

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

"ACH" means automated clearing house, an electronic network for financial transactions that processes credit and debit transactions.

"Act" means chapter 31.45 RCW.

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

"Agent" for purposes of RCW 31.45.079 means a person who engages in the business of making small loans by performing small loan agent services (~~((on behalf of a licensee or exempt entity))~~).

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part (~~((226))~~) 1026 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at <http://www.occ.treas.gov/aprwin.htm>.

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

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

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

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

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

"Default" means:

~~((1))~~ (a) The borrower's failure to repay a small loan in compliance with the terms contained in the small loan agreement or note; or

~~((2))~~ (b) Failure to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. See WAC 208-630-556 (12)(b).

"Department" means the department of financial institutions.

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

"Gross monthly income" means an individual's total personal income earned during a month prior to any taxes or deductions.

"Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially

equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

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

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

"Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

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

"Paid" means that moment in time when the licensee deposits the borrower's check, accepts cash, or initiates an ACH withdrawal from the borrower's account for the full amount owed on a valid small loan. If the borrower's check is dishonored and returned unpaid by the borrower's bank, the loan is not paid. If an ACH authorization is denied, the loan is not paid.

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

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

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

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

"Small loan" or "loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

"Small loan agent services" include, but are not limited to:

~~((1))~~ (a) Marketing and advertising small loans;

~~((2))~~ Taking small loan applications;

~~(3))~~ (b) Collecting nonpublic personal information from consumers in anticipation of selling the information to potential licensed lenders or other entities providing small loan agent services;

(c) Assisting ((customers)) consumers in completing small loan documentation;

~~((4))~~ (d) Providing required applicable state and federal disclosures

~~(5) Disbursing small loan proceeds;~~

~~(6))~~ in connection with small loans; and

(e) Collecting on small loans

~~(7) Retaining documents and records; and~~

~~(8) Making reports~~)).

Small loan agent services do not include (a) services performed by any person holding a small loan endorsement or (b) collection of small loans by a person licensed under chapter 19.16 RCW or exempt from that chapter or otherwise authorized under Washington law to act as a collection agent.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would mate-

rially impair the net worth of a licensee or create an abnormal risk of loss to its customers.

NEW SECTION

WAC 208-630-135 What must I do to be authorized to offer small loan agent services? (1) Persons providing small loan agent services must license with the department. To license you must provide the following information:

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

(b) The trade or business name under which you will do business. Please note, your request may be denied if the proposed trade or business name is similar to a currently existing licensee name, including trade names.

(c) The street and mailing address of each location where you will engage in business.

(d) The location at which your records will be kept.

(e) Whether the applicant or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act or rules or any state or federal law applicable to the business activity.

(f) Whether the applicant or other person subject to the act has been charged or found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or any state or federal law applicable to the business activity.

(g) Whether the applicant or other person subject to the act has been convicted of, or pled guilty or nolo contendere, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(h) Any other pertinent information the director may require.

(2) You must also provide to the department a declaration that the company will not sell consumers' nonpublic personal information to unlicensed entities making loans or to unlicensed small loan agents.

NEW SECTION

WAC 208-630-136 If I am licensed to provide small loan agent services, what activities may I engage in? The small loan agent services license is a limited license. You may only provide the following services:

(1) Marketing and advertising small loans;

(2) Collecting nonpublic personal information, including social security, bank account, or credit card numbers, from consumers in anticipation of selling the information to potential licensed lenders or other entities providing small loan agent services;

(3) Assisting consumers in completing small loan documentation;

(4) Providing required disclosures;

(5) Collecting on small loans if licensed under chapter 19.16 RCW or exempt from that chapter or otherwise authorized under Washington law to act as a collection agent.

NEW SECTION

WAC 208-630-137 What disclosures must I provide when conducting business pursuant to a small loan agent services license? You must display the following information on your internet home (landing) page in a clear and conspicuous manner:

(1) That you are not a lender and will not be the entity lending money to the consumer.

(2) The department's name and telephone number for consumers to contact with complaints.

The information required in subsections (1) and (2) of this section must be displayed in a manner substantially similar to the following:

"Your use of this web site is not an offer or solicitation to lend you money. The owner of this web site is not a lender and does not make loans or credit decisions. The owner of this web site may sell all or part of your information to lenders and other persons and you may be contacted by lenders and other persons. Contact the Department of Financial Institutions (1-877-746-4334) with complaints."

(3) Your privacy policy that describes all actions you may take with consumers' nonpublic personal information.

NEW SECTION

WAC 208-630-138 What laws govern my conduct as a small loan agent licensee? Small loan agent licensees are subject to chapter 31.45 RCW and chapter 208-630 WAC, including being subject to the following prohibitions:

(1) Selling nonpublic personal information, including Social Security, bank account, or credit card numbers, to potential lenders or other entities providing small loan agent services without first verifying that the lender or other entity is licensed under the act, or is exempt from licensing.

(2) Selling nonpublic personal information, including Social Security, bank account, or credit card numbers, to persons not required to license under the act without first giving the consumer an opportunity to prohibit the sale of their information.

(3) Failing to comply with the applicable provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801-6809 and 15 U.S.C. 6821-6827.