

WAC 415-113-066 How does service credit from more than one retirement system affect my indexed retirement allowance? (1) May I combine service credit from more than one retirement system to receive an indexed retirement allowance? If you are a dual member, you may combine service credit from any dual member system to be eligible for an indexed retirement allowance.

(2) How will my indexed retirement allowance be calculated? If there is a period of at least one month between your separation from employment in an indexed retirement plan and your date of retirement, the department will calculate your indexed retirement allowance in the following two ways and use the higher of the two results:

(a) Method 1: Use the average compensation from the indexed retirement plan. Index the retirement allowance (for the indexed retirement plan only) from the date both of the following have occurred, to the date of retirement:

(i) Separation from the indexed retirement plan; and

(ii) Accrual of twenty years of service from one or more of the systems in which service credit was earned.

(b) Method 2: Use the highest average compensation from any of the systems in which service credit was earned. Index the retirement allowance (for the indexed retirement plan only) from the date both of the following have occurred, to the date of retirement:

(i) Separation from all systems; and

(ii) Accrual of twenty years of service from one or more of the systems in which service credit was earned.

(3) Defined terms used. Definitions for the following terms used in this section may be found in the WAC sections listed in (a) through (e) of this subsection:

(a) "Average compensation" - WAC 415-113-030

(b) "Dual member" - WAC 415-113-041

(c) "Dual member system" - WAC 415-113-030

(d) "Indexed retirement allowance" - WAC 415-02-030

(e) "Indexed retirement plan" - WAC 415-02-030

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-113-084 How will my benefit be computed if I retire retroactively from LEOFF Plan 2?

WSR 16-08-014
PERMANENT RULES
WASHINGTON STATE UNIVERSITY

[Filed March 28, 2016, 10:19 a.m., effective April 28, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed amendments are intended to permit the service of students on the academic integrity hearing board, further clarify the jurisdiction of the standards of conduct for students, and update administrative office names to reflect current university organization.

Citation of Existing Rules Affected by this Order: Amending WAC 504-26-010, 504-26-200, 504-26-402, 504-26-403, 504-26-404, 504-26-405, 504-26-406, 504-26-407, 504-26-501, and 504-26-602.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 16-03-075 on January 20, 2016.

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Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: March 25, 2016.

D. Bartlett, Director
 Procedures, Records, and Forms
 and Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appeals board" means any person or persons authorized by the vice-president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination as to whether a student has violated the standards of conduct for students and any sanctions imposed.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student ~~((standards and accountability))~~ conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the ~~((vice president for))~~ office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, uni-

versity official, any person employed by the university, or any person with a relationship with the university. A person's status in a particular situation is determined by the vice-president for student affairs or designee.

(9) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice-president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice-president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means ~~(those)~~ teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice-president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-200 Jurisdiction of the standards of conduct for students. (1) The standards of conduct for students shall apply to conduct that occurs on university prem-

ises ~~(-at))~~ or in connection with university sponsored activities, ~~((and))~~ including transit to or from the activity.

(2) The standards of conduct may also apply to off-campus conduct that adversely affects the health and/or safety of the university community ~~((and/or))~~ or the pursuit of ~~((its objectives-))~~ the university's vision, mission, or values.

(3) The university has sole discretion to determine what conduct occurring off-campus adversely impacts the university's interests described in subsection (2) of this section. In determining whether university interests are adversely affected and whether to exercise jurisdiction, the conduct officer considers whether the alleged conduct:

(a) Required exercise of jurisdiction under law or as required by federal or state agencies;

(b) Negatively impacted the reputation of the university or its students;

(c) Occurred on the property of recognized living groups;

(d) Caused physical, mental, or emotional harm to another;

(e) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized student organization.

(4) These standards of conduct may be applied to behavior conducted online, via electronic mail or other electronic means.

(5) Each student is responsible and accountable for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school, takes a leave of absence, or graduates while a disciplinary matter or investigation is pending. Definitions from these standards are incorporated into Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct. ~~((The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of university objectives-))~~

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-402 Conduct officer actions. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).

Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding and enter a finding that the accused student or recognized student organization is not responsible for the alleged conduct violation;

(b) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter to the university conduct board pursuant to WAC 504-26-401(3).

(4) The conduct officer may consider the student's past contacts with the office of student ~~((standards and accountability))~~ conduct in determining an appropriate sanction and/or deciding whether to refer the case for a university conduct board hearing.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-403 Conduct board proceedings. (1) Any student charged by a conduct officer with a violation of any provision of the standards of conduct for students that is to be heard by a conduct board is provided notice as described in WAC 504-26-401(5).

(2) The written notice shall be completed by the conduct officer and shall include:

(a) The specific complaint, including the university policy or regulations allegedly violated;

(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;

(c) The time, date, and place of the hearing;

(d) A list of the witnesses who may be called to testify, to the extent known;

(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.

(3) Time for hearings.

(a) The conduct board hearing is scheduled not less than seven days after the student has been sent notice of the hearing, except in the case of interim suspensions as set forth in WAC 504-26-406.

(b) Requests to extend the time and/or date for hearing must be addressed to the chair of the university conduct board, and must be copied to the office of student ~~((standards and accountability))~~ conduct. A request for extension of time is granted only upon a showing of good cause.

(4) University conduct board hearings are conducted by a university conduct board. A goal of the hearing is to have an educational tone and to avoid creation of an unduly adversarial environment. The hearings are conducted according to the

following guidelines, except as provided by subsection (6) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(v) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board, the complainant, and the accused student, as appropriate. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board. The chair of the university conduct board shall have the discretion to determine admissibility of information.

(vi) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair and/or conduct officer.

(vii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(viii) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the university conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged and what sanctions, if any, are appropriate.

(b) If the accused student is found responsible for any of the charges, the board may, at that time, consider the student's past contacts with the office of student ~~((standards and~~

~~accountability~~) conduct in determining an appropriate sanction.

(c) The accused student or recognized student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or recognized student organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the standards of conduct for students), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered, deposited in the U.S. mail, or electronically mailed, and a statement of how to file an appeal.

(i) The written decision is the university's initial order.

(ii) If the student or recognized student organization does not appeal the conduct board's decision before twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as an audio record, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-404 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student ~~((standards and accountability))~~ conduct in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student ~~((standards and accountability))~~

~~it~~) conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student ~~((standards and accountability))~~ conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily required to appear before a university conduct board with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be heard by the university conduct board with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student or recognized student organization that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor; and she or he is not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of a recognized student organization).

(g) Residence hall suspension. Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this standards of conduct for students, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on his or her misconduct.

(n) Loss of recognition. A recognized student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohib-

ited from housing freshmen. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice-president for student affairs.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3)(a) In determining an appropriate sanction, the conduct officer or relevant board may consider any record of past contacts with the office of student ~~((standards and accountability))~~ conduct, and the nature and severity of such past contact(s).

(b) The conduct board and/or appeals board may consider suspending or expelling any student found responsible for violating the university's sexual misconduct code (WAC 504-26-221).

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing.

(6) Academic integrity violations.

No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-406 Interim suspension. In certain circumstances, the vice-president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice-president for student affairs or designee may determine to be appropriate.

(4) The vice-president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice-president of student affairs or designee sends copies of the decision by personal delivery, by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student ~~((standards and accountability))~~ conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to hearing as quickly as feasible, ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-407 Review of decision. (1) The findings and sanctions rendered by the university conduct board or a conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the findings and sanctions. Such appeal must be made before twenty-one days of the date of the decision letter. The director of student ~~((standards and accountability))~~ conduct provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a

formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed, except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university presi-

dent or designee provides written notice of additional review as provided in subsection (6) of this section.

(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student organization no later than ten calendar days from the date the appeals board decision is signed.

(a) This review is limited to the record and purposes stated in subsection (2) of this section.

(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.

(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available.

(7) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(8) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-501 Records. (1) Standards of conduct for students records are maintained in accordance with the university's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and the university policy on student educational records (chapter 504-21 WAC).

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student (~~(standards and accountability))~~ conduct.

(4) Personally identifiable student information is redacted to protect other students privacy.

(5) A student may authorize release of his or her own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by making a written request to the office of student (~~(standards and accountability))~~ conduct.

(6) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of

violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(7) The university informs the complainant of the outcome of any disciplinary proceeding alleging sexual misconduct. (34 C.F.R. 668.46 (b)(11)(vi)(B).)

(8) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(b) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(9) A student may request removal from her or his record of a single disciplinary violation relating to the possession or use of alcohol and/or marijuana, and/or other violation of the university's policies relating to alcohol and drugs. Granting such a request is discretionary, and the student must make such a request in accordance with university policies and procedures.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-602 Periodic review. The standards of conduct for students are reviewed every three years under the direction of the director of student (~~(standards and accountability))~~ conduct.

WSR 16-08-026
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed March 30, 2016, 8:34 a.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules must be amended to implement changes to the law, to aid the regulated industries by having consistent rules within the mortgage marketplace, and to make technical changes for clarity and consistency.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 208-620-010, 208-620-011, 208-620-104, 208-620-105, 208-620-231, 208-620-232, 208-620-234, 208-620-240, 208-620-271, 208-620-300, 208-620-301, 208-620-310, 208-620-328, 208-620-371, 208-620-400, 208-620-420, 208-620-490, 208-620-505, 208-620-510, 208-620-511, 208-620-515, 208-620-520, 208-620-531, 208-620-550, 208-620-555, 208-620-580, 208-620-590, 208-620-610, 208-620-620, 208-620-621, 208-620-622, 208-620-630, 208-620-640, 208-620-710, 208-620-800, 208-620-820, and 208-620-900.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 31.04.165.

Adopted under notice filed as WSR 16-05-085 on February 16, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 37, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 37, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2016.

Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the 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, social media, instant messages, or electronic bulletin boards.

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

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026 (~~((formerly 12 C.F.R. Section 226) et seq.))~~), implementing the Truth in Lending Act.

"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))~~ Part 103.

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

"Borrower." See WAC 208-620-011.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

"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) and Regulation Z, 12 C.F.R. Part 1026 (~~((formerly 12 C.F.R. 226))~~).

"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. ~~((§))~~ Sec. 1735f-7a.

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

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. ~~((section))~~ Sec. 1691 and Regulation B, 12 C.F.R. Part 1002 (~~((formerly Part 202))~~).

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

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. ~~((section))~~ Sec. 1692, 12 C.F.R. Part 1006.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, National Credit Union Administration, Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. ~~((section))~~ Sec. 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)) Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 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 or exempt 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 NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"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 originator" means the same as mortgage loan originator.

"Loan processor." See WAC 208-620-011.

"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. 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 direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. 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 loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

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. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

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 employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"NMLS" means ~~((a))~~ the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed ((and maintained)) by the Conference of State Bank Supervisors ((and the American Association of Residential Mortgage Regulators for the)) and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration ((of mortgage loan originators and other license types)) of persons in the mortgage and other financial services industries.

"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))~~ Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024 ((formerly 24 C.F.R. Part 3500)).

"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.

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a

record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

"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 the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC ~~((208-620-045))~~ 208-620-011.

"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; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

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

"Service or servicing a loan." See WAC 208-620-011.

"Simple interest method." ~~((means the method of computing interest payable on a loan by applying the rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. For nonresidential mortgage loans, 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. For residential mortgage loans, each payment must be applied as directed in the loan documents))~~ See WAC 208-620-011.

"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. ~~((§))~~ Sec. 6101 to 6108.

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

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"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))~~ Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026 ~~((formerly 12 C.F.R. Part 226))~~.

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

"Underwriter." See WAC 208-620-011.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015~~((28))~~? "Borrower" means an individual 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 or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

"Loan processor" or "underwriter" means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. A residential mortgage loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

"Residential mortgage loan modification services" means activities conducted for compensation or gain by ~~((individuals or entities))~~ persons not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another ~~((entity))~~ person performing mortgage loan modification services or to a residential mortgage loan servicer.

"Service" or "servicing a loan" means, with respect to residential mortgage loans:

(a) Collecting or attempting to collect payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

(b) Collecting fees due to the servicer for the servicing activities;

(c) Working with the borrower to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; or

(d) Otherwise finalizing collection through the foreclosure process.

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Interest may not be compounded or payable in advance.

~~((a))~~ ~~((For nonresidential mortgage loans, 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. Interest must not be payable in advance.~~

~~((b))~~ ~~((For residential mortgage loans,))~~ Each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

~~((c))~~ (b) The prohibition on compounding interest does not apply to reverse mortgage loans made in compliance with the Washington State Reverse Mortgage Act within this chapter.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 (2)(a), (b), (d), ~~((f))~~ (g) through ~~((h))~~ (i), and ~~((j))~~ (k) through ~~((l))~~ (m).

(2) Under RCW 31.04.025 (2)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) Under RCW 31.04.025 (2)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary ~~((residence))~~ dwelling.

(4) Under RCW 31.04.025 (2)(f), a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings. See also WAC 208-620-232.

(5) Under RCW 31.04.025 (2)~~((f))~~ (j), a nonprofit housing organization seeking exemption must meet the following standards:

(a) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides home ownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(g) Meets other standards as prescribed by the director.

(6) Under RCW 31.04.025(3), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025(3), individuals who extend credit on the sale of their primary dwelling.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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 or any individual required to be registered while employed by a covered financial institution as defined in regulation G, 12 C.F.R. Sec. 1007.102;

(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 Washington 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;

(5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain or in the expectation of compensation or gain; and

(6)(a) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(b) Terms favorable to the borrower are terms consistent with loan origination in a public or charitable context, rather than a commercial context.

(7) Individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless licensing is required by federal law or regulation.

(8) See also WAC 208-620-232.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-231 (~~Which companies~~) Who must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents? (1) ~~(Companies)~~ Persons servicing loans they originated.

(2) ~~(Companies)~~ Persons servicing loans purchased post closing.

(3) ~~(Companies)~~ Persons servicing loans owned by other ~~(companies)~~ persons.

(4) You must comply with the annual assessment requirements for your residential mortgage loan servicing activity. See WAC 208-620-440.

(5) See also WAC ~~((208-620-106))~~ 208-620-104.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-232 Can I make a small number of residential mortgage loans without being licensed at the company level? Pursuant to RCW 31.04.025(3) you may be eligible to make five or fewer residential mortgage loans during a calendar year without holding a company level license if you are not subject to licensing as a mortgage loan originator. See WAC 208-620-105. If you are eligible for the license waiver you must comply with ~~((the following))~~ certain conditions including the following:

(1) If you do not provide the borrower with a compliant federal disclosure of the loan terms and conditions and cost of financing you must provide the buyer with a disclosure prescribed by the director.

(2) You must comply with the state's usury rate limit. See chapter 19.52 RCW.

(3) You must follow Washington law if you pursue a foreclosure.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-234 Must a company that provides loan processing or underwriting services on residential mortgage loans be licensed under the Consumer Loan Act? Yes. (1) The company must license at the company level and must employ at least one licensed mortgage loan originator. Loan processors and underwriters are subject to the individual licensing requirements of the S.A.F.E. Act, 12 C.F.R. Part 1008 (Regulation H) if not supervised by an individual licensed as a mortgage loan originator under S.A.F.E. A company level license is required to provide the sponsorship for the supervising licensed mortgage loan originator.

(2) Alternatively, the company may license under the Mortgage Broker Practices Act, chapter 19.146 RCW.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-240 Once I am licensed, does the act apply to all loans I broker or make? Yes. All loans you broker or make to Washington residents, secured and unse-

cured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-271 Do I need a license to assist a ((borrower)) homeowner with a residential mortgage loan modification? Yes. Persons providing third-party loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW. See also WAC ((208-620-550)) 208-620-552 and 208-620-568.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-300 If I want to operate my business from more than one office, do I have to license each location? Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, or direct solicitation location. You must provide evidence of surety bond coverage for each branch and meet all other license requirements. ((See also WAC 208-620-252)) You may not operate until a license is granted for that location.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-301 If I make residential mortgage loans and employ managers, must they license individually as mortgage loan originators? Your managers, including branch managers, must license individually as mortgage loan originators if they conduct the following activities:

(1) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

(2) Supervise your loan processor or underwriting employees; or

(3) Supervise your licensed mortgage loan originators.

(4) Specifically:

(a) Any manager or any person who takes a residential mortgage loan application in Washington, negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location.

(b) Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location.

(c) Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license. Washington licensed loan originators must work from a licensed location.

(5) As to subsections (2) and (3) of this section licensure is for the day-to-day operational supervisors.

(6) Supervisory plans must be written. The details of the plan and how it is implemented must include consideration of the location of the supervisor and employees supervised, the number of employees supervised, and the volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services? A location that is solely providing loan processing or underwriting or other back-office services on Washington loans and has only incidental contact with the borrower after an application has been taken, is not required to be licensed. Back office services do not include loan servicing. However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-328 How often must I report my loan origination and residential mortgage loan servicing volume? You must report your loan origination and residential mortgage loan servicing volume as directed and on the form prescribed ((each year during the annual assessment period)) by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a gross misdemeanor or felony, or who has had a lending-related license revoked or suspended? No. (1) 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 [contendere])) contendere to:

(a) A gross misdemeanor involving dishonesty or financial misconduct; or

(b) A felony in a domestic, foreign, or military court:

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

((b)) (ii) 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.

(2) For purposes of this section, "((participation)) participating in the affairs of any licensee" means an officer, principal, or employee or independent contractor who will or does originate loans, supervise employees or independent contractors, or manage the loan production or other activities of the licensee.

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee or independent contractor, or person subject to the act, who has had a license to engage in lending, or perform-

mance of a settlement service related to lending, including loan modifications, revoked or suspended in this state or any state.

(4) 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 or independent contractor to conduct any of the activities described in subsection (3) of this section without first conducting a background check.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-400 Can I share an office with another business? (1) You may conduct your business in a licensed location in which other persons are engaged in business.

(2) If you originate residential mortgage loans, you must comply with RESPA ((~~§~~), 12 C.F.R. Sec. 1024.14, including the required disclosures and prohibitions on referral fees if:

(a) The licensee has effective control over the person sharing space; or

(b) The person sharing space has effective control over the licensee; or

(c) The licensee and the person sharing space are under common control by a third person; or

(d) The licensee is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-420 May I transact my company business in a name other than the name on my company license? (1) You may only transact business using the name on the license or as further described in this section.

(2) You may apply to the department to add a trade or doing business as (DBA) name to your main office license but you may not use the DBA alone to transact business. DBA names will only be attached to the main office license. Branch offices cannot have DBAs attached to the branch office license. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(3) If you transact business using a DBA you must use either the main office license number or main office ((~~license~~)) name as entered in the NMLS with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

(4) Reserved.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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 NMLS 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 NMLS record within ten days after an occurrence of any of the following:

(a) A change in mailing address, telephone number, fax number, or e-mail address;

(b) A cancellation or expiration of your Washington state business license;

(c) A 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;

(h) A change in primary company contact or primary consumer complaint contact; or

(i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response.

(3) **Post notification within twenty days.** You must amend your NMLS 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 information 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.

(5) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-620-573.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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 and programs that apply to lending or brokering loans ((~~when applicable to the transaction~~)), or servicing residential mortgage loans, including applicable reverse mortgage 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 Telemarketing Sales Rule, and the Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-510 What are my disclosure obligations to consumers? Some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and HELOCS. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

(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 business 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) **Residential mortgage loans—Rate locks.** Within three business days ~~(, including Saturdays,)~~ of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the ~~((RESPA))~~ federal good faith estimate or loan estimate is considered compliance.

(b) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(i) The number of days in the rate lock period;

(ii) The date of the rate lock and expiration date of the rate lock;

(iii) The rate of interest locked;

(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~~

~~(+))~~ Any other terms and conditions of the rate lock agreement; and

(v) The date the rate lock agreement was provided to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.

(d) Prior to closing, you must disclose payment of a rate lock ((fee)) as a cost in Block 2 of the ((GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209)) federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(e) You may rely on a broker's rate lock agreement if it complies with this subsection.

(4) **Residential mortgage loans—Loans brokered to other creditors.** Within three business days following receipt of a residential mortgage loan application you must provide to each borrower or potential borrower:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the ~~((RESPA))~~ federal good faith estimate ((is in)) or loan estimate is considered compliance with ~~((subsection (3)(a) of))~~ this subsection;

(b) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(c) A good faith estimate or loan estimate that conforms with RESPA, Regulation X, 12 C.F.R. Part 1024 and TILA, Regulation Z, 12 C.F.R. Part 1016;

(d) ~~((A truth in lending disclosure that conforms with TILA, Regulation Z, 12 C.F.R. 1026;~~

~~(+))~~ A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, the name of the company providing the guarantee, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(A) The number of days in the rate lock period;

(B) The date of the rate lock and the expiration date of the rate lock;

(C) The rate of interest locked;

(D) ~~((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))~~ The date the rate lock was provided to the borrower; and

(E) Any other terms and conditions of the rate lock agreement.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within

three business days of the rate lock date. The rate lock agreement must include the items from ~~((e))~~ (d) of this subsection.

~~((f))~~ (e) Prior to closing, you must disclose payment of a rate lock ((fee)) as a cost in Block 2 of the ((GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209)) federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(5) **Residential mortgage loans—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, in addition to the disclosures required by federal law or by this chapter, 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) **Loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

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

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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))~~ 1026, 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.

(6) Disclosure in compliance with the Real Estate Settlement Procedures Act, ~~((12 U.S.C. Sec. 2601, and))~~ Regulation X, 12 C.F.R. ~~((1024.7 (formerly 24 C.F.R. Sec. 3500.7)))~~ Part 1024 and Truth in Lending Act, Regulation Z, 12 C.F.R. Part 1026 is considered compliance with the disclosure requirements of this section.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-515 What authority do I have ~~((as a licensee))~~ after my license has been issued? ~~((As a licensee))~~ Once your license has been issued 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 authorized in RCW 31.04.115 provided that:

(a) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars; and

(b) The annual fee must be charged in advance as a lump sum. It must not be charged monthly and must not be financed.

(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.

(4) Service residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-550, 208-620-551, and 208-620-900.

(5) Provide third-party loan modification services for residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-545, 208-620-550, and 208-620-552.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-520 How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain? Licensees must maintain the following records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.

(1) **General records.** Each licensee must maintain ~~((the))~~ electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to ~~((a))~~ making loans or servicing ~~((of a))~~ residential mortgage loans ~~((for a minimum of three years, or the period of time required by federal law, whichever is longer, after making the final entry on that loan at a licensed location)).~~

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any electronic advertising distributed ~~((directly by delivery;))~~ by facsimile ~~((or))~~ computer, or other electronic or wireless network.

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

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(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))~~ or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures ~~((, and RESPA servicing disclosure statement))~~ under RESPA;

(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 or federal closing disclosure);

(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;

(n) All documents used to support the underwriting approval; and

(o) All documents that evidence a financial commitment made to protect a rate of interest during a rate lock period.

(4) Loan servicing documents. See subsection (1) of this section.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-531 Must I have a ~~((records disaster recovery and information security))~~ business resumption plan? Yes. You must have written policies and procedures in place that detail your response to any event that results in damage to or destruction ~~((of))~~ of your records. You must maintain the policies and procedures as part of your books and records.

NEW SECTION

WAC 208-620-532 Records disposal. Licensees must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal disposal rule at 16 C.F.R. Part 682.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-550 What business practices are prohibited? In addition to 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))~~ seven business days after being requested in writing to do so by a borrower 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) Collecting more than forty-five days of prepaid interest at the time of loan closing;

(4) 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;

(5) **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;

(6) 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;

(7) 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;

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

(9) 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;

(10) 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;

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

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

(13) 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;

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

(15) 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;

(16) Failing to indicate on all residential mortgage loan applications, initial and revised, the company's unique identifier, the loan originator's unique identifier, and the date the application was taken or revised;

(17) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

(18) Receiving compensation for making the loan and for brokering the loan in the same transaction.

(19) Charging a fee in a residential mortgage loan transaction that is more than the fees allowed by the state or federal agency overseeing the specific type of loan transaction. Examples include, but are not limited to, loans insured or guaranteed by the Veterans Administration, Home Equity Conversion Mortgages insured by HUD, and loans offered

through the United States Department of Agriculture Rural Development.

(20) 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.

(21) Servicing a usurious loan.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-555 What fees are allowed and when can they be collected from the borrower under the Consumer Loan Act? (1) Residential mortgage loans. This subsection does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(a) Origination fees. You 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.

(b) Brokering fees. 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.

(c) Third-party fees. The only third-party fees you collect from the borrower before a loan is closed is the actual cost of the credit report and appraisal ((fee)). You may collect from the borrower reimbursement for fees you 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. You must provide a copy of the appraisal to the borrower even if you do not receive reimbursement for the cost of the appraisal.

(2) Nonmortgage loans. You 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) Third-party fees. This subsection applies to residential and nonresidential lending.

(a) When agreed to in writing by the borrower, you may collect from the borrower at closing reimbursement for fees you paid to third-party service providers who provided goods or services in connection with the preparation of the borrower's loan. Such third-party service providers include, but are not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow compa-

nies. The actual cost of such fees may be included in the amount of the loan.

(b) 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.

(c) You may use a borrower's credit card information for payment of the credit report or appraisal when paid directly to the third-party service provider.

(d) You may charge a nonrefundable rate lock fee when agreed to in writing by the borrower. 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, if the borrower does not qualify for a loan, or if the loan is denied based on the property appraisal. See also WAC 208-620-510(3).

~~((e))~~ (4) Late payment penalties. ~~((Not))~~ You may not charge more than ten percent of any installment payment delinquent ten days or more.

~~((f))~~ (5) Attorneys' fees. You may charge 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))~~ your salaried employee ~~((of the licensee.~~

~~(4))~~.

(6) The fees allowed in subsection (3)(d) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

(7) Discount points.

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

(ii) You must be able to show a definitive mathematical relationship between discount points paid and the interest rate obtained via a rate sheet or pricing engine that was in effect when the interest rate was locked.

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

INFORMATION SECURITY

NEW SECTION

WAC 208-620-571 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the plan described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security plan must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguards Rule at: <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> and see 16 C.F.R. 314.

NEW SECTION

WAC 208-620-572 Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P. (1) Licensees must comply with GLBA, as amended, and Regulation P. Unless subject to an exception under GLBA, as amended, licensees must at a minimum:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's compliant privacy policy has not changed, additional notices may not be required.

(2) See GLBA, as amended, and Regulation P at 12 C.F.R. Part 1016 for the required details.

NEW SECTION

WAC 208-620-573 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required to the attorney general's office.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-580 As a licensee, will my business be subject to periodic examinations? (1) ~~((You))~~ Licensees can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or

agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

(2) When directed to do so during an examination ((you)) licensees must provide information on the characteristics of loan originations in a format prescribed by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-590 How much will I be charged for my ((periodic)) examinations and when will the payment be due? (1) You will be charged \$69.01 per hour for ((regular and special)) examinations of your records.

(2) If the examination occurs outside of Washington, you will be charged the hourly rate plus travel costs.

(3) You must pay examination costs within thirty days after receiving the invoice to avoid having to pay accrued interest.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-610 What authority does the department have to investigate violations of the Consumer Loan Act? (1) The director may enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employees or loan originators, or other persons subject to this chapter for any violation of this chapter or for failure to comply with any order or subpoena issued by the director under this chapter.

(3) Each day's continuance of the violation is a separate and distinct offense.

(4) **Testimony.** The director or designees may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing.

(5) **Production of records or copies.** The director or designee may require the production of books, accounts, papers, records, files, and any other information deemed relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information.

(6) **Subpoena authority.** If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(7) The director may collect an investigation fee. Licensees will be charged sixty-nine dollars and one cent per hour for the investigation.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-620 How do I have to identify my business when I advertise? You must identify the business using your Washington consumer loan ((license)) name as entered in the NMLS. You may also use an approved DBA name if you include the main office ((license)) name as entered in the NMLS and license number. For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your ((license)) name as entered in the NMLS in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI. See also WAC 208-620-620 and 208-620-622.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-622 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content my web pages must contain? Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's ((license)) name as entered in the NMLS and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their license numbers must closely follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2) Branch office web page - No DBA. Comply with subsection (1) of this section.

(3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must also contain the main office ((license)) name as entered in the NMLS, license number, be in compliance with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the sponsoring licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's ((license)) name as entered in the NMLS and license

number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your (~~license~~) name as entered in the NMLS followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See also WAC 208-620-710(26).

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant state and federal statutes for specific services and products advertised on the web site.

(6) Oversight. The company is responsible for web site content displayed on all company web pages used to solicit Washington consumers including main, branch, and mortgage loan originator web pages.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-630 What are some of the advertising restrictions I must comply with? (1) Licensees are prohibited from advertising with envelopes or stationery, or (~~by~~) using images in an electronic format, that (~~contain an official-looking emblem~~) are designed to resemble a government mailing or other method of communication 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 or electronic communications designed to resemble official government communications, such as IRS or U.S. Treasury envelopes, or other government mailers or electronic communications.

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

(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 presentation of the disclosure of the APR must be at least equivalent to the presentation of 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 31.04.027.

(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 (12). 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. ((§)) Sec. 251.1(g) (2003).

(9) How can I advertise a discounted rate? You must clearly and conspicuously disclose in the advertisement at a minimum, the cost of the discount to the borrower and that

the rate is discounted. Not including that information is a violation of RCW 31.04.027(7).

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

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, Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014, and the Equal Credit Opportunity Act.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-710 Mortgage 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 NMLS.

(2) How do I apply for a mortgage loan originator license? Your application consists of filing an online application through the NMLS and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLS. In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

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

(a) Be eighteen years or older.

(b) 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: Your credit report, current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or judgments or other government liens or 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 receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of application.

(c) Pass a licensing test. You must take and pass the NMLS test that assesses your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(d) Complete prelicensing education. You must complete prelicensing education before submitting an application. See WAC 208-620-720.

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

(f) 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

(g) 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 mortgage 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 a gross misdemeanor involving dishonesty or financial misconduct or has not 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 online application through the NMLS 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 online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the NMLS 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 NMLS.

(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 NMLS. 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 NMLS. 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 meet the minimum requirements to obtain a license under the S.A.F.E. Act to receive an interim license.

(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 NMLS. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education. See WAC 208-620-730.

(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 on or before the last day of February 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 (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 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 NMLS.

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. How-

ever, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) Must I include my loan originator license number on any documents? You must include your license number closely following your ((license)) name as entered in the NMLS on (a) through (d) of this subsection. An example of closely following is: Your ((license)) name as entered in the NMLS followed by your title (if you use one) followed by your license number.

(a) Solicitations. This includes correspondence in any form. Correspondence that this not a solicitation does not have to include your license number.

(b) Business cards.

(c) All advertisements and marketing that contain your ((license)) name as entered in the NMLS.

(d) Any state or federal form that requires your license number. See WAC 208-620-710(26).

(25) 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.

(26) May I conduct business and advertise under a name other than the name on my loan originator license? You must use the name on your license when you are conducting business and in your advertisements with the following exceptions:

Except, use of your middle name is not required. Except, you may use only your middle and last name. Except, you may use a nickname as your first name if it is registered in NMLS on your MU4 as an "other" name.

(27) As a licensed mortgage loan originator, what are my reporting responsibilities? You must notify the director through amendment to the NMLS within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions;

(b) Sponsorship status;

(c) Residence address; ((☞))

(d) Any change in the information supplied to the director in your original application; or

(e) A change to your response to a disclosure question within NMLS. You must upload any document that is the basis for your changed response.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-800 What definitions are applicable to ((this section)) proprietary reverse mortgage products under the act? (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.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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 means an amount of money charged to the borrower in addition to 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 inter-

est 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. ((See ~~226~~) Part 1026).

(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.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-900 What requirements must I comply with when servicing residential mortgage loans? In addition to complying with all other provisions of this act you must:

(1) Other applicable laws, regulations, and programs. Comply with the following:

(a) ((~~Chapters~~) Chapter 61.24 ((~~and 19.148~~)) RCW and any other applicable state or federal law, regulation, and program. ((~~Any conflict that arises between this chapter and chapter 19.148 RCW will be resolved in favor of this chapter.~~))

(b) Comply with the federal Servicemembers Civil Relief Act.

(c) A violation of an applicable state or federal law, regulation, or program is a violation of this act.

(2) Servicing and ownership transfers or sales.

(a) ((~~As to~~)) When acquiring servicing rights from another servicer you must:

(i) Continue processing loan modification requests and honoring trial and permanent modifications;

(ii) Designate the homeowner as a third-party intended beneficiary in any subsequent contract for transfer or sale, unless doing so would violate another state law or federal HAMP or GSE modification programs requirements; and

(b) ((~~As to~~)) When transferring or selling the servicing of loans with pending modification requests or trial or permanent modifications you must:

(i) Inform the successor servicer if a loan modification is pending;

(ii) Obligate the successor servicer to accept and continue processing loan modification requests and to honor trial and permanent loan modification agreements; and

(iii) Designate the homeowner as a third-party intended beneficiary in any contract for transfer or sale, unless doing so would violate state law or federal HAMP or GSE modification programs requirements.

(3) Payment processing and fees.

(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided, that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. You must apply the payment as specified in the loan documents.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available before crediting them to the borrower's account.

(c) You must notify the borrower if a payment is received but not credited and instead placed in a suspense account. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. In the event of a conflict between this subsection (3)(c) or (d) of this section immediately following or both, and the requirements of an applicable bankruptcy court order, compliance with the bankruptcy court requirements are considered compliance with the subsections.

(d) When the suspense account contains enough money to make a full payment, you must apply that payment to the mortgage as of the date the full amount became available in the suspense account.

(e) You must assess any incurred fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement.

(f) If you provide monthly or more frequent statements that include the information required under this subsection, you have until January 1, 2013, to program these changes. On and after January 1, 2013, you must be in compliance with this subsection.

(4) Maintenance of the escrow account.

(a)(i) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with

respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(ii) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower. You must comply with (a)(ii) of this subsection beginning on January 1, 2013.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.

(c) You must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

(5) Borrower requests for information.

(a) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(i) Maintaining written or electronic records of each written request for information involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(ii) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(b) You must provide at a minimum the following information to a borrower's request described in subsection (5) of this section:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(iii) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(iv) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes ~~((and to act as a single point of contact for the homeowner during loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:~~

~~(A) Explain loss mitigation options and requirements;~~

~~(B) Track documents submitted by the homeowner and documents provided to the homeowner;~~

~~(C) Inform the homeowner of the status of their loss mitigation process;~~

~~(D) Ensure the homeowner is considered for all loss mitigation options; and~~

~~(E) Access individuals with the authority to delay or stop foreclosure proceedings.~~

~~You must comply with (b)(iv) of this subsection beginning on January 1, 2013).~~

(c) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(d) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with (c) of this subsection.

(e) In addition to the statement described in (a) of this subsection, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(i) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(ii) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any out-

standing sums are owed on the residential mortgage loan up to the date of the request for the information.

(iv) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(6) Loss mitigation.

(a) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

(i) Explain loss mitigation options and requirements;

(ii) Track documents submitted by the homeowner and documents provided to the homeowner;

(iii) Inform the homeowner of the status of their loss mitigation process;

(iv) Ensure the homeowner is considered for all loss mitigation options; and

(v) Access individuals with the authority to delay or stop foreclosure proceedings.

(b) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. If not using a HAMP or GSE loan modification program, you must:

(i) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days. You have until April 1, 2013, to develop the system described in (a)(i) of this subsection. On and after April 1, 2013, you must be in compliance with (a)(i) of this subsection.

(ii) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(iii) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See (b) of this subsection for additional requirements on borrower appeals.

(iv) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(v) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(vi) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (a)(viii) and (ix) of this subsection.

(vii) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(viii) Review and consider a complete loan modification application if received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(ix) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

~~((b))~~ (c) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

- (A) An ineligible mortgage;
- (B) An ineligible property;
- (C) The borrower did not accept the offer; or
- (D) The loan was previously modified.

(ii) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(iii) Respond to the borrower's appeal within thirty days of receipt.

(iv) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

~~((e))~~ (d) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

~~((f))~~ (e) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(f) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

~~((g))~~ (g) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

~~((h))~~ (h) You must make public all necessary information to inform homeowners about your short sale requirements.

~~((i))~~ (i) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.

(7) Foreclosure.

(a) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(b) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.

(8) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as part of your books and records and must provide them to the department when directed to do so.

(9) See also WAC 208-620-551.

WSR 16-08-027
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed March 30, 2016, 8:38 a.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules must be amended to implement changes to the law, to aid the regulated industries by having consistent rules within the mortgage marketplace, and to make technical changes for clarity and consistency.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-006, 208-660-008, 208-660-105, 208-660-155, 208-660-163, 208-660-300, 208-660-350, 208-660-400, 208-660-410, 208-660-430, 208-660-440, 208-660-446, 208-660-450, 208-660-500, and 208-660-520.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 19.146.223.

Adopted under notice filed as WSR 16-05-066 on February 15, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 15, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2016.

Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

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 or social media 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, or residential mortgage

loan modification, for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan or loan modification.

"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 or loan estimate and applicable 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.

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

"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, National Credit Union Administration, Federal Deposit Insurance Corporation and Consumer Financial Protection Bureau.

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 C.F.R. Part ~~((202))~~ 1002.

- "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. 41-58.

- "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 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 C.F.R. 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))~~ 12 C.F.R. Part ~~((3500 et seq))~~ 1024.

- "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), 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))~~ Telemarketing Sales Rule, 16 C.F.R. Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part ~~((226 et seq))~~ 1026.

"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.

"License number" means the NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"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 originator" or "mortgage 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, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

- (a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

- (b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of the activities described in this definition. 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.

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.

"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.

"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. An individual 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 definition.

"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.

The definition of loan originator does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

"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." See WAC 208-660-106.

"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)) 12 C.F.R. Part ((3500, Section 3500-2)(b)) 1024.2(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" also includes any person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

"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."

"NMLS" means ((a)) the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed ((and maintained)) by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage ((loan originators)) and other ((license types)) financial services industries.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"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.

"Rate lock agreement" means an agreement with a borrower made by a mortgage broker, loan originator, or lender in which the mortgage broker, loan originator, or lender 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.

"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 NMLS.

"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 mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC 208-660-105.

"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; 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; or
 - 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.

"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; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"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.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the 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 NMLS.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

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 cor-

porate 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 loan 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.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-105 How does the department interpret the definition of residential mortgage loan modification services in RCW 19.146.010(21)? Residential mortgage loan modification services means activities conducted by ~~((individuals or entities))~~ persons not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another ~~((entity))~~ person performing mortgage loan modification services or to a residential mortgage loan servicer.

Any person in violation of the act while providing residential mortgage loan modification services is subject to the department's investigation and enforcement authorities including being responsible for an investigation fee when the department investigates the books and records of any person subject to the act.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-155 Mortgage brokers—General. (1) May I originate residential mortgage loans in Washington without a license? No. Mortgage brokers must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, and must maintain a sponsored loan originator who is approved by the director, in order to originate residential mortgage loans or conduct residential mortgage loan modification services. 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) 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 31.04 RCW. See also WAC 208-660-430(23), 208-660-500(4), 208-660-550 (3)(c) and (4).

(4) 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.

(5) 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.

(6) **What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

(7) **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.

(8) **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.

(9) **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 good faith estimate or loan estimate identifying the specific third-party provider goods and services the funds are to be used for and the cost of the goods and services. 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.

(10) **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)~~) or loan estimate.

(11) **How do I sponsor a loan originator?** You must file a sponsorship request through the NMLS.

(12) **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 NMLS.

(13) **When must I update my record in the NMLS after I terminate employment with a loan originator?** You

must process the termination through the NMLS within five business days of the termination.

(14) **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. Additionally, your loan originator compensation models must comply with federal law, including Regulation Z, 12 C.F.R. Part 1026 (~~((formerly 12 C.F.R. Part 226))~~).

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-163 Mortgage brokers—Licensing.

(1) **How do I apply for a mortgage broker license?** Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS.

(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 online application through the NMLS.

(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(3) 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, denied, suspended, or restricted within the prior five years.

(b) Whether the applicant has ever had a license denied or 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 NMLS. 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 NMLS.

(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 NMLS. 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) Complete a renewal request through the NMLS.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(iii) 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 the last day of February 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 NMLS 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).

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

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 NMLS, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The NMLS 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 or with someone in the same real estate agency 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."))

for required disclosure language see RCW 19.146.0201(14).

(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) **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.

(11) **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.

(12) **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

dent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(13) **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))~~ loan originator (including the designated broker) and do not hold themselves out as able to conduct the activities of a licensed mortgage broker or loan originator. Independent contractor loan ~~((processors))~~ processing companies must be licensed as a mortgage broker, have a designated broker, and have at least one licensed mortgage loan originator (who can be the designated broker). The W-2 employee loan processors are not then required to be licensed mortgage loan originators. Individual independent contractor loan processors must be licensed as ~~((a))~~ mortgage ~~((broker, mortgage broker branch office, or))~~ loan originators, be sponsored by a licensed mortgage broker, and be supervised by that licensee's licensed mortgage loan originator (including the designated broker).

(14) **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.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license? Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS system. You also must:**

(a) **Be eighteen years or older.**

(b) **Pass a licensing test.** You must take and pass the NMLS test. See WAC 208-660-360(;) Loan originators—Testing.

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

(d) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLS. See WAC 208-660-550(;) Department fees and costs.

(e) **Complete preclicensing education.** You must complete preclicensing education before submitting the license application. See WAC 208-660-355.

(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. This investigation may also include a review of whether you have had a license issued under the act or any similar state statute denied, suspended, restricted, or revoked.

(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.

(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 (b) and (c) of this subsection, a "similar statute" may include statutes 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 judgments or other government liens or 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 online application through the NMLS, 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 online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the NMLS 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. 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 NMLS.

(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) **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.

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

(9) **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. When an individual 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.

(10) **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.

(11) **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.

(12) **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.

(13) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLS. The department will notify you and all the companies you are working with of the new working relationship if approved.

(14) **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. In no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

(15) **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.

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

(a) You must continue to meet the minimum standards for license issuance. See RCW 19.146.310.

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

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education. See WAC 208-660-370.

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

(17) **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 the last day of February 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 (16) 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.

(18) **If I let my loan originator license expire and then apply for a new loan originator license, 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.

(19) **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.

(20) **What happens to the loan applications I originated before my loan originator license expired?** Because loan files belong to the licensed mortgage broker, existing loan applications must be processed by the licensed mortgage broker, unless the borrower makes a written demand that the loan file be transferred to another licensed entity. See WAC 208-660-300 (5) and (6).

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

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.

(22) 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.

(23) Must I include my license number on any documents? You must include your license number closely following your license name on (a) through (d) of this subsection. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number.

(a) Solicitation. This includes correspondence in any form. Correspondence that ~~((this))~~ is not a solicitation does not have to include your license number.

(b) Business cards.

(c) All advertisements and marketing that contain your license name.

(d) Any state or federal form that requires your license number. See also WAC 208-660-350(25).

(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 and advertise under a name other than the name on my loan originator license? You must use the name on your license when you are conducting business and in your advertisements with the following exceptions: Except, use of your middle name is not required. Except, you may use only your middle and last name; except, you may use a nickname as your first name if it is registered in NMLS on your MU4 as an "other" name.

(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.

RECORDS AND RESPONSIBILITIES

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **What are my quarterly filing requirements?** You are required to file accurate and complete call reports through the NMLS on the dates and in a form prescribed by the director or NMLS.

(2) As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?

(a) **Notification required.** You must notify the director through amendment to the NMLS to a change of:

(i) Principal place of business or any branch offices;

(ii) Sponsorship status of a mortgage loan originator;

(iii) Answers to the NMLS generated disclosure questions.

(b) **Prior notification required.** You must notify the director in writing twenty days prior to a change of:

(i) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(ii) Legal or trade name; or

(iii) A change of ownership control of twenty 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.

(c) **Post notification within ten business days.** You must notify the director through the NMLS 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 business license;

(iii) Change in standing with the Washington secretary of state, including the resignation or change of the registered agent;

(iv) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(v) Receipt of notification of cancellation of your surety bond;

(vi) Receipt of notification of license revocation proceedings against you in any state;

(vii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(viii) Name and mailing address of your registered agent if you are out-of-state.

(d) **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.

(e) Other post notification. Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-660-480.

(3) As a licensed mortgage loan originator, what are my reporting responsibilities? You must notify the director

through amendment to the NMLS within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions;

(b) Sponsorship status with a licensed mortgage broker;

(c) Residence address; or

(d) Any change in the information supplied to the director in your original application.

(4) **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 NMLS. If the location of your books and records changes, you must provide the department, through the NMLS, with the new physical address within five business days of the change.

(5) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, through NMLS, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(6) **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.

(7) **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: Notify the department in writing and provide requested information. At the effective date of sale, update and file all required information through the NMLS 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.

(8) **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 NMLS.

(9) **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.

(10) **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.

(11) **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.

(12) **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.

(13) **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.

(14) **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.

(15) **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.

(16) **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.

(17) **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.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

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 online 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 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.

(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 (~~providers~~) providers' charges associated with your deposit have been paid; and

(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 advanced," 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))~~ applicable settlement statement or final HUD-1, 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.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?

(a) 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.

(b) If a lender is providing disclosures to the borrower, you must maintain copies of those disclosures and a copy of your agreement with the lender about the provision of disclosures; failure to do so would result in a violation.

(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)) An estimate made in 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 Regulation Z, Truth-in-Lending Act and Regulation X, 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 a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower and:

- (i) The number of days in the rate lock period;
 - (ii) The expiration date of the rate lock;
 - (iii) The rate of interest locked;
 - (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 rate lock agreement;
- (d) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection;

(e) Prior to closing, you must disclose payment of a rate lock ((fee) as a cost in Block 2 of the ((GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209)) federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure;

(f) See subsection (7) of this section if the borrower initially chooses to float rather than lock the interest rate;

(g) 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; and

(h) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded. If the mortgage broker does not collect trust funds of any kind, the disclosure is not required.

(4) What is the disclosure required under RCW 19.144.020?

(a) 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.

(b) Disclosure in compliance with the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 12 C.F.R. 1024.7 (~~(formerly 24 C.F.R. Sec. 3500.7))~~) is considered compliance with this disclosure requirement.

(5) How do I disclose the lender's credit or charge for the interest rate?

(a) You must disclose the credit or charge for the interest rate as a dollar amount credited to the borrower on the ~~((GFE))~~ good faith estimate or loan estimate.

(b) You must direct the settlement service provider to disclose the credit or charge for the interest rate on ~~((line 802 on the HUD-1 or equivalent))~~ the applicable settlement statement. The amount must be expressed as a dollar amount.

(c) Failure to properly disclose the credit or charge for the interest rate is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) Are there additional disclosure requirements related to interest rate locks? Yes. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(c) of this section. Changes to a locked interest rate can only occur for valid reasons such as changes in loan to value, credit scores or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate.

(7) What must I disclose to the borrower if they do not choose to enter into a rate lock agreement? If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the good faith estimate or loan estimate required by ~~((RESPA))~~ TILA is deemed compliance with this subsection.

(8) Will a rate lock agreement always guarantee the interest rate and terms? No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

(9) How do I disclose the payment of a rate lock fee? In a table funded transaction, prior to closing, you must disclose payment of a rate lock ((fee) as a cost in Block 2 of the ((GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209)) federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(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))~~ loan estimate 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))~~ loan estimate 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 or loan esti-

mate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X or the Truth in Lending Act and Regulation Z, as now or hereafter amended. However, the federal good faith estimate or loan 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 department 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 or loan 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~~) applicable settlement statement or final HUD-1 do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan 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/A~~) or loan estimate and applicable settlement 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/A~~) applicable settlement statement 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 estimate or loan estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the (~~HUD-1/A~~) applicable settlement statement, 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 or loan 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 or loan 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? Was the change due to a valid change of circumstance as allowed under RESPA?

(c) How were the costs disclosed in each good faith estimate or loan estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the (~~final~~) applicable settlement statement or final HUD-1 exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan 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 (~~THA disclosure~~) loan estimate 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)~~) loan estimate 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.

(23) **Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes, stationery, or (~~internet pages~~) images in an electronic format that (~~contain an official-looking emblem~~) are designed to resemble a government agency mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) 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.

(b) (~~Envelopes or internet pages~~) Images, including those in electronic format, designed to resemble official government (~~mailings or internet locations~~) communications, such as IRS or U.S. Treasury, or other government agencies.

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

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

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **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 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 C.F.R. §251.1(g) (2003)) available at <http://www.ftc.gov/bcp/guides/free.htm>.

(4) **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 advertisements must be reasonably understandable. Consumers must be able to 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. The disclosure of the APR must be as prominent or more prominent than any other rates disclosed in the advertisement, regardless of the form of the advertisement.

(5) **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 mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(6) **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))~~ 1026.26 provides guidance for using the annual percentage rate in oral disclosures.

(7) **May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates or fees 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).

(8) **When I present a business card to a potential borrower, must I make the disclosures required under RCW 19.146.030?** No. You are not required to make those disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(9) **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.

(10) **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:

- (a) The name of the source of the information;
- (b) A statement that you are not affiliated with the borrower's lender; and
- (c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-446 When I advertise using the internet or any electronic form (including, but not limited to,

text messages), is there specific content advertisements must contain? Yes. You must provide the following language, in addition to any other, on your web pages, social media pages, or in any medium where you hold yourself out as being able to provide the services:

- (1) Main ~~((or))~~ office's home web page.
- (a) The company's license name and license number must be displayed on the licensee's ~~((main-or))~~ home web page.

(b) If loan originators are named, their license numbers must closely follow the names.

(c) The ~~((main-or))~~ home web page must also contain a link to the NMLS consumer access web site page for the company.

(d) If the company uses a DBA on a home web page, the page must also contain the company's license name and license number.

(2)~~((a))~~ Branch office web page ~~((No-DBA))~~. Comply with subsection (1) of this section.

~~((b) Main office, or branch office web page—DBA. If the company uses a DBA on a web page the web page must contain the main office license name, and the information in subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.))~~

(3) Loan originator web page. If a loan originator maintains a separate ~~((home-or-main))~~ web page, the sponsoring licensee's name and license number must appear on the web page. The web page must also contain the loan originator's license name and license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See WAC 208-660-350(25).

(4) Social media pages or other online advertisements.

(a) The company's license name and license number must be displayed on the page.

(b) If the company uses a DBA, the company license name and license number must be displayed on the page along with the DBA name.

(c) If a page is created by a loan originator, the company license name and license number, along with the loan originator's license number must be displayed on the page.

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.

~~((5))~~ (6) Oversight. The company is responsible for ~~((web site))~~ content displayed on all ~~((web pages))~~ electronic advertisements used to solicit Washington consumers ~~((including main, branch, and loan originators' web pages)).~~

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

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

(iii) Correspondence with third parties requesting documents necessary to the transaction (and copies of the documents received as a result of that correspondence) including, but not limited to, credit, appraisal, title, verifications of employment and deposits, automated underwriting results, and any other notes or documents used to collect borrower and loan information to originate the loan;

(iv) All written disclosures required by the act and federal laws and regulations, including those provided to consumers by the lender. Some examples of federal law disclosures are: The good faith estimate (~~(truth in lending disclosures)~~) or loan estimate, 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)~~) initial and final (HUD-1 or HUD-1A), if applicable;

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, credit or charge for the interest rate, loan type and terms;

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

(xi) All file correspondence and logs;

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

(xiii) The clear written explanation required under WAC 208-660-430 (11)(b).

(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 newspaper, 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(7) 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 docu-

ments, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410(7) 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 three years.

(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.

(6) **Abandoned records.** If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, and proper destruction of the records.

(7) Records disposal. You must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer

credit report information must also comply with the federal Disposal Rule at 16 C.F.R. 682.

NEW SECTION

WAC 208-660-460 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the plan described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security plan must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguard Rules at: <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> and see 16 C.F.R. 314.

NEW SECTION

WAC 208-660-470 Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P. Licensees must comply with GLBA, as amended, and Regulation P.

(1) Unless subject to an exception under GLBA, as amended, licensees must, at a minimum:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's privacy policy has not changed, additional notices may not be required.

(2) See GLBA, as amended, and Regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-660-480 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

NEW SECTION

WAC 208-660-490 Business resumption plan. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

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, loan 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) Making or funding a loan by any means other than table funding.

(h) 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. This includes leaving blanks on a document and instructing the borrower to sign the document with the blanks or providing the borrower with documents with blanks. You are not prohibited from marking some information blanks with "N/A" if the information is not applicable to the transaction.

(i) Willfully filing a lien on property without a legal basis to do so.

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

(k) 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.

(l) 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.

(m) 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).

(n) 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.

(o) 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.

(p) 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.

(q) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(r) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(s) Failing to pay third-party providers within the applicable timelines.

(t) 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.

(u) 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).

(v) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(w) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(x) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(y) Receiving compensation or any thing of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a

profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

(z) Abandoning records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

(4) What additional practices are prohibited when providing residential mortgage loan modification services? You are prohibited from:

(a) Collecting an advance fee;

(b) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services;

(c) Failing to provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. See also WAC 208-660-430(23);

(d) As a condition to providing loan modification services requiring or encouraging a borrower to:

(i) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(ii) Sign a waiver of his or her right to contest a future foreclosure;

(iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(e) Entering into any contract or agreement to purchase a borrower's property;

(f) Failing in a timely manner to:

(i) Communicate with or on behalf of the borrower;

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;

(g) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;

(ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;

(h) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

(5) 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).

(6) 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.

(7) 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. 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.

(8) **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))~~ 1024, Appendix A.

(9) **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))~~, loan estimate, or similar document provided that such fee is disclosed in compliance with the act and these rules.

(10) **How do I disclose my mortgage broker fees on the good faith estimate or loan estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate or loan estimate and ~~((HUD-1/1A))~~ settlement statement or similar document as required by the act and Regulations X or Z.

(11) **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 there is a valid change of circumstance as allowed under RESPA and:

(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).

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-520 Director and department powers—Investigation authority. (1) **What is an investigation?** An investigation is an inquiry to determine compliance with the act and rules, to assess allegations of wrongdoing, or to evaluate the licensing qualifications of persons subject to the act. The inquiry may involve extensive research, fact gathering, the issuance of directives and subpoenas, witness interviews, and financial and legal analysis. Depending on the results of these efforts, an investigation may result in the pursuit of an enforcement action. An investigation may proceed at the same time as other matters and may continue during an enforcement action.

(2) **How often may the department investigate my mortgage broker or loan originator operations?** For the purpose of investigating violations or complaints, the department may investigate your business as often as necessary to carry out the purpose of the act.

(3) **Will the department give advance notice before requiring me to make my books and records available for its investigation?** The department is not required to give you advance notice before an investigation. However, the department may provide advance notice before an investigation if doing so would be in the best interests of all parties involved, including the department.

(4) **From whom may the department obtain information in an investigation?** The department may obtain information from any person whose ~~((testimony))~~ information may be pertinent to the loans, business, or subject matter of an investigation.

(5) **How may the department obtain information during an investigation?** The department may direct, subpoena, or order a person to submit to a deposition, or produce written information.

(6) **What information may the department obtain during an investigation?** The department may obtain books, accounts, records, files, and any other documents the department deems relevant to the investigation.

(7) **What businesses may the department investigate?** The department may investigate the business of any person who is engaged in the business of mortgage brokering, whether the person is a licensee or whether the person acts or claims to act under, or without the authority of, the act.

(8) **May the director retain professionals or specialists to assist in an investigation, and if so, will I have to pay for those services?** Yes. The department may hire attorneys, accountants or other professionals as needed to conduct or assist in an investigation. The cost for these services will be assessed in accordance with WAC 208-660-550(5), Investigations.

(9) **When may the department charge an investigation fee?** The department may charge an investigation fee when it investigates the books and records of any licensee.

(10) **Are there circumstances in which the department will investigate a licensee but will not charge an investigation fee?** Yes. The department will not charge an investigation fee in a complaint investigation if it is determined that no violation occurred, or when the licensee implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

(11) **How is the amount of the investigation fee determined?** The amount of the investigation fee is the number of hours expended by the ~~((department))~~ examiner related to the investigation multiplied by an hourly rate established by the department. See WAC 208-660-550~~((s))~~ Department fees and costs.

WSR 16-08-028
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed March 30, 2016, 8:41 a.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules must be amended to put licensees on notice of changes to state and federal laws they must comply with, to aid the regulated industry by having consistent rules, and to make technical changes for clarity and consistency.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Citation of Existing Rules Affected by this Order:
Amending WAC 208-680-265, 208-680-410, 208-680-425,

208-680-530, 208-680-540, 208-680-560, 208-680-610, 208-680-620, and 208-680-645.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 18.44.410.

Adopted under notice filed as WSR 16-05-069 on February 15, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 2, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 9, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2016.

Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-265 Reporting significant events. What significant events am I required to report to the department, and how quickly must I report them? Depending on the significant event, you will have different reporting periods.

(1) **Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least ten days before they occur:

(a) Your location or mailing address. See RCW 18.44.061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department and may be required to file a new escrow agent application;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

(2) **Twenty-four hour post-notification required.**

(a) You must notify the director in writing within twenty-four hours of any change to the trust status of your trust account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department in writing within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

(b) You must notify the director in writing within twenty-four hours of receiving any information from a financial institution that your trust account is overdrawn. The notice to the director must contain the name of the financial institution holding the trust account and the trust account number. The notice must also contain a detailed written statement signed by the designated escrow officer explaining the insufficiency in your trust account and a copy of any information received from the financial institution, including, if applicable, a copy of any items returned for insufficient funds.

(c) You must notify the director in writing within twenty-four hours of receiving service of or within the discovery of the initiation of a civil lawsuit, criminal complaint or administrative action against you, your escrow officers or employees providing escrow services or with access to the trust account. See WAC 208-680-570.

(3) **Ten-day post-notification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:

(a) The cancellation or expiration of your Washington state master business license;

(b) For an in-state escrow agent, a change in your standing with the Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, which requires ten-day prenotification;

(c) The escrow agent filing for bankruptcy;

(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers; or

(e) Any change in a principal officer, if no other reporting period is specified in the act or these rules. This includes changes in ownership affecting ten percent or more of the escrow agent's equity.

(4) **Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:

(a) For an escrow office closure, see WAC 208-680-245.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680-125.

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-110 and may be required to file a new application for an escrow agent license.

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680-174.

(e) For termination of a licensed escrow or limited practice officer, the escrow agent must notify the department within three business days that the escrow or limited practice officer no longer represents the escrow agent. If the escrow or limited practice officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with a detailed written statement signed by the designated escrow officer explaining the dishonesty or financial misconduct; a copy of any infor-

mation provided to the police; and a copy of any claim filed under your surety bond or errors and omissions policy.

Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101. If the terminated escrow officer was the escrow agent's designated escrow officer, see WAC 208-680-176 for additional notification requirements.

(f) For the filing of quarterly reports, see WAC 208-680-425.

(g) For civil lawsuit, criminal complaint or administrative action notification see WAC 208-680-570.

(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principal parties of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.

(i) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-680-533.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-410 Administration of funds held in trust. (1) **Who is responsible for funds deposited to and disbursed from an escrow trust account?** The escrow agent must establish a trust account or accounts in a recognized Washington state depository. The escrow agent, through the designated escrow officer, is responsible for depositing, holding, disbursing, and accounting for funds in the trust account as provided in the act and the rules, regardless of how they are received or disbursed. The designated escrow officer or branch designated escrow officer must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to such benefit. For branch offices, the branch designated escrow officer is also responsible for depositing, holding, disbursing, and accounting for funds in the branch's trust account. The escrow agent is ultimately responsible for all the actions of the designated escrow officer or branch designated escrow officer.

(2) **What kind of an account can I use as a trust account for my escrow services?** Your trust account or accounts must be designated as a trust account or accounts in the licensed name of the escrow agent. Your trust accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principal parties to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principal parties. The agreement must specify

the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust account containing funds related to transactions in which a licensed attorney has prepared documents. Your trust account must not be used for any purpose other than that specified in the act or rules. You must not use the trust account for the receipt or disbursement of funds for any business other than that conducted under the act.

(3) **What information do I need to provide to the department regarding my trust account?** Each time you renew your escrow agent license, you must provide the department with an authorization to examine your trust account. This authorization must be on a form specified by the department, signed by a representative of the bank, and notarized.

(4) **Can I set up a system of records and procedures that varies from this section?** No. You must establish and maintain a system of records and procedures as provided in this section unless you receive advance approval from the department.

(5) **Who may have signatory authority over trust account disbursements?** The designated escrow officer must have signatory authority on all trust accounts, and he or she may authorize any employee that he or she supervises to sign disbursements by including them on a bank account signature card. Branch designated escrow officers must have signature authority for trust accounts at their branch, and may have signature authority for other branches if the designated escrow officer authorizes it on either a temporary or permanent basis. The signatory authority of any employee other than a designated or branch designated escrow officer is discretionary, may be conditional or temporary, and may be revoked by the designated escrow officer at any time.

(6) **When must my client's funds be deposited into a trust account?** You must deposit any funds you receive for an escrow transaction or collection account into the escrow agent's trust account on the first banking day following receipt.

This requirement does not apply to funds owned exclusively by the agent.

(7) **What do I need to do when I receive escrow funds?**

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust account or accounts, the deposit must be documented by:

(i) For traditionally deposited funds, a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust account;

(ii) For funds received via wire transfer, posting of the deposit in the same manner as other receipts with a traceable

identifying name or number supplied by the financial institution or transferring entity. You must also make arrangements for a follow-up "hard copy" receipt for the deposit; or

(iii) For remotely deposited funds, a follow-up "hard copy" receipt for the deposit.

(c) The traceable identifying name or number supplied by the financial institution in (b) of this subsection does not need to be a name or number you use to identify the transaction, but must be enough to allow the department to track and verify the transfer.

(8) What are my responsibilities regarding my individual client ledgers? You must maintain an individual client ledger for each escrow transaction or collection account for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit, amount, and name of remitter.

(b) Debit entries must show the date of check, check number (if funds are disbursed via check), amount of check, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

(9) What are my obligations regarding a reconciled trust account? Your reconciled trust account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

(10) What requirements must I meet for disbursements of trust funds?

(a) Disbursed funds must be good funds.

(b) Unless otherwise authorized by (c) of this subsection, in the escrow instructions, you must make trust fund disbursements by check or cashier's check. Checks must be drawn on your trust account or accounts, and must identify which specific escrow transaction or collection account the disbursement relates to. Cashier's checks may be issued by the financial institution and drawn upon the trust account. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(c) You may make disbursements via wire transfer or ACH if both of the following are true:

(i) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(ii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number.

(d) You may make disbursements via ACH if both of the following are true:

(i) The ACH disbursements are restricted to fees payable to the escrow agent and reoccurring payments made to payees

in the escrow transaction. See subsection (13) of this section for further restrictions on escrow agent fees; and

(ii) You print and retain the ACH confirmation or a copy of the confirmation screen. The retained documentation must, at a minimum, include payee, payment date, escrow trust account number debited, and confirmation number assigned to the ACH transaction.

(e) You may make appropriate transfers between escrow accounts by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(f) If you are making recurring transfers between collection escrows, they must be authorized by standing escrow instructions on file from all appropriate parties.

(g) See also WAC 208-680-560.

(11) I have a voided check written on the trust account. What do I need to do with it? You must permanently deface the check and retain it as a permanent record in the individual escrow or collection account file.

(12) What are my obligations regarding fees payable to me for my escrow services? You must be paid via a separate check or bank transfer, drawn on the trust account and bearing the escrow or transaction number, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, or transfer, but ~~((either))~~ ~~((closing or))~~ the settlement statement or an addendum signed by the principal parties must itemize the included charges.

(13) What are my obligations regarding fees payable to me for my collection account services? Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

(14) May I have funds in my Washington trust account that are not related to a Washington escrow transaction or collection account? No. Only funds related to the services you provide under the authority of your Washington license may be placed in your trust account. No other funds may be in the trust account for any reason.

(15) What kinds of disbursements am I not allowed to make from my trust account? You may only make disbursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account ~~((including aggregate disbursements to the department of revenue of unclaimed funds from multiple transactions. Such disbursements must be made for each specific account with unclaimed funds));~~

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a triggering condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering condition if you receive a written release from all

principal parties of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agreement terminates according to its own terms prior to closing and provides for such disbursement;

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust account in connection with such transaction or collection account;

(d) To pay any fee owed to you, your employees or for your own business expenses. Such fees or expenses must be paid from your own general business operating account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on trust accounts allowed under subsection (2)(c) or (d) of this section;

(f) If the Washington financial institution's trust account does not have the ability to automatically charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice of the charge;

(g) On lease or rental contract collection account for pre-authorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(h) On lease or rental contract collection accounts, of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at which point you must disburse them to the person or persons entitled to the funds under the terms of the rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(16) If I choose to use a computer accounting system, what additional requirements do I need to meet? The provisions of this section apply to both manual and computerized accounting systems. However, there are some additional requirements if you choose to use a computer accounting system.

(a) Your computer accounting system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances must be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your computer accounting system has the ability to write checks by filling in fields on existing checks, the check number must be preprinted on the check or a voucher copy retained by the supplier. Your computer accounting system may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) If your computer accounting system has the ability to print entire checks on blank check stock using MICR toner or a similar system, it must track all checks that are printed. Those checks must be verifiable against your check register to ensure no duplication or skipping of check numbers;

(f) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer; and

(g) All checks you write must be included within the computer accounting system.

(17) I have unclaimed funds in my trust account. What do I need to do with them? Unclaimed funds are governed by and defined in the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least six years.

You must dispose of unclaimed funds in accordance with this section on a rolling basis (~~(to ensure that you do not have unclaimed funds in your trust account)~~). You must examine your books at least once a ~~(quarter)~~ year to determine if you have unclaimed funds. If you have unclaimed funds in your trust account, they must be disposed of pursuant to chapter 63.29 RCW. See also WAC 208-680-425.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-425 What are the requirements for my quarterly reports? (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following ~~(reports)~~ documents in a form prescribed by the director:

(a) A report concerning its operations, including the number of escrow transactions conducted and the total dollar volume of those transactions;

(b) A report concerning the trust account administration;

(c) A one page summary report of the completed three way reconciliation from the last month of the quarter; and

(d) Such other reports or documents in support of the reports as requested by the department. At a minimum, you must provide copies of your bank statements in support of (c) of this subsection.

(2) A complete three way reconciliation that demonstrates:

(a) ~~(You have no)~~ Any unclaimed funds in your trust account are in compliance with WAC 208-680-410(17);

(b) You have no overdue negotiable instruments as defined in RCW 62A.3-304;

(c) You have no overdrawn individual escrow transaction accounts; and

(d) You have no outstanding balances more than nine months old, unless:

(i) The outstanding balance is authorized by valid instructions from the principal parties stating a finite period the funds should be held; or

(ii) You certify to the department that you have conducted a quarterly examination of your records to ensure compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

(3) ~~((For nontrust account matters,))~~ Your designated escrow officer or ~~((any other))~~ principal officer of the escrow agent ~~((may))~~ must certify ~~((the information on the reports))~~ that he or she has reviewed the quarterly reports and any documents filed with it, and that the information contained in the quarterly report and documents is true and correct. This certification must be made under penalty of perjury in a manner consistent with RCW 9A.72.085. In the event the designated escrow officer or a principal officer is not available, a knowledgeable person acceptable to the director may certify the information on the quarterly report.

~~(4) ((For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. In the event the designated escrow officer is no longer available or employed by the escrow agent, any other principal officer or other knowledgeable person acceptable to the director, may certify the information on the trust account report(s).~~

~~(5))~~ Failure to file ~~((these))~~ the quarterly reports within the time period specified in this rule is a violation of RCW 18.44.301 and provides grounds under RCW 18.44.430 for legal action against the escrow agent by the department. False certifications of the quarterly report may result in revocation of your license and referral to a prosecuting attorney.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-530 Records. What are the additional records requirements? (1) In addition to trust account records, you are required to keep additional records, including:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, ~~((closing))~~ settlement statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent including, but not limited to, the trust accounts, individual trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computer accounting system. These checks and receipts must be sequentially numbered. You must retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

(2) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

(3) All of your records must be accurate, posted, and kept current to the date of the most recent activity.

(4) **How long must I retain my records?** You must keep required records and make them available for inspection by the department for a minimum of six years from completion of a transaction. Records must be retained in their original format until the related transaction is completed and the client's trust account balance is zero after which time they may be converted to electronic format pursuant to subsection (6) of this section.

(5) **Where must I retain my records?** You must at all times maintain your records in a location that is reasonably likely to preserve them. For the first year after completion, records of a transaction must be maintained at an address where you are licensed to maintain an escrow office. Records of transactions that have been completed for more than one year may be stored at another location within the state of Washington. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable. You must not store records at a remote location if funds related to the transaction remain in the trust account.

(6) **When can I convert my records to an electronic format?** Once a transaction is completed and a client's trust account balance is zero, you may convert that client's file into a permanent storage format and destroy the originals. You must not store records electronically if funds related to the transaction remain in the trust account.

(7) **How can I store my records electronically?** Records stored electronically must be electronically imaged and stored on permanent storage media like optical disks or microfilm. The storage media must meet the following requirements:

(a) The retrieval process must provide the ability to view and print the records on-site in their original form, including any signatures or other writings placed on the records prior to imaging;

(b) The equipment must be made available on- and off-site to the department for the purposes of an examination or investigation;

(c) The records must be stored exclusively in a nonrewritable and nonerasable format;

(d) The hardware and software necessary to display and print the records must be maintained by the escrow agent during the required retention period under subsection (4) of this section.

Permanent storage does not affect your duties under subsection (5) of this section to maintain files in your licensed location for the first year.

(8) **I am closing my escrow agent business. What are my obligations regarding my records?** You must ensure that all records retention requirements are met and that records are properly destroyed when appropriate. You also have an ongoing duty to ensure the department is informed about who has your records and where they are being maintained.

(9) **Records disposal.** You must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information

cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal Disposal Rule at 16 C.F.R. 682.

NEW SECTION

WAC 208-680-532 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the program described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security program must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguard Rules at: <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> and see 16 C.F.R. 314.

NEW SECTION

WAC 208-680-534 Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P. (1) Licensees must comply with GLBA, as amended, and Regulation P. Unless subject to an exception under GLBA, as amended, licensees must, at a minimum:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information.

(2) See GLBA, as amended, and Regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-680-536 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

NEW SECTION

WAC 208-680-538 Business resumption plan. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-540 What are my obligations regarding escrow transactions? The escrow agent is responsible for providing escrow services between the principal parties. In addition to complying with the act and these rules, an escrow agent must at a minimum:

(1) **Escrow instructions.**

(a) Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(b) Comply with the escrow instructions for completing the ~~((closing))~~ settlement statement. All funds disbursed on the ~~((closing))~~ settlement statement should be bona fide and supported with adequate documents.

(c) Provide the services and perform all acts pursuant to the escrow instructions.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the ~~((closing))~~ settlement statement (both the estimated and final ~~((HUD-1 or HUD-1A)))~~ provided for any transaction subject to the act, and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When

the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary ~~((closing))~~ settlement statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

(4) **Recordkeeping.** Maintain copies of the escrow instructions and ~~((closing))~~ settlement statement ~~((for example, HUD-1 or HUD-1A))~~ in the escrow transaction file.

(5) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction~~((s))~~ including, but not limited to, changes in the financing of the transaction.

(6) ~~((Closing))~~ **Settlement statements.**

(a) Provide a complete detailed ~~((closing))~~ settlement statement ~~((for example HUD-1 or HUD-1A))~~ as it applies to each principal at the time the transaction is closed.

(b) Provide copies of the final ~~((closing))~~ settlement statement to each real estate broker or agent involved with the transaction.

(c) The escrow agent must retain a copy of all ~~((closing))~~ settlement statements in the transaction file, even if funds are not handled by the agent. The ~~((closing))~~ settlement statements must show, at a minimum:

(i) The date of closing;

(ii) The total purchase price;

(iii) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the ~~((closing))~~ settlement statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(iv) A detail of debits and credits identified to each principal party; and

(v) Names of payees, makers and assignees of all notes paid, made or assumed.

(7) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(8) **Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final ~~((closing))~~ settlement statement and maintain a copy of the signed ~~((closing))~~ settlement statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must obtain original signatures for the file only if the escrow instructions so require.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-560 What requirements must I follow when disbursing funds or other things of value? (1) The escrow agent must disburse funds as set forth in the escrow instructions or collection agreement. Not doing so is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principal parties, and all funds must be disbursed in compliance with RCW 18.44.400(3) and these rules.

(2)(a) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreements of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW.

(b) For purposes of complying with (a) of this subsection, escrow agents should construe "written notice from any principal party that the ownership of the funds is in dispute broadly so that many various written forms evidencing one party's or the other's belief in ownership of the subject funds is included."

(c) So too should the escrow agent construe "written demand" in RCW 64.04.220(2) broadly to include various forms of written correspondence and documents.

(d) Upon notification of a dispute between the principal parties, the department may, at its discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction. If the department orders an escrow agent to interplead funds, the escrow agent may deduct only the actual costs of interpleading from the escrow funds.

(3) Except as provided otherwise in this section, at no time may an escrow agent disburse or delay the disbursement of funds without the written consent of the principal parties unless the delay is necessary to ensure the funds being disbursed are good funds.

(4) See also WAC 208-680-410 (1), (7), (11), and (16).

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-610 What are the department's examination powers under the act? (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the department may examine, wherever located, the records used in the business of every licensee and any person ~~((who must be licensed under))~~ subject to the act.

(2) The department may make necessary inquiry of the business or personal affairs of each person identified in subsection (1) of this section for the purposes of determining compliance with the act and these rules. In conducting examinations, the department may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business operating account records;

(b) Interview or take sworn testimony of any person subject to RCW 18.44.021, or any employee or independent contractor of any person subject to RCW 18.44.021;

(c) Interview or take sworn testimony of any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act;

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient; and

(j) Retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators. The cost of the services provided must be paid by the person who is the subject of the examination or investigation.

(3) The department may make examinations as frequently as it deems necessary or appropriate; and

(4) The department may charge an hourly fee for an examination. See RCW 18.44.121 (1)(e).

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-620 What are the department's investigatory powers under the act? (1) The department may conduct (~~(private or public)~~) investigations at any time to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the department may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The department may investigate the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the department may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the

purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview, publicly or privately, under administration of oath or otherwise, or take the sworn testimony of: Any principal party, escrow agent, employee, or independent contractor, of any person subject to the act, or any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the department makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the department may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the department may be held, returned, or forwarded to other regulatory or law enforcement officials as deemed necessary;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the department.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the department.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-645 Possession of escrow agent property and business. (1) **When may the department take control of my escrow agent property and business?** The department may take control of a licensed escrow agent if, as

a result of an examination, report, investigation, or complaint, it appears to the department that the licensed escrow agent:

(a) Is conducting business in an unsafe and unsound manner that poses a risk to the public;

(b) Has suspended payment of its trust obligations;

(c) Has refused to comply with a lawfully issued order of the department (~~and one or more consumers are likely to be harmed by noncompliance~~).

(2) What actions can the department take once it has taken possession of an escrow agent's property and business? The department may take any action to protect consumers. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) Recover and distribute funds to cure any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance to make whole consumers who have been harmed by employee activities;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Where it is clear that the escrow agent's business cannot be safely operated, take the necessary steps to wind down the business of the escrow agent including seizing the operating and escrow trust accounts; hiring and firing employees; changing locks and passwords; taking control of the escrow agent's internet web site; and turning over operations to a court-appointed receiver.

(3) How long may the department keep control of a business? The department may maintain control over a business until the licensee is able to resume business or the business is liquidated by a receiver appointed pursuant to RCW 18.44.470.

(4) I also conduct nonescrow business through my licensed escrow agent business. If the department seizes my escrow business, will it also seize these other areas of business? When possible, the department will only take control of the portion of a business related to escrow. If the portions of a business are not clearly divisible, the department will determine its actions on a case-by-case basis, based in part on the relationship between and degree of commingling of the business lines.

(5) I am an attorney whose law practice is licensed as an escrow agent. Will the department seize my law practice under this section? Where an attorney's law practice is exempted from licensure, the law practice is not subject to seizure under the act. For attorneys with a business entity licensed under the act, the department will generally not exercise its seizure authority against a business entity or portion of a business entity supervised by the Washington state bar association. In any event, the department will only take control of the portion of a business related to escrow as set forth in subsection (4) of the section.

WSR 16-08-029

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed March 30, 2016, 8:41 a.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Repeal of chapter 495B-300 WAC, Grievance rules—Title IX and replace with chapter 495B-305 WAC, Grievance rules—Discrimination and harassment. Repeal of chapter 495B-120 WAC, Campus code of conduct and replace with chapter 495B-121 WAC, Student conduct code.

Citation of Existing Rules Affected by this Order: Repealing chapters 495B-120 and 495B-300 WAC.

Statutory Authority for Adoption: RCW 28B.50.130.

Adopted under notice filed as WSR 16-02-100 on January 5, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 43, Amended 0, Repealed 27.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 43, Amended 0, Repealed 27.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2016.

Kimberly Perry
President

Chapter 495B-121 WAC

STUDENT CONDUCT CODE

NEW SECTION

WAC 495B-121-010 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College administrator designated by the president or vice-president of student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Conduct review officer" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review offi-

cer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(5) "The president" is the president of the Bellingham Technical College. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or and expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by e-mail and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(10) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first-class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(11) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(12) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(13) "Day" and "business day" mean a weekday, excluding weekends and college holidays.

(14) "Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.

(15) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.-201 through 60.50.212, or a legend drug as defined in RCW 69.41.010.

NEW SECTION

WAC 495B-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellingham Technical College the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student services or designee. The vice-president of student services or the student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 495B-121-030 Statement of student rights. As members of the Bellingham Technical College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college.

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION**WAC 495B-121-040 Prohibited student conduct.**

Prohibited student conduct for which the college may impose sanctions includes, but is not limited to, any of the following:

(1) Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent.

(5) Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, dis-

rupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization; or

(c) Any other person or organization, or possession of such property or money after it has been stolen.

(7) Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such person when requested to do so.

(8) Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.

(9) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

(10) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(11) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.

(12) Alcohol. Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, sell-

ing or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) Marijuana. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling, or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.

(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) Conduct that is disorderly, lewd, or obscene.

(17) Breach of the peace.

(18) Discriminatory action which harms or adversely affects any student or college employee because of his/her race, color, national origin, mental or physical disability, gender, sexual orientation, age, creed, or religion.

(19) Sexual violence. Sexual or gender-based misconduct perpetrated against a person's will or where a person is incapable of giving consent including, but not limited to, rape, sexual assault, sexual battery, gender-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim.

(20) Sexual harassment. Conduct that includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's ability to participate in or benefit from the college's program, or to create an intimidating, hostile, or offensive educational environment.

(21) Other harassment. Conduct that has the purpose or effect of substantially interfering with a reasonable person's work or educational performance or creating an intimidating, hostile or offensive working or educational environment, when such conduct is directed at an individual because of race, national origin, disability, age, religion, sexual orientation, gender or any other legally protected classification. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(22) Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(23) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(24) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(25) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(26) Safety violations. Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(27) Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(28) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(29) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

In addition to initiating discipline proceedings for violations of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 495B-121-050 Disciplinary sanctions. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495B-121-070 through 495B-121-200.

(1) Disciplinary warning: A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) Written reprimand: Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student, subject to a deferred disciplinary sanction, is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(4) Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(5) Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Professional evaluation: Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(8) Refund of fees: Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.

A student suspended on the basis of conduct that disrupted the orderly operation of the campus or any facility of the college may be denied access to all or any part of the campus or other college facility.

(9) No contact order: An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

NEW SECTION

WAC 495B-121-060 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on Bellingham Technical College premises and facilities, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 495B-121-065 Statement of purpose. (1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct himself or herself as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college security or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

NEW SECTION

WAC 495B-121-070 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC 495B-121-040;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION

WAC 495B-121-080 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service to the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and not subject to appeal.

NEW SECTION

WAC 495B-121-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both of the parties within ten days of consideration

of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of services of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495B-121-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495B-121-110 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant,

or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 495B-121-120 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper ex parte communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost,

but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 495B-121-125 Student conduct appeals committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 495B-121-130 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility

of evidence or the demeanor of witnesses shall so be identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 495B-121-135 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action and/or impose interim sanctions pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in any ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 495B-121-140 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled notice of summary suspension and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 495B-121-150 Supplemental sexual misconduct—Procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 495B-121-050 through 495B-121-140. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 495B-121-160 Supplemental sexual misconduct—Definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, he or she is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, dating/intimate violence, and sexual or gender-based stalking;

(e) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 495B-121-170 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer, coordinator, or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written per-

mission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions is received.

NEW SECTION

WAC 495B-121-180 Supplemental appeal rights. (1)

The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 495B-121-170. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent appeals a decision imposing discipline for a sexual misconduct violation in a timely manner, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct

against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. The complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of his or her appeal rights.

(11) The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Judicial review of the decision may be available to the complainant or respondent.

NEW SECTION

WAC 495B-121-190 Brief adjudicative proceedings authorized. This chapter is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (1) Parking violations;
- (2) Outstanding debts owed by students or employees;
- (3) Use of college facilities;
- (4) Residency determinations;
- (5) Use of library - Fines;
- (6) Challenges to contents of education records;
- (7) Loss of eligibility for participation in institution-sponsored athletic events;
- (8) Student conduct appeals involving the following disciplinary actions:
 - (a) Suspensions of ten instructional days or less;
 - (b) Disciplinary probation;
 - (c) Written reprimands;
 - (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions;
 - (e) Summary suspensions; and
 - (f) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
 - (i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
 - (ii) Issues a verbal warning to respondent.
- (9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

Note: Subsections (1) through (7) and (9) are types of issues that colleges typically use a brief adjudicative proceeding to resolve and are included here merely for illustrative purposes.

NEW SECTION

WAC 495B-121-200 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

Chapter 495B-305 WAC**GRIEVANCE RULES—DISCRIMINATION AND HARASSMENT**NEW SECTION

WAC 495B-305-010 Preamble. Bellingham Technical College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remedi-

ate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1975, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Bellingham Technical College has enacted policies prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of these policies will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX coordinator or EEO/AA officer, identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Title: Vice-President of Student Services, Title IX Coordinator

Contact Information: titleIX@btc.edu; 360-752-8440

Title: Executive Director of Human Resources, Equal Employment Opportunity/Affirmative Action (EEO/AA) Officer

Contact Information: hr@btc.edu; 360-752-8549

The Title IX coordinator or EEO/AA officer or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors.

- Will make determinations regarding how to handle requests by complainants for confidentiality.

- Will keep accurate records of all complaints and referrals for the required time period.

- May conduct investigations or delegate and oversee investigations conducted by a designee.

- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.

- Will issue written findings and recommendations upon completion of an investigation.

- May recommend specific corrective measures to stop, remediate and prevent the recurrence of inappropriate conduct.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available online at (INSERT LINK). Hard copies of the complaint form are available at the following locations on campus: Human resources office and office of the vice-president of student services. For complaints involving student on student acts of sexual violence under Title IX, refer to chapter 495B-121 WAC.

NEW SECTION**WAC 495B-305-020 Definitions.** (1) **Complainant:**

Employee(s), student(s), applicant(s), or visitor(s) of Bellingham Technical College who alleges that he or she has been subjected to discrimination or harassment due to his or her membership in a protected class.

(2) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

(3) **Consent:** Knowing, voluntary and clear permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid there must be, at the time of the act of sexual intercourse or sexual contact, actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(4) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(5) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student or an employee to participate in or benefit from the college's educational and/or social programs.

Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment.

Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed toward an individual based upon their membership in a protected class.

(c) Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes, or other materials that relate to race, ethnic origin, gender, or any other protected class.

(6) **Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged

veteran or military status, or use of a trained guide dog or service animal.

(7) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanctions.

(8) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(9) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student or an employee to participate in or benefit from the college's educational and/or social programs.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority conditions the receipt of a benefit upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- An instructor who promises a student a better grade in exchange for sexual favors.
- Sexually explicit statements, questions, jokes, or anecdotes.
- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- Direct or indirect propositions for sexual activity.
- Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(10) **Sexual violence** is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(a) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Domestic violence** includes assorted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(d) **Dating violence** means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

(e) **Stalking** means intentional and repeated harassment or following of another person which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

NEW SECTION

WAC 495B-305-030 Who may file a complaint. Any employee, student, applicant or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online. Hard copies of the complaint form are available at the following locations on campus: Human resources office and vice-president of student services office. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

NEW SECTION

WAC 495B-305-040 Confidentiality and right to privacy. Bellingham Technical College will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Bellingham Technical College policies and procedures. Although Bellingham Technical College will attempt to honor complainants' request for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator.

Confidentiality requests and sexual violence complaints. The Title IX coordinator or EEO/AA officer will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator or EEO/AA officer will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX coordinator or EEO/AA officer will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the com-

plainant. Factors weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator or EEO/AA officer will notify the complainant of the decision and ensure that the complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator or EEO/AA officer will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

NEW SECTION

WAC 495B-305-050 Investigation procedure. Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX coordinator or EEO/AA officer shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX coordinator or EEO/AA officer or his or her designee. If the investigation is assigned to someone other than the Title IX coordinator or EEO/AA officer, the Title IX coordinator or EEO/AA officer shall inform the complainant and respondent(s) of the appointment of an investigator.

Interim measures. The Title IX coordinator or EEO/AA officer may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no-contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

Investigation. Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days, barring exigent circumstances.

At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX coordinator or EEO/AA officer.

The Title IX coordinator or EEO/AA officer shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred and, if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

Written notice of decision. The Title IX coordinator or EEO/AA officer will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings, and of acts taken or recommended to resolve the complaint, as well as the basis for the findings and any resulting sanctions, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

Informal dispute resolution. Informal dispute resolution processes, like mediation, may be used to resolve complaints when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the Title IX coordinator or EEO/AA officer. Requests for reconsideration shall be submitted in writing to the Title IX coordinator or EEO/AA officer within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the Title IX coordinator or EEO/AA officer shall respond within fifteen days. The Title IX coordinator or EEO/AA officer shall either deny the request or, if the Title IX coordinator or EEO/AA officer determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

NEW SECTION

WAC 495B-305-060 Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

NEW SECTION

WAC 495B-305-070 Limits to authority. Nothing in this chapter shall prevent the college president or designee from taking immediate disciplinary action in accordance with Bellingham Technical College policies and procedures and federal, state, and municipal rules and regulations.

NEW SECTION

WAC 495B-305-080 Nonretaliation, intimidation, and coercion. Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX coordinator, EEO/AA officer or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX coordinator or EEO/AA officer immediately.

NEW SECTION

WAC 495B-305-090 Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Bellingham Police Department: 360-778-8600
 Whatcom County Sheriff's Office: 360-676-6650
 Washington State Patrol: 360-738-6215

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 495B-305-100 Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission:
<http://www.hum.wa.gov/index.html>

U.S. Dept. of Education Office for Civil Rights:
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission:
<http://www.eeoc.gov/>

WSR 16-08-030
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed March 30, 2016, 8:45 a.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules must be amended to be consistent with the definition of mortgage lending process in chapter 229, Laws of 2015 (amending RCW 19.144.010). Having consistent definitions in the rules will better inform industry about the activities constituting mortgage fraud. Other technical changes must be made for clarity and consistency.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 208-700-010.

Statutory Authority for Adoption: Chapter 43.320 RCW.

Adopted under notice filed as WSR 16-05-067 on February 15, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2016.

Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 04-02-008, filed 12/29/03, effective 1/29/04)

WAC 208-700-010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

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

(2) "Director" means the director of the department.

(3) "Mortgage lending fraud prosecution account" or "account" means the account established under RCW 36.22.181, (~~(40.320.140,))~~ and (~~(43.320.140+)~~) 43.32.140 (chapter 289, Laws of 2003).

(4) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan or residential mortgage loan modification including, but not limited to, solicitation, application, or origination(;-); negotiation of terms(;-); third-party provider services(;-); underwriting(;-); signing and closing(;-); and

funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, settlement statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs, and any required disclosures.

(5) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(6) "Prosecutorial agency" means the office of the Washington attorney general, the office of the United States Attorney, or the office of any county prosecutor in the state of Washington.

(7) "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 fewer units.

(8) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services in connection with the preparation of a borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

WSR 16-08-033
PERMANENT RULES
GAMBLING COMMISSION

[Order 718—Filed March 30, 2016, 9:13 a.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rule changes:

- Require manufacturers and distributors of group 12 amusement games to be licensed.
- Require all group 12 amusement games to have an annual identification stamp which would cost more than other amusement game stamps.
- Require testing of group 12 amusement games by our gambling lab. Manufacturers will have to pay the cost of our review and testing of each game.
- Set wagering limits of \$5 and prize limits of \$1,000 for group 12 amusement games.
- Revise rental fee restrictions for charities. Currently, charitable and nonprofit organizations can rent amusement games. The rental fee can be based on a percentage of revenue the amusement games generate. The charitable and nonprofit organization must receive at least twenty-two percent or more of the gross receipts from the amusement games. Under this rule change, for group 12 amusement games a certain percentage would not be required.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-185, 230-03-190, 230-05-030, 230-06-110, 230-13-010, 230-13-135, and 230-13-160.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0201.

Adopted under notice filed as WSR 16-04-053 on January 28, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 230-03-185, language was added to require manufacturers of Group 12 amusement games that were approved before the effective date of this rule to apply by May 1, 2016, and be licensed by December 31, 2016.

WAC 230-06-110, language was added to clarify that lease agreements entered into prior to the effective date of this rule may continue until the manufacturer is licensed or December 31, 2016, whichever occurs first.

WAC 230-13-010, language was added to require games approved before the effective date of this rules package to be submitted for testing, including the application and deposit, by May 1, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: March 30, 2016.

Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-085, filed 5/18/09, effective 7/1/09)

WAC 230-03-185 Applying for a manufacturer license. (1) You must apply for a manufacturer license if you:

(a) Make or assemble a completed piece or pieces of gambling equipment for use in authorized gambling activities; or

(b) Convert, modify, combine, add to, or remove parts or components of any gambling equipment for use in authorized gambling activities; or

(c) Manufacture group 12 amusement games approved or modified after May 1, 2016. Manufacturers of group 12 amusement games that were approved before the effective date of this rule must apply by May 1, 2016, and be licensed by December 31, 2016.

(2) You must demonstrate your ability to comply with all manufacturing, quality control, and operations restrictions imposed on authorized gambling equipment that you want to manufacture or market for use in Washington state.

(3) The licensing process may include an on-site review of your manufacturing equipment and process for each separate type of authorized gambling equipment to ensure compliance capability.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-190 Applying for a distributor license.

You must apply for a distributor license if you:

(1) Buy or otherwise obtain a finished piece of gambling equipment for use in authorized gambling activities or a group 12 amusement game from another person and sell or provide that gambling equipment to a third person for resale, display, or use; or

(2) Are a manufacturer who sells or provides gambling equipment you do not make to any other person for resale, display, or use; or

(3) Service and repair authorized gambling equipment. However, distributors must not add, modify, or alter the gambling equipment; or

(4) Modify gambling equipment using materials provided by manufacturers to upgrade equipment to current technology.

AMENDATORY SECTION (Amending WSR 14-19-123, filed 9/17/14, effective 11/1/14)

WAC 230-05-030 Fees for other businesses.

All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$347/\$159
Class B	Up to \$50,000	\$488
Class C	Up to \$100,000	\$1,256
Class D	Up to \$250,000	\$2,804
Class E	Up to \$500,000	\$4,918
Class F	Up to \$1,000,000	\$8,446
Class G	Over \$1,000,000	\$10,568

* We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$699
Class B	Up to \$250,000	\$1,398
Class C	Up to \$500,000	\$2,100
Class D	Up to \$1,000,000	\$2,804
Class E	Up to \$2,500,000	\$3,654
Class F	Over \$2,500,000	\$4,498

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$276

License	Description	Fee
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$699

4. Gambling service supplier

License	Fee
Annual	\$728
Financing, consulting, and management contract review	\$152

5. Linked bingo prize provider

License	Fee
Annual	\$4,680

6. Call centers for enhanced raffles

License	Fee
Annual	\$4,770

7. Manufacturer

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$699
Class B	Up to \$250,000	\$1,398
Class C	Up to \$500,000	\$2,100
Class D	Up to \$1,000,000	\$2,804
Class E	Up to \$2,500,000	\$3,654
Class F	Over \$2,500,000	\$4,498

8. Permits

Type	Description	Fee
Agricultural fair	One location and event only	\$29
Agricultural fair annual permit	Annual permit for specified different events and locations	\$200
Recreational gaming activity		\$63
Manufacturer's special sales permit		\$224
Punch board and pull-tab service business permit	Initial application fee	\$250
Punch board and pull-tab service business permit	Renewal	\$59

9. Changes

Application	Description	Fee
Name		\$29
Location		\$29
Business classification	Same owners	\$63
Exceeding license class	New class fee, less previous fee paid, plus	\$29
Duplicate license		\$29
Corporate stock/limited liability company shares/units		\$63
License transfers		\$63

10. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$106
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$29
Review of gambling equipment, supplies, services, ((#)) games, or group 12 amusement games	Cost reimbursement

11. Identification stamps

Type	Fee	
(a) Punch boards and pull-tabs		
(i) Standard	Wagers fifty cents and below	\$.30
	Wagers over fifty cents	\$ 1.18
(ii) Progressive jackpot pull-tab series	Per series	\$11.86
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$1.18
(b) Pull-tab dispensing devices		
(i) Mechanical and electro-mechanical		\$.30
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$118.76 annually
Replacement of identification stamps		\$28
(c) Disposable bingo cards		
(i) Single game sets of individual cards or sheets of cards		\$.30
(ii) Multigame card packets		\$ 1.29
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$.47
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$ 9.50
(d) Coin or token-activated amusement games		
Annually - Operated at any Class A amusement game license location, group 1 through 11 games		\$29.68
Annually for group 12 games		\$250.00
(e) Electronic bingo card daubers		
Annual		\$11.86
(f) Electronic card facsimile table		
Annual		\$404.39

12. Two-part payment plan participation

Annual participation	\$29
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AMENDATORY SECTION (Amending WSR 08-11-044, filed 5/14/08, effective 7/1/08)

WAC 230-06-110 Buying, selling, or transferring gambling equipment. (1) All licensees and persons authorized to possess gambling equipment must closely control the gambling equipment in their possession.

(2) Before selling gambling equipment, licensees must ensure that the buyer possesses a valid gambling license or can legally possess the equipment without a license.

(3) Before purchasing gambling equipment, licensees must ensure that the seller possesses a valid gambling license.

(4) Applicants for Class F or house-banked card room licenses may purchase and possess gambling equipment during the precicensing process, but only after receiving written approval from us.

(5) Charitable and nonprofit organizations conducting unlicensed bingo games, as allowed by RCW 9.46.0321, may possess bingo equipment without a license.

(6) Group 12 amusement games can only be sold or leased by a licensed manufacturer or distributor to a licensee. Lease agreements entered into prior to the effective date of this rule may continue until the manufacturer is licensed or December 31, 2016, whichever occurs first.

(7) Licensees may transfer gambling equipment as a part of a sale of a business as long as a condition of the sale is that the buyer receives a gambling license before the sale is complete. Licensees must make a complete record of all gambling equipment transferred in this manner, including I.D. stamps. Licensees must report these transfers, including a copy of the inventory record, to us.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-010 Approval of new amusement games. (1) Operators may introduce new games that meet the standards of an authorized group 1 through 11 amusement game without approval of the director as long as they provide the director or his or her designee with a description of the game, the rules of play, and the group number of the game with an explanation of why that group was chosen at least sixty days before introducing the game.

((2)) The game cannot be introduced during this sixty day period unless approved sooner by us. The sixty day period stops when we request additional information.

(2) The following procedures apply to all group 12 amusement games. Games approved before the effective date of this rule must be submitted for testing, including the application and deposit, by May 1, 2016:

(a) An application and deposit must be submitted requesting approval of new group 12 amusement games and the applicant will provide all requested information:

(b) All amusement game equipment, programs, and games must be submitted for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC.

(i) The equipment, programs, and/or games submitted must be fully functional/operational and capable of being tested once our review begins.

(ii) If the equipment is not fully functional/operational and ready for testing and review, we may require additional equipment or information before we start our review process.

(c) Amusement game equipment, programs, and games submitted for review must be identical to what will be marketed, distributed, and deployed in Washington:

(d) Group 12 amusement games must allow for a means of identifying and validating approved software that will demonstrate the authenticity of any software or game by a third-party verification program or tool:

(e) We will have sixty days to finish our review once your application is complete:

(f) We will notify you if we require additional information or if your equipment, program, or game malfunctions or is otherwise inoperable.

(i) You will have fourteen days to provide any additional information or correct any equipment, program, or game malfunction and the sixty day review period stops when this occurs. The review period will restart when we receive the requested additional information or when the problem is corrected. You will be responsible for any additional cost needed to review the additional information provided or review of any equipment, program, or game malfunction:

(ii) Review of your application may be terminated if you do not respond within fourteen days. You will be required to reapply under this rule if your application is terminated.

(g) You can only begin selling, leasing, distributing, or operating these amusement games once all entities or individuals are licensed under chapter 230-03 WAC and the amusement game equipment, program, and/or game(s) are approved by the director or director's designee:

(h) All licensed amusement games must operate as approved by the director or director's designee; and

(i) We may keep equipment, software, and/or games submitted for review to allow for continued testing and training as long as the equipment remains in play in Washington. We are not liable for any damage to equipment while in our possession.

(3) If the director or director's designee notifies the operator that the proposed game does not meet the standards or otherwise violates the gambling laws or rules, the operator:

(a) May not introduce the game; ~~((and))~~

(b) If already introduced, must remove it from play until the operator brings it into compliance with the authorized group; and

(c) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

AMENDATORY SECTION (Amending WSR 11-04-004, filed 1/20/11, effective 2/20/11)

WAC 230-13-135 Maximum wagers and prize limitations ~~((at certain amusement game locations))~~. (1) The maximum wager is three dollars and fifty cents and the maximum cost for a prize is five hundred dollars if school-aged minors are allowed to play amusement games at the following locations:

~~((+))~~ (a) Regional shopping centers; and

- ~~((2))~~ (b) Movie theaters; and
~~((3))~~ (c) Bowling alleys; and
~~((4))~~ (d) Miniature golf course facilities; and
~~((5))~~ (e) Skating facilities; and
~~((6))~~ (f) Family sports complexes.

~~((a))~~ (i) A "family sports complex" is a facility, at a permanent location, to which people go to play sports. A family sports complex must offer multiple sports activities, such as indoor soccer, outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling and the gross receipts must be primarily from these sports activities.

~~((b))~~ (ii) A family sports complex does not include a facility owned or operated by a school or school district; and
~~((7))~~ (g) Amusement centers; and

~~((8))~~ (h) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas; and

~~((9))~~ (i) Any business whose primary activity is to provide food service for on premises consumption.

(2) For group 12 amusement games, the maximum wager is five dollars and the maximum cost for a prize is one thousand dollars.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-160 Basing rent on a percentage of gross receipts. Class B or above amusement game operators:

(1) May base the rent or consideration paid to a Class A commercial amusement game location or charitable or non-profit amusement game location for group 12 amusement games on a percentage of revenue the activity generates if the method of distribution is specific.

(2) May not base the rent or consideration paid to a charitable or nonprofit organization on a percentage of revenue the activity generates unless the amount returned to the organization is equal to or exceeds twenty-two percent of the gross gambling receipts.

(3) Operators must pay the organization at least once a month.

~~((3))~~ (4) If located at regional shopping centers, may use a percentage of receipts to pay rental leases. They are also exempt from the profits restrictions of RCW 9.46.120(2).

WSR 16-08-034
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 30, 2016, 9:47 a.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: The department is creating WAC 388-493-0010 Working family support, in order to implement the

working family support program that will provide additional food assistance to qualifying low-income families.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 16-05-091 on February 16, 2016.

Changes Other than Editing from Proposed to Adopted Version: The department removed language stating that support services may be available to recipients of the working family support program. This language change does not change the nature of the program being offered to clients.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: March 29, 2016.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-493 WAC

WORKING FAMILY SUPPORT

NEW SECTION

WAC 388-493-0010 Working family support. (1) What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (Department) and provides an additional monthly food benefit from May 2016 through September 2016 to low income families who meet specific criteria. Continuance of the program beyond September 30, 2016 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home that is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You are eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent, work a minimum of thirty five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state per WAC 388-468-0005.

(4) How can I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long can I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed above and provide current proof that you, your spouse, or co-parent works a minimum of thirty five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or WAC 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent, no longer work a minimum of thirty five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

246-840-340, 246-840-342, 246-840-344, 246-840-350, 246-840-360, 246-840-361, 246-840-365, 246-840-367, 246-840-400, 246-840-410 and 246-840-420, the revised rule will add a new advanced registered nurse practitioner (ARNP) designation of clinical nurse specialist (CNS). The revised rule establishes the education, examination, licensing, practice requirements, and other qualifications for the ARNP CNS designation. The revised rules also clarify and update ARNP related rules through general housekeeping.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-840-304 and 246-840-350; and amending WAC 246-840-010, 246-840-020, 246-840-300, 246-840-302, 246-840-310, 246-840-311, 246-840-340, 246-840-342, 246-840-344, 246-840-360, 246-840-361, 246-840-365, 246-840-367, 246-840-400, 246-840-410, and 246-840-420.

Statutory Authority for Adoption: RCW 18.79.050, 18.79.110, and 18.79.160.

Adopted under notice filed as WSR 15-24-117 on December 1, 2015.

Changes Other than Editing from Proposed to Adopted Version: All the changes are editorial to clarify the rules and ensure that they are consistent with other nursing commission rules.

WAC 246-840-010(23), changed "enrolled as a nursing student" to "enrolled as a student";

WAC 246-840-010(25), changed "national nursing accreditation body" to "national nursing education accreditation body";

WAC 246-840-302(1), change to write out and use abbreviation:

(a) Nurse practitioner (NP);

(b) Certified nurse-midwife (CNM);

(c) Certified registered nurse anesthetist (CRNA);

(d) Clinical nurse specialist (CNS).

A final cost-benefit analysis is available by contacting Debbie Carlson, Washington State Nursing Commission, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4725, fax (360) 236-4738, e-mail debbie.carlson@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 16, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 16, Repealed 2.

Date Adopted: January 8, 2016.

Paula Meyer, MSN, RN, FRE
Executive Director

WSR 16-08-042

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed March 30, 2016, 1:50 p.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-840-010, 246-840-020, 246-840-300, 246-840-302, 246-840-304, 246-840-310, 246-840-311,

AMENDATORY SECTION (Amending WSR 13-15-064, filed 7/15/13, effective 8/15/13)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ~~((An))~~ "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse ((who has had)) (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and ((has achieved)) national specialty certification ((for the nurse practitioner, nurse anesthetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice:

(3)) through a commission approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and
- (d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection (28) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(7) "Client advocate" means a licensed ((registered nurse or practical)) nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and((not)) choices by providing the client with adequate information about their care and options.

~~((4))~~ (8) "Commission" means the Washington state nursing care quality assurance commission.

~~((5))~~ (9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

~~((6))~~ (10) "Conditional approval" ((of a school of nursing)) is the approval given a ((school of)) nursing education program that has not met the requirements of the law and the rules ((and regulations)) of the commission((:)). Conditions are specified that must be met within a designated time to rectify the deficiency.

~~((7))~~ (11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed ((practical nurse or registered)) nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The ((licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability)) nurse delegating the task is responsible and accountable for the nursing care of the client. The ((licensed practical nurse or registered)) nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

~~((a))~~ Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely performed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(c) When delegating a nursing act to an unlicensed person it is the licensed practical nurse or the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

(8) "Faculty" means persons who are responsible for the educational nursing program and who hold faculty appointment in the school.

~~((9))~~ (13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a ~~((school of))~~ nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules ~~((and regulations))~~ of the commission.

~~((10))~~ (15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own~~((;))~~; receipt of the examination results after thirty days after the nurse technician's date of graduation~~((;))~~; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

~~((11))~~ (16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

~~((12))~~ (17) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

(18) "Home state" is defined as where the nursing education program has legal domicile.

(19) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

(20) "Immediately available" as applied to nursing technicians, means that ~~((a registered nurse))~~ an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed~~((-This))~~ which may include the use of two-way communication devices which allow conversation between the nursing technician and ~~((a registered nurse))~~ an RN who has agreed to act as supervisor.

(a) In a hospital setting, ~~((a registered nurse))~~ the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the ~~((registered nurse))~~ RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, ~~((a registered nurse))~~ an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the ~~((registered nurse))~~ RN prior to the delegation of duties to the nursing technician.

~~((13))~~ (21) "Initial approval" of nursing education program~~((s))~~ is the approval ~~((given))~~ status conferred by the commission to a new nursing program based on its proposal prior to the graduation of its first class.

~~((14))~~ (22) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a commission approved refresher course. This authorization does not permit practice for employment. ~~((A limited educational authorization may be issued to:~~

~~((a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or~~

~~((b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.~~

~~((15))~~ (24) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

~~((16))~~ (25) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

(26) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching~~((+))~~ and learning component in clinical settings.

~~((17))~~ "Nurse" (27) "Nursing education program administrator" is an individual who ~~((meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this position may include, among others, dean, director, coordinator or chairperson.~~

~~((18))~~ has the authority and responsibility for the administration of the nursing education program.

(28) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

(29) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

(30) "Nursing technician" means a nursing student preparing for ~~((registered nurse))~~ RN licensure who meets the qualifications for licensure under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic~~((; and who:~~

~~((a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or~~

~~((b) Is a graduate of a nursing program approved by the commission who graduated:~~

~~((i) Within the past thirty days; or~~

~~((ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period; or~~

~~((c) Is enrolled in an approved school of nursing in the United States or its territories. Approved schools for nursing technicians include the list of registered nursing programs (schools) approved by state boards of nursing in the United~~

States or its territories as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not include nontraditional schools as defined in subsection (16) of this section.

~~(19))~~ The nursing student must be in a nursing educational program in the United States or its territories that is approved by the National Council Licensure Examination-RN. Approved nursing education programs do not include nontraditional schools as defined in subsection (27) of this section.

~~(31)~~ "Philosophy" means the beliefs and principles upon which ~~(the)~~ a nursing education program curriculum is based.

~~((20))~~ "Program" means a division or department within a state supported educational institution, or other institution of higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

~~(21))~~ (32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

~~(33)~~ "Registered nurse" ~~((as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).~~

~~(22))~~ or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

~~(34)~~ "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed ~~((registered nurse))~~ RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed ~~((registered nurse))~~ RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed ~~((registered nurse))~~ RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

~~((23))~~ (35) "Traditional ((program of)) nursing education program" means a program that has a curriculum which includes a faculty supervised teaching((/)) and learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 10-24-047, filed 11/24/10, effective 1/1/11)

WAC 246-840-020 Credentials issued to ~~((nurses))~~ an LPN, RN, or ARNP in Washington state. The following credentials are issued to nurses in Washington state.

(1) Active status license for LPN or RN. A license is issued upon completion of ~~((all requirements for))~~ licensure requirements. The license holder may use the title licensed practical nurse or registered nurse and the use of its abbreviation, LPN or RN. The license allows practice as ~~((a licensed practical nurse or registered nurse))~~ an LPN or RN in the state of Washington. ~~((See WAC 246-840-201 through 246-840-207 for continuing competency program requirements.))~~

A student who has graduated from a basic professional nursing course and who is pursuing a baccalaureate degree in nursing, an advanced degree in nursing or an advanced certification in nursing must hold an active Washington RN license before participating in the practice of nursing as required to fulfill the learning objectives in a clinical course.

(2) ~~((Inactive status license. A license issued to a person previously holding an active license in this state, is in good standing, and does not practice in Washington state. Refer to chapter 246-12 WAC, Part 4.~~

~~(3))~~ Advanced registered nurse practitioner (ARNP) license. An ARNP license may be issued to ~~((any person))~~ an individual who meets the requirements of the commission as contained in WAC 246-840-300 through 246-840-365. Only persons holding this license have the right to use the title "advanced registered nurse practitioner" or the abbreviation "ARNP" or any title or abbreviation which indicates that the ~~((person))~~ individual is entitled to practice at an advanced and specialized role as ~~((a nurse practitioner, a nurse midwife, or a nurse anesthetist. The ARNP may engage in the scope allowed for his or her area of national certification as approved by the commission))~~ a NP, CNM, CRNA, or CNS. The license is valid only with a current ~~((registered nurse))~~ RN license. The ARNP's scope of practice is defined by ~~((national certification standards and))~~ a national certifying body approved by the commission.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-300 ~~((Advanced registered nurse practitioner (ARNP)))~~ ARNP scope of practice. ~~((1))~~ A licensed advanced registered nurse practitioner (ARNP) is a registered nurse prepared in a formal educational program to assume primary responsibility for continuous and comprehensive management of a broad range of patient care, concerns and problems.

~~(2))~~ The scope of practice of a licensed ARNP is as provided in RCW 18.79.250 and this section.

(1) The ARNP is prepared and qualified to assume primary responsibility and accountability for the care of patients.

~~((3))~~ (2) ARNP practice is grounded in nursing process and incorporates the use of independent judgment ((as well as)). Practice includes collaborative interaction with other health care professionals ((when indicated)) in the assess-

ment and management of wellness and health conditions ((as appropriate to the ARNP's area of practice and certification. (4))).

(3) The ARNP functions within his or her scope of practice ((according to the commission approved certification program and standards of care developed by professional organizations.

~~(5) The~~) following the standards of care defined by the applicable certifying body as defined in WAC 246-840-302. An ARNP may choose to limit the area of practice within the commission approved certifying body's practice.

(4) An ARNP shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices.

~~((6))~~ (5) Performing within the scope of the ARNP's knowledge, experience and practice, the licensed ARNP may perform the following:

(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;

(b) Admit, manage, and discharge patients to and from health care facilities;

(c) Order, collect, perform, and interpret diagnostic tests;

(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;

(e) Prescribe therapies and medical equipment;

(f) Prescribe medications when granted prescriptive authority under this chapter;

(g) Refer patients to other health care practitioners, services, or facilities; and

(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to the commission approved ~~((certification program))~~ certifying body as defined in WAC 246-840-302.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-302 ARNP designations, certification, and approved certification examinations. (1) ARNP designations recognized by the commission include:

(a) Nurse practitioner (NP);

(b) Certified nurse-midwife (CNM); and

(c) Certified registered nurse anesthetist (CRNA); and

(d) Certified nurse specialist (CNS).

(2) An ARNP must maintain current certification within his or her designation(s) by ~~((an accredited))~~ a commission approved certifying body as identified in subsection (3) of this section. An ARNP license becomes invalid when the certification expires.

(3) ~~((The commission approved certification examinations include those approved by the National Commission on Certifying Agencies or the American Boards of Nursing Specialties from the following programs:))~~ To be eligible for licensure as an ARNP, an applicant must pass an examination from one of the following certifying bodies within the ARNP's specialty designation:

(a) For NP designation(~~(-NP exams from))~~);

(i) The American Academy of Nurse Practitioners;

(ii) The American Nurses Credentialing Center;

(ii) The National Certification Corporation ((for Obstetric, Gynecological, and Neonatal Nursing; and));

(iv) The Pediatric Nursing Certification Board;

(v) The American Association of Critical Care Nurses;

or

(vi) The Oncology Nursing Certification Corporation.

(b) For CNM designation, the ~~((CNM exam from))~~ American Midwifery Certification Board.

(c) For CRNA designation, the ~~((CRNA exam from Council on))~~ National Board of Certification ((of)) and Recertification for Nurse Anesthetists.

(d) For CNS designation:

(i) The American Nurses Credentialing Center;

(ii) The American Association of Critical Care Nurses;

or

(iii) The Oncology Nursing Certification Corporation.

(4) ~~((An ARNP may choose to limit his or her area of practice within the commission approved certification program area of practice.~~

~~(5) If))~~ An ARNP ((is)) recognized in more than one ((certification area, he or she)) designation must obtain and maintain education, training, and practice in each area.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-310 Use and protection of professional titles. ~~((1) Any))~~ A person who holds a license to practice as an ARNP shall have the right to use the title "advanced registered nurse practitioner" ((or "nurse practitioner")) and the abbreviation following the nurse's name shall read "ARNP" or "NP."

~~((2) The))~~ An ARNP may also use the applicable title or abbreviation ((designated by the approved certifying body. (3)), or designation as defined in WAC 246-840-302.

No other person shall assume such titles or use such abbreviations.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-311 ARNP previously adopted specialties. (1) ~~((On the effective date of this rule,))~~ An ARNP holding ((a)) an active license, without sanctions or restrictions, under one or more of the following previously existing advanced practice certification ((categories)) designations, may continue to renew his or her license as an ARNP:

(a) Community health ~~((nurse));~~

(b) ~~((Maternal/GYN/neonatal nurse))~~ Maternal-gynecological-neonatal;

(c) Medical~~(/)~~surgical ~~((nursing));~~

(d) Occupational health ~~((nurse));~~

(e) Neurosurgical ~~((nursing));~~ or

(f) Enterostomal therapy~~((; or~~

~~(g) Psychiatric mental health clinical nurse specialist)).~~

(2) ~~((Any lapse in certification))~~ An expired license identified in subsection (1)(a) through ~~((g))~~ (f) of this section ((will result in an invalid ARNP license. The license)) will not be renewed.

(3) The commission will not accept initial ARNP licensure applications from individuals certified in the categories identified in subsection (1)(a) through ~~((g))~~ (f) of this section.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-340 Initial ARNP (~~(application)~~ requirements (~~for new graduates of advanced registered nurse programs~~)). (1) An applicant for licensure as an ARNP must ~~((meet))~~ have the following ~~((requirements))~~ qualifications:

(a) ~~((Hold a registered nurse license in the state of Washington that is not subject to))~~ An active Washington state RN license, without sanctions or restrictions ~~((by the commission))~~;

(b) ~~((Have graduated))~~ A graduate degree from an advanced nursing education program ~~((within the past year;~~

(i) ~~For new graduates of advanced nursing education programs in the United States, the program must be accredited by a nursing or nursing-related accrediting organization recognized by the United States Department of Education (USDE) or the Council of Higher Education Accreditation (CHEA);~~

(ii) ~~For new graduates of advanced nursing education programs outside the United States, the program must be equivalent to the advanced registered nurse education in Washington; and~~

~~(e) Hold certification from a commission approved certification program))~~ accredited by a national nursing accreditation body recognized by the United States Department of Education;

(c) Certification from a certifying body as identified in WAC 246-840-302;

(d) Completion of advanced clinical practice hours, when applicable, in situations under subsection (3) of this section.

(2) An applicant for ARNP licensure must submit:

(a) ~~((Apply for Washington state registered nurse licensure if not a current holder of the RN license;~~

~~(b) Submit))~~ A completed ARNP application for licensure to the commission;

~~((e) Submit))~~ (b) The license fee as specified in WAC 246-840-990;

~~((d) Request the commission approved certification program))~~ (c) A request to the certifying body, as identified in WAC 246-840-302((3)), to send official documentation of certification directly to the commission;

~~((e) Request))~~ (d) A request to the advanced nursing educational program to send an official transcript directly to the commission showing ((a)) courses, grades, degree or certificate granted, official seal, and appropriate registrar ((or program director's signature;

(f) Submit documentation from the graduate program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript;

~~(g) Submit))~~; and

(e) Program objectives and course descriptions when requested by the commission((; and

~~(h) Request a certificate or credential from a commission approved credential evaluating service if the applicant is a new graduate educated outside the United States.~~

~~(3) The ARNP applicant may petition the commission for an exemption to the requirement that application for licensure occur within one year of graduation if the applicant has had undue hardship.~~

~~(a) Undue hardship includes difficulty scheduling for the approved certification examination through no fault of his or her own, natural disaster, or an unexpected health or family crisis which caused him or her to delay completing the certification examination.~~

~~(b) Undue hardship does not include failure of the examination.~~

~~(c) The ARNP applicant shall provide evidence as requested by the commission of any undue hardship).~~

(3) To be granted a license without meeting the advanced clinical practice requirements identified in subsection (4) of this section, the ARNP shall initiate the application process within one year of earning a graduate degree from an advanced nursing education program.

(4) An ARNP applicant who does not apply within one year of earning a graduate degree from an advanced nursing education program must complete one hundred twenty-five hours of advanced clinical practice for each additional year following graduation, not to exceed one thousand hours.

(a) An ARNP applicant's clinical practice must be supervised by an ARNP, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or equivalent licensure in another state or United States jurisdiction. The ARNP must complete supervised advanced clinical practice as defined in subsections (3) through (5) of this section.

(b) The supervisor must be in the same practice specialty in which the applicant is seeking licensure. The supervising ARNP or physician must:

(i) Have an active ARNP or physician license, without sanctions or restrictions, for two or more years;

(ii) Not be a relative of the applicant;

(iii) Not have a personal or financial relationship with the applicant;

(iv) Not have current disciplinary action on their license;

(v) Submit a written evaluation to the commission verifying the applicant's successful completion of the required supervised clinical practice hours and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.

(5) An ARNP applicant needing to complete supervised advanced clinical practice must:

(a) Meet the requirements of subsection (1)(a) and (b) of this section; and

(b) Have commission approval for the following:

(i) The clinical site in which the supervision will take place; and

(ii) The supervising ARNP or physician.

(6) The nursing commission may request additional evidence supporting the applicant's completion of advanced clinical practice hours for the purposes of this section. The commission reserves the right to conduct on-site visits.

(7) The nurse will not use the designation ARNP during the time of the supervised practice hours.

(8) An applicant holding an active RN license, without sanctions or restrictions, and current national certification as a CNS, and is practicing in Washington state in an advanced nursing role, will be exempt from the supervised practice requirement if they can provide evidence of two hundred fifty hours of advanced clinical practice within the last two years.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-342 ((ARNP application requirements for licensed advanced practice nurse applicants from other states or jurisdictions.)) ~~Licensure for ARNP applicants by interstate endorsement.~~ (1) An applicant ((who is currently licensed as an advanced practice nurse in another state or jurisdiction and who is applying for ARNP licensure in Washington.)) for interstate endorsement for Washington state licensure as an ARNP must meet the following requirements:

(a) ((Hold current registered nurse and advanced practice nurse licenses that are not subject to sanctions or restrictions by)) Have an active RN and ARNP license, or recognition in another state or jurisdiction ((licensing agency)), as practicing in an advanced practice role, without sanctions or restrictions;

(b) Have ((graduated)) a graduate degree from an advanced nursing ((educational program that:

(i) Requires a minimum of one academic year for completion if graduated on or before December 31, 1994; or

(ii) Requires a graduate degree with a concentration in advanced nursing practice if graduated on or after January 1, 1995; or

(iii) Is equivalent to that leading to a graduate degree in advanced nursing practice if the formal educational program is taken after completion of the graduate degree)) education program as identified in WAC 246-840-340 (1)(b);

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3); and

(d) Have been ((practicing in direct patient care)) performing advanced clinical practice as a licensed ((nurse practitioner, certified nurse-midwife or certified nurse-anesthetist in his or her state)) ARNP, or in the role of an advanced practice nurse, for at least two hundred fifty hours ((of direct patient services)) within the two years prior to the date of application ((for ARNP licensure); and

(e) Be currently certified as a nurse practitioner, nurse midwife or registered nurse anesthetist by a commission approved certification program as identified in WAC 246-840-302(3)).

(2) An ((out-of-state applicant for ARNP licensure)) applicant for an ARNP license through interstate endorsement must:

(a) Apply for and be granted a Washington state ((registered nurse licensure)) RN license as identified in WAC 246-840-090;

(b) Submit a completed ARNP ((licensure)) application for licensure to the commission;

(c) Submit ((a)) the license fee as specified in WAC 246-840-990;

(d) Request the ((commission approved certification program)) certifying body, as identified in WAC 246-840-302((3)), to send official documentation of certification directly to the commission;

(e) Request the advanced nursing educational program to send an official transcript directly to the commission showing ((a)) courses, grades, degree or certificate granted, official seal and appropriate registrar ((or program director's signature));

(f) Submit ((documentation from the graduate program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript;

(g) Submit educational)) nursing education program objectives and course descriptions when requested by the commission; and

((h)) (g) Submit evidence of at least two hundred fifty hours of ((direct patient care services as an advanced practice nurse)) advanced clinical practice as an ARNP, or at an advanced nursing practice level, within the two years prior to the date of application ((for ARNP licensure)). The two hundred fifty hours may include teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor in a clinical setting.

(3) An ARNP applicant who does not meet practice requirements must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) An ARNP applicant needing to complete the supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-344 ((ARNP application requirements for advanced practice nurse)) ~~Licensure for ARNP applicants educated and licensed outside the United States.~~ (1) ((Persons educated outside the United States who are currently licensed in their country as advanced registered nurse practitioners, registered nurse-midwives or registered nurse anesthetists and who are applying for ARNP licensure in Washington, must meet the following requirements:

(a) Hold current registered nurse and ARNP licenses that are not subject to)) An applicant for ARNP licensure in Washington state, educated and licensed outside the United States, must:

(a) Apply for and be granted an active RN license, or recognition in another state or jurisdiction, without sanctions or restrictions ((by a foreign nurse licensing agency)), issued by a regulatory entity outside the United States, and have been practicing at an advanced practice level;

(b) ((Have a certificate or credential)) Submit a course-by-course evaluation of education from a commission approved credential evaluating service verifying ((that)) the advanced nursing educational program completed by the

applicant is equivalent to the ~~((advanced registered nurse))~~ ARNP education identified in WAC 246-840-455;

~~(c) Hold certification from a certifying body as identified in WAC 246-840-302(3); and~~

~~(d) Have been ((practicing in direct patient care as a licensed nurse practitioner, certified nurse midwife or certified nurse anesthetist)) performing advanced clinical practice in his or her country for at least two hundred fifty hours ((of direct patient services)) within the two years prior to the date of application for ARNP licensure(;~~ and

~~(d) Be certified as a nurse practitioner, nurse midwife or registered nurse anesthetist by a commission approved certification program)).~~

(2) The applicant educated and licensed outside of the United States must:

~~(a) ((Obtain registered nurse licensure)) Apply for and be granted a Washington state RN license, without sanctions or restrictions, as identified in WAC 246-840-045;~~

~~(b) Submit a completed ARNP application to the commission;~~

~~(c) Submit the ((application)) license fee as specified in WAC 246-840-990;~~

~~(d) Submit a ((certificate or credential)) course-by-course evaluation of education completed from a commission approved credential evaluating service;~~

~~(e) Request the ((commission approved certification program)) certifying body, as identified in WAC 246-840-302(3) to send official documentation of certification directly to the commission; and~~

~~(f) Submit evidence of at least two hundred fifty hours of ((direct patient care services)) advanced clinical practice as an ((advanced practice nurse)) ARNP, or in an advanced practice role, within the two years prior to the date of application ((for ARNP licensure)). The two hundred fifty hours may include teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor in a clinical setting.~~

(3) Internationally educated ARNP applicants who do not meet advanced clinical practice requirements must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) The ARNP applicant needing to complete supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-360 Renewal of ARNP ((license)) licensure. (1) An applicant applying for ARNP license renewal, ((the applicant)) must have:

~~(a) An active ((registered nurse license in)) Washington state RN license, without sanctions or restrictions;~~

~~(b) ((Maintained)) Current certification ((in area of practice from a commission approved certification program)) from a certifying body as identified in WAC 246-840-302;~~

~~(c) Obtained thirty contact hours of continuing education ((credit)) during the renewal period in each ((area of certification. ARNPs who have)) ARNP designation. An ARNP~~

who has certification in more than one ((related)) area of practice may count the continuing education hours for more than one certification when applicable to each area of practice; and

(d) Practiced for at least two hundred fifty hours in advanced clinical practice ((as an)) for each ARNP designation within the two-year licensing renewal cycle. The two hundred fifty hours may include teaching advanced nursing practice only when the faculty member is providing patient care or serving as a preceptor in a clinical setting.

~~((i) Clinical practice includes the formulation, implementation and evaluation of plans of care for patients for whom ARNPs are responsible.~~

~~((ii) Clinical practice includes teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor.~~

~~(2) The ARNP applicant must:~~

~~(a) Submit a) (2) An applicant for ARNP licensure renewal must comply with the requirements of chapter 246-12 WAC, Part 2 and submit:~~

~~(a) The renewal license fee as specified in WAC 246-840-990; and~~

~~(b) ((Submit)) Evidence of current certification by the commission approved ((certification program in all areas of practice)) certifying body for each designation;~~

~~(c) ((Submit)) A written declaration, on forms provided by the commission((, that he or she has completed)) attesting to:~~

~~(i) Completion of thirty contact hours of continuing education during the renewal period ((in each area of certification)) for each ARNP designation; and~~

~~(ii) Completion of a minimum of two hundred fifty hours of advanced clinical practice for each designation in the ARNP role within the last two years.~~

~~(d) ((Submit a written declaration on forms provided by the commission, to having within the last two years, a minimum of two hundred fifty hours of independent clinical practice in the ARNP role;~~

~~(e) Submit)) Evidence of completion of continuing education contact hours and ((independent)) advanced clinical practice hours when requested by the commission(;~~ and

~~(f) Comply with the requirements of chapter 246-12 WAC, Part 2)).~~

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-361 Continuing education for ARNP license renewal. The thirty contact hours of continuing education required for the two-year renewal of ARNP licensure must:

~~(1) Be acceptable to the ((commission approved certification program)) certifying body identified in WAC 246-840-302(3); ((and))~~

~~(2) Be obtained from courses in which the contact hour is at least fifty minutes; ((and))~~

~~(3) Not include the fifteen hours of continuing education required for an ARNP((s)) with prescriptive authority as identified in WAC 246-840-450 (1)(b); and~~

(4) Not include the same course taken more than once during the renewal cycle.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-365 Inactive (~~credential~~) and reactivating an ARNP license. ~~((1) An ARNP may apply for and renew an inactive credential as identified in chapter 246-12 WAC, Part 4.~~

~~(2)) To apply for an inactive ARNP license, an ARNP must comply with WAC 246-12-090 or 246-12-540, as appropriate.~~

~~(1) An ARNP may apply for an inactive (~~credential~~) license if he or she (~~meets the following criteria:~~~~

~~(a)) holds an active Washington state ARNP (~~credential~~;~~

~~(b) Does not have any sanctions or restrictions issued on the current ARNP license; and~~

~~(c) Will not practice in Washington.~~

~~(3) Prior to returning to active status, the applicant must complete two hundred fifty hours for each two-year period of inactive license status for a maximum of one thousand hours of advanced clinical practice supervised by an ARNP or physician in the same practice area that the applicant is seeking licensure.~~

~~(a) The applicant must submit a written notification to the commission thirty days prior to the supervision experience identifying the name of the ARNP or physician who will be supervising the applicant.~~

~~(b) The supervising ARNP or physician must submit a written evaluation to the commission verifying that the applicant has successfully completed the required hours of supervised clinical practice and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.~~

~~(c) During the time of the supervision, the nurse will be practicing under his or her RN license and will not use the designation ARNP.~~

~~(4) A person with an inactive credential and who does not hold a current active advanced practice nursing license in any other United States jurisdiction, may return to active status. The applicant must:~~

~~(a) Meet the requirement identified in chapter 246-12 WAC, Part 4;~~

~~(b) Hold a registered nurse license in the state of Washington that is not subject to sanctions or restrictions;~~

~~(c) Submit a fee as identified in WAC 246-840-990;~~

~~(d) Submit evidence of current certification by the commission approved certification program identified in WAC 246-840-302(3);~~

~~(e) Submit a written declaration, on forms provided by the commission, of completion within the past two years of thirty contact hours of continuing education related to area of certification and practice; and~~

~~(f) Submit evidence of supervised advanced clinical practice.~~

~~(5) A person with an inactive credential and who has been in active practice in another United States jurisdiction may return to active status and must:~~

~~(a) Meet the requirements identified in chapter 246-12 WAC, Part 4;~~

~~(b) Meet the requirements of WAC 246-840-342; and~~

~~(c) Submit a fee as identified in WAC 246-840-990.~~

~~(6) To obtain)) license without sanctions or restrictions.~~

~~(2) To return to active status the nurse must:~~

~~(a) Meet the requirement identified in chapter 246-12 WAC, Part 4;~~

~~(b) Hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;~~

~~(c) Submit the fee as identified in WAC 246-840-990;~~

~~(d) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1);~~

~~(e) Submit evidence of thirty contact hours of continuing education for each designation within the past two years; and~~

~~(f) Submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(5) To regain prescriptive authority (~~and~~) after inactive status, the applicant must (~~apply as identified in WAC 246-840-410 once the ARNP license has been returned to active status~~) meet prescriptive authority requirements identified in WAC 246-840-410.~~

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-367 Expired license. ~~((1)-(f))~~ When an ARNP license (~~has expired for two years or less, the practitioner must~~) is not renewed, it will be in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

~~((2) Prior to returning to active status, the applicant must complete two hundred fifty hours for each two-year period of expired license status for a maximum of one thousand hours of advanced clinical practice supervised by an ARNP or physician in the same practice area that the applicant is seeking licensure.~~

(i) The applicant must submit a written notification to the commission thirty days prior to the supervision experience identifying the name of the ARNP or physician who will be supervising the applicant.

(ii) The supervising ARNP or physician must submit a written evaluation to the commission verifying that the applicant has successfully completed the required hours of supervised clinical practice and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.

(iii) During the time of the supervision, the nurse will be practicing under his or her RN license and will not use the designation ARNP.

~~(3))~~ Applicants not meeting the required advanced clinical practice requirements must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.

(2) The ARNP applicant needing to complete supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

(3) If the ARNP license has expired for ~~((more than))~~ two years ~~((and the practitioner has not been in active practice in another United States jurisdiction, the practitioner))~~ or more, the applicant must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved ~~((certification program))~~ certifying body identified in WAC 246-840-302(3);

(c) Submit ~~((a written declaration, on forms provided by the commission, of completion))~~ evidence of thirty contact hours of continuing education for each designation within the past two years ~~((of thirty hours of continuing education related to area of certification and practice; and~~

~~((d) Submit evidence of the supervised advanced clinical practice hours.~~

~~(4) If the ARNP license has expired for more than two years and the practitioner has been in active advanced nursing practice in another jurisdiction, the practitioner must:~~

~~(a) Meet the requirements of chapter 246-12 WAC, Part 2;~~

~~(b) Meet the requirements of WAC 246-840-342; and~~

~~(c) Submit verification of active practice from any other United States jurisdiction.~~

~~(5) If the license has expired for two or more years, applicants may apply for);~~

(d) Submit evidence of two hundred fifty hours of advanced clinical practice completed within the past two years; and

(e) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority ~~((as identified in WAC 246-840-410 once the ARNP license has been returned to active status)),~~ which may be granted once the ARNP license is returned to active status.

(4) If the applicant does not meet the required advanced clinical practice hours, he or she must complete the supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-400 ARNP prescriptive authority. (1) An ARNP licensed under chapter 18.79 RCW when authorized by the nursing commission may prescribe drugs~~(-)~~ and medical ~~((equipment and therapies))~~ devices pursuant to applicable state and federal laws.

(2) The ARNP when exercising prescriptive authority is accountable for competency in:

- ~~((a))~~ ~~((Patient selection;~~
- ~~((b)))~~ Problem identification through appropriate assessment;
- ~~((c)))~~ (b) Medication ~~((and~~ and device selection;
- ~~((d)))~~ (c) Patient education for use of therapeutics;
- ~~((e)))~~ (d) Knowledge of interactions of therapeutics~~(-if any));~~
- ~~((f)))~~ (e) Evaluation of outcome; and
- ~~((g)))~~ (f) Recognition and management of side effects, adverse reactions, and complications ~~((and untoward reactions)).~~

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-410 Application requirements for ARNP prescriptive authority. (1) An ARNP who applies for prescriptive authority must:

(a) ~~((Have a current))~~ Hold an active Washington state ARNP license ~~((as an ARNP in Washington that is not subject to)),~~ without sanctions or restrictions, issued by the commission; ~~((and))~~

(b) ~~((Complete))~~ Provide evidence of thirty contact hours of education in ~~((pharmaceuticals related to the applicant's scope of practice))~~ pharmacology, including didactic and clinical application, and consisting of pharmacodynamics, pharmacokinetics, pharmacotherapeutics, and pharmacological management of individual patients related to the applicant's scope of practice.

(2) Pharmacology education must be completed within a two-year time period immediately prior to the date of application for prescriptive authority~~(- unless the applicant has graduated within the past two years from a graduate program which meets the requirements identified in WAC 246-840-455 (11)(e).~~

~~The pharmacotherapeutic educational content shall include pharmacokinetic principles and their clinical application and the use of pharmacological agents in the prevention of illness, restoration, and maintenance of health.~~

~~((2)))~~ unless the applicant has graduated within the past two years from an advanced nursing education program meeting requirements identified in WAC 246-840-455 (11)(e).

(3) If an ARNP applicant does not have advanced pharmacology education, the applicant must complete:

(a) Advanced pharmacology education of at least thirty contact hours, including pharmacodynamics, pharmacokinetics, pharmacotherapeutics and pharmacological management of individual patients, differential diagnosis, and applied pharmacological management of patients consistent with the applicant's area of certification.

(b) Supervised advanced clinical practice of no less than one hundred fifty hours that meets the requirements of WAC 246-840-340 (4) and (5). The clinical practice hours shall occur after completion of the thirty hours of advanced pharmacology education under the direct supervision of an ARNP with prescriptive authority, a physician as identified in chapter 18.71 RCW, an osteopathic physician as identified in chapter 18.57 RCW, or equivalent in other states or jurisdictions. The thirty contact hours of advanced pharmacology education is obtained from the following:

(i) Study within the advanced nursing education program; or

(ii) Continuing education programs accepted by a national credentialing body.

(4) The ARNP applying for prescriptive authority must submit:

(a) ~~((Submit))~~ A completed application on a ~~((form provided by the))~~ commission approved form;

(b) ~~((Submit a))~~ The fee as specified in WAC 246-840-990; and

(c) ~~((Submit))~~ Evidence of completion of ~~((thirty contact hours of education in pharmacotherapeutics related to the applicants scope of practice.~~

~~((3))~~ required advanced pharmacology education hours and supervised advanced clinical practice hours identified in subsection (3)(a) and (b) of this section.

(5) If an ARNP does not apply for prescriptive authority within two years of graduation from ~~((the))~~ an advanced practice program, an additional thirty contact hours of ~~((pharmacotherapeutics))~~ advanced pharmacology education shall be required.

~~((4))~~ (6) An ARNP who applies for a new or additional ARNP designation must send proof of advanced pharmacology educational content appropriate to each designation.

~~((5) The thirty contact hours of pharmacotherapeutic education shall be obtained from the following:~~

(a) Study within the advanced educational program; or

(b) Continuing education programs.

~~((6))~~ (7) Applicants who hold prescriptive authority from another state at the time of application may request an exemption to subsection ~~((1)(b) and (2)(e))~~ (3)(a) and (b) of this section if he or she provides evidence of at least two hundred fifty hours of ~~((independent advanced registered nurse practice))~~ advanced clinical practice in an ARNP role with prescriptive authority in his or her scope of practice within the two years prior to application for prescriptive authority.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-420 Authorized prescriptions by ARNP with prescriptive authority. ~~((1))~~ Prescriptions for drugs ~~((s))~~ and medical ~~((equipment and therapies))~~ devices must comply with all applicable state and federal laws and be within the ARNP's scope of practice.

~~((2) The advanced registered nurse practitioner)~~ (1) An ARNP must sign ~~((a))~~ prescriptions and include the initials ARNP or NP.

~~((3))~~ (2) An ARNP may not, under RCW 18.79.240(1) and chapter 69.50 RCW, prescribe controlled substances in Schedule I.

~~((4) Any)~~ (3) An ARNP with prescriptive authority who prescribes controlled substances must be registered with the drug enforcement administration.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-304 Certification and certification program requirements.

WAC 246-840-350 Application requirements for ARNP interim permit.

WSR 16-08-044

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Psychology)

[Filed March 30, 2016, 2:34 p.m., effective April 30, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-924-358, the examining board of psychology is amending the sexual misconduct rule to establish clearer standards of conduct for psychologists under the board's authority. The definition of "sexual misconduct" is revised to include sexual contact with any person involving force, intimidation, lack of consent, or a conviction of a sex offense listed in RCW 9.94A.030.

Citation of Existing Rules Affected by this Order: Amending WAC 246-924-358.

Statutory Authority for Adoption: RCW 18.83.050, 18.130.050, and 18.130.062.

Adopted under notice filed as WSR 16-01-170 on December 22, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 29, 2016.

Shari Roberts, Board Chair
Examining Board of Psychology

AMENDATORY SECTION (Amending WSR 07-23-126, filed 11/21/07, effective 12/22/07)

WAC 246-924-358 Sexual misconduct. (1) The following definitions apply to this section:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of psychology.

(d) "Patient" or "client" means an individual who receives psychological services from a psychologist.

(2) A psychologist shall never engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Dressing or undressing in the presence of the patient, client or key party;
- (g) Removing patient or client's clothing or gown or draping without emergent medical necessity;
- (h) Encouraging masturbation or other sex act in the presence of the psychologist;
- (i) Masturbation or other sex act by the psychologist in the presence of the patient, client or key party;
- (j) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;
- (k) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;
- (l) Soliciting a date with a patient, client or key party;
- (m) Discussing the sexual history, preferences or fantasies of the psychologist;
- (n) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (o) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for psychological service purposes;
- (p) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(q) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for psychological service purposes; and

(r) Showing a patient, client or key party sexually explicit photographs, other than for psychological service purposes.

(3) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent: or a conviction of a sex offense as defined in RCW 9.94A.030.

(4) A psychologist shall not:

(a) Offer to provide psychological services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the psychologist's sexual needs.

~~((4))~~ (5) After the termination of the psychology services, the psychologist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a patient or client for five years or with a key party for two years.

~~((5))~~ (6) A psychologist shall never engage, or attempt to engage, in sexual misconduct with a former client, patient or key party even after the period of time described in subsection ~~((4))~~ (5) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the psychologist; or

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

~~((6))~~ (7) When evaluating whether a psychologist is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the psychological services;

(b) Transfer of care to another health care provider;

(c) Duration of the psychological services;

(d) Amount of time that has passed since the last psychological services were provided to the patient or client;

(e) Communication between the psychologist and the patient or client between the last psychological services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the psychologist;

(g) Nature of the patient's or client's mental health condition during and since the professional relationship; and

(h) The patient's or client's emotional dependence and vulnerability.

~~((7))~~ (8) Initiation or consent by patient, client or key party does not excuse or negate the psychologist's responsibility.

~~((8))~~ (9) These rules do not prohibit providing psychological services in case of emergency where the services cannot or will not be provided by another psychologist.

~~((9))~~ (10) Psychologists must not accept as therapy patients or clients persons with whom they have engaged in sexual contact or activity.

WSR 16-08-093

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed April 5, 2016, 9:27 a.m., effective May 6, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These proposed rule changes will:

- Enable enforcement of civil infractions under chapter 46.72A RCW.
- Add safety requirements.
- Adjust the definition of an executive sedan limousine, to include wheelbase changes made by automotive manufacturers.

Reasons Supporting Proposal: The current chauffeur definition does not adequately allow for the citing and prosecution of drivers not certified as a chauffeur under WAC 308-83-145. The addition of the safety equipment requirement increases the safety of the public, and makes it more consistent with federal safety requirements. The updated executive sedan definition will address the limousine industry's lack of affordable vehicle options for executive sedans due to changes in automotive wheelbase length.

Citation of Existing Rules Affected by this Order: Amending WAC 308-83-010 Definitions and 308-83-120 Vehicle inspections.

Statutory Authority for Adoption: RCW 46.72A.120, 43.24.086, chapter 46.04 RCW.

Adopted under notice filed as WSR 16-04-047 on January 27, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 5, 2016.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and chapter 46.72A RCW.

(1) "Amenities" means equipment or features added to a vehicle for the comfort or convenience of the occupants:

(a) "Standard amenities" means standard factory amenities normally found in passenger cars;

(b) "Nonstandard amenities" means amenities not normally found in passenger cars. These amenities may include, but are not limited to, a television, musical sound system, telephone, ice storage, refrigerator, power-operated dividers, or additional interior lighting.

(2) "Business license" or "limousine carrier business license" means a license issued under chapter 19.02 RCW, which contains an endorsement indicating the business to which the license is issued is authorized to provide limousine carrier services.

(3) "Business licensing service" means the program within the Washington state department of revenue authorized by chapter 19.02 RCW to issue the business license.

(4) "Business office" refers to the physical location where a limousine carrier business maintains its business records, as defined in WAC 308-83-130. The business office is the physical address on file with the business licensing service. The business office is the place where the business license is posted.

(5) "Business owner" means an individual, partnership, corporation, association, or other person(s), or group that holds a substantial interest in a limousine carrier business.

(6) "Chauffeur" means a person ~~((with a valid Washington state driver license, who is also certified to drive a limousine under chapter 46.72A RCW and WAC 308-83-145. As provided by WAC 308-83-145(1), a business owner cannot assume the duties of a chauffeur unless the owner is also certified as a chauffeur))~~ who operates a limousine.

(7) "Decal" means a sticker issued by the department to indicate the vehicle displaying the decal has a valid limousine vehicle certificate.

(8) "Department" means the Washington state department of licensing.

(9) "Dispatch log" refers to a paper or electronic record of assignments made to chauffeurs, and includes all information from the passenger manifest(s) for a given period, as well as the time each ride was arranged, passenger and carrier phone numbers used to make the arrangement, limousine, and the chauffeur assigned to the customer. The dispatch log also documents passengers referred by or to other drivers or businesses.

(10) "Disqualification" means a prohibition against driving a limousine.

(11) "Drugs" are those substances as defined by RCW 69.04.009 including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(12) "Limousine" has the same meaning as in RCW 46.04.274 and includes vehicles that meet one of the following definitions:

(a) "Stretch limousine" means an automobile with a seating capacity behind the driver of not less than four passengers

and not more than fourteen passengers, and a maximum wheelbase of two hundred eighty-five inches. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch limousine must be equipped with nonstandard amenities in the rear seating area.

(b) "Executive sedan" means a four-door sedan or crossover automobile having a seating capacity behind the driver of not more than three passengers, and a minimum wheelbase of one hundred fourteen and one-half inches or is designated as a large car under 40 C.F.R. 600.315-08, and has a manufacturer's suggested retail price when new of no less than thirty-five thousand dollars. The department may provide guidelines for qualified vehicles on our web site. An executive sedan must at a minimum be equipped with standard amenities, and the wheelbase may not be altered.

(c) "Executive van" means a van or minivan, having a seating capacity behind the driver of not less than seven passengers and not more than fourteen passengers.

(d) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older.

(e) "Executive sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than three passengers and not more than six passengers, and a minimum wheelbase of one hundred sixteen inches that has not been altered.

(f) "Stretch sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than four and not more than fourteen passengers, and a maximum wheelbase of three hundred twenty-five inches that has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch sport utility vehicle must be equipped with nonstandard amenities in the rear seating area.

(13) "Limousine carrier" or "carrier" is a business licensed, or required to be licensed by the department to provide limousine services, in accordance with RCW 46.04.276 and department regulations.

(14) "Nonresident limousine carrier" refers to a limousine carrier or vehicle owner whose place of business is not in Washington state, and does not have a valid Washington state limousine carrier license.

(15) "Operate" refers to a person engaging in the business of a limousine and includes driving, occupying, or otherwise using a limousine to wait for, pick up, transport, or drop off a passenger for compensation. Specific activities included in the definition of operating a limousine are contained in WAC 308-83-210.

(16) "Passenger capacity" means the maximum number of passengers that may be carried in a vehicle as determined by using the information found on the label that is required by the United States Department of Transportation to be affixed to the vehicle under 49 C.F.R., Parts 567 and 568. This label must be affixed to the vehicle in accordance to 49 C.F.R., Parts 567 and 568. In absence of the label, a member of the Washington state patrol or the department may determine the passenger capacity upon visual inspection of the vehicle.

(17) "Passenger manifest" refers to a daily record that verifies prearranged trips. Specific requirements for the passenger manifest are contained in WAC 308-83-200.

(18) "Person" or "persons" means an individual, a corporation, association, sole proprietorship, joint stock association, partnership, limited liability partnership, limited liability company, or other association of people organized to conduct business. It also includes their lessees, trustees, or receivers.

(19) "Prearranged" refers to a customer or customer's agent having secured and agreed to the services and fare. Prearranged means the agreement was made prior to the time of departure and at a place different than the place of departure.

(20) "Public highway" includes every public street, road, or highway in this state.

(21) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(22) "Unified business identifier" or "UBI" is a nine digit number that registers a business with several state agencies and allows an entity to do business in Washington state. It is sometimes called a tax registration number, a business registration number, or a business license number.

(23) "Vehicle certificate" is a document issued by the department, indicating that the vehicle is registered as a limousine. The vehicle certificate must be carried in the limousine at all times. The vehicle certificate is not the vehicle registration document.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-120 Vehicle inspections. The vehicle inspection report must certify that the vehicle meets the following standards:

(1) The legal definition of a limousine, as defined in WAC 308-83-010; (~~and~~)

(2) The standards and criteria set by the Washington state patrol for vehicle inspections, as established under chapter 204-95 WAC(~~-~~); and

(3) On board safety equipment, as described in Title 49 C.F.R. 393-95 Federal Regulations pertaining to:

(a) Fire extinguishers; and

(b) Warning devices for stopped vehicles.

WSR 16-08-100

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed April 5, 2016, 10:20 a.m., effective May 16, 2016]

Effective Date of Rule: May 16, 2016.

Purpose: This rule making reviewed the plumber certification rules for housekeeping changes in order to further clarify the rules. The plumber certification rules are reviewed on a regular basis to: Ensure the rules are consistent with the national consensus standards; industry practice; and to clarify the rules.

The rule changes put forward included:

- Amending the rule to be consistent with the national consensus code;
- Encourages the visible display of the plumber certificate of competency; and
- General housekeeping changes.

The plumbing program worked with the Washington state advisory board of plumbers, with representation from business, labor, and the public, regarding employer compliance with plumbing rules. The advisory board of plumber[s] has endorsed the proposed changes.

Citation of Existing Rules Affected by this Order:

NEW SECTIONS:

WAC 296-400A-024 How should a person performing plumbing wear or visibly display their certification, trainee card, or endorsement?

- The wording in the title of WAC 296-400A-024 was changed.
- Clarifies the requirement under RCW 18.106.020 that an individual working in the plumbing trade must have in their possession photo identification and a plumber certificate of competency.
- Encourages the visible display of plumber certificates of competency.

AMENDED SECTIONS:

WAC 296-400A-005 What definitions do I need to know to understand these rules?

- Added a definition for "assist," "calendar day," and "control."
- Under the definition "Continuity affidavit," deleted "annually" and added "at the time of renewal," "notarized" and a sentence about medical gas installers.
- Under the definition "Supervision," deleted "or" and replaced it with "and."
- Changed the word "journeyman" to "journey level."

WAC 296-400A-010 Plumbing certificate types and scope of work.

- Changed the word "journeyman" to "journey level."
- Deleted a sentence in subsection (1) and (2).
- Replaced the words "apprentice permit" with "plumber trainee card."

WAC 296-400A-020 How do I obtain a certificate of competency?

- Changed the word "journeyman" to "journey level."
- Deleted a sentence in subsection (1).
- Added information on backflow assembly test certification in subsection (2).

WAC 296-400A-021 How do I obtain a medical gas piping installer endorsement?

- Changed the word "journeyman" to "journey level."
- Added language to subsection (4).
- Deleted and added language to subsection (5) on medical gas endorsement examination.

WAC 296-400A-022 What procedure is required for renewal of a journeyman medical gas endorsement?

- Changed the word "journeyman" to "journey level."
- Added language in subsection (2).
- Changed the word "shall" to "must."
- Added subsection (6) about affidavit of continuity and/or affidavit of review.

WAC 296-400A-023 What process is required for renewal of journeyman, domestic pump specialty, and residential specialty plumber certificates of competency?

- Removed "journeyman, domestic pump specialty, and residential specialty" from the title.
- Changed the word "journeyman" to "journey level."
- Changed a reference in subsection (2).
- Added a new subsection (6) about backflow specialty plumber certificate holders.

WAC 296-400A-028 What are the requirements for continuing education and classroom training? What are the general and continuing education course requirements for journeyman, residential specialty plumbers, domestic pump specialty plumbers, and plumber trainees?

- Changed the word "journeyman" to "journey level."
- Changed the words "at least" to "a minimum of."
- Changed the word "shall" to "must."
- Changed the word "code" to "trade related classes."
- Added language in subsections (2), (6), (7), (13), and (20).
- Changed the word "must" to "may" in subsection (16).

WAC 296-400A-029 What is the implementation schedule for the continuing education course requirements?

- Added the words "journey level and residential specialty."

WAC 296-400A-030 Do I need a temporary permit?, 296-400A-031 How do I qualify for a temporary permit?, 296-400A-140 How does the department enforce plumbers certification requirements?, and 296-400A-430 If I am a certified backflow assembly maintenance and repair, journeyman, or specialty plumber do I need to be a registered contractor under chapter 18.27 RCW?

- Changed the word "journeyman" to "journey level."

WAC 296-400A-033 What is the duration of a temporary permit?

- Changed "one hundred twenty days" to "four months."

WAC 296-400A-035 How can I be placed on inactive status?

- Removed the word "annual" in subsection (3).
- Added language on minimum hours in subsection (4).
- Added subsections (5) and (6).

WAC 296-400A-045 What fees will I have to pay?

- Changed the word "journeyman" to "journey level."
- Changed "120 days" to "four months."
- Removed information about honorary plumbing certification.
- Changed the word "shall" to "will" and "shall" to "must" in the notes.

WAC 296-400A-070 Can I work as a certified plumber in Washington without taking the Washington state plumbers' competency examination?

- Moved language from subsection (3) to the intro section.
- Changed the word "journeyman" to "journey level."
- Deleted the old subsection (4).
- Added subsection (5) about reciprocity applications.
- Added subsection (6) about reciprocal certificates.
- Added subsection (7) about reciprocal certificate holders.

WAC 296-400A-100 For certification purposes, how are "years of employment" computed and documented?

- Change a reference in subsection (4).
- Changed the word "journeyman" to "journey level."

WAC 296-400A-120 What do I need to know about plumber trainee certificates (excluding backflow assembly maintenance and repair specialty certification)?

- Removed the language "excluding backflow assembly maintenance and repair specialty certification" from the title.
- Changed the word "journeyman" to "journey level."
- Added language to subsections (1), (2), and (4) and changed the numbering.

WAC 296-400A-121 What do I need to know about trainee experience and plumber examination requirements for the journeyman and specialty plumber (excluding the backflow assembly maintenance and repair specialty)?

- Changed the word "journeyman" to "journey level."
- Removed the words "excluding the backflow assembly maintenance and repair specialty" from the title.
- Renumbered several sections.
- Added in language about supervision of trainees.
- Changed the word "shall" to "must."

WAC 296-400A-400 What are the monetary penalties for violating certification requirements?

- Changed the word "shall" to "will."

WAC 296-400A-425 What if I owe outstanding penalties related to a department issued plumber infraction?

- Changed the word "shall" to "must."

REPEALED SECTIONS:

WAC 296-400A-036 How can I maintain my plumbing certificate as an honorary accomplishment?, 296-400A-122 What do I need to know about trainee experience and certification, and the backflow assembly maintenance and repair specialty examination requirements?, and 296-400A-135 How does the department enforce trainee supervision?

WAC 296-400A-036 How can I maintain my plumbing certificate as an honorary accomplishment?, 296-400A-122 What do I need to know about trainee experience and certification, and the backflow assembly maintenance and repair specialty examination requirements?, and 296-400A-135 How does the department enforce trainee supervision?

- These sections have been repealed.

Statutory Authority for Adoption: Chapter 18.106 RCW.
Other Authority: Uniform Plumbing Code.
Adopted under notice filed as WSR 15-20-124 on October 7, 2015.

Changes Other than Editing from Proposed to Adopted Version: The adopted language had a few changes from the text of the proposed rule as published in the CR-102. In WAC 296-400A-035, 296-400A-070, and 296-400A-120, the numbering was changed and language was moved from one subsection to another for clarification purposes. The wording in the title of WAC 296-400A-024 was changed and the language was change[d] to encourage but not require the visible display of plumber certificates of competency.

A final cost-benefit analysis is available by contacting Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6272, fax (360) 902-5292, e-mail Beverly.Clark@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 21, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 21, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 5, 2016.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-005 What definitions do I need to know to understand these rules? Unless a different meaning is clearly required by the context, the following terms and definitions are important:

"Advisory board" is the state advisory board of plumbers.

"Assist" means a friend, neighbor, or other person (including a certified plumber) may assist a householder, at his or her residence, in the performance of plumbing work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

"Audit" means an assessment, evaluation, examination or investigation of, contractor's accounts, books and records for the purpose of verifying the contractor's compliance with RCW 18.106.320.

"Backflow assembly" or "backflow prevention assembly" or "backflow preventer" is a device as described in the *Uniform Plumbing Code* used to prevent the undesired reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" is an individual certified by the department of health to perform tests to backflow assemblies.

"Calendar day" means each day of the week, including weekends and holidays.

"Continuing education" is approved plumbing and electrical courses for ((~~journeymen~~)) journey level, domestic pump specialty plumbers, and residential specialty plumbers, to meet the requirements to maintain their plumbing certification and for trainees or individuals to become certified plumbers in Washington.

"Continuing education course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide continuing education training for ((~~journeymen~~)) journey level, domestic pump specialty plumbers, residential specialty plumbers, and trainees. All training course providers must comply with the requirements in WAC 296-400A-028.

"Continuity affidavit" is a form developed by the department that is used to verify whether medical gas pipe installation work (brazing process) has been performed biannually. This form is provided to the department ((~~annually~~)) at the time of renewal by the person holding the medical gas piping installer endorsement and requires the notarized signature of the employer of the medical gas piping installer or another qualified verifier as determined by the department. Continuity is a visual examination by the employer of the brazing that was performed. The medical gas installer must also review the current medical gas code and sign the affidavit stating that they have done so.

"Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of chapter 18.106 RCW by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of chapter 18.106 RCW and is registered as a contractor under chapter 18.27 RCW.

"Control" means that the journey level plumber, specialty plumber, or temporary permit plumber is physically on-site at the start of each day and each and every job site to diagnose, direct, and lay out the plumbing work the trainee is to perform.

"Course of study" means classroom training and practical work experience in the plumbing industry as defined in WAC 296-400A-100.

"Department" is the department of labor and industries.

"Director" is the director of the department of labor and industries.

"Dispatcher" means the contractor's employee who authorized the work assignment of the person employed in violation of chapter 18.106 RCW.

"((~~Journeyman~~)) Journey level plumber" is anyone who has learned the commercial plumbing trade and has been issued a ((~~journeyman~~)) journey level certificate of competency by the department. A ((~~journeyman~~)) journey level plumber may work on plumbing projects including residential, commercial and industrial worksite locations.

"Medical gas piping installer" is anyone who has been issued a medical gas piping installer endorsement of competency by the department.

"Medical gas piping systems" are piping systems that convey or involve oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, or medical vacuum systems.

"Plumbing" is that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems and medical gas piping systems in the footprint of a building. Potable water systems, liquid waste systems, and medical gas piping systems are defined by the current *Uniform Plumbing Code* (UPC) and amendments adopted by the state building code council. All piping, fixtures, pumps and plumbing appurtenances that are used for a reclaimed water system are included in the definition of liquid waste systems. The installation of water softening or water treatment equipment into a water system is not considered plumbing.

"Records" include, but are not limited to, all bids, invoices, billing receipts, time cards and payroll records that show the work was performed, advertised, or bid.

"Specialty plumber" is anyone who has been issued a specialty plumbers certificate of competency by the department limited to:

(a) Installation, maintenance and repair of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories;

(b) Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies.

(c) "Domestic pump specialty" means the installation, maintenance, and repair of a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to:

(A) A single-family dwelling, duplex, or other similar place of residence;

(B) A public water system, as defined in RCW 70.119.-020 and as limited under RCW 70.119.040; or

(C) A farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space~~(s)~~ including, but not limited to, an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either:

(A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a ~~((journeyman))~~ journey level plumber, specialty plumber, or trainee, as defined in this chapter; or

(B) A person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

For the purposes of the domestic pump specialty, residential structure includes any improvement to real property where that property is primarily used as a residence.

"**Story**" is defined by the current building codes and amendments adopted by the state building code council which includes basements or garages.

"**Supervision**" for the purpose of these rules means within sight ~~((or))~~ and sound. Supervision requirements are met when the supervising plumber is on the premises and within sight ~~((or))~~ and sound of the individual who is being trained.

"**Trainee plumber**" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a ~~((journeyman))~~ journey level plumber or specialty plumber working in their specialty.

"**Training course provider**" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide medical gas piping installer training. All training course providers must comply with the requirements in WAC 296-400A-026.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-010 Plumbing certificate types and scope of work. (1) ~~((Journeyman))~~ **Journey level plumber (PL01):** A ~~((journeyman))~~ journey level plumber may work on all phases of plumbing projects including residential, commercial and industrial worksite locations. ~~((A plumber trainee must have a training certificate in order to perform plumbing work under the supervision of a certified journeyman plumber.))~~

(2) **Residential specialty plumber (PL02):** Installation, maintenance and repair of all phases of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories. ~~((A plumber trainee must have a training certificate in order to perform plumbing work as a residential specialty plumber under the supervision of a certified residential or journeyman plumber.))~~

(3) **Backflow specialty plumber (PL30):** Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include

installing or replacing backflow assemblies. A plumber trainee must have a PT31 certificate in order to ~~((do))~~ work as a backflow specialty plumber under the supervision of a certified backflow specialty plumber, certified residential specialty plumber or certified ~~((journeyman))~~ journey level plumber. PT31 trainee requires one hundred percent supervision.

(4) **Pump and irrigation specialty plumber (PL03):** Installation, maintenance and repair of equipment that is used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation or to a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment. For the purposes of this subsection, if located within the interior space of a residential structure as stated in RCW 18.106.010 (10)(c), only the equipment and piping defined by RCW 18.106.010 (10)(c) are included in this specialty and other parts of the system must be worked on by the appropriate certification.

(5) **Limited volume domestic pump specialty plumber (PL03A):** Installation, maintenance and repair of equipment that is used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes on pumping systems not exceeding one hundred gallons per minute. A domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment. For the purposes of this subsection, if located within the interior space of a residential structure as stated in RCW 18.106.010 (10)(c), only the equipment and piping to stated equipment in this locked room can be worked on by this certification; other parts of the system must be worked on by the appropriate certification.

(6) **Plumber trainee (PT00 and PT31):** Is an individual learning the trade or craft of plumbing. Trainees are required to have and maintain a valid plumber's training certificate. Trainees will be accredited for those hours worked within the scope of their supervising plumber. Any plumber trainee may perform plumbing work within the scope of their supervising ~~((journeyman))~~ journey level or specialty plumber. A trainee ~~((shall))~~ must keep a record of the hours worked as a trainee as required by WAC 296-400A-120(3).

(7) **Certified ~~((journeyman))~~ journey level electricians, certified residential specialty electricians, or electrical trainees (EL01 and EL02):** According to RCW 18.106.150 (2)(b), a current plumbing certificate of competency or ~~((apprentice permit))~~ plumber trainee card is not required for: Certified ~~((journeyman))~~ journey level electricians, certified residential specialty electricians, or electrical trainees working for ~~((an))~~ a general or residential specialty electrical contractor (EC01 or EC02) and performing exempt work under RCW 18.27.090(18). A plumber trainee must have ~~((a))~~ an electrical trainee (ET00) certificate in order to work with a ~~((journeyman))~~ journey level electrician~~(s)~~ or residential specialty electrician~~(s or electrical trainee)~~.

The plumbing work must be directly and immediately appropriate to the like-in-kind replacement of a household

fixture or its component(s) that requires limited power and waste/water connections.

An example would be replacing the heating element (a component) of an electric hot water heater. An electrician performing a like-in-kind replacement of an electric hot water tank could only disconnect and then reconnect the water supply lines to the tank and drain line from the temperature and pressure relief valve. Gas hot water tanks are not part of the electrician's exemption.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-020 How do I obtain a certificate of competency? You can obtain a certificate of competency by completing the following requirements for:

(1) ~~((Journeyman and))~~ Journey level, residential and domestic pump specialty plumber certificate ~~((excluding backflow assembly maintenance and repair specialty certification))~~:

(a) Submitting a competency examination application to the department;

(b) Paying the examination fee shown in WAC 296-400A-045(1);

(c) Submitting the required evidence of competency and experience to the department as required under WAC 296-400A-120 and 296-400A-121;

(d) Providing documentation to the department with continuing education requirements;

(e) Passing the competency examination;

(f) In lieu of (a), (b) and (c) of this subsection and with the approval of the advisory board, the department may accept the successful passage of an examination administered by a nationally recognized testing entity;

(g) For domestic pump specialty plumbers, in lieu of (a), (b) and (c) of this subsection and with the approval of the advisory board, the department may accept a certification issued by professional trade association; and

(h) Paying the certification issuance fee within ninety days of notification of passing the written examination. Failure to pay within ninety days will require reexamination.

(2) Backflow assembly maintenance and repair specialty certificate:

(a) Submitting a competency examination application to the department;

(b) Submitting evidence of a current backflow assembly tester certification issued by the department of health;

(c) Paying the application and certificate fee shown in WAC 296-400A-045(1);

~~((e))~~ (d) Passing the competency examination; and

~~((d))~~ (e) Paying the certification issuance fee within ninety days of notification of passing the written examination. Failure to pay within ninety days will require reexamination.

AMENDATORY SECTION (Amending WSR 05-11-061, filed 5/17/05, effective 6/30/05)

WAC 296-400A-021 How do I obtain a medical gas piping installer endorsement? *(Only ((journeyman)) journey level plumbers holding active state of Washington certi-*

fication may apply for this endorsement.) **This section applies if you have never held the endorsement.**

You can obtain a medical gas piping installer endorsement by completing the following requirements:

(1) Submit an application to the department; ~~((and))~~

(2) Pay the ~~((examination))~~ application fee shown in WAC 296-400A-045; ~~((and))~~

(3) Submit the required evidence of approved training to the department; ~~((and))~~

(4) Pass the written and practical competency examination provided by a nationally recognized testing agency under contract with the department;* and

(5) Pay the endorsement issuance fee shown in WAC 296-400A-045 to the department.

*~~((The written and practical competency examination is performed under contract with a nationally recognized testing agency. The results of the competency examination will be forwarded to the department for processing.))~~ **This section applies if you previously held the endorsement.**

(6) If you previously held a medical gas endorsement in Washington and it has been expired for more than ninety days, you are required to take the department's medical gas examination. You can apply for the examination by completing the following requirements:

(a) Submit an application to the department;

(b) Pay the examination fee shown in WAC 296-400A-045;

(c) Pass the competency examination;

(d) Pay the certificate issuance fee within ninety days of notification of passing the written examination;

(e) Failure to pay within ninety days will require reexamination.

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-022 What procedure is required for renewal of a ((journeyman)) journey level medical gas endorsement? (1) Maintain an active Washington state ~~((journeyman))~~ journey level certification.

(2) Submit affidavit of continuity verifying that brazing has been performed every six months during the renewal cycle.

(3) Submit affidavit of review of current medical gas code adopted by the Washington state building code council.

(4) Pay the appropriate fee: If renewal occurs before expiration of current endorsement, the renewal fee shown in WAC 296-400A-045; if renewal occurs within ninety days of expiration of current endorsement, you must pay a double renewal fee; if the current endorsement has been expired for ninety-one days or more, you must take an examination relating to medical gas installation administered by the department and pay the examination application fee shown in WAC 296-400A-045. Medical gas endorsement is renewed every two years.

(5) Contractors ~~((shall))~~ must accurately verify and attest to brazing performed by the ~~((journeyman))~~ journey level by sending an affidavit of continuity to the department or in lieu of the biannual braze requirement from the contractor, a performed brazed coupon test documenting that the coupon was

certified as passing from a department approved medical gas training course provider would be accepted.

(6) If affidavit of continuity and/or affidavit of review are not received within ninety days of expiration, the applicant will be required to retake the examination and pay the appropriate fees prior to being placed in active status.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-023 What process is required for renewal of ~~((journeyman, domestic pump specialty, and residential specialty))~~ plumber certificates of competency? (1) An individual must apply for renewal of their plumbing certificate before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. ~~((Journeyman and))~~ Journey level residential specialty and backflow specialty plumber certificates are renewed every two years. Domestic pump specialty plumber certificates are renewed every three years.

(2) An individual may renew their certificate within ninety days after the expiration date without reexamination if the individual pays the ~~((late))~~ doubled renewal fee ~~((listed in WAC 296-400A-045))~~ referenced in RCW 18.106.070.

(3) All applications for renewal received more than ninety days after the expiration date of the plumbing certificate require that the plumber pass the appropriate competency examination before being recertified.

(4) All applicants for plumbing certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Provide accurate evidence ~~((on the renewal form))~~ that the individual has completed the continuing education requirements described in WAC 296-400A-028 (excluding backflow specialty).

If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing certificate, the individual's plumbing certificate may be suspended or revoked.

(5) A ~~((journeyman))~~ journey level, domestic pump specialty, or residential specialty plumber certificate holder who has not completed the required hours of continuing education ~~((prior to the))~~ on or before the renewal date must pay a doubled fee according to RCW 18.106.070. Also, if the required hours of continuing education are not completed within ninety days after the expiration date the applicant will be required to retake the examination and pay the appropriate fees prior to being placed in active status.

(6) Backflow specialty plumber certificate holders must submit evidence of an active backflow assembly tester certification issued by the department of health within ninety days of their expiration date. If the backflow assembly tester evidence is not submitted within ninety days after the expiration date, the applicant will be required to retake the examination and pay the appropriate fees prior to being placed in active status.

(7) An individual may renew a suspended plumbing certificate by submitting a complete renewal application including obtaining and submitting the continuing education

required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

~~((7))~~ (8) An individual may not renew a revoked plumbing certificate.

NEW SECTION

WAC 296-400A-024 How should a person performing plumbing wear or visibly display their certification, trainee card, or endorsement? (1) The certificate must be immediately available for examination at all times.

(2) The individual must also have in their possession governmental issued photo identification.

(3) To work in the plumbing trade, an individual must possess, and is encouraged to wear, and visibly display on the front of the upper body a current, valid plumber certificate of competency, medical gas endorsement, or plumber trainee card.

(a) The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.), is required.

(b) The certificate may be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

(c) The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment where wearing the certificate may pose an unsafe condition for the individual.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-028 What are the requirements for continuing education and classroom training?

What are the general and continuing education course requirements for ~~((journeyman))~~ journey level, residential specialty plumbers, domestic pump specialty plumbers, and plumber trainees?

(1) ~~((Journeyman))~~ Journey level, residential specialty plumber, domestic pump specialty plumber, and plumber trainee.

(a) To be eligible for renewal of a ~~((journeyman))~~ journey level plumber or residential specialty plumber certificate, the individual must have completed at least sixteen hours of approved continuing education for each two years of the prior certification period. Individuals will be required in the prior two-year period to have completed ~~((at least))~~ a minimum of eight hours of plumbing code and ~~((at least))~~ a minimum of four hours of electrical ~~((code))~~ trade related classes from the currently adopted Washington state plumbing and electrical codes. The remaining four hours may be plumbing or electrical trade related classes.

(b) Domestic pump specialty plumbers ~~((shall))~~ must renew their domestic pump specialty certificate once every three years, on or before the individual's birthday. Individuals will be required to complete twenty-four hours of approved continuing education. The continuing education may comprise both electrical and plumbing education with a minimum

of twelve of the required twenty-four hours of continuing education in plumbing for each three-year renewal cycle.

(c) Plumber trainees must complete at least eight hours per year of (~~classroom~~) training from an approved continuing education course for each year of the prior certification period. Trainees will be required during a two-year period to complete at least eight hours of plumbing code and at least four hours of electrical (~~code~~) trade related classes from the currently adopted Washington state plumbing and electrical codes. The remaining four hours may be plumbing or electrical trade related classes.

(d) Any portion of a year of a prior plumber certification period is equal to one year for the purposes of the required continuing education.

(2) An individual will not be given credit for the same approved continuing education course taken more than once in (~~the two years prior to the renewal date~~) their renewal cycle. No credit will be granted for any course not approved by the department.

(3) Continuing education requirements do not apply to backflow specialty plumbers under chapter 18.106 RCW and this chapter.

Approval process - Continuing education course.

(4) The advisory board of plumbers or plumbing board subcommittee will review each continuing education course. The advisory board of plumbers or plumbing board subcommittee will recommend approval or disapproval to the department. The department will either approve or disapprove the course.

(5) To be considered for approval, a continuing education course must consist of not less than two hours of instruction and must be open to monitoring by a representative of the department and/or the plumbing board at no charge. If the department determines that the continuing education course does not meet or exceed the minimum requirements for approval, the department may revoke the course approval or reduce the number of credited hours.

(6) Approved courses must be based on:

(a) Currently adopted edition of the *Uniform Plumbing Code with amendments as adopted by the state building code council* and currently adopted *National Electrical Code*;

(b) Chapters 18.106 or 19.28 RCW or chapters 296-400A or 296-46B WAC; or

(c) Materials and methods as they pertain to the industrial practices of plumbing or electrical construction, building management systems, plumbing or electrical maintenance, or workplace health and safety.

(7) Code-update courses must be based on the (~~entire~~) currently adopted *Uniform Plumbing Code with amendments as adopted by the state building code council* or currently adopted *National Electrical Code*.

(a) Correspondence and online courses in the plumbing code or industry related plumbing category require thirty-five questions per hour of credit. Exams and answers required with course application.

(b) Correspondence and online courses in the industry related electrical (~~courses~~) category require twenty-five questions per hour of credit. Exams and answers required with course application.

(c) Classroom training requires one hour of instruction for each hour of credit.

(d) Course outline must support the number of hours requested.

Application - For continuing education course approval.

(8) All applications for course approval must be on forms provided by the department. The plumbing board and the department will only consider the written information submitted with the application when considering approval of the continuing education training course.

(9) The department will provide continuing education application forms to sponsors upon request. The course sponsor must submit an original completed application for course approval and three copies (unless submitted electronically using department prescribed technology) to the department. The department must receive the complete course application from the sponsor in writing at least forty-five days before the first class requested for approval is offered.

(10) A complete application for course approval must include:

(a) The appropriate course application fee;

(b) Course title, number of classroom instruction hours, and whether the training is open to the public;

(c) Sponsor's name, address, contact's name and phone number;

(d) Course outline (general description of the training, including specific *Uniform Plumbing Code* or currently adopted *National Electrical Code* articles referenced);

(e) Lists of resources (texts, references, visual aids);

(f) Names and qualifications of instructors. Course instructors must show prior instructor qualification and experience similar to that required by the work force training and education coordinating board under chapter 28C.10 RCW;

(g) Any additional documentation to be considered; and

(h) A sample copy of the completion certificate issued to the course participants.

(11) The course sponsor seeking approval of a continuing education course will be notified of the subcommittee's decision within five days of the completed review of the application.

(12) If the application is not approved, the rejection notice will include an explanation of the reason(s) for rejection. If the course sponsor disagrees with the subcommittee's decision, the course sponsor may request a reconsideration hearing by the full plumbing board. A request to appeal course rejection must be received by the department forty-five days before a regularly scheduled board meeting. The course sponsor must submit, to the department, any additional information to be considered during the hearing, in writing, at least thirty days before the board hearing. The course sponsor must provide at least twenty copies of any written information to be submitted to the board.

Offering - Continuing education course.

(13) The course sponsor may offer an approved course for up to three years without additional approval. However, if the course is classified as code-update or code-related and a new edition of the *Uniform Plumbing Code* or *National Electrical Code* is adopted within the course approval period, the

course approval will be considered automatically revoked and the course sponsor must submit a new application for review by the department and approval by the plumbing board subcommittee. On new code cycle years new code courses can be approved and taught three months prior to the formal adoption date.

(14) A continuing education course attended or completed by an individual before final approval by the plumbing board subcommittee cannot be used to meet the plumbing certificate renewal requirements.

Documentation - Washington approved training course attendance/completion.

(15) The department is not responsible for providing verification of an individual's continuing education history with the course sponsor.

(16) The course sponsor must provide the department with an accurate and typed course attendance/completion roster for each course given.

(a) The attendance/completion roster must be provided within thirty days of course completion.

(b) In addition, the course sponsor (~~(must)~~) may provide the attendance/completion roster in an electronic format provided by the department.

(c) The attendance/completion roster must show each participant's name, Washington certificate number, course number, location of course, date of completion, and instructor's name. The typed roster must contain the signature of the course sponsor's authorized representative.

(17) If the course sponsor fails to submit the required attendance/completion rosters within thirty days of the course completion, the department may revoke or suspend the course approval.

(18) Course sponsors must award a certificate to each participant completing the course from which the participant will be able to obtain:

- (a) Name of course sponsor;
- (b) Name of course;
- (c) Date of course;
- (d) Course approval number;
- (e) The number of continuing education units; and
- (f) The type of continuing education units.

(19) The department will only use a copy of the sponsor's attendance/completion roster as final evidence that the participant completed the training course.

(20) The department will keep an electronic copy of submitted rosters of the continuing education courses on file only for audit purposes. The department is not responsible for the original of any completion certificate issued.

Documentation - Out-of-state training course attendance/completion.

(21) To apply continuing education units earned out-of-state from course sponsors who do not have state of Washington approved courses, one of the following conditions must be met:

(a) The individual must request that the course sponsor submit a complete continuing education course application and requirements as described in this section for in-state courses.

Application for course approval will not be considered more than three years after the date of the course.

(b) The department must have entered into a reciprocal agreement with the state providing course approval.

The participant must provide a copy of an accurate and completed award or certificate from the course sponsor identifying the course location, date of completion, participant's name, and Washington certificate number. The department will only accept a copy of the sponsor's certificate or form as evidence that the participant attended and completed the course.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-029 What is the implementation schedule for the continuing education course requirements?

- Individuals that renew between July 1, 2005, and June 30, 2006, are required to complete eight hours of continuing education courses.

- Effective July 1, 2006, all journey level and residential specialty renewals will require sixteen hours of continuing education.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-030 Do I need a temporary permit?

You need a temporary permit if you are an active out-of-state ((~~journeyman~~)) journey level plumber, domestic pump specialty plumber, or a residential specialty plumber residing in a state that does not have a reciprocal agreement with Washington and you would like to work as a plumber in Washington. Temporary permits are not issued for installers of medical gas piping systems.

Temporary permits are not issued for the backflow assembly maintenance and repair specialty. Therefore, WAC 296-400A-030 through 296-400A-033 do not apply to this specialty.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-031 How do I qualify for a temporary permit? To qualify for a temporary permit, you must:

(1) Have an active state-issued ((~~journeyman~~)) journey level plumber, domestic pump specialty plumber, or a residential specialty plumber certificate;

(2) Give the department sufficient qualifying evidence for a ((~~journeyman~~)) journey level plumber, domestic pump specialty plumber, or a residential specialty plumber certificate of competency;

(3) Never have taken the ((~~journeyman~~)) journey level plumber, domestic pump specialty plumber, or a residential specialty plumber competency examination in Washington state; and

(4) Not be a trainee or an apprentice plumber.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-033 What is the duration of a temporary permit? A temporary permit is valid for ~~((one hundred twenty days))~~ four months and is nonrenewable.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-035 How can I be placed on inactive status? (1) To be placed on inactive status, you must meet these three requirements:

- ~~((1))~~ (a) You must currently be a certified plumber;
- ~~((2))~~ (b) Have your inactive status request submitted and approved by the department prior to the expiration date of your plumbing certificate; and
- ~~((3))~~ (c) Not be working in the plumbing trade.

Inactive status means that you are not currently working in the plumbing trade and you are not required to pay the ~~((annual))~~ certificate renewal fee or required continuing education.

(2) To be reinstated from inactive status, you must meet these requirements:

(a) If you have been in inactive status for less than five years, you may return to active status, without reexamination, by paying the reinstatement fee shown in WAC 296-400A-045 ~~((If you have been in inactive status for five or more years, you are required to reapply and pass the competency examination pursuant to WAC 296-400A-020 and pay the appropriate fees shown in WAC 296-400A-045))~~ and meet continuing education requirements for your certification.

~~((4))~~ (i) Journey level and residential specialty plumbers are required to meet a minimum of sixteen hours continuing education with ~~((four of the))~~ a minimum of eight hours of plumbing code and a minimum of four hours being in electrical training before being reinstated. The remaining four hours can be from any of the approved categories.

(ii) Domestic pump plumbers are required to complete twenty-four hours, with a minimum of twelve hours of plumbing classes before being reinstated.

~~((b))~~ If you have been in inactive status for five or more years, you are required to reapply and pass the competency examination pursuant to WAC 296-400A-020 and pay the appropriate fees shown in WAC 296-400A-045.

(3) Inactive status does not apply to medical gas endorsements.

AMENDATORY SECTION (Amending WSR 11-23-141, filed 11/22/11, effective 12/31/11)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers nonrefundable fees: Fees related to ~~((journeyman))~~ journey level and specialty plumber certification:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$151.90
Domestic pump specialty application fee*****	Per application	\$151.90
Reciprocity application*	Per application	\$151.90
Trainee certificate**	One year or when hours are updated	\$45.20
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	((120 days)) <u>four months</u>	\$75.40
((Journeyman)) <u>Journey level</u> or residential specialty certificate renewal or 1st card***	Two years	\$121.60
Domestic pump specialty plumber certificate renewal or 1st card***	Three years	\$182.50
Backflow assembly maintenance and repair specialty certificate renewal or 1st card***	Two years	\$83.90
Medical gas endorsement application	Per application	\$55.90
Medical gas endorsement renewal or 1st card***	Two years	\$83.60
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and ((journeyman)) <u>journey level</u> certificates		\$243.90
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$140.30
Reinstatement fee for domestic pump		\$365.20
Replacement fee for all certificates		\$20.50
Refund processing fee		\$32.60
Unsupervised trainee endorsement		\$32.60
Inactive status fee		\$32.60
((Honorary plumbing certification		(\$130.30))
Certified letter fee/verification of licensure		\$32.60
Documents copied from a plumber's file		\$2.00 per page maximum copy charge \$30.00
Continuing education new course fee*****		\$197.50
Continuing education renewal course fee*****		\$98.60
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.

** The trainee certificate ~~((shall))~~ will expire one year from the date of issuance and must be renewed on or before the date of expiration. Trainee update fee required when hours are submitted outside of renewal period.

*** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.

The two-year renewal of a Medical Gas Piping Installer Endorsement ~~((shall))~~ must include a continuity affidavit verifying that brazing work has been performed every six months during the renewal cycle.

**** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement or the domestic pump or pump and irrigation examination. **This fee is not paid to the department.**

***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**

***** This fee is for a three-year period or code cycle.

***** The domestic pump specialty application is valid for one year.

AMENDATORY SECTION (Amending WSR 02-14-074, filed 6/28/02, effective 7/1/02)

WAC 296-400A-070 Can I work as a certified plumber in Washington without taking the Washington state plumbers' competency examination? The director of labor and industries negotiates reciprocal agreements with states that have equivalent requirements for certification and licensing of journey level and specialty plumbers. The agreement allows plumbers from those states to work in Washington and Washington-certified plumbers to work in the other

state without taking competency examinations. To find out if your state has an agreement with the department contact the plumber's certification clerk at the department's Tumwater, Washington headquarters.

(1) You may be eligible to work in Washington state without taking an examination if:

((+)) (a) You have a current plumbers certificate or license from another state; and

((2)) (b) That state has a current reciprocal agreement with the department of labor and industries; and

~~((3)) (c) You pay the reciprocity application fee and ((journeyman)) journey level or specialty certificate fee shown in WAC 296-400A-045.~~

~~((The director of labor and industries negotiates reciprocal agreements with states that have equivalent requirements for certification and licensing of journeyman and specialty plumbers. The agreement allows plumbers from those states to work in Washington and Washington-certified plumbers to work in the other state without taking competency examinations. To find out if your state has an agreement with the department, contact the plumber's certification clerk at the department's Tumwater, WA headquarters.))~~

(2) Reciprocity agreements cannot be used to take the Washington state competency examination instead of the examination in your home state.

~~((4)(a) Those actively certified by the department of health on or before July 1, 2001, as backflow assembly testers and registered as a contractor under chapter 18.27 RCW or employed by a registered contractor, may perform maintenance and repair of backflow prevention assemblies, without being a certified plumber under chapter 18.106 RCW and these rules, until January 1, 2003.~~

~~(b) After January 1, 2003, backflow assembly testers exempted under (a) of this subsection are required to meet the eligibility requirements for a specialty plumber's certificate of competency under chapter 18.106 RCW and these rules.))~~

(3) Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement.

(4) An applicant for a reciprocal certificate must be a resident of the state in which they hold the certificate at the time they make the application for reciprocity.

(5) A certificate by reciprocity must not be granted to an individual residing in the state to which they are making application at the time of application.

(6) Reciprocal certificate holders are responsible for the renewal of their certificate. A late renewal fee and/or reexamination can result when renewal is not accomplished in accordance with each state's respective statutes.

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-100 For certification purposes, how are "years of employment" computed and documented?

(1) For certification purposes, 2,000 hours of employment is considered one year. See RCW 18.106.070(2).

(2) When you renew your certificate, you must document your previous years' plumbing work by accurately completing the department's approved form and submitting it to the department.

(3) If you have completed a one, two, three, four or more years plumbing construction trainee program, you must have the necessary training hours for the year in which you are registered. No more than fifty percent of the minimum work experience needed to qualify for plumbing certification is allowed for any training school program. See RCW 18.106.-040.

(4) Subsections (1) through (3) of this section do not apply to the backflow assembly maintenance and repair specialty certification as years of employment are not required for this specialty. Applicants for this specialty designation are required to have fulfilled the requirements in WAC ~~((296-400A-122))~~ 296-400A-121 and pay the applicable fees in WAC 296-400A-045(2).

(5) Experience obtained as a backflow assembly maintenance and repair specialty may not be applied toward ~~((journeyman))~~ journey level or specialty plumber certification.

(6) For experience in another country, if an individual has a ~~((journeyman))~~ journey level plumbing certificate from a country outside the United States that requires that at least four years of plumbing construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington ~~((journeyman))~~ journey level plumbers examination. No more than two years of the required training to become a Washington ~~((journeyman))~~ journey level plumber may be for work described for specialty plumbers or technicians in WAC 296-400A-010. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a ~~((journeyman))~~ journey level plumber. Documentation substantiating the individual's out-of-country experience must be submitted in English.

(7) Out of country experience credit is not allowed toward a specialty plumbing certificate.

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-120 What do I need to know about plumber trainee certificates ~~((excluding backflow assembly maintenance and repair specialty certification))~~? ~~((1))~~ Journeyman) General.

(1) Journey level and specialty plumber ~~((trainee certificate))~~ original trainee certificates:

~~((a) Original trainee certificates:))~~ The department will issue an original trainee certificate when the trainee applicant submits a complete trainee certificate application including:

~~((i))~~ (a) Date of birth, mailing address, Social Security number; and

~~((ii))~~ (b) All appropriate fees as listed in WAC 296-400A-045.

~~((iii))~~ (c) If an individual has previously held a plumbing trainee certificate, then that individual is not eligible for a subsequent original trainee certificate.

(d) All applicants for a plumbing trainee certificate must be at least sixteen years of age and must follow requirements as defined in WAC 296-125-030.

~~((b))~~ (2) Renewal.

(a) The department issues separate trainee certificates once a year.

~~((e))~~ (b) The plumbing trainee may not apply for renewal more than ninety days prior to the expiration date. Plumber trainee certificates are valid for one year.

~~((c))~~ (c) All applicants for trainee certificate of renewal must:

- (i) Submit a complete renewal application;
- (ii) Pay all appropriate fees; and

~~(iii) (Provide accurate evidence on the renewal form that the individual has))~~ Completed the continuing education requirements described in chapter 296-400A WAC. Backflow trainees are exempt from continuing education requirements.

~~((e))~~ (d) If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing trainee certificate, the individual's certificate may be suspended or revoked.

~~((f))~~ (e) An individual who has not completed the required hours of continuing education ~~((cannot))~~ can renew a trainee certificate; however, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to active status upon validation by the department of the required continuing education.

~~((g))~~ Individuals will not be able to apply to test for journeyman plumber, domestic pump specialty plumber, or residential specialty plumber certificates until the continuing education requirements have been met.

~~((h))~~ (f) If continuing education hours have not been met, trainee certificates will become expired/inactive and any plumbing work experience obtained by the trainee in expired/inactive status will not be credited ~~((toward plumbing certificate application))~~.

~~((i))~~ An individual may renew an expired certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in an expired status for the duration of the expired period.

~~((j))~~ (g) An individual may not renew a revoked trainee certificate.

~~((k))~~ (h) Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate. Included under this exemption are active trainees that are not in the formal approved program according to chapter 49.04 RCW but are attending all hours of required classroom training along with the apprentices and meeting the work experience as required under chapter 18.106 RCW and this chapter. The plumber craft training school ~~((shall))~~ will be required to supply the department the necessary documentation to prove there was full hourly attendance of these trainees as is required of the apprentices while they attend the classroom training.

~~((l))~~ If you are a trainee applying for a journeyman certificate, you must complete a minimum of two of the required four years in commercial plumbing experience.

~~((m))~~ (i) The trainee will not be issued a renewal or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(3) Ratio/supervision.

(a) Commercial/residential.

(i) A certified residential specialty plumber or domestic pump specialty plumber working on a commercial job site may work as a ~~((journeyman))~~ journey level trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

~~((n))~~ (ii) On a job site, the ratio of certified plumbers to ~~((noncertified))~~ plumbers trainees must be:

~~((o))~~ (A) One residential specialty plumber or ~~((journeyman))~~ journey level working on a residential plumbing job site may supervise no more than two trainees. Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.

~~((p))~~ ~~((One journeyman))~~ (B) One journey level plumber working on a commercial job site may supervise no more than one trainee or one residential specialty plumber who holds a current trainee certificate. Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.

(b) Domestic pump.

~~((q))~~ One appropriate domestic pump specialty plumber or one ~~((journeyman))~~ journey level plumber working on a domestic pump system may supervise no more than two trainees. Supervision must be a minimum of seventy-five percent of the time spent on each and every job site.

(c) Medical gas.

~~((r))~~ A plumber trainee or specialty plumber who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified ~~((journeyman))~~ journey level plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be one hundred percent of the ~~((working day))~~ time spent on each and every job site on a one-to-one ratio.

~~((s))~~ Plumber trainee shall renew the certificate annually but not more than ninety days before the expiration date.

(q) The trainee will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(r) Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

~~((t))~~ (d) Backflow.

A backflow specialty plumber, a journey level plumber on a commercial job site, or a residential specialty plumber on a residential job site must supervise one backflow trainee to perform maintenance and repair work on every backflow assembly on potable water systems inside every commercial or residential building. The ratio must be one to one for one hundred percent of the time on each and every job site.

(4) Affidavits of experience.

(a) At the time of renewal, the holder ~~((shall))~~ must provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous annual period. The individual must submit a completed, signed, and notarized affidavit(s) of experience. The affidavit of experience must accurately attest to:

~~((a)) (i)~~ The plumbing installation work performed for each employer the individual worked for in the plumbing trade during the previous period;

~~((b)) (ii)~~ The correct plumbing category the individual worked in; and

~~((c)) (iii)~~ The actual number of hours worked in each category, worked under the proper supervision of a Washington certified ~~((journeyman))~~ journey level plumber, certified domestic pump specialty plumber, or residential specialty plumber.

~~((3)) (b)~~ The trainee should ask each employer and/or apprenticeship-training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request.

~~((4)) (c)~~ If hours for previous period are not submitted within the thirty days after renewing a plumbing training certificate, the individual may not receive credit for these previous period hours.

(d) Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

(e) Trainee hours will not be credited during periods of time when the trainee card is expired or inactive.

AMENDATORY SECTION (Amending WSR 06-24-040, filed 11/30/06, effective 12/31/06)

WAC 296-400A-121 What do I need to know about trainee experience and plumber examination requirements for the ~~((journeyman))~~ journey level and specialty plumber ~~((excluding the backflow assembly maintenance and repair specialty))~~? (1) ~~((If you possess a trainee certificate:~~

~~((a))~~ You may take the residential specialty plumber examination after completing 6,000 hours and not less than three years of documented training under direct supervision of a certified residential specialty or journey level plumber.

~~((b)) (2)~~ You may take the ~~((journeyman))~~ journey level examination after completing 8,000 hours and not less than four years of documented training which must include 4,000 hours of commercial plumbing experience under direct supervision of a certified journey level plumber.

~~((2) All journeyman trainees must work under the direct supervision of a journeyman plumber until they have completed 8,000 hours of training.~~

~~When 8,000 training hours have been completed, the trainee must take the journeyman examination. Any trainee who has failed the journeyman plumber examination cannot retake the examination for at least one month and must work under the direct supervision of a journeyman plumber until the examination is passed.~~

~~(3) To be eligible for the residential specialty plumber's examination, a residential specialty trainee must complete 6,000 hours of training under the direct supervision of either a certified specialty plumber or a journeyman plumber. Any residential specialty trainee who has failed the residential specialty examination, cannot retake the examination for at~~

~~least one month and must work under the direct supervision of a certified plumber until the examination is passed.~~

~~(4)) (3)~~ For domestic pump specialty plumbers:

(a) To be eligible for a limited volume domestic pump specialty plumbers examination defined by RCW 18.106.010 (10)(c), the trainee must complete 2,000 hours practical experience working under the direct supervision of a certified limited volume domestic pump specialty plumber, a certified unrestricted domestic pump specialty plumber, or a ~~((journeyman))~~ journey level plumber on pumping systems not exceeding one hundred gallons per minute. The experience may be obtained at the same time the individual is meeting the experience required by RCW 19.28.191, or equivalent experience may be accepted as determined by rule by the department in consultation with the advisory board. Restricted domestic pump specialty trainees who have completed at least 720 hours of on-the-job training and passed the competency examination required by WAC 296-400A-020 may work unsupervised for the remainder of the time required for work experience to become a restricted domestic pump specialty plumber.

(b) To be eligible for an unrestricted domestic pump specialty plumbers examination defined by RCW 18.106.010 (10)(c), the trainee must complete 4,000 hours but not less than two years, of practical experience working under the direct supervision of a certified unrestricted domestic pump specialty plumber or a ~~((journeyman))~~ journey level plumber on pumping systems. The experience may be obtained at the same time the individual is meeting the experience required by RCW 19.28.191 or equivalent experience may be accepted as determined by rule by the department in consultation with the advisory board.

~~((5)) (4)~~ To be eligible for a backflow assembly maintenance and repair specialty examination, the trainee must furnish written evidence that they have a valid backflow assembly tester certification administered and enforced by the department of health.

(5) Individuals are required to complete 16 hours of continuing education with a minimum of 4 hours of industry related electrical training prior to testing for journey level, domestic pump, or residential specialty plumber certification.

(6) Effective January 1, 2005, all plumber trainees will be required to meet the current hour requirements to test.

~~((6)) (7)~~ **Apprentice/trade school endorsement requirements.** An individual who has a current ~~((journeyman))~~ journey level plumber, domestic pump specialty plumber, or residential specialty plumber trainee certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the work force training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter. In order to work without direct on-site supervision applicable to the type (residential or ~~((journeyman))~~ journey level) of training hours for which certification is being sought by the individual, this individual must obtain an apprentice/trade school trainee endorsement by submitting the applicable forms provided by the department and paying the applicable fees. This individual may

work without direct on-site supervision until he or she receives the remaining hours required to be eligible to take the applicable examination. This individual may not supervise trainees. (See RCW 18.106.070.)

~~((7))~~ **(8) Any applicant** ~~((trainee, specialty plumber or journeyman))~~ who fails an examination~~(;)~~ will be required to wait at least until the next scheduled examination date and location and work under the direct supervision of a certified plumber while holding an active trainee card, until they have passed the exam and their certificate of competency has been issued. Examinations are held the first Thursday of every month, unless that date falls on a holiday. Applications ~~((shall))~~ must be submitted and received by the plumbing certification program office two weeks before the next scheduled date.

(9) Failure to reschedule or appear on the scheduled exam date will result in forfeiture of the examination fee.

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-140 How does the department enforce plumbers certification requirements? The department enforces plumber certification requirements by means of job-site inspections conducted by an authorized representative of the department. The representative must determine whether:

(1) Each person doing plumbing has their department issued certification card and governmental issued photo identification in their possession on the job site; and

(2) The ratio of certified specialty and/or ~~((journeyman))~~ journey level plumbers to certified trainees is correct; and

(3) Each certified trainee is directly supervised by either a certified specialty plumber or a certified ~~((journeyman))~~ journey level; and

(4) Persons who are installing medical gas piping systems have active medical gas piping installer endorsements in addition to their active plumber certification; and

(5) Persons who are certified as backflow assembly maintenance and repair specialties have an active backflow assembly tester certification from the department of health.

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-400 What are the monetary penalties for violating certification requirements? (1) A person cited for an infraction under chapter 18.106 RCW or this chapter ~~((shall))~~ will be assessed a monetary penalty based upon the following schedule:

(a) Individual

First Infraction	\$250.00
Second Infraction	\$500.00
Third Infraction	\$750.00
Fourth and each additional infraction	Not more than \$1,000.00

(b) Contractor or dispatcher

First Infraction	\$250.00
Second Infraction	\$500.00
Third and each additional infraction	Not more than \$1,000.00

(2) Each day a person is in violation is considered a separate infraction.

(3) Each job site at which a person is in violation is considered a separate infraction.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-425 What if I owe outstanding penalties related to a department issued plumber infraction?

The department may deny your application or renewal of your certificate or endorsement if you owe outstanding penalties. The department must notify you of their denial by registered mail, return receipt requested. This notice of denial will be mailed to the address on your application.

Upon receipt of the notice, you have twenty days to file a notice of appeal with the department. Your notice of appeal must be accompanied by a certified check for two hundred dollars. This amount will be returned to you if the department's decision is not upheld by the hearings officer. If the hearings officer upholds the department's decision, the two hundred dollars will be applied to the cost of the hearing.

The office of administrative hearings ~~((shall))~~ must conduct the hearing under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 02-14-074, filed 6/28/02, effective 7/1/02)

WAC 296-400A-430 If I am a certified backflow assembly maintenance and repair, ~~((journeyman))~~ journey level, or specialty plumber do I need to be a registered contractor under chapter 18.27 RCW? Anyone who advertises, offers to do work, submits a bid, or performs any work under chapter 18.106 RCW and these rules must be a registered contractor as required under chapter 18.27 RCW, or an employee of such a registered contractor, with wages as their sole compensation.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-400A-036 How can I maintain my plumbing certificate as an honorary accomplishment?
- WAC 296-400A-122 What do I need to know about trainee experience and certification, and the backflow assembly maintenance and repair specialty examination requirements?
- WAC 296-400A-135 How does the department enforce trainee supervision?

WSR 16-08-108
PERMANENT RULES
PENINSULA COLLEGE

[Filed April 5, 2016, 12:21 p.m., effective May 6, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Modification of rule needed to update misconduct and incorporate Title IX and Violence Against Women Act procedural elements based on the Department of Education's final rule they released in October 2014.

Citation of Existing Rules Affected by this Order: Amending chapter 132A-125 WAC.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 15-21-076 on October 20, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 2, 2016.

Pattie Fischer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-015 Definitions. The following definitions shall apply for the purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "Conduct review officer" is the vice-president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the

student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion, are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(7) "Respondent" is the student against whom disciplinary action is initiated.

(8) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(9) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(10) "Student conduct officer" is a college administrator designated by the president or vice-president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(11) "The president" is the president of the college. The president is authorized to delegate any (~~and all~~) of his or her responsibilities, as set forth in this chapter, as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, (~~or~~) attempts to commit, aids, abets, incites, encourages or assists another person to commit an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse, (~~repeated over time, and~~) involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual

recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties including, failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his or her designee may (~~authorize possession of~~) grant permission to bring a weapon on campus upon a (~~showing~~) determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated (~~therein~~) in the written permission; or

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale or being (~~visibly~~) observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale or being (~~visibly~~) observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled sub-

stance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** ~~((Tobacco, electronic cigarettes, and related products:))~~ The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct that is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct that harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age ~~((40+))~~; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** ~~((The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender or sex-based stalking. The term further includes acts of violence in a dating and/or domestic relationship. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.))~~ "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral

copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age ~~((40+))~~; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual Misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or

responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-035 Disciplinary sanctions—Terms—Conditions. The following disciplinary sanctions may be

imposed upon students found to have violated the student conduct code.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(8) No contact order. An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~designated by the president~~). The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-070 Student conduct committee proceedings. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One (~~administrative staff member~~) faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer(~~(s)~~)) appointed by the president at the beginning of the academic year.

(2) The (~~administrative staff~~) faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-090 Student conduct committee proceedings—Appeal of initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) (~~The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~

~~(5))~~ The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-105 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section

(2) "Sexual misconduct" (~~is prohibited sexual or gender-based conduct by a student including, but not limited to:~~

~~(a) Sexual activity for which clear and voluntary consent has not been given in advance;~~

~~(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, or otherwise incapacitated due to alcohol or drugs;~~

~~(c) Sexual harassment;~~

~~(d) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking; and~~

~~(e) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity)) has the meaning ascribed to this term in WAC 132A-125-030(13).~~

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-110 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX ~~((compliance officer))~~ coordinator or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit, and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

WSR 16-08-109

PERMANENT RULES

PENINSULA COLLEGE

[Filed April 5, 2016, 12:22 p.m., effective May 6, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The current antidiscrimination rules are [out] of compliance with current federal and state law.

Citation of Existing Rules Affected by this Order: Repealing WAC 132A-350-030 and 132A-350-045; and amending WAC 132A-350-015, 132A-350-020, 132A-350-040, and 132A-350-050.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 15-21-080 on October 20, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 2, 2016.

Pattie Fischer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-142, filed 7/5/05, effective 8/5/05)

WAC 132A-350-015 ((Peninsula College antidiscrimination)) Nondiscrimination and antiharassment policy. ~~((1) Preamble. Peninsula College is committed to protecting the rights and dignity of each individual in the campus community and will not tolerate any form of discrimination. All Peninsula College employees and students may report alleged discriminatory behavior without fear of restraint, reprisal, interference, or coercion. No employee's or student's status with the college shall be adversely affected in any way because he or she utilizes the following procedures: Peninsula College's informal and formal grievance procedures are designed to ensure fairness and consistency in the college's relations with its employees and students. Nothing in these procedures shall be construed as abridging the right of an employee or student to allege discrimination in exercising constitutional or statutory rights which may be available.~~

~~((2) Informal review procedures. Any employee or student is urged to communicate his or her discrimination grievance to the appropriate supervisor. Every effort should be made to resolve the grievance informally within the department. However, should an employee or student feel that he or she is unable to discuss the grievance with the appropriate~~

supervisor, then that employee or student should go to the major administrator for that unit, department, or division to discuss the problem. The employee or student may also wish to exercise his or her rights to pursue an informal resolution, which may include mediation with the assistance of the affirmative action officer.

(3) **Formal review procedures.** The following formal review procedures have been established for those kinds of discrimination problems which remain unsolved after informal review has occurred and when the informal procedure has failed to resolve the conflict to the satisfaction of the parties:

(a) Any employee or student who believes he or she has been discriminated against in connection with a violation of the college's affirmative action policy may, after the informal procedures have failed, file a formal complaint in writing with the college's affirmative action officer, stating the grievance and requesting a remedy. Within five working days of the filing, the affirmative action officer shall serve a copy of the complaint to the respondent and notify the respondent's major administrator. The respondent has five working days in which to respond to the allegations in the complaint in writing and submit the reply to the affirmative action officer. Within five working days of the receipt of the reply, the affirmative action officer shall show the reply to the complainant, and ask both the complainant and respondent if they will mediate the complaint. If so, the affirmative action officer will initiate the mediation within ten working days of receiving the reply, unless availability of the parties involved necessitates an extension.

(b) If the complaint is unresolved after mediation, or if either party refuses to mediate, the affirmative action officer, or a qualified designee shall then investigate the complaint. Depending upon the circumstances, this investigation may include meetings with the employee, the immediate supervisor, the major administrator, and any other person who may be involved. A finding of probable cause or no probable cause shall be given to the employee or student by the affirmative action officer within sixty working days of the filing of the complaint. This time may be extended by mutual agreement between the complainant and the respondent.

(c) If the complainant or respondent is not satisfied with the results of the review as indicated above, that person may appeal to the college president. All information regarding the complaint shall be forwarded to the president by the affirmative action officer, and the complainant or respondent may submit any further information desired. The president shall, within ten working days, communicate in writing to the complainant or respondent a decision, with a copy to the affirmative action officer. Again, the time may be extended by mutual agreement. The decision of the president shall be the college's final decision.)) Peninsula College provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972,

Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

(1) Definitions.

(a) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so substantially interferes with the individual's employment, education, or access to college programs, activities and opportunities.

(b) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(i) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(ii) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) **Domestic violence** includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) **Dating violence** means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(2) Designees. The following college officials are designated to handle inquiries regarding this policy:

Title: Director of Human Resources, Title IX/EEO Coordinator

Contact: titleixcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.
Port Angeles, WA 98362

Phone: 360-417-6212

Title: Director of Financial Aid and Enrollment Services, Title IX/EEO Deputy Coordinator

Contact: titleixderd@pencol.edu

Address: 1502 E. Lauridsen Blvd.
Port Angeles, WA 98362

Phone: 360-417-6393

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-020 (~~Grievance procedure—Sexual harassment, sex discrimination.~~) **Discrimination and harassment complaint procedure.** ((~~1~~) **Preamble.** It is the policy of Peninsula College to provide an environment in which employees can work free from sexual harassment and sexual intimidation. Sexual harassment is a form of sex discrimination. As such it is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.

(2) **Definitions.** Sexual harassment of an employee is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

(a) Submission to the conduct is either explicitly or implicitly a term or condition of an individual's education, employment or career advancement; and/or

(b) Submission to or rejection of such conduct by an individual is used as the basis for education or employment

decisions or any other decisions affecting that individual; and/or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's education or work or has the effect of creating an intimidating, hostile, or offensive environment.

(3) **Procedure.** A person who believes he or she has experienced gender discrimination or sexual harassment in the college environment may discuss the issue with a gender equity advisor who will help the claimant determine whether to proceed with mediation, formal hearing, or appeal. The advising process shall be designed to promote free discussion between the claimant and the advisor. Every attempt shall be made to protect the privacy of the individuals during the advising process.

(a) Mediation. After the advising process the claimant may request mediation among parties involved in his or her grievance. Both parties have the option to bring a support person to the mediation. A mutually agreed upon mediator will be selected from a list of mediators appointed by the president.

(b) Formal hearing. Any party may request a formal hearing by submitting a claim on Peninsula College's Complaint/Grievance Form to the affirmative action officer, who shall forward the claim to the sexual harassment investigative team appointed by the president and composed of classified student, faculty, and administrative representatives. At the conclusion of the investigation, the investigative team shall issue a written report which will include recommendations to the claimant, the respondent, and the college president. All parties are entitled to legal representation.

(c) Appeal. The claimant and respondent are entitled to file an appeal in writing to the college president within ten working days following receipt of the formal hearing report. Within ten working days after receipt of the written appeal, the college president shall conduct an appeal hearing and report the findings in writing to both the claimant and respondent. The decision of the college president shall be the college's final decision.) Peninsula College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, or honorably discharged veteran or military status, or use of trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor. To this end, Peninsula College has enacted policies prohibiting discrimination against any harassment of members of these protected classes. Any individual found to be in violation of these policies will be sub-

ject to disciplinary action up to and including dismissal from the college or from employment. Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator/deputy identified below. If the complaint is against that coordinator/deputy, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.pencol.edu/student-rights-and-policies/informational-stop-discrimination>. Hardcopies of the complaint form are available in the human resource office, C34.

Role of the Title IX/EE Coordinator and/or Deputy Coordinator:

Title: Title IX/EEO Coordinator

Contact: titlexdcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.
Port Angeles, WA 98362

Phone: 360-417-6393

Title: Title IX/EEO Deputy Coordinator

Contact: titlexdcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.
Port Angeles, WA 98362

Phone: 360-417-6393

The Title IX/EEO Coordinator/Deputy Coordinator or Designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;
- May conduct investigations or delegate and oversee investigations conducted by a designee;
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- Will issue written findings and recommendations upon completion of an investigation; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

(1) Definitions.

(a) Complainant: Employee(s), applicant(s), student(s), or visitor(s) of Peninsula College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(b) Complaint: A description of facts that allege violation of the college's policy against discrimination or harassment.

(c) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct

indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) Discrimination: Conduct that harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. Harassment is a form of discrimination.

(e) Harassment: A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

- Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.
- Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.
- Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(f) Protected class: Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(g) Resolution: The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.

(h) Respondent: Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(i) Sexual harassment: A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not

have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(i) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(ii) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(j) **Sexual violence:** Incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of violence in a dating and/or domestic relationship. A person may be incapable of giving consent by reason of age, threat, or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other causes.

(2) **Who may file a complaint.** Any employee, applicant, student, or visitor of Peninsula College may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.pencol.edu/student-rights-and-policies/informational-stop-discrimination>. Hardcopies of the complaint form are available at the human resource office, C34. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

(3) **Confidentiality and right to privacy.** Peninsula College will seek to protect the privacy of the complainant to fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Peninsula College policies and procedures. Although Peninsula College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator/designee.

(a) **Confidentiality requests and sexual violence complaints:** The Title IX/EEO coordinator/designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator/designee will determine whether the college can

honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant.

(b) **Factors to be weighed during this determination may include, but are not limited to:**

(i) The seriousness of the alleged sexual violence;

(ii) The age of the complainant;

(iii) Whether the sexual violence was perpetrated with a weapon;

(iv) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;

(v) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(vi) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator/designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator/designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

(4) **Investigation procedure.** Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EEO coordinator/designee shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator/designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(a) **Interim measures:** The Title IX/EEO coordinator/designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(b) **Investigation:** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator/designee. The Title IX/EEO coordina-

tor/designee shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(c) Written notice of decision: The Title IX/EEO coordinator/designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions, or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) Informal dispute resolution: Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) Final decision and/or reconsideration: Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator/designee. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator/designee within seven calendar days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven calendar days, the decision becomes final. If a request for reconsideration is received, the college president or designee shall respond within fourteen calendar days. The president or designee shall either deny the request or, if the president or designee determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

(5) Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published

and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

(6) Limits to authority. Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Peninsula College policies and procedures, and federal, state, and municipal rules and regulations.

(7) Nonretaliation, intimidation, and coercion. Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator/designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individual(s) as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator/designee immediately.

(8) Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

City of Port Angeles Police Department

321 East 5th Street

Port Angeles, WA 98362

Phone: 360-452-4545

<http://wa-portangeles.civicplus.com/288/Police-Department>

City of Forks Police Department

500 East Division Street

Forks, WA 98331

Phone: 360-374-2223

<http://forkswashington.org/police-and-corrections>

City of Port Townsend Police Department

1925 Blain Suite 100

Port Townsend, WA 98368

Phone: 360-385-2322

<http://cityofpt.us/police.htm>

Clallam County Sheriff Department

223 East 4th Street

Port Angeles, WA 98362

Phone: 360-417-2459

<http://www.clallam.net/sheriff/>

Jefferson County Sheriff Department

79 Elkins Road

Port Hadlock, WA 98339

Phone: 360-385-3831

<http://www.jeffersonsheriff.org/>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil criminal prosecution.

(9) Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission

<http://www.hum.wa.gov/index.html>

U.S. Dept. of Education Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission

<http://www.eeoc.gov/>

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-040 Reasonable accommodations/academic adjustment for persons with disabilities. ((Persons with disabilities have the right to request reasonable accommodations/academic adjustments that:

(1) Are necessary to ensure that employment/academic requirements do not discriminate based on disability or have the effect of discriminating based on disability against a qualified individual; and

(2) Do not impose an undue hardship on the college or require alteration of essential program requirements.)) Peninsula College shall provide to individuals qualifying with a disability an equal opportunity to access the benefits, rights, and privileges of college services, programs, activities, and employment in the most integrated setting appropriate to the individual's needs, in compliance with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act Amendment Act (ADAAA) of 2008, the state of Washington laws against discrimination, and appropriate collective bargaining agreements. No individual shall, based on disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any program or activity.

In accordance with the ADAAA of 2008, persons with disabilities have the right to request and receive reasonable accommodations that:

(1) Are necessary to ensure that employment/academic requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability based on that disability; and

(2) Do not impose an undue hardship on the college or require alteration of academic requirements demonstrated as essential to the program of instruction being pursued.

It shall be the obligation of the individual with a disability to request reasonable accommodation.

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-045 Definitions. ((1) Academic adjustment means modifications to academic requirements as necessary to ensure that such requirements do not discriminate against students with disabilities or have the effect of excluding a student solely on the basis of a disability.

(2) Individual with a disability is a student, employee, applicant, or visitor who has a physical, mental or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, is perceived to

have such an impairment, or has an abnormal condition that is capable of being medically diagnosed.

(3) Reasonable accommodations means modifications or adjustments to academic procedures and job or work environment, policies, or practices that enable qualified individuals with disabilities to enjoy equal opportunities.)) **Essential functions:** The fundamental job duties of the position that the individual with a disability holds or desires.

Essential requirements: The fundamental student learning outcomes and course curriculum requirements or activities.

Qualified student: A student with a disability who, with or without reasonable accommodations, meets the academic and technical standards required for admission to, participation in, and/or fulfills the essential requirements of college programs or activities.

Qualified employee: An employee with a disability who meets the skill, experience, education, and other job related requirements for the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-050 Reasonable accommodations/academic adjustment disputes. ((The college shall not be mandated to furnish the requested accommodation, but will confer with the requester in an effort to achieve reasonable appropriate accommodations. If an individual believes the special needs coordinator or the counselor for students with disabilities has not identified or provided reasonable accommodations/academic adjustment or auxiliary aids, the individual may seek review of the action by contacting the vice president of educational services for academic adjustments or the vice president of administrative services for reasonable accommodations. The individual shall submit the appeal in writing to the appropriate vice president. The vice president shall review the individual's position and respond within five working days. If resolution is not reached, the vice president will refer the appeal to the college president. The president shall review the dispute and make recommendations in writing for appropriate resolution. The decision of the president shall be the final decision.)) **Reasonable accommodation shall be provided to any qualified individual with a disability for accessing the benefits, rights and privileges of college services, programs, activities, and employment in the most integrated setting appropriate to the individual's needs. Employees and campus visitors should go to the human resources office to request reasonable accommodation. Enrolled students should go to the services for students with disabilities office to request reasonable accommodation.**

(1) Reasonable accommodation

Any individual who requests reasonable accommodation shall:

(a) Provide timely notice and documentation of the nature and extent of the disability and the accommodation requested to the college's disability support staff. Since some accommodation may require considerable time to arrange, requests should be made well in advance of need. Lack of

advance notice may delay the availability of an accommodation.

(b) Provide any additional documentation on the nature and extent of the disability that the college may require in order to determine appropriate accommodation. This may include a second opinion from a health care professional of the college's choosing and at the college's expense.

(c) Cooperate with the college's disability support staff to develop an appropriate plan for reasonable accommodation. The individual must:

(i) Accept the plan as developed. Any problems encountered in receiving the agreed-upon accommodation must be promptly reported to the college's disability support staff (human resources office for employees and campus visitors/services for students with disabilities office for students); or

(ii) Decline the proposed accommodation. If the individual refuses an accommodation and cannot perform the essential function of the job/program without the accommodation, the individual may not be considered a qualified individual with a disability.

(2) Process of accommodation

(a) For employees or applicants for employment:

(i) Essential job functions shall be determined when a position is established, when it becomes vacant, or when duties are changed. The process of selecting reasonable accommodation for each qualified individual with a disability shall be made on a case-by-case basis, appropriate to the essential job functions of the position and the nature and extent of the individual's disability.

(ii) Possible accommodation shall be developed jointly with the individual requesting accommodation and the disability support staff. If there are two or more effective accommodations that would allow the individual with a disability to perform the essential job functions, the college shall consider the preference of the individual with a disability before selecting the accommodation(s) to be provided.

(iii) When an accommodation in an employee's present position is not reasonable or would cause an undue hardship, the college shall attempt to accommodate the employee through reassignment to another vacant position, at the same pay range or lower, for which the employee is qualified. The employee is responsible for identifying types of jobs he/she is interested and qualified for and shall work on the accommodation with human resources.

(b) For students: Possible accommodation shall be developed jointly with the person requesting accommodation and the services for students with disabilities office. The request for accommodation must be made to the services for students with disabilities office. The process of selecting accommodation(s) for each qualified student with a disability shall be made on a case-by-case basis, appropriate to the nature and extent of the student's qualified disability.

(3) Course equivalency

The college recognizes that certain disabilities may preclude a student from successfully completing a specific course requirement for a degree even when reasonable accommodation(s) are in place. The college recognizes its obligation to accommodate students with disabilities without compromising the integrity of the academic program. There-

fore, every student enrolled in a degree program is required to meet the academic requirements demonstrated as essential to the program of instruction being pursued.

The college recognizes that altered methods of course delivery and/or providing reasonable accommodations will enable most students with disabilities to successfully complete course requirements except in unusual circumstances. Once given reasonable accommodation(s), the student must attempt to complete the required course. If the student attempted and was unable to complete the course, the student may request a course equivalency under this procedure.

Course equivalency shall only be approved when such equivalency is consistent with the academic requirements demonstrated as essential to the program of instruction being pursued. Requests for equivalency for a required course shall only be considered when a qualified student with a disability has demonstrated that, even with accommodations provided by the college, the student is unable to complete the course solely because of a disability.

All requests for course equivalency shall be submitted to the services for students with disabilities office within a year from the academic quarter that the course was attempted and shall include the following information:

(a) A description of the accommodations previously provided to the student for the course;

(b) An explanation of the relationship of the student's disability to the lack of success in completing the course;

(c) A proposed substitute course, if known;

(d) A statement by the student that a good faith effort has been made to complete the required course with accommodations; and

(e) A release signed by the student, authorizing the special needs academic advisory committee to review the documentation on the student's disability and to contact the evaluating doctor or psychologist.

The dean of student services shall forward the request, with documentation, for review by the special needs academic advisory committee.

(4) Special needs academic advisory committee

All requests for course equivalency shall be submitted to the special needs academic advisory committee. The student or designated advocate requesting equivalency shall have an opportunity to address the committee.

The special needs academic advisory committee is comprised of the following:

• An instructional services administrator;

• A faculty member from the department in which the course is offered;

• A faculty member from a department other than the department in which the course is offered;

• A student services administrator; and

• A representative of the services for students with disabilities office.

Requests for course equivalency shall be approved if the committee agrees that the student has made a good faith effort to complete the required course with accommodations and if the proposed equivalency meets the learning objectives of the degree requirement.

The committee shall respond in writing to all requests for course equivalency within ten instructional days after receiv-

ing the request. The decision of the special needs academic advisory committee may be appealed to a senior level administrator within fifteen instructional days after receiving the decision to review it was not arbitrary or capricious. The decision of the senior level administrator's review is the final decision of the college.

(5) Reasonable assurance disputes

It is recommended but not required, that student and/or employee complainants who disagree with an accommodation request a review of the accommodation given or not given by first attempting, via an informal meeting to resolve the issue in the following manner, before seeking the formal grievance procedure in the following manner:

(a) Informal meeting. In an attempt to informally resolve the dispute, the complainant may request a meeting with the employee believed to have not been provided the reasonable accommodation or to request a meeting with the employee's supervisor or in his/her absence, a person designated by the president.

(b) Formal grievance procedure. If a complainant believes the human resources officer (for employees), the coordinator for students with disabilities, or an employee of the college, has not identified and/or has not provided reasonable accommodations, the complainant may seek review of the action by contacting the employee's supervisor. In this case, the following formal grievance procedure will be followed:

(i) The complainant will submit a written appeal to the supervisor within ninety calendar days of the incident(s):

(ii) The supervisor will review the complainant's position, and respond within five working days:

(iii) The response will be the decision of the college, or a notification that the college will need additional time to come to a decision and the amount of time needed to respond:

(iv) If resolution is not reached by the complainant and the supervisor, the supervisor will refer the appeal to his/her appropriate administrator:

(v) The senior level administrator will review the dispute and make recommendations in writing for appropriate resolution.

The decision of the senior level administrator is the final decision of the college. If desired, inquiries or appeals beyond the institutional level may be directed to:

Equal Employment Opportunity Commission at 800-669-4000

Washington State Human Rights Commission at 800-233-3247

Office of Civil Rights, Department of Education at 206-220-7900

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132A-350-030 Disciplinary action.

WSR 16-08-115
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed April 5, 2016, 3:32 p.m., effective May 6, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updates WAC 458-07-010 Valuation and revaluation of real property—Introduction and 458-07-015 Revaluation of real property, to incorporate legislative changes from SSB 5275, 2015 regular session (sections 102 through 104, chapter 86, Laws of 2015). WAC 458-07-020 Revaluation of real property—Multiyear counties, is repealed. Further, language contained in repealed WAC 458-07-020 is transferred to WAC 458-07-015 at new subsection (5), with clarifying language that the revaluation is "after a value is certified for the current year."

Citation of Existing Rules Affected by this Order: Repealing WAC 458-07-020; and amending WAC 458-07-010 and 458-07-015.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010

Adopted under notice filed as WSR 16-04-101 on February 2, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 5, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-010 Valuation and revaluation of real property—Introduction. The Washington state Constitution requires that all taxes be uniform upon the same class of property within the territorial limits of the authority levying the tax. In order to comply with this constitutional mandate and ensure that all taxes are uniform, all real property must be valued in a manner consistent with this principle of uniformity. Also, to comply with statutory and case law, the county assessor must value all taxable real property in the county on a regular, systematic, and continuous basis. ~~((This valuation may be accomplished on an annual basis for all real property in the county, or it may be accomplished on a multiyear basis with all the real property in the county revalued within a time period of not more than four years. Whether on an annual basis or a multiyear basis,))~~ All taxable real property within a

county must be valued or revalued annually, and all taxable real property within a county must be physically inspected at least once every six years. The assessor must adhere to a revaluation plan that will ensure equality and uniformity in the valuation of real property, and must use proper appraisal methods. The administrative rules in this chapter describe and explain the processes to be used by the county assessor in valuing and revaluing real property for purposes of taxation.

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-015 Revaluation of real property~~(—Annual counties)~~. (1) **Appropriate statistical data defined.** ~~((In any county where all real property is revalued each year.))~~ The assessor must revalue the property at its current true and fair value using appropriate statistical data. For purposes of this chapter, "appropriate statistical data" means the data required to accurately adjust real property values and includes, but is not limited to, data reflecting costs of new construction and real property market trends.

(2) **Comparable sales data.** In gathering appropriate statistical data and determining real property market trends, the assessor must consider current sales data. "Current sales data" means sales of real property that occurred within the past five years of the date of appraisal and may include sales that occur in the assessment year. To the extent feasible, and in accordance with generally accepted appraisal practices, the assessor shall compile the statistical data into categories of comparable properties. Comparability is most often determined by similar use and location and may be based upon the following use classifications:

- (a) Single family residential;
- (b) Residential with from two to four units;
- (c) Residential with more than four units;
- (d) Residential hotels, condominiums;
- (e) Hotels and motels;
- (f) Vacation homes and cabins;
- (g) Retail trade;
- (h) Warehousing;
- (i) Office and professional service;
- (j) Commercial other than listed;
- (k) Manufacturing;
- (l) Agricultural; and
- (m) Other classifications as necessary.

(3) **Appraisal processes.** Appropriate statistical data shall be applied to revalue real property to current true and fair value using one or more of the following processes:

- (a) Multiple or linear regression;
- (b) Sales ratios;
- (c) Physical inspection; or
- (d) Any other appropriate statistical method that is recognized and accepted with respect to the appraisal of real property for purposes of taxation.

(4) **Physical inspection cycles.**

(a) For purposes of this chapter, "physical inspection" means, at a minimum, an exterior observation of the property to determine whether there have been any changes in the physical characteristics that affect value. The property improvement record must be appropriately documented in

accordance with the findings of the physical inspection. ~~((In a county where all real property is revalued at its current true and fair value each year, using appropriate statistical data.))~~ The assessor must physically inspect all real property at least once within a six-year time period.

(b) Physical inspection of all the property in the county shall be accomplished on a proportional basis in cycle, with approximately equal portions of taxable property of the county inspected each year. Physical inspections of properties outside of the areas scheduled for physical inspection under the plan filed with the department (see WAC 458-07-025) may be conducted for purposes of validating sales, reconciling inconsistent valuation results, calibrating statistical models, valuing unique or nonhomogeneous properties, administering appeals or taxpayer reviews, documenting digital images, or for other purposes as necessary to maintain accurate property characteristics and uniform assessment practices. All properties shall be placed on the assessment rolls at current true and fair value as of January 1st of the assessment year.

(c) In any year, when the area of the county being physically inspected is not completed in that year, the portion remaining must be completed before beginning the physical inspection of another area in the succeeding year. All areas of the county must be physically inspected within the cycle established in the revaluation plan filed with the department.

(5) **Revaluation after a value is certified for the current year.** In certain circumstances the assessor is authorized to revalue real property, using appraisal judgment, after a value is certified for the current year. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state Constitution. The assessor may disregard the certified value for the current year and change a property valuation, as appropriate, in the following situations:

(a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (Notice of decision—Distribution: local project review), chapter 35.22 RCW (First class cities), chapter 35.63 RCW (Planning commissions), chapter 35A.63 RCW (Planning and zoning in code cities), or chapter 36.70 RCW (Planning Enabling Act);

(b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;

(c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;

(d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;

(e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or

(f) When property has been subdivided or merged.

~~(6) Change of value notice. ((In a county that revalues all real property each year,))~~ Revaluation notices must be mailed or transmitted electronically by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal or adjustment in value.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-07-020 Revaluation of real property—Multi-year counties.

WSR 16-08-119

PERMANENT RULES

EVERETT COMMUNITY COLLEGE

[Filed April 6, 2016, 9:17 a.m., effective May 7, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The revised rules for facility use clarify the use of college facilities relating to the first amendment rights of individuals.

Citation of Existing Rules Affected by this Order: Amending WAC 132E-137-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 16-03-050 on January 15, 2016.

Changes other than edition from proposed to adopted version: The word "equipment" was added in the nonassignment and release of claims sections.

A final cost-benefit analysis is available by contacting Jennifer Howard, 2000 Tower Street, Everett, WA 98201, phone (425) 388-9232, fax (425) 388-9228, e-mail jhoward@everettcc.edu.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 15, 2016.

Jennifer L. Howard
Vice-President
Administrative Services

AMENDATORY SECTION (Amending WSR 01-02-043, filed 12/28/00, effective 1/28/01)

~~WAC 132E-137-010 ((General policy covering the use of the facilities.))~~ **Facilities use.** ~~((1) The parties to this agreement are the Washington State Community College District 5, acting under specific authority granted to its board of trustees by the laws of the state of Washington, to contract for the use of the facility at Everett Community College, hereinafter referred to as the college and the organization contracting to use the college facilities, hereinafter referred to as the licensee.~~

~~(2) Before a college facility may be used, this college facility use agreement must be completed and signed by the college president or his designee. Forms may be obtained from the college facilities maintenance office or college student activities office. All information received on agreements not completed at least fourteen school days prior to the date of intended use may be denied. A single use agreement should be made for a series of similar meetings. A separate agreement must be made for each meeting which varies from the series.~~

~~(3) The building and grounds of the college are primarily for educational purposes. No other use shall be permitted to interfere with the primary purpose for which these facilities are intended. Facilities shall not be made available for any use which might result in any undue damage or wear. The college reserves the right to reject any application for use of college facilities.~~

~~(4) Every possible opportunity will be provided for the use of college facilities by citizens of the district community college service area, provided that the purpose of the meeting is in harmony with public interest and welfare, subject to the laws of the state of Washington and rules and regulations prescribed by the District 5 board of trustees for the operation of the college.~~

~~(5) It is the present policy of the college to permit organizations considered closely affiliated with college-related educational purposes to use facilities of the college at the lowest possible charge.~~

~~(6) College facilities may be used by other public or private educational institutions only insofar as they meet a community educational need not being fulfilled by the community college district.~~

~~(7) The college does not wish to compete with private enterprise. Therefore, the use of buildings for commercial-type entertainment, banquets, luncheons, and money raising events is discouraged.~~

~~(8) The college reserves the right to prohibit the use of college facilities by groups, or activities, which are secret, which are of a private nature, or which restrict membership or attendance, in a manner inconsistent with the public and non-discriminatory character of the college set forth in its written policies and commitments. Subversive organizations as defined and listed by the Attorney General of the United States shall not be eligible to use college facilities.~~

~~(9) Use agreements shall not be entered into for any use which, in the judgment of the college may be in any way prejudicial to the best interest of the college or the educational program, or for which satisfactory sponsorship or adequate adult supervision is not provided. Proper police and fire pro-~~

tection shall be provided by the organization when required by the college.)) The building and grounds of Everett Community College are designed for educational purposes. The college does not wish to compete with private enterprise. As a partner in our community, Everett Community College allows the citizens of the district community college service area to use college facilities, provided that the use is in harmony with public interest and welfare, subject to the laws of the state of Washington and rules and regulations prescribed by the District 5 board of trustees for the operation of the college.

The college reserves the right to reject any application for use of college facilities.

The college reserves the right to prohibit the use of college facilities by groups or activities, which are secret, of a private nature, or which restrict membership or attendance, in a manner inconsistent with the public and nondiscriminatory organizations as defined and listed by the Attorney General of the United States. Facilities shall not be made available for any use which might result in any undue damage or wear.

No use shall be permitted which interferes with the primary educational purpose of the college or for which satisfactory sponsorship or adequate adult supervision is not provided. Proper police and fire protection shall be provided by the organization when required by the college.

Before a college facility may be used, a college facility use agreement must be completed and submitted to the conference services office. Forms may be obtained from the conference services office. Agreements not completed at least fourteen business days prior to the date of intended use may be denied.

Use of Facilities for First Amendment Activities

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance both the college's responsibility to fulfill its mission as state educational institution of Washington along with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

The activity must be conducted such that usual ingress or egress to the college, college buildings or facilities, or college activities continues unimpeded.

The activity must not create safety hazards or pose safety risks to others.

The activity must not substantially infringe on the rights and privileges of college students, employees, or invitees to the college.

Users must follow the facility use policy with respect to paying for any damages and/or extra staff required for facility cleanup or repair.

Facility Damage

The user of the facility shall accept responsibility for any damage done to the college's property. In the event of property damage, the user shall accept and pay the college's estimate of the amount of damage.

Custodial services will be provided by the college. The college reserves the right to charge an additional custodial fee if extra cleaning is required.

If the facility is used differently than the original request, the college may charge an additional fee.

Supervision

When the use of special facilities or equipment makes it necessary that supervision or technical assistance be provided, a college-employed supervisor or technician shall be assigned as required by the college.

The college reserves the right to require a campus security officer to be present at a scheduled event.

When the college requires its employees to attend a scheduled event, the user shall be charged the amount covering the employees' compensation.

When minors are part of an event at EvCC, adult leaders shall actively supervise minors at all times.

Restrictions

No decorations or the application of materials to walls, ceilings, or floors shall be permitted which will mar, deface, or injure these surfaces. The user is required to arrange for the disposal of decorations, materials, equipment, furnishings, or rubbish left after the use of college facilities.

Profane or other improper language, or the use of drugs or other controlled substances, or any other conduct which is objectionable in the judgment of the college shall not be allowed.

Games of chance and lotteries shall not be permitted except as prescribed by law and with prior approval of the college.

Standard approved gym shoes shall be required for all indoor activity and games such as basketball, volleyball, badminton, etc.

Keys to buildings or facilities may not be issued or loaned on any occasion to the user. Doors will be opened and locked by authorized college personnel.

College-owned equipment shall not be removed from buildings. Users wishing to use college media/IT equipment may be required to attend training on the use of that equipment prior to the date of the event.

Nonassignment and Cancellation

Use of the facilities, equipment or premises shall be in full compliance with federal and state law, as well as county and city rules or ordinances; any use to the contrary shall be grounds for immediate cancellation of this agreement.

The college reserves the right to cancel this agreement at any time. The college may refund any advance payment made to the college for the use of the college facilities and equipment. The user may be required to reimburse the college for any preparation expenses.

This use agreement shall be nonassignable. Only the user as named in the use agreement shall use the facilities.

Events scheduled more than one academic quarter (three months) in advance, may be canceled by the college when college events take priority.

Release of Claims/Holds Harmless

In consideration of the permission granted to user and the fee charged by the college for the use of its facilities or equipment, user hereby and forever releases the college and its agents, employees or officers from all debts, claims, demands, actions and causes of action whatsoever, which user may now have or may hereafter have, as a result of the uses of college facilities.

The user further agrees to protect, indemnify, and hold harmless the district, college and its agents, employees, and officers from any claims, demands, actions, damages, or causes of action directly or indirectly arising out of the use of the facilities, equipment or premises contemplated by this application.

Use Fees

The use fee is determined by the college based on the purpose of the activity and the nature of the group using the facility.

If fees are waived, no charge will be made for use of the facilities. Discounts and waivers apply to rental fees only. However, charges may be made for specific services or equipment, which may include charges for excessive use/damages as described above as well as charges for events resulting in staff overtime and setup services.

Specialized areas such as laboratories, shops, or other specialized facilities require special arrangements. The rates and conditions will be based upon careful analysis by the college of the needs, experience, and capabilities of the user.

The college's rental fee schedule shows the fee rates for category I and category II. The current fee schedule is available on the college's web site: www.everettcc.edu

	<u>Nonprofit Activities</u>	<u>Fund-raising Activities</u>
<u>College Related or College Sponsored Groups</u>	<u>Fee Waived*</u>	<u>Fee Waived*</u>
<u>Public, Nonprofit Organizations</u>	<u>Category I</u>	<u>Category I Plus 10%</u>
<u>Private, Profit Organizations</u>	<u>Category II</u>	<u>Category II Plus 30%</u>

*As a consideration for the waiving of rental fees, for all college related or college sponsored groups, the college will require an opportunity for marketing the college to the group.

Payment

All payments shall be made at least two weeks prior to the event. The college may make other arrangements for payment at its discretion.

Payments shall be made, either in person or via phone, to the college cashier's office.

Additional charges for damages shall be billed directly to the user, and shall be paid within thirty days of the date of the invoice.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132E-137-020 Licensee's responsibility.
- WAC 132E-137-030 Attendants needed.
- WAC 132E-137-040 Restrictions.
- WAC 132E-137-050 Nonassignment and cancellation.
- WAC 132E-137-060 Release of claims/holds harmless.
- WAC 132E-137-070 Use fees.

WSR 16-08-120

PERMANENT RULES

EVERETT COMMUNITY COLLEGE

[Filed April 6, 2016, 9:17 a.m., effective May 7, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this proposal is to update the drug and alcohol use provisions of the Everett Community College Washington Administrative Code.

The updates include references to new student housing. The updates clarify the rules for employees as well as students with respect to acceptable use. Additionally, the expectations for approved use of prescription medications are clarified.

Citation of Existing Rules Affected by this Order: Amending WAC 132E-120-400.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 16-03-049 on January 15, 2016.

A final cost-benefit analysis is available by contacting Jennifer Howard, 2000 Tower Street, Everett, WA 98201, phone (425) 388-9232, fax (425) 388-9228, e-mail jhoward@everettcc.edu.

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Date Adopted: March 15, 2016.

Jennifer L. Howard
Vice-President
Administrative Services

AMENDATORY SECTION (Amending WSR 14-04-048, filed 1/27/14, effective 2/27/14)

WAC 132E-120-400 Drug-free campus policy.

~~((Everett Community College's board of trustees have adopted a policy for the maintenance of a drug-free campus. The provisions of this policy as it relates to students are as follows:~~

~~(1) Students who report to class or work must do so unimpaired due to the use of alcohol or other drugs.~~

~~(2) Unlawful use, possession, delivery, dispensation, distribution, manufacture or sale of drugs on college property, in college housing, in state vehicles or on official business is strictly prohibited. Documented evidence of illegal drug involvement will be given to law enforcement agencies.~~

~~(3) Possession or consuming any form of liquor or alcoholic beverage on college property or at off-campus college events is prohibited except as a participant of legal age at a program which has the special written permission of the college president.~~

~~(4) Students found in violation of this policy will be subject to formal disciplinary action, which could include completion of an appropriate rehabilitation program up to and/or including dismissal/expulsion.~~

~~(5) Students needing assistance with problems related to alcohol or drug abuse are encouraged to seek referral from a counselor in the counseling center and/or appropriate off-campus substance abuse agencies.~~

~~(6) Students must report any criminal drug statute conviction to the chief student affairs officer within five school days after such conviction.~~

~~(7) The college will report the conviction to the appropriate federal or state agency within ten working days after having received notice that a student employed under a federally funded grant or contract or receiving grant funds has any drug statute conviction occurring on campus.~~

~~(8) All students, regardless of status, shall comply with this policy regarding a drug-free campus.) It is the responsibility of the college to provide a safe and healthy educational and work environment. A motivated and healthy work force and student body are the college's greatest assets.~~

Fit for participation.

It is essential that all employees and students report to work and class both mentally and physically able to perform their duties and learn in a satisfactory manner.

All employees and students who report to work or class must be in a condition fit to perform their duties, fit to learn, unimpaired due to the use of alcohol or other drugs.

Possession/use guidelines.

Possession or consuming any form of liquor or alcoholic beverage on college property, in college housing or at off-campus college events is prohibited.

Illegal possession, consumption, selling, or distributing, or being demonstrably under the influence of marijuana or any substance as defined by RCW 69.50.101 on property owned or controlled by the college, in college housing or at functions sponsored or supervised by the college is prohibited.

For the purpose of this rule, "sale" shall include the statutory meaning defined in RCW 69.50.410.

Disorderly or abusive conduct resulting from being under the influence of drugs or alcohol on college owned or controlled property, in college housing or at functions sponsored or supervised by the college is prohibited. Disorderly or abusive conduct includes, but is not limited to, interfering with the right of others or obstructing or disrupting teaching, research, or administrative functions including failure to abide by the directive(s) of a college employee who is acting in their capacity as an agent of the college.

Allowable use.

Medication

Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Any employee or student taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to learn about the effects of a medication. If the use of a medication could compromise the safety of the employee or student, other employees and/or other students or the public, it is the individual's responsibility to use appropriate procedures (e.g., call in sick, use leave, request change of duty, notify supervisor, notify instructor) to avoid unsafe practices.

The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this policy to intentionally misuse and/or abuse prescription medications.

Events

Alcohol use is prohibited as described above except for participants of legal age at programs which have the special written permission of the college president.

Employees representing the college at official functions in the scope of their employment including, but not limited to, attendance at conferences and events, should exercise prudence in consuming alcohol and should refrain from driving after consuming alcohol.

Violations.

Any employee or student found in violation of this policy will be subject to formal disciplinary action, which may include completion of an appropriate rehabilitation program up to and/or including dismissal/expulsion, as per the applicable collective bargaining agreement/student handbook.

Other legal penalties may be enforced by state and local law enforcement officials.

Abuse assistance.

Everett Community College recognizes that alcohol and drug abuse and addiction are treatable illnesses. We also realize that early intervention and support improve the success of rehabilitation and may prevent those whose problems have yet to reach the level of addiction from progressing.

Employees needing assistance with problems related to alcohol or drug abuse are encouraged to seek assistance utilizing employee medical insurance programs or the employee assistance program (EAP).

Students are encouraged to seek referral assistance from the college's counseling center and/or appropriate off-campus substance abuse agencies.

Federal law.

The college will continue to comply with the federal Drug-Free Work Place Act of 1988 and the Drug-Free Schools and Communities Act Amendments of 1989.

(1) All employees must, as a condition of continued employment, notify the chief human resources officer of any criminal drug statute conviction for a violation occurring during the course of the employee's work duties no later than five days after such conviction.

(2) Students must report any such conviction to the dean of students within five days after such conviction. Students may lose federal funding as well as be subject to the student disciplinary process.

(3) Everett Community College will report any conviction to the appropriate federal or state agency within ten days after having received notice that a person employed under a federally funded grant or contract or receiving grant funds has any drug statute conviction occurring on the campus.

All employees and students, regardless of status, shall comply with this policy regarding a drug-free campus.

WSR 16-08-121

PERMANENT RULES

EVERETT COMMUNITY COLLEGE

[Filed April 6, 2016, 9:17 a.m., effective May 7, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To honor the life and service of Walt Price to Everett Community College, the college chooses to rename the student fitness center the Walt Price Student Fitness Center.

Citation of Existing Rules Affected by this Order: Amending 132E-133-020.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 16-03-048 on January 15, 2016.

A final cost-benefit analysis is available by contacting Jennifer Howard, 2000 Tower Street, Everett, WA 98201, phone (425) 388-9232, fax (425) 388-9228, e-mail jhoward@everettcc.edu.

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Date Adopted: March 15, 2016.

Jennifer L. Howard
Vice-President
Administrative Services

AMENDATORY SECTION (Amending WSR 11-16-073, filed 8/1/11, effective 9/1/11)

WAC 132E-133-020 Organization—Operation—Information. (1) Organization. Everett Community College is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

President's Office
Everett Community College
2000 Tower Street
Everett, WA 98201-1352

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

Everett Community College
Aviation Maintenance Technician School
9711 - 31st Place W.
Building C-80
Paine Field
Everett, WA 98204

Everett Community College
Corporate & Continuing Education Center
2333 Seaway Blvd.
Everett, WA 98204

Everett Community College
School of Cosmetology
9315 G State Avenue
Marysville, WA 98270

Everett Community College
Early Learning Center
820 Waverly Avenue
Everett, WA 98201

Everett Community College
Walt Price Student Fitness Center
2206 Tower Street
Everett, WA 98201

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the catalog, copies of which are available at the following address:

Everett Community College
2000 Tower Street
Everett, WA 98201-1352