

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

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

"Act" means chapter 31.45 RCW.

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

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

"Annual percentage rate" or "APR" means, for fixed-rate plans, a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in Regulation Z, 12 C.F.R. section 226.5b(d)(12)(xi) or a rate that has been in effect under the plan since the date of the most recent rate in the table.

The Office of the Comptroller of the Currency (OCC) provides an APR calculator for free downloading and use. The Windows-based version of the annual percentage rate program (APRWIN v 6.0) is an efficient tool for verifying annual percentage rates and reimbursement adjustments. This version includes relevant finance charge and APR tolerances for verifying the accuracy of annual percentage rates and finance charges on loans secured by real estate or a dwelling. Access the calculator at the OCC web site, <http://www.occ.treas.gov/aprwin.htm>.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

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

"Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

For purposes of this definition, "engages, in whole or in part, in the business of cashing checks," means that the check casher provides the currency used as payment to consumers for checks presented for cashing, takes possession of checks presented

by consumers for cashing, and deposits the purchased checks into the check casher's bank account. If checks are cashed through a kiosk, the check casher is the supplier of currency for the kiosk, the owner of the checks deposited into the kiosk, and the owner of the bank account into which the checks are subsequently deposited.

"Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.

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

"Department" means the department of financial institutions.

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

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

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

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

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

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

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

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

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

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

"State" means the state of Washington.

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

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WAC 208-630-130 How does a business apply for a check casher's or seller's license or a small loan endorsement to a check casher's or seller's license? Each applicant for a check casher license, or check seller license, or a small loan endorsement to a check casher's or seller's license must apply to the director by filing the following:

(1) An application in a form prescribed by the director including at least the following information:

(a) The legal name, residence, and business address of the applicant if the applicant is an individual or sole proprietorship, and in addition, if the applicant is a partnership, corporation, limited liability company, limited liability partnership, trust, company, or association, the name and address of every member, partner, officer, controlling person, and board director;

(b) The trade name or name under which the applicant will do business under the act;

The director or the director's designated representative may deny an application for a proposed license or trade name if the proposed license or trade name is similar to a currently existing licensee name, including trade names.

(c) The street and mailing address of each location in which the applicant will engage in business under the act;

(d) The location at which the applicant's records will be kept; and

(e) Financial statements and any other pertinent information the director may require with respect to the applicant and its board directors, officers, trustees, members, or employees, including information regarding any civil litigation filed within the preceding ten years against the applicant or controlling person of the applicant;

(2) A surety bond and related power of attorney, or other security acceptable to the director in an amount equal to the penal sum of the required bond as set forth in this rule. In lieu of the bond, the applicant may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond in accordance with RCW 31.45.030 (5)(b) and (e) and this rule;

(3) A current financial statement as of the most recent quarter end prepared in accordance with generally accepted accounting principles which includes a statement of assets and liabilities and a profit and loss statement;

(4) Information on the applicant's or any affiliate's current or previous small loan or related type business in this state or any other state, including, but not limited to, name, address, city, state, licensing authority, and whether any enforcement action is pending or has been taken against the applicant in any state;

(5) Upon request, a complete set of fingerprints and a recent photograph of each sole proprietor, owner, director, officer, partner, member, and controlling person; and

(6) An application fee.

Any information in the application regarding a personal residential address or telephone number, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret is exempt from the public disclosure requirements of chapter 42.17 RCW.

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WAC 208-630-320 What examination authority does the director have? The director determines the frequency of examinations for the purpose of determining compliance with chapter 31.45 RCW and these rules.

The director or designee may at any time examine the records and documents used in the business of any licensee or licensee's agent wherever located. This includes licensees whose business is conducted entirely on the internet.

The director or designee may examine the records and documents of any person the director believes is engaging in unlicensed business governed by chapter 31.45 RCW wherever located.

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WAC 208-630-430 When may a licensee expect a fee increase?
(~~The department intends to increase its fee and assessment rates each year for several bienniums. The department intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2005-2007 biennium.~~)

(1) On (~~July~~) January 1, (~~2005~~) 2008, the fee and assessment rates (~~as increased in the prior fiscal year,~~) under WAC 208-630-400 will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025. (~~However, there will be no rate increase under this subsection (1) for assessments described in WAC 208-630-022 (2)(a)(i), (b)(i) and (c)(i).~~)

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

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-470 What types of information must a licensee include on a borrower's application for a small loan? The licensee must require and maintain an application for each borrower in each small loan transaction. Each application must contain the borrower's full name, Social Security number or other unique identifier acceptable to the director, current address, loan origination date, and whether the applicant is a military borrower at any time prior to the termination date of the loan. As used in this section "other unique identifier" means a state identification card, a passport, a document issued by the U.S. Immigration and (~~Naturalization Service of the United States~~) Customs Enforcement that provides identification of the borrower, a matricula consular, a driver's license, or other forms as approved by the director.

Licensees may rely upon an applicant representation regarding the applicant's military status, and are not required to conduct an independent investigation regarding military status.

NEW SECTION

WAC 208-630-505 What process must a licensee follow when a borrower pays off a small loan, or makes a payment toward a payment plan, with cash? A licensee must prepare a receipt with information that includes, but is not limited to, the date of the transaction, the borrower's name, the amount of the cash received, an indication that the payment was made in cash, an indication that the payment was made either on a loan, or towards a payment plan, the borrower's signature, and the signature of the person receiving the payment for the licensee.

NEW SECTION

WAC 208-630-5401 What duties and restrictions must a licensee comply with when making loans to military borrowers? (1) For purposes of this section, "military borrower" means any active duty member of the armed forces of the United States, or any member of the National Guard or the reserves of the armed forces of the United States who has been called to active duty.

(2) A licensee must:

(a) Honor the terms of any repayment agreement, including any repayment agreement negotiated through military counselors or third party credit counselors.

(b) Defer all collection activity against a military borrower who has been deployed to a combat or combat support posting, for the duration of the posting.

(3) A licensee must not:

(a) Make a loan to a military borrower with an annual percentage rate over thirty-six percent.

(b) Garnish any wages or salary paid to a military borrower for service in the armed forces when collecting any delinquent small loan.

(c) Contact a military borrower's chain of command in an effort to collect a delinquent small loan.

(d) Make a loan to a person known to the licensee to be a military borrower from a specific location when the military borrower's commander has notified the licensee in writing that the specific location is designated off-limits to military personnel under their command.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-560 What types of disclosures must a licensee make to a borrower? (1) A licensee must deliver to the borrower at the time the licensee makes a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act.

(2) A licensee must deliver to the borrower at the time the licensee makes the small loan a disclosure of the right to rescind the loan and the right to convert the loan to a payment plan.

(3) A licensee who complies with federal law as indicated in subsection (1) of this section will be deemed in compliance with this act.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-580 In addition to providing disclosures to the borrower, does a licensee have to post any disclosures? (1) Licensees that make small loans must post at each location where small loans are made a conspicuous notice substantially in the form set forth in the preceding question.

(2) Licensees that make small loans must post at each location where small loans are made a conspicuous notice, in a form prescribed by the director, with the following information:

"If you have questions about your rights and responsibilities

when taking out a payday loan, contact the Department of Financial Institutions at 1-877-746-4334 or 360-902-8700 or 150 Israel Road S.W., Tumwater, Washington, 98501."

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WAC 208-630-610 Are there accounting and financial records that a licensee must keep? Licensees must maintain as a minimum the following records for at least two years.

(1) A licensee must maintain a record of transactions conducted. Such a record may be limited to the following provided a sufficient audit trail is available through records obtainable from the licensee's bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;
- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) Payment plan payment due dates;

(1) The information required to be maintained for applications in the rule.

(2) Licensees must maintain a cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) Records of the disbursement of loan proceeds and the receipt of all payments on the balance of small loans must be kept and must indicate the date of the transaction, the borrower's name, amount, and whether the disbursement or payment is on a loan or payment plan.

(4) Records of cash payments made on small loans, in addition to containing the date, the borrower's name, the amount of cash received, and whether the payment is on a loan or payment plan, must be evidenced by a copy of a receipt that has been signed by the borrower and the individual from the company who accepted the cash payment. The licensee shall keep and maintain the receipt as part of its business records as required under subsection (2) of

this section.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-710 What other federal and state laws and regulations must a licensee comply with? Each licensee must comply with applicable federal and state laws including, but not limited to, the following:

(1) Washington laws:

Chapter 63.29 RCW, the Uniform Unclaimed Property Act (~~(+and)~~)
Chapter 19.16 RCW, Collection agencies

(2) (~~The federal Truth in Lending Act.~~) Federal Laws and Regulations:

● "Bank Secrecy Act (BSA)" means the Currency and Foreign Transactions Reporting Act , 31 U.S.C. Sec. 5311-5330 and 12 U.S.C. Sec. 1818(s), and 1951-1959, 31 C.F.R. Part 103.

● "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

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

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

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

● "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

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

● "USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act), 115 Stat. 272 (2001).

NEW SECTION

WAC 208-630-711 What are the minimum requirements of a policy that protects borrowers' nonpublic personal information (NPI) under the Gramm-Leach-Bliley Act? (1) Each licensee must establish appropriate policies and procedures with administrative, technical, and physical safeguards:

(a) To insure the security and confidentiality of borrowers' records and information;

(b) To protect against any anticipated threats or hazards to the security or integrity of such records; and

(c) To protect against any unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any borrower.

(2) The policies and practices must, at a minimum, contain the following elements:

(a) A privacy notice to consumers before you share their NPI with nonaffiliated third parties not otherwise excepted;

(b) A plan to limit the reuse and redisclosure of NPI you receive from a nonaffiliated financial institution. The limits of your use depend on how the information is disclosed to you; and

(c) A plan to prevent the disclosure of account numbers or similar access numbers or codes for marketing purposes.

(3) The obligations imposed under this section are in addition to any other obligations imposed under federal law.

NEW SECTION

WAC 208-630-712 What are the minimum requirements of a Customer Identification Program (CIP) required under the USA Patriot Act? Each licensee must implement a CIP that is appropriate given the licensee's size and location. The CIP must be written and incorporated into the licensee's BSA/AML program. The CIP must include:

(1) Risk-based procedures to verify the identity of customers including procedures that:

(a) Specify the identifying information the licensee must obtain from any customer, at a minimum, name, address, identification number, and, for individuals, date of birth;

(b) Describe how the licensee will verify the identity of the customer using documents, nondocumentary methods, or a combination of both methods; and

(c) Respond to circumstances in which the licensee cannot form a reasonable belief that it knows the true identity of the customer.

(2) Procedures to record the identifying information provided by the customer, a description of any document relied on, the methods and results of any measures undertaken to verify the

identity of the customer, and the resolution of any substantive discrepancies discovered when verifying the identifying information obtained. Identifying information generally must be retained for five years after the account is closed. The remaining records need only be retained for five years after the records are made.

(3) Procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the licensee by any federal government agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators (326 list). The procedures must also require the licensee to follow all federal directives issued in connection with such a list. (Currently no 326 list has been designated.)

(4) Procedures for providing customers with adequate notice that the licensee is requesting information to verify their identities.

(5) A licensee may use the following notice to satisfy subsection (4) of this section:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR VERIFYING IDENTITIES

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you do business with us, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-720 Is a licensee required to register as a money service business with the Secretary of the Treasury? (~~Each licensee must register with the Secretary of the Treasury of the United States if required by 31 U.S.C. Section 5330 or any regulations promulgated thereunder.~~) Licensees may be required to register as a money services business (MSB) under the Bank Secrecy Act, 31 U.S.C. Section 5330, or any regulations promulgated thereunder. Generally, an MSB is a business that cashes checks or exchanges currency (other than as an agent for another business) in an amount greater than one thousand dollars in currency or monetary or other instruments for any person on any day, in one or more transactions.

NEW SECTION

WAC 208-630-721 If a licensee is considered a money service business (MSB) under the Bank Secrecy Act (see WAC 208-630-720), what are the minimum requirements for the anti-money laundering program the licensee must develop? (1) Each licensee must develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the licensee's business from being used to facilitate money laundering and the financing of terrorist activities.

(2) The program must be commensurate with the risks posed by the location and size of, and the nature and volume of the licensee's business.

(3) The program must be in writing, and available for inspection by the department upon request.

(4) At a minimum, the program shall:

(a) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this section. The policies, procedures, and internal controls must include requirements for:

(i) Verifying customer identification;

(ii) Filing reports with the necessary federal agencies;

(iii) Creating and retaining records; and

(iv) Responding to law enforcement requests.

(v) Licensees with automated data processing systems must integrate their compliance procedures with such systems.

(b) Designate a person to assure day-to-day compliance with the program and this section. The responsibilities of the designated person include assuring that:

(i) The licensee properly files reports, and creates and retains records, in accordance with applicable requirements of the federal law requirements; and

(ii) The compliance program is updated as necessary to reflect current requirements, and related guidance issued by the Department of the Treasury.

(c) Provide education or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the licensee is required to report such transactions under this section.

(d) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the licensee. The review may be conducted by an officer or employee of the licensee as long as the reviewer is not the person designated in (b) of this subsection.

(e) The licensee must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the end of the ninety-day period beginning on the day following the date the business is licensed with the department.

PROHIBITED PRACTICES

NEW SECTION

WAC 208-630-8201 What business practices are prohibited? (1)

It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement;

(e) Directly or indirectly refer a borrower, or encourage a borrower, to use the services of more than one payday lending business that results in an amount outstanding that exceeds the loan limit in RCW 31.45.073; and

(f) Directly or indirectly structure a loan transaction in order to exceed the loan limit in RCW 31.45.073.

(2) In addition to any other penalties, any transaction in violation of this section is uncollectible and unenforceable.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-630-760

What are the legal restrictions on making small loans?