

# Consumer Loan Act Rules for Non-Residential Lending

## WAC 208-620 Excerpt

This compilation of non-mortgage lending rules under the Consumer Loan Act, chapter 31.04 RCW, is an attempt to help industry navigate the applicable rules. This compilation of the rules is not an amendment to the law or rules and does not change applicability of the law or rules. Licensees are ultimately responsible for complying with the law and rules and any mistaken information or omission of information in this compilation does not release a licensee's liability for not complying with the law or rules.

Link to Rules: [WAC 208-620 – Consumer Loan Act](#)

WAC 208-620-010

### Definitions.

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter [31.04](#) RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

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

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

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the 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." See WAC [208-620-011](#).

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

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

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. 1026 (formerly 12 C.F.R. 226).

"Department" means the department of financial institutions.

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

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

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

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

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

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

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

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

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 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. Part 1003 (formerly Part 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 NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

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

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

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

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

"Loan processor." See WAC [208-620-011](#).

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

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

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

"Mortgage broker" means the same as in RCW [19.146.010](#). A licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions.

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

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

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

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

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

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

"NMLS" means a nationwide multistate 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 and other license types.

"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, 12 C.F.R. Part 1024 (formerly 24 C.F.R. Part 3500).

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

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

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

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.

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

"Residential mortgage loan modification services." See WAC [208-620-045](#).

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

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

"Service or servicing a loan." See WAC [208-620-011](#).

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to

accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest must not be payable in advance or compounded. For residential mortgage loans, each payment must be applied as directed in the loan documents.

"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. Part 1026 (formerly 12 C.F.R. Part 226).

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-010, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-010, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-010, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-010, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-010, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-010, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW [43.320.040](#), 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. WSR 96-04-013, § 208-620-010, filed 1/26/96, effective 2/26/96.]

WAC 208-620-104

## Who is exempt from licensing as a consumer loan company?

(1) See RCW [31.04.025](#) (2)(a), (b), (d), (f) through (h), and (j) through (l).

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

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

(4) Under RCW [31.04.025](#) (2)(i), a nonprofit housing organization seeking exemption must meet the following standards:

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

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

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

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

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-104, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-104, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-104, filed 12/1/09, effective 1/1/10.]

## WAC 208-620-230

# Do I need a consumer loan license to lend money, extend credit or service or modify the terms of residential mortgage loans?

(1) Yes. If you do not qualify for an exemption under RCW [31.04.025](#), you must hold a license to:

(a) Be located in Washington and lend money, extend credit, or service or modify residential mortgage loans;

(b) Be located outside Washington and lend money or extend credit to Washington residents or service or modify residential mortgage loans on Washington real estate;

(c) From any location solicit or advertise by any means to Washington residents including but not limited to mail, brochure, telephone, print, radio, television, internet, or any other electronic means;

(d) From any location conduct business under the act with Washington residents by mail or internet;

(e) Hold yourself out as able to conduct any of the activities in (a) through (d) of this subsection.

(2) If you violate subsection (1) of this section, on nonresidential loans, you must refund to the borrower the interest and nonthird-party fees charged in the transaction. On residential mortgage loans, you must refund to the borrower nonthird-party fees charged in the transaction.

(3) See also WAC [208-620-232](#) for residential mortgage loans.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-230, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-230, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-230, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-230, filed 1/27/06, effective 2/27/06.]

## WAC 208-620-235

# When making loans, is there a maximum rate of interest allowed under the act?

Yes. The rate of interest specified in the note must not exceed twenty-five percent per annum.

[Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-235, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-235, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-235, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045,

31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-235, filed 1/27/06, effective 2/27/06.]

WAC 208-620-240

## Once I am licensed, does the act apply to all loans I make?

Yes. All loans you make to Washington residents, secured and unsecured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-240, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-240, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-240, 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 hold a license but any location doing business under the act, wherever located, must be licensed. Your company's main office (headquarters), wherever located, must have a license.

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-250, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-250, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-250, filed 1/27/06, effective 2/27/06.]

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](#). The main office (headquarters), wherever located, must be licensed.

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

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand. [Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-251, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-251, filed 10/5/10, effective 11/5/10.]

WAC 208-620-280

## How do I apply for a consumer loan license?

(1) Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS system.

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

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

(b) Personal history;

(c) Experience;

(d) Business record; and

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-280, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-280, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-280, filed 1/27/06, effective 2/27/06.]

WAC 208-620-281

## What will happen if my license application is incomplete?

The department will only process complete applications. If your application is incomplete your file will be marked "pending-deficient" in the NMLS. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-281, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-281, filed 12/1/09, effective 1/1/10.]

WAC 208-620-282

## How do I withdraw my application for a license?

You may withdraw the application through the NMLS. You will not receive a refund of the NMLS application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-282, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-282, filed 12/1/09, effective 1/1/10.]

WAC 208-620-284

## What are my rights if the director denies my application for a license?

You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter [34.05](#) RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied. See WAC [208-620-615](#).

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

WAC 208-620-290

## What fees must I pay for my application for a

## consumer loan license?

- (1) **NMLS fees.** You must pay the NMLS system fee when you submit your application.
- (2) **DFI fees.** You must pay \$95.55 per hour for review and investigation of the following:
  - (a) New consumer loan company license;
  - (b) New branch office license;
  - (c) Notice of change of control; or
  - (d) Opinions rendered regarding interpretations of statutes and rules.
- (3) **Licenses.** You must pay \$106.71 for issuance of the following licenses:
  - (a) New or replacement main office licenses; or
  - (b) New or replacement branch licenses.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-290, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-290, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-290, filed 1/27/06, effective 2/27/06.]

### WAC 208-620-300

## If I want to operate my business from more than one office, do I have to license each location?

Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, or direct solicitation location. You must provide evidence of surety bond coverage for each branch and meet all other license requirements. See also WAC [208-620-252](#).

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-300, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-300, 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 loan processing or underwriting or 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. However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-310, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-310, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-310, filed 1/27/06, effective 2/27/06.]

WAC 208-620-320

[n](#)

## What is the amount of the bond required for my consumer loan license?

(1) Nonresidential loan origination. If you originate nonresidential loans the bond amount is based on the annual dollar amount of loans you originate. See the following chart:

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

(2) Residential mortgage loan origination.

(a) If you originate residential mortgage loans, the bond amount is based on the annual dollar amount of residential mortgage loans you originate. Use the chart in subsection (1) of this section for the bond amount.

(b) 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. Zero to fifty million in loan principal: \$30,000
2. Fifty million and above: \$50,000

(c) If you originate and service residential mortgage loans, your bond amount will be based on your origination activity volumes.

(d) If you broker residential mortgage loans, your bond amount will be based on the principal amount of the loans brokered.

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-320, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-320, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-320, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-320, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-320, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-320, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-320, filed 1/27/06, effective 2/27/06.]

## WAC 208-620-325

# What will my bond amount be in the first year of licensing?

(1) If you lend money, 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 third-party residential mortgage loan modification services, your bond amount is thirty thousand dollars initially and thereafter.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-325, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-325, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-

325, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-325, filed 12/1/09, effective 1/1/10.]

WAC 208-620-327

## How often will my bond amount change?

Your bond amount may change annually depending on your volume of loan origination 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.

[Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-327, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-327, filed 12/1/09, effective 1/1/10.]

WAC 208-620-328

## How often must I report my loan origination and residential mortgage loan servicing volume?

You must report your loan origination and residential mortgage loan servicing volume as directed on the form prescribed each year during the annual assessment period.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 12-18-047, § 208-620-328, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-328, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-328, filed 12/1/09, effective 1/1/10.]

WAC 208-620-330

## Does the surety bond need to reflect coverage for licensee and its W-2 employees and independent contractors?

Yes. The surety bond must cover both the licensee and all employees and independent contractors working for the licensee.

[Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-330, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-330, filed 1/27/06, effective 2/27/06.]

WAC 208-620-340

## Do I have any alternative to maintaining a surety bond?

With the director's approval, you may use a bond substitute, as defined in WAC [208-620-010](#), that meets the following requirements:

- (1) Your company must be a Washington business corporation.
- (2) Your company must maintain unimpaired capital in an amount so that the aggregate sum of the company's debt, including outstanding promissory notes or other evidences of debt, does not at any time exceed three times the amount of its bond substitute.
- (3) You may exclude long-term subordinated debt, as defined in WAC [208-620-010](#), for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the company's assets is junior to claims by the state or a consumer under the act. You must file with the director a subordination agreement in favor of the state.
- (4) You must not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. A bad debt is any debt owed to you upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-340, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-340, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115,

31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-340, filed 1/27/06, effective 2/27/06.]

WAC 208-620-350

If I qualify to use a bond substitute in lieu of a surety bond, what documentation do I have to provide to the department?

(1) **Semiannual financial statements required.** A licensee that maintains a bond substitute must submit semiannually to the director year-to-date financial statements prepared in accordance with generally accepted accounting principles, including at a minimum a statement of assets and liabilities and a profit and loss statement.

(2) **More frequent financial reporting.** The director may require that financial reports be submitted more frequently if past financial reports have been prepared incorrectly or were misleading or if there is substantial risk that the licensee will violate the bond substitute standard.

(3) **Additional information to be filed.** The director may require other documents, agreements and information deemed necessary to properly evaluate and ensure that the licensee remains in compliance with this section.

(4) **Failure to file financial statements as required.** The director may require a licensee that fails to file its financial statements under subsection (1) of this section to obtain a surety bond within thirty days of that failure.

[Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-350, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-350, filed 1/27/06, effective 2/27/06.]

WAC 208-620-360

What if I use a bond substitute and my unimpaired capital falls below the minimum?

A company that does not maintain a sufficient bond substitute must notify the director within ten days of the decrease in unimpaired capital. The department will then direct you to obtain and file a surety bond in the amount required by WAC [208-620-320](#). You must comply within twenty days. If you obtain a surety bond under this section you must maintain the surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a bond substitute.

[Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-360, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-360, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-360, filed 1/27/06, effective 2/27/06.]

WAC 208-620-370

## What are the grounds for denying or conditioning my consumer loan company license application?

The director may deny or condition approval of a license application if you or any principal, officer, or board director of the applicant:

(1) Fails to pay a fee due the department or the NMLS;

(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) 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) Is reported to have a history of unpaid debts as reported by an independent credit report issued by a recognized credit reporting agency; or

(c) 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) 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) 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;

(6) Fails to maintain a bond or bond alternative that is compliant with the act.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-370, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-370, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-370, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-370, filed 1/27/06, effective 2/27/06.]

WAC 208-620-371

May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked or suspended?

No. (1) Pursuant to RCW [31.04.093](#)(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere [contendere] to a felony in a domestic, foreign, or military court:

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

(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.

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

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee or independent contractor, or person subject to the act, who has had a license to engage in lending, or performance of a settlement service related to lending, including loan modifications, revoked or suspended in this state or any state.

(4) The department considers it to be a deceptive practice in violation of RCW [31.04.027](#)(2) for any licensee to employ an officer, principal, or employee or independent contractor to conduct any of the activities described in subsection (3) of this section without first conducting a background check.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-371, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-371, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-371, filed 12/1/09, effective 1/1/10.]

WAC 208-620-372

## Am I responsible for the actions of my employees and independent contractors?

Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

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

WAC 208-620-378

## Knowledge of the law and rules.

You are responsible for ensuring that your employees and mortgage loan originators have a sufficient understanding of the act and the rules.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 12-18-047, § 208-620-378, filed 8/29/12, effective 11/1/12.]

WAC 208-620-400

## Can I share an office with another business?

(1) You may conduct your business in a licensed location in which other persons are engaged in business.

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

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

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 12-18-047, § 208-620-400, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-400, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-400, filed 1/27/06, effective 2/27/06.]

WAC 208-620-420

## May I transact my company business in a name

## other than the name on my company license?

(1) You may only transact business using the name on the license or as further described in this section.

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

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

(4) Reserved.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-420, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-420, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-420, filed 1/27/06, effective 2/27/06.]

WAC 208-620-425

## May I transfer or assign my license?

No. A license is given to a specific entity with specific individuals at a specific location. If twenty percent or more of the business is transferred or sold to another person, the licensee and the proposed new licensee(s) must apply to the department for a license. See also WAC [208-620-490](#).

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-425, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-425, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-425, filed 1/27/06, effective 2/27/06.]

## What are my annual filing requirements as a consumer loan licensee?

Each year you are required to file two annual reports on forms provided by the department. You must also pay a fee (assessment) based on your activities during the reporting year. The reports and the assessment fee must be provided to the department on March 1st of each year or within thirty days of ceasing Washington operations (the due date).

(1) **Annual reports and assessment fee on activity.** You must provide the annual reports (annual assessment report and consolidated annual report) and the assessment fee by the due date.

(2) **Late penalties.** If you fail to submit the required annual reports and assessment fee by the due date you are subject to a penalty of fifty dollars for each item for each day of delay. For example, if the department receives the two annual reports and assessment fee on March 4th, you would have to pay an additional four hundred fifty dollars as a late penalty. If the items are filed with the department more than thirty days after ceasing Washington operations, the late penalty will accrue at the same rate. The maximum late penalty that will be assessed is five thousand dollars per reporting year. More penalties may be assessed if the department must make a bond claim to collect the amounts due. See subsection (3) of this section.

(3) **Failure to file.**

(a) If you fail to pay the annual assessment fee or file the annual reports by the due date the director may file a claim against your surety bond for failing to comply with the Consumer Loan Act. The department may make a claim for the late penalties under subsection (2) of this section and the greater of:

- (i) The assessment fee paid the previous year;
- (ii) The average annual assessment fee you paid in the previous two years; or
- (iii) Fifteen hundred dollars.

(b) Your license will expire if you fail to pay the annual assessment fee and file the annual reports by the due date. The department will provide you with notice of the pending expiration and you can stop the pending expiration by paying the assessment fee and providing the reports. If the department does not receive the assessment fee and reports within fifteen days from the date the department provides you with the notice, your license will expire. The notice warning you of the pending expiration is presumed received by you three days after the department mails it via first class mail to the last address of record with the department. You are responsible for updating your address of record with the department. Notice of the pending expiration is valid even if it is sent to an address of record that is incorrect due to your failure to provide an updated address.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-430, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-430, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-430, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-430, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-430, filed 1/27/06, effective 2/27/06.]

WAC 208-620-460

## Must I file my annual reports even if I go out of business during the year?

(1) If you cease operation during the year, you must file the 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. See also WAC [208-620-499](#).

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-460, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-460, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-460, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-460, filed 1/27/06, effective 2/27/06.]

WAC 208-620-480

## What are my reporting responsibilities if my company files for bankruptcy?

(1) **Chapter 7 bankruptcy.** A licensee that files for chapter 7 bankruptcy must notify the director within ten days, surrender its license(s) and deliver the consolidated annual report and worksheet for the period in business that year within sixty days of filing bankruptcy.

(2) **Chapter 11 bankruptcy.** A licensee that files for chapter 11 bankruptcy must notify the director within ten days.

[Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-480, filed 1/27/06, effective 2/27/06.]

WAC 208-620-490

## What are my reporting responsibilities when something of significance happens to my business?

(1) **Prior notification required.** You must amend your NMLS record at least ten days prior to a change of your:

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

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

- (a) Change in mailing address, telephone number, fax number, or e-mail address;
- (b) Cancellation or expiration of your Washington state business license;
- (c) Change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;
- (d) Failure to maintain the appropriate unimpaired capital under WAC [208-620-340](#). See WAC [208-620-360](#);

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator; or

(g) Receipt of notification of a claim against your bond.

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

(a) Receipt of notification of license revocation procedures against your license in any state;

(b) The filing of a felony indictment or information related to lending or brokering activities against you or any officer, board director, or principal or an indictment or information involving dishonesty against you or any officer, board director, or principal;

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-490, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-490, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-490, filed 1/27/06, effective 2/27/06.]

## WAC 208-620-499

# What are my reporting requirements if I want to close my company or surrender my license?

If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLS 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.

(3) 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 activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-499, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-499, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-499, filed 12/1/09, effective 1/1/10.]

WAC 208-620-500

## What are my reporting requirements if I want to close one or more of my branch offices?

If you close a branch office, you must submit a surrender request through the NMLS at least ten days prior to the branch closing.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-500, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-500, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-500, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-500, filed 1/27/06, effective 2/27/06.]

WAC 208-620-505

## In addition to the Consumer Loan Act, what other laws do I have to comply with?

You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure

Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the S.A.F.E. Act, and the Federal Trade Commission Telemarketing Sales Rule.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 12-18-047, § 208-620-505, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-505, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-505, filed 1/27/06, effective 2/27/06.]

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

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

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

(ii) The expiration date of the rate lock;

(iii) The rate of interest locked;

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

(v) Any other terms of the rate lock agreement.

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

(d) 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.

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

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

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

(c) A good faith estimate that conforms with RESPA, Regulation X, 12 C.F.R. 1024;

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

(e) A rate lock disclosure containing the following:

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

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

(B) The expiration date of the rate lock;

(C) The rate of interest locked;

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

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

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from (e) of this subsection.

(f) 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.

**(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.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-510, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-510, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-510, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-510, filed 1/27/06, effective 2/27/06.]

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 authorized in RCW [31.04.115](#) provided that:

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

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

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 12-18-047, § 208-620-515, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-515, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-515, filed

12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-515, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-515, filed 1/27/06, effective 2/27/06.]

WAC 208-620-520

## How long must I maintain my records under the Consumer Loan Act?

### What are the records I must maintain?

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

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any 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) 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;

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

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-520, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-520, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-520, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-520, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-520, filed 1/27/06, effective 2/27/06.]

WAC 208-620-530

## Can I maintain my records electronically?

Yes. (1) You may maintain records electronically if you also maintain the electronic display equipment and make it 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) You must provide records in hard copy upon request of the director.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-530, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-530, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-530, filed 1/27/06, effective 2/27/06.]

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.

[Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-531, filed 10/5/10, effective 11/5/10.]

WAC 208-620-540

## Do I need to account separately for payments from borrowers for third-party service providers?

Yes. You must separately account for all deposits and disbursements made by or for borrowers for third-party service providers. You must not use those funds for your benefit or for the benefit of any person not entitled to such benefit.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-540, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-540, filed 1/27/06, effective 2/27/06.]

## What business practices are prohibited?

In addition to RCW [31.04.027](#), the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within five 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) Collecting more than forty-five days of prepaid interest at the time of loan closing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-550, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-550, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-550, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-550, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-550, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-550, filed 1/27/06, effective 2/27/06.]

## What fees are allowed and when can they be collected from the borrower under the Consumer Loan Act?

(1) Residential mortgage loans. This subsection does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(a) Origination fees. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

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

(c) Third-party fees. The only third-party fee you may collect from the borrower before a loan is closed is the appraisal fee. You may collect from the borrower reimbursement for fees you actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender. You must provide a copy of the appraisal to the borrower even if you do not receive reimbursement for the cost of the appraisal.

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

(3) Third-party fees. This subsection applies to residential and nonresidential lending.

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

(b) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC [208-620-010](#), in excess of the actual costs paid or to be paid.

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

(d) You may charge a nonrefundable rate lock fee when agreed to in writing by the borrower. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, if the borrower does not qualify for a loan, or if the loan is denied based on the property appraisal. See also WAC [208-620-510](#)(3).

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

(f) 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.

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-555, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-555, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-555, 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?

This section does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

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

(2) **Dishonored check fees.** You may charge or collect 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.** You must not collect an underwriting fee.
- (8) **Prepayment penalty.** You must not collect a prepayment penalty on the following loans:
- (a) Any nonmortgage loan;
  - (b) Any adjustable rate residential mortgage loan, except as allowed by RCW [19.144.040](#);
  - (c) Any junior lien mortgage loan; or
  - (d) Any loan you made if you are not a "creditor" under DIDMCA.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-560, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-560, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-560, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-560, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-560, filed 1/27/06, effective 2/27/06.]

WAC 208-620-570

## What are the grounds for suspending or revoking a consumer loan company license?

The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

- (1) **Failing to pay.** Fails to pay a fee due the department;
- (2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;
- (3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;
- (4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines, restitution, or both;
- (5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

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

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

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

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

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

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

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

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

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

(b) Not furnishing records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action;

(15) Reserved.

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-570, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-570, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-570, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-570, filed 1/27/06, effective 2/27/06.]

## WAC 208-620-580

### As a licensee, will my business be subject to periodic examinations?

(1) You can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-580, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-580, filed 1/27/06, effective 2/27/06.]

## WAC 208-620-590

### How much will I be charged for my periodic examinations and when will the payment be due?

(1) You will be charged \$69.01 per hour for regular and special examinations of your records.

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-590, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-590, filed 1/27/06, effective 2/27/06.]

WAC 208-620-600

## How often will the department visit my business to examine my records?

There is no set schedule to examine each licensee. Licensees will be examined on a flexible schedule based upon the potential risk of the business to the public.

[Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-600, filed 1/27/06, effective 2/27/06.]

WAC 208-620-601

## What assistance may the department seek in conducting an investigation or examination of my business?

In order to carry out the purposes of RCW [31.04.145](#), the director may:

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

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

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

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

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

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

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

WAC 208-620-610

## What authority does the department have to investigate violations of the Consumer Loan Act?

(1) The director may enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

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

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

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

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-610, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-610, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093,

31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-610, filed 1/27/06, effective 2/27/06.]

WAC 208-620-614

## What Washington law protects my rights when my license is suspended or revoked?

The Administrative Procedure Act, chapter [34.05](#) RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

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

WAC 208-620-615

## Application of the Administrative Procedure Act.

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

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

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

based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

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

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

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

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

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

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

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

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

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

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

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The

presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

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

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

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

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

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

WAC 208-620-620

## How do I have to identify my business when I advertise?

You must identify the business using your Washington consumer loan license name. You may also use an approved DBA name if you include the main office license name and license number. For use of URL addresses and web pages, see WAC [208-620-621](#) and [208-620-622](#).

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-620, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-620, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-620, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-620, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-620, filed 1/27/06, effective 2/27/06.]

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. See also WAC [208-620-620](#) and [208-620-622](#).

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-621, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-621, filed 10/5/10, effective 11/5/10.]

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 license numbers must closely follow the names.

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

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

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

(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the sponsoring licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's license name and license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See also WAC [208-620-710](#)(26).

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

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

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-622, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-622, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-622, filed 10/5/10, effective 11/5/10.]

WAC 208-620-630

## What are some of the advertising restrictions I must comply with?

**(1) Licensees are prohibited from advertising with envelopes or stationery, or by using images in an electronic format that contain an official-looking emblem designed to resemble a government mailing or other method of communication that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:**

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or

words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

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

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

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

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

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

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

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

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

**(5) May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW [31.04.027](#).

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

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

**(8) Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW [31.04.027](#) (2), (7), and (12). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

[Statutory Authority: RCW [43.320.040](#) and 31.04.165. WSR 13-24-024, § 208-620-630, filed 11/22/13, effective 1/1/14; WSR 12-18-047, § 208-620-630, filed 8/29/12, effective 11/1/12. Statutory Authority: RCW [43.320.040](#), 31.04.165 and 2010 c 35. WSR 10-20-122, § 208-620-630, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-630, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#), 19.144.070, 2008 c 78. WSR 09-01-159, § 208-620-630, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-630, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-630, filed 1/27/06, effective 2/27/06.]

WAC 208-620-640

## What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act?

You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act.

[Statutory Authority: RCW [43.320.040](#), 31.04.165, 2009 c 120, and 2009 c 149. WSR 09-24-090, § 208-620-640, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-640, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-640, filed 1/27/06, effective 2/27/06.]

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## Will the director waive fees charged under the Consumer Loan Act?

The director or designee may waive any or all of the fees and assessments under this chapter when he or she determines that:

(1) The financial services regulation account exceeds the projected minimum fund balance level approved by the office of financial management; and

(2) That the waiver is fiscally prudent.

[Statutory Authority: RCW [43.320.040](#). WSR 08-15-125, § 208-620-650, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW [31.04.165](#), 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. WSR 06-04-053, § 208-620-650, filed 1/27/06, effective 2/27/06.]