

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the department of financial institutions.

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

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

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

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

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

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

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

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

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

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

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

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

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

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

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

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

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

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

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

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

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

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

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

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

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

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

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

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

"Mortgage broker" means the same as in RCW 19.146.010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for 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.

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 an individual servicing a mortgage loan before July 1, 2011.

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.

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

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

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

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

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

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

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

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

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

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

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

"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" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. Residential mortgage loan modification services also includes the collection of data for submission to an entity performing mortgage loan modification services. Residential mortgage loan modification services do not include actions by individuals servicing a mortgage loan before July 1, 2011.

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

~~(("Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending~~

~~Act) or residential real estate upon which is constructed or intended to be constructed a dwelling.))~~

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

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

"Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan:

(a) Collecting or receiving 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;

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

(d) Otherwise finalizing collection through the foreclosure process; or

(e) Servicing a reverse mortgage loan. See RCW 31.04.015(26).

"Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender. See RCW 31.04.015(27).

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

"State" means the state of Washington.

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

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

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

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

"Third-party 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 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

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

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

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

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

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

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

(4) A 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; and

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

NEW SECTION

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

(2) Companies servicing loans purchased post closing.

(3) Companies servicing loans owned by other companies.

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

**WAC 208-620-235** When making loans, is there a maximum rate of interest allowed under the act? Yes. The ~~((note))~~ rate of interest ~~((may))~~ specified in the note must not exceed twenty-five percent per annum.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-250** If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington? (1) You are not required to maintain a physical presence in this state to ~~((get))~~ hold a license but any location doing business under the act, wherever located, must be licensed.

(2) If you employ mortgage loan originators, those licensed employees must work from a licensed location. A licensed location can be a branch office or an individual loan originator's home.

NEW SECTION

**WAC 208-620-251** Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590.

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

NEW SECTION

**WAC 208-620-252 If I am offering loans by mail or internet to Washington residents, do I have to license those locations?** Yes. Any person that conducts business under the act with Washington residents must obtain a license for all locations including those that offer loans by mail or internet.

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

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

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

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

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

**WAC 208-620-271 Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW. See also WAC 208-620-550 and 208-620-551.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**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 underwriting and other back-office services on Washington loans and has only incidental contact

with the borrower, is not required to be licensed. Back office services do not include loan servicing.

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

**WAC 208-620-320 What is the amount of the bond required for my consumer loan license?** (1) If you originate loans the bond amount is based on the annual dollar amount of loans you originate. See the following chart:

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

(2) If you only service residential mortgage loans, your bond amount at application is thirty thousand dollars. Thereafter and subject to annual adjustment, your bond amount is based on the annual dollar amount of the residential mortgage loans serviced pursuant to the following schedule (see RCW 31.04.045(6)):

- |  |                 |
|--|-----------------|
| 1. <u>Zero to fifty million in loan principal:</u> | <u>\$30,000</u> |
| 2. <u>Fifty million and above:</u>                 | <u>\$50,000</u> |

(3) If you only offer residential mortgage loan modification services, your bond amount is thirty thousand dollars.

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

**WAC 208-620-325 What will my bond amount be in the first year of licensing?** (1) Your initial bond amount will be based on either your prior year's loan origination volume in Washington or one hundred thousand dollars. See the bonding chart in WAC 208-620-320.

(2) If you only service residential mortgage loans your initial bond amount is thirty thousand dollars. For subsequent years see the bonding chart in WAC 208-620-320.

(3) If you only provide residential mortgage loan modification services, your bond amount is thirty thousand dollars initially and thereafter.

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

**WAC 208-620-327 How often will my bond amount change?** Your bond amount may change annually depending on your volume of loan origination and residential mortgage loans serviced in Washington. See RCW 31.04.045(6). By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond.

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

**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 loan servicing volume (~~(each quarter when filing your call report (see WAC 208-620-431) and)~~) as directed on the form prescribed each year during the annual assessment period. (~~(By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond.)~~)

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

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

(1) Fails to pay a fee due the department or the NMLSR;  
(2) Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

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

(c) The person is the subject of a criminal felony indictment,

or a criminal gross misdemeanor charge involving dishonesty or financial misconduct (RCW 31.04.055 (1)(d)); or

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

(e) The person has had a license to conduct lending, residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing revoked or suspended by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license (see RCW 31.04.093 (6)(c)).

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

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

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

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

**WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked or suspended?** No. (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 to a felony in a domestic, foreign, or military court:

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

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

~~((3))~~ (2) For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or employee who will or does originate loans, supervise loan originators, or manage the loan production activities of the licensee.

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee who has had a license to engage in lending, or performance of a settlement service related to lending, revoked or suspended in this

state or any state.

(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 to originate loans, supervise loan originators or manage the loan production activities of the licensee without first conducting a background check.

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

**WAC 208-620-373 What happens to residential mortgage loans in the pipeline if a mortgage loan originator leaves my company?** Existing loan applications must be processed by another licensed loan originator in the company. At the borrower's written request, the loan must be transferred to another licensed entity. You may pay the original loan originator for the work he or she performed prior to leaving.

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

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

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-420 May I transact business in a name other than the name on my license?** ~~((No. A licensee may transact business such as making a loan or providing applicable disclosures only under the name on the license. A licensee))~~ (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 ((its)) your main office license but ((it)) you may not use the DBA ~~((doing business as))~~ 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 with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

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

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

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

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

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

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

(4) **Annual reporting of residential mortgage loan data.** On an annual basis the company licensee must provide information on the characteristics of residential mortgage loan originations in an electronic format prescribed by the direction.

(5) Residential mortgage loan annual reports content.

- (a) The director will provide the report format or forms and

worksheet for the reporting requirement described in subsection (4) of this section.

(b) For the annual reporting of loan data, the company licensee must provide:

(i) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;

(ii) Information sufficient to enable a computation of key items in the federal truth in lending disclosures, including the annual percentage rate, finance charge, amount financed, a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures;

(iii) Information included in the initial and any subsequent good faith estimate (GFE) disclosures required under the federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, itemization of settlement charges and all compensation;

(iv) Information included in the final HUD-1 Settlement Statement;

(v) Information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the mortgage lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, the maximum amount of penalty);

(vi) Information typically used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), loan to value, borrowers' income, monthly payment amount, housing debt-to-income ratio including taxes and insurance, total debt-to-income ratio including taxes and insurance, and credit score(s) of borrowers; and

(vii) Information included in a loan application register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

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

**WAC 208-620-431 What are my quarterly call report filing requirements if I make, broker, or service residential mortgage loans?** When the NMLSR develops the call report functionality you will be required to file (~~quarterly~~) call reports on the dates and in a form prescribed by NMLSR (see RCW 31.04.277).

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

**WAC 208-620-440 How do I calculate my annual assessment for activity in Washington?** (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the cost based on the total annual volume of Washington residential mortgage loans serviced. The maximum amount assessed to any individual licensee will not exceed twenty-five thousand dollars.

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

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

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

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

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-460 Must I file my annual reports even if I go out of business during the year?** (1) A licensee that ceases operations during the year must file the ((consolidated)) annual reports and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

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

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

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

(2) File the final closure form, annual reports, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action(~~(7) and~~).

(3) (~~Return your license to the department.~~) If your license has expired or you are otherwise locked out of the NMLS data base, you must provide the documents described in subsection (2) of this section directly to the department.

Any Washington loans in your portfolio and (~~ELA~~) activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

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

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

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

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

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

(d) 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 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(4) **Residential mortgage loans--Brokered loans.** ~~((a))~~  
Within three business days following receipt of a residential mortgage loan application you must provide to each borrower:

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

(b) A good faith estimate that conforms with RESPA 24 C.F.R. 3500~~((-))~~;

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

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

(d) A rate lock disclosure containing the following:

(i) If a ~~((lock-in))~~ rate lock agreement has been entered into you must disclose to the borrower whether the ~~((lock-in))~~ rate lock agreement is guaranteed and whether and under what conditions any ~~((lock-in))~~ rate lock fees are refundable to the borrower.

~~((e))~~ (ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock disclosure and a rate lock agreement within three business days of the ~~((lock-in))~~ rate lock date ~~((that))~~. The rate lock agreement must include~~((s))~~ the following:

~~((i))~~ (A) The length of the ~~((lock-in))~~ rate lock period;  
~~((ii))~~ (B) The expiration date of the ~~((lock-in))~~ rate lock;  
~~((iii))~~ (C) The ~~((lock-in-interest))~~ rate of interest locked;

~~((iv))~~ (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; and

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

(e) 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 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(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 09-24-090, filed 12/1/09, effective 1/1/10)

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

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage

loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as (~~provided~~) 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 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 09-24-090, filed 12/1/09, effective 1/1/10)

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

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

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

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

(a) (~~(Mortgage transaction documents. These documents must be retained for three years or the period of time required by federal law, whichever is longer)~~) 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, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

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

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

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

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

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

(l) All file correspondence and logs;

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

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

(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 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-530 Can I maintain my records electronically?**

Yes. (1) **Records must be available.** The records required to be maintained by RCW 31.04.145 may be maintained by means of electronic display equipment if such equipment is made available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) **Hard copy upon request.** (~~(A licensee)~~) You must provide the records in hard copy upon request of the director.

NEW SECTION

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

NEW SECTION

**WAC 208-620-545 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 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-550 What business practices are prohibited?** (~~(Under)~~) 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 business days after being requested in writing to do so by a borrower of record or their authorized representative;

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

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

(4) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public

policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

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

(6) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

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

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

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

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

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

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

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

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

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

(16) 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.

NEW SECTION

**WAC 208-620-551 Residential mortgage loan servicers--What business practices are prohibited?** In addition to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

- (1) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;
- (2) Waive his or her right to contest a future foreclosure;
- (3) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;
- (4) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or
- (5) Cease communication with the lender or investor.
- (6) You are further prohibited from:
  - (a) Purchasing insurance on a property secured by a loan you service without providing one or more notices to the borrower's last known address in order to verify that the property is not otherwise insured.
  - (b) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.
  - (c) Knowingly misapplying or recklessly applying payments to escrow accounts.
  - (d) Charging excessive or unreasonable fees to provide loan payoff information.
  - (e) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.
  - (f) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.
  - (g) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

NEW SECTION

**WAC 208-620-552 Residential loan modification service providers--What business practices are prohibited?** In addition to RCW 31.04.027, you are prohibited from:

- (1) Collecting an advance fee of more than seven hundred fifty dollars.
- (2) Collecting an advance fee without a written fee agreement. See also WAC 208-620-545.
- (3) As a condition to providing loan modification services requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) 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

(f) Enter into any contract or agreement to purchase a borrower's property.

(4) You are further prohibited from failing in a timely manner to:

(a) Communicate with or on behalf of the borrower;

(b) Act on any reasonable request from or take any reasonable action on behalf of a borrower.

(5) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(a) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.

(b) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.

(6) 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.

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

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

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

(2) (~~On nonmortgage loans and junior lien mortgage loans,~~) Nonmortgage loan origination fees. All licensees may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) Mortgage broker 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.

(4) Third-party fees.

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

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

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

(5) Rate lock fees. When agreed to in writing by the borrower, a nonrefundable rate lock fee. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, or if the borrower does not qualify for a loan. See also WAC 208-620-510(3).

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

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

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

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

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

**WAC 208-620-560 What fees are not allowed when making loans under the Consumer Loan Act?** (1) **Filing fees.** You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee you collect(~~s~~) for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

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

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

(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

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

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

(a) You must only charge an origination fee on that part of

the new loan not used to pay the amount due on the previous loan;

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

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

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

(5) **Discount points.**

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

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

(6) **Administrative fees.** On nonmortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, you must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

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

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

(a) Any nonmortgage loan;

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

(c) Any junior lien mortgage loan; or

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

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

**WAC 208-620-565 What fees am I allowed to charge or receive when acting as a residential mortgage loan broker under the act?**

(1) A broker's fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount credited to the borrower on the

good faith estimate and as applicable on the settlement statement.

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

NEW SECTION

**WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act?** (1) You may charge servicing fees authorized by the loan documents, by law, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by law, and wire transfer fees for wire transfers requested by the borrower.

(2) You may only charge a fee for a default related service that is usual and customary or reasonable in light of the service provided.

(3) You may not charge fees paid to third parties in excess of the fee charged by the third party.

NEW SECTION

**WAC 208-620-568 What fees am I not allowed to charge when providing residential mortgage loan modification services under the act?** You must not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided.

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

**WAC 208-620-620 How do I have to identify my business when I advertise?** You must either identify the business using your Washington consumer loan license (~~(number or use the)~~) name (~~(on your Washington main office consumer loan license)~~), or using an approved DBA name with the main office license name or license number (CLA-123456). For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

NEW SECTION

**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 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.

NEW SECTION

**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 and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their NMLS numbers must 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 contain the main office license name, comply 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 URL address to the site must be a DBA of the licensee and the licensee's name must appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.

(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.

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

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

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

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

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

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

(f) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

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

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

calculation for the advertised interest rate.

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

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW ((~~19.146.0201(7)~~) 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 (10). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

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

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

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

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

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

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

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

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

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by (~~who is licensed or exempt from licensing under Washington law~~) as long as the out-of-state company licenses a branch in Washington for you to work from. See subsection (1) of this section.

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

(9) **Do loan processors have to be licensed as loan**

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

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

**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 nationwide mortgage licensing system and registry (NMLSR).

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

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

(a) Be eighteen years or older.

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

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

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

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

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

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

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

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

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

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

(A) W-2 Federal Income Tax Reporting Forms in the designated

broker appointee's name; or

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

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

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

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

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

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

(f) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-620-720.

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

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

~~((h))~~ (i) **Provide a bond.**

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

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

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

following amounts:

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

((+i)) (j) File a quarterly call report. Reserved.

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

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

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

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

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

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

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

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

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

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

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

abandonment. You may reapply by submitting a new application package and new application fee.

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

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

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

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

**(12) When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

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

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

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

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

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

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

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

(a) Before the license expiration date you must renew your

license through the NMLSR. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement. You will not have a continuing education requirement in the year in which you complete 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 before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

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

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

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

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

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

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

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

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

**(25) Must I include my loan originator license number on any documents?** You must include your license number immediately

following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

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

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

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

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

(d) When taking a residential mortgage loan application.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Counseling disclosure. You must provide the following plain language statement in conspicuous bold sixteen-point type or larger, prior to receiving a complete and final loan application: "Important notice to reverse mortgage loan applicant: A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity. If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate. It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

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

(3) Benefits and tax disclosure. You must provide the following statement prior to or simultaneously with receiving an initial loan application:

"If you receive advances under the terms of a reverse mortgage, you may lose your right to receive certain public funds, such as Medicaid, and possibly others. Also, receiving advances under the terms of a reverse mortgage may have tax consequences for you. You may wish to obtain advice from a tax professional or an attorney before you decide on a reverse mortgage."

NEW SECTION

**WAC 208-620-835 Under what circumstances will the department determine that the making of a reverse mortgage was unsuitable for a particular borrower and therefore an unfair and deceptive practice in violation of RCW 31.04.027?** Examples of circumstances which might indicate that an offered reverse mortgage loan is unsuitable include reverse mortgage loans when the applicant:

(1) Does not intend to reside in the property on a long-term basis.

(2) Does not want nonborrower residents of the property to be displaced at the maturity of the loan because they will not be able to pay off the reverse mortgage loan.

(3) Will use the proceeds of the reverse mortgage loan to purchase a product, such as annuities or other investments, which are not appropriate for the borrower.

(4) Does not understand the terms and conditions of a reverse mortgage loan or what happens to the collateral when the reverse mortgage loan matures.

(5) Would receive disbursements from the reverse mortgage loan that are insufficient to meet the applicant's stated needs or is not enough to justify the initial cost of a reverse mortgage loan.

**RESIDENTIAL MORTGAGE LOAN SERVICING REQUIREMENTS**

NEW SECTION

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

(1)(a) Comply with applicable federal laws or regulations when servicing a residential mortgage loan.

(b) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by a government program.

(c) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by Fannie Mae or Freddie Mac.

(d) A violation of an applicable federal law or regulation is a violation of this act.

(2) Comply with chapter 19.148 RCW.

(3) You must assess 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.

(4)(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.

(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.

(5) You must notify the borrower if a payment is received but not credited. 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.

(6)(a) 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.

(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. See also subsection (1)(c) of this section.

(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. Examples of changes requiring notification include, but are not limited to, a reduction in the required cushion amount for the account, or a change in the property's tax assessment.

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

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

(b) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. 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.

(8) You must provide at a minimum the following information to a borrower's request described in subsection (7) of this section:

(a) 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;

(b) 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;

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

(d) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.

(e) You may charge a fee for preparing and furnishing the statement described in this subsection not exceeding thirty dollars per statement.

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

(g) 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 this subsection.

(9) In addition to the statement described in subsection (6) of this section, 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:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) 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.

(c) 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

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

(d) 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.

(10) 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. If the notification is returned to you because the address is deficient in some manner, you must post the notification of the foreclosure sale on the property itself within three days of the notification being returned to you.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-380	Are there any additional requirements for out-of-state licensees?
WAC 208-620-390	If I am offering loans by mail or internet to Washington residents, do I have to license those locations?