

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," (~~means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan~~) 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, (~~Director of the Office of Thrift Supervision,~~) National Credit Union Administration, (~~and~~) 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." ((means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 31.04 RCW.~~

~~A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license)) 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 ((except that for purposes of this chapter,)).~~ A licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

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

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

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

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

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

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

~~((This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.))~~

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

"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 (~~((as defined in section 103(v) of the Truth in Lending Act))~~) or residential real estate upon which is constructed or intended to be constructed a dwelling.

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

"Residential mortgage loan modification services." 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 ~~((208-620-055))~~ 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.

NEW SECTION

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015(28)? "Borrower" means an individual who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

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

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

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

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

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

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

(d) Otherwise finalizing collection through the foreclosure process.

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

(a) For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. Interest must not be payable in advance.

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

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

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

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 (~~((1),)~~) (2)(a) (~~(through)~~), (b), (d) (~~and~~), (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.

~~((3))~~ (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.

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

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

- (1) Registered mortgage loan originators;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;
- (4) A Washington licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;
- (5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain or in the expectation of compensation or gain; and
- (6)(a) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.
(b) Terms favorable to the borrower are terms consistent with loan origination in a public or charitable context, rather than a commercial context.
- (7) See also WAC 208-620-232.

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

WAC 208-620-230 Do I need a consumer loan license ((if I am lending)) to lend money ((in the state of Washington)), extend credit or service or modify the terms of residential mortgage loans? ((If you are in the business of making secured or unsecured loans of money or credit and you do not qualify for an exception under RCW 31.04.025, you must hold a license under this act.)) (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.

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

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

(2) Companies servicing loans purchased post closing.

(3) Companies servicing loans owned by other companies.

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

under S.A.F.E. A company level license is required to provide the sponsorship for the supervising licensed mortgage loan originator.

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

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 (~~and loans secured by Washington residential real estate~~), secured and unsecured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

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

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 (~~can be a~~) is a main or branch office (~~or~~) and an individual loan originator's home can be licensed as a branch office.

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

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.

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

WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington? Yes. You may broker residential mortgage loans under the Consumer Loan Act. Brokered loans are subject to the annual assessment (~~under WAC 208-620-240~~). See WAC 208-620-440.

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

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

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

WAC 208-620-280 How do I apply for a consumer loan license? (1) Your application consists of an online filing through the ((NMLSR)) NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the ((NMLSR)) 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.

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

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 ((NMLSR)) 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.

AMENDATORY SECTION (Amending WSR 09-24-090, 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 ((NMLSR)) NMLS. You will not receive a refund of the ((NMLSR)) 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.

AMENDATORY SECTION (Amending WSR 09-24-090, 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) ((NMLSR)) NMLS fees. You must pay the ((NMLSR)) 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.

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

WAC 208-620-300 If I want to ((open)) operate my business from more than one office, do I have to ((file an application for)) license each location? Yes. You must submit a branch office application through the ((NMLSR)) NMLS for each ((consumer loan company)) branch office, residential mortgage loan servicing location, or direct solicitation location((, and)). You must provide evidence of surety bond coverage for each branch and meet all other license requirements. See also WAC 208-620-252.

NEW SECTION

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

- (1) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;
- (2) Supervise your loan processor or underwriting employees; or
- (3) Supervise your licensed mortgage loan originators.

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

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 ((and)) 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.

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

WAC 208-620-320 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.

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

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.

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

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) ~~((The))~~ Your company must be a Washington business corporation.

(2) ~~((The company's))~~ Your company must maintain unimpaired capital ~~((must be maintained))~~ 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) ~~((The company's))~~ You may exclude long-term subordinated debt, as defined in WAC 208-620-010, ~~((may be excluded from the company's debt))~~ 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. ~~((The licensee))~~ You must file with the director a subordination agreement in favor of the state.

(4) ~~((The company may))~~ 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 ~~((the licensee))~~ 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.

~~((5) The director may evaluate the documentation submitted by the licensee or other documentation requested by the director to determine whether the bond substitute meets the requirements of RCW 31.04.045(3).))~~

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

WAC 208-620-341 If I originate residential mortgage loans and my company relies on the bond substitute, must my licensed mortgage loan originators obtain an individual bond? Yes. They must each obtain individual bonds based on their mortgage loan origination volume. See WAC 208-620-710 (3)((+h))(i).

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

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

(1) Fails to pay a fee due the department or the ((NMLSR)) 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) ((The person)) Is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) Is reported to have a history of unpaid debts as reported by an independent credit report issued by a recognized credit reporting agency ((indicates that the person has a history of unpaid debts)); or

(c) ((The person)) Is the subject of a criminal felony indictment, or a criminal gross misdemeanor charge involving dishonesty or financial misconduct (RCW 31.04.055 (1)(d)); or

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

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

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

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

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

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

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

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

(1) Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(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 (~~loan originators~~) 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 (~~to originate loans, supervise loan originators or manage the loan production activities of the licensee~~) or independent contractor to conduct any of the activities described in subsection (3) of this section without first conducting a background check.

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

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

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

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

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

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.

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

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.

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

WAC 208-620-430 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 ~~((a-licensee))~~ you fail~~((s))~~ to pay ~~((its))~~ the annual assessment fee or file the annual reports by the due date the director may file a claim against ~~((the licensee's))~~ 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:

~~((a))~~ (i) The assessment fee paid the previous year;

~~((b))~~ (ii) The average annual assessment fee you paid in the previous two years; or

~~((c))~~ (iii) Fifteen hundred dollars.

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

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

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

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

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

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses not paid through the examination or investigation process, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the regulatory cost based on the total annual volume of Washington residential mortgage loans serviced on January 1st. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any ((individual)) licensee will not exceed ((twenty-five)) one hundred thousand dollars.

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

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

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

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

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

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

WAC 208-620-460 Must I file my annual reports even if I go out of business during the year? (1) (~~(A licensee that ceases)~~) If you cease operation(~~s~~) 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.

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

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 (~~(NMLSR)~~) 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 (~~(NMLSR)~~) 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 (~~(mas-~~
~~ter)~~) 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 (~~(NMLSR)~~) 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.

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

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

(1) Submit a surrender request through the ((NMLSR)) 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.

AMENDATORY SECTION (Amending WSR 09-24-090, 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 ((NMLSR)) NMLS at least ten days prior to the branch closing.

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

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

(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 ((new)) rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from ((~~this subsection (4)~~))(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 ((with "P.O.C. (borrower)" recorded to the left of the borrower column)).

(5) **Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) **Loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

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

NEW SECTION

WAC 208-620-513 In a residential mortgage loan transaction, what are my disclosure obligations to the company that brokered the loan to me? You must provide copies of any disclosures you provided to the borrower, following the initial disclosures, within ten business days of providing the disclosures to the borrower.

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 (~~twenty-five months~~) 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, tele-marketing 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; (~~and~~)

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

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

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

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

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

WAC 208-620-530 Can I maintain my records electronically? Yes.
(1) (~~Records must be available. The records required to be maintained by RCW 31.04.145 may be maintained by means of~~) You may maintain records electronically if you also maintain the electronic display equipment ((if such equipment is made)) 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) (~~Hard copy upon request.~~) You must provide ((the)) records in hard copy upon request of the director.

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

WAC 208-620-540 Do I need to account separately for payments from borrowers for third party service providers? ((A licensee)) Yes. You must separately account for all deposits and disbursements made by or for borrowers for third party service providers. ((The funds may not be used for the benefit of the licensee or)) You must not use those funds for your benefit or for the benefit of any person not entitled to such benefit.

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

WAC 208-620-545 Must I provide a written ((fee)) agreement when I provide third-party residential mortgage loan modification services? Yes. You must provide a written ((fee)) agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed ((fee)) agreement to the consumer and you must keep a copy as part of your books and records.

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

WAC 208-620-550 What business practices are prohibited? In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within five 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;

~~((4))~~ (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;

~~((5))~~ (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;

~~((6))~~ (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;

~~((7))~~ (8) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

~~((8))~~ (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;

~~((9))~~ (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;

~~((10))~~ (11) Willfully filing a lien on property without a legal basis to do so;

~~((11))~~ (12) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

~~((12))~~ (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;

~~((13))~~ (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;

~~((14))~~ (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;

~~((15))~~ (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;

~~((16))~~ (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;

((17)) (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.

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

WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited? (1) In addition to being subject to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

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

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

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

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

(e) Cease communication with the lender or investor.

(2) As to force placed insurance you are prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing two prior written notices to the homeowner's last known address seeking verification of existing insurance coverage. The notices must state:

(i) How the homeowner provides proof there is insurance coverage in place;

(ii) That without proof of insurance the servicer may obtain coverage at the homeowner's expense, that such coverage may only protect the mortgage holder, and that the cost of the coverage may be higher than that the homeowner may be able to obtain privately;

(iii) That the homeowner may request the servicer to set up an escrow account to advance insurance payments and that upon establishment of an escrow account the servicer may charge the borrower the amount of the insurance payments advanced on the borrower's behalf respecting the mortgaged property including a cushion amount (see WAC 208-620-900 (4)(b));

(iv) The second written notice must be sent thirty days after the first written notice.

(b) Failing to advance payments to a property insurer regardless of the homeowner making a payment to the servicer when the homeowner has an escrow account for the payment of insurance.

(c) Purchasing force placed insurance at a price that is not commercially reasonable.

~~((d) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.))~~ You must terminate force placed insurance within thirty days of receiving evidence from the homeowner of the existence of coverage. You must refund to the homeowner all premiums for force placed insurance collected during any period of time for which the homeowner's private insurance was in place.

(3) You are additionally prohibited from:

(a) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(b) Knowingly misapplying or recklessly applying payments to escrow accounts.

(c) Charging excessive or unreasonable fees to provide loan payoff information.

(d) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(e) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

(4) You are prohibited from referring a delinquent mortgage to foreclosure if you have received the homeowner's loan modification application and you have not evaluated the homeowner for all available loan modifications.

(5) You are prohibited from using any funds in a suspense account to pay your own fees for servicing.

(6) You are prohibited from pursuing any collection activities while a complete loan modification application is being reviewed or while the borrower is making payments pursuant to a trial or permanent modification. This prohibition includes activities conducted by others on your behalf.

(7) You are prohibited from collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(8) You are prohibited from failing to service the loan pursuant to the loan terms and conditions unless agreed to in writing by the borrower.

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

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

(1) Collecting an advance fee.

(2) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services.

(3) Failing to provide a written ((fee)) agreement as prescribed by the director when providing residential mortgage modification services. See also WAC 208-620-545.

(4) As a condition to providing loan modification services requiring or encouraging a borrower to:

- (a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;
 - (b) Waive his or her right to contest a future foreclosure;
 - (c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;
 - (d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or
 - (e) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or
 - (f) Enter into any contract or agreement to purchase a borrower's property.
- (5) You are further prohibited from failing in a timely manner to:
- (a) Communicate with or on behalf of the borrower;
 - (b) Act on any reasonable request from or take any reasonable action on behalf of a borrower.
- (6) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:
- (a) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.
 - (b) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.
- (7) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

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

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

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

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

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

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

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

(5) Rate lock fees. When agreed to in writing by the borrower,))

(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, ~~((e))~~ 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).

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

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

~~((8)) (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.~~

~~((9)) (4) The fees allowed in subsection ~~((5) and (6))~~ (3) (d) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.~~

NEW SECTION

WAC 208-620-556 What fees must I refund to the borrower if I provide services subject to the act but do not have a license? (1) With residential mortgage loans you must refund any nonthird-party fees (not interest) that inured to your benefit.

(2) With nonresidential mortgage loans you must refund interest and nonthird-party fees that inured to your benefit.

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

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.** (~~On nonmortgage and junior lien mortgage loans~~) You must not collect an underwriting fee.

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

(a) Any nonmortgage loan;

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

(c) Any junior lien mortgage loan; or

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

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

WAC 208-620-565 What fees am I allowed to charge or receive when acting as a residential mortgage loan broker under the act? (1) A broker's fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) ~~((A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount credited to the borrower on the good faith estimate and as applicable on the settlement statement.~~

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

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

WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act? (1) You may charge servicing fees authorized by the loan documents, by ~~((law))~~ the act, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by ~~((law))~~ the loan documents or as allowed under WAC 208-620-560(2), and wire transfer fees for wire transfers requested by the borrower.

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

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

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

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.

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

WAC 208-620-580 As a licensee, will my business be subject to periodic examinations? ((Each consumer loan company)) (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.

AMENDATORY SECTION (Amending WSR 06-04-053, 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) (~~Hourly charge for examinations. A licensee~~) You will be charged \$69.01 per hour for regular and special examinations of (~~the licensee's~~) your records.

(2) (~~A licensee that makes loans pursuant to the act from out of state locations, maintains records outside the state or services loans pursuant to the act outside the state~~) If the examination occurs outside of Washington, you will be charged the hourly rate plus travel costs.

(3) (~~Billing for the examinations. The director will submit an invoice for the charges following the completion of any applicable examination. The charges must be paid~~) You must pay examination costs within thirty days after receiving the invoice (is submitted to the licensee) to avoid having to pay accrued interest.

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

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.

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

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 ((~~CLA-123456~~)). For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

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

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.

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

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

(1) Main or home page.

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

(b) If mortgage loan originators are named, their ((NMLS)) 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 ((NMLS)) 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.

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

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 ((mailings)) 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 ((mailing)) 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, sav-

ings 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).

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

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

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

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

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

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

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

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

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

(9) **Do loan processors and underwriters have to be licensed as loan originators?** W-2 employee loan processors and underwriters are not required to have a loan originator license provided they work un-

der the supervision and instruction of ((a)) an individual licensed or exempt ((consumer loan company)) from licensing and do not hold themselves out as able to conduct the activities of a loan originator.

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

WAC 208-620-710 Mortgage loan originator—Licensing. (1) **Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the NMLS.

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

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

(a) Be eighteen years or older.

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

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

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

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

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

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

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

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

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

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

~~(A) W 2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or~~

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

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

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

~~((e))~~) **Demonstrate financial responsibility.** For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Your credit report, current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or judgments or other government liens or filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years. Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of application.

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

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

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

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

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

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

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

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

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

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

~~((j))~~) (g) File a quarterly call report. Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Paying the annual assessment fee; and

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

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

(19) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

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

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

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

(21) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer con-

duct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

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

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

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

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

~~(25))~~ **Must I include my loan originator license number on any documents?** You must include your license number ~~((immediately))~~ close-ly following your license name on ~~((solicitations, correspondence, business cards, advertisements, and residential mortgage loan applica-tions))~~ (a) through (d) of this subsection. An example of closely fol-lowing is: Your license name followed by your title (if you use one) followed by your license number.

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

(b) Business cards.

(c) All advertisements and marketing that contain your license name.

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

~~((26))~~ **(25) When must I disclose my loan originator license number?** In the following situations you must disclose your loan origi-nator license number and the name and license number of the company you are associated with:

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

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

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

(d) When taking a residential mortgage loan application.

~~((27))~~ **(26) May I conduct business and advertise under a name other than the name on my loan originator license?** ~~((No.))~~ You must ~~((only))~~ use the name on your license when you are conducting busi-ness~~((. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."~~

~~(28))~~ and in your advertisements with the following exceptions:

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

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

- (a) Answers to the NMLS generated disclosure questions;
- (b) Sponsorship status;
- (c) Residence address; or
- (d) Any change in the information supplied to the director in your original application.

AMENDATORY SECTION (Amending WSR 13-06-012, filed 2/25/13, effective 4/1/13)

WAC 208-620-720 Loan originator—Prelicensing education. Must I complete prelicensing education in order to receive a loan originator license? Yes.

(1) You must complete at least twenty-two hours of prelicensing education approved by the ((NMLSR)) NMLS. The prelicensing education must include:

- (a) Three hours of federal law and regulations;
- (b) Three hours of ethics, which includes instruction on fraud, consumer protection, and fair lending issues;
- (c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (d) At least four hours of training specifically related to Washington law.

(2) You will receive credit for having completed the SAFE required prelicensing education for every state once you have successfully completed the SAFE required prelicensing education requirements approved by the NMLS for any state.

(3) **Must I take continuing education in the year I complete the prelicensing education?** No. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education.

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

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

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

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

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

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

(2) Servicing and ownership transfers or sales.

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

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

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

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

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

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

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

(3) Payment processing and fees.

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

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

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

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

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

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

(4) Maintenance of the escrow account.

(a)(i) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

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

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

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

(5) Borrower requests for information.

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

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

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

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

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

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

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

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

(A) Explain loss mitigation options and requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Loss mitigation.

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

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

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

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

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

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

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

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

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

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

suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

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

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

(A) An ineligible mortgage;

(B) An ineligible property;

(C) The borrower did not accept the offer; or

(D) The loan was previously modified.

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

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

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

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

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

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

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

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

(7) Foreclosure.

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

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-045 How does the department interpret the definition of residential mortgage loan modification services in RCW 31.04.015(23)?

WAC 208-620-055 How does the department interpret the definition of service or servicing a loan in RCW 31.04.015(26)?

WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans without being licensed?

WAC 208-620-252 If I am offering loans by mail or internet to Washington residents, do I have to license those locations?