

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08,
effective 1/23/09)

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

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

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

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

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

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

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"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.

"Closing" or "consummation" means the day documents are signed.

"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).

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"Department" means the department of financial institutions.

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

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

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

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

12 C.F.R. Section 202.

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

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section((s)) 1692 ((~~through 1692e~~)).

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

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

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

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

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

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

"Individual servicing a mortgage loan" means a person ~~who~~ on behalf of a lender or servicer licensed by this state, who

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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.

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

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

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

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

"Loan originator" means the same as ~~((in RCW 19.146.010))~~ 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 19.146 RCW.

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

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

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

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal

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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 compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan.

"Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; 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.

"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.

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

"Out-of-state licensee" means (~~any~~) a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

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

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

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

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

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

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

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

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

"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

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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.

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

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

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment (~~shall~~) 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 (~~shall~~) must not be payable in advance or compounded.

"State" means the state of Washington.

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

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an

assignment of the loan to the person advancing the funds.

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

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

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

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

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

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-010, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-010, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 43.320.040, 31.04.045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-010, filed 1/26/96, effective

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2/26/96.]

EXEMPTION FROM LICENSING

NEW SECTION

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? See RCW 31.04.025.

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NEW SECTION

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

- (1) Registered mortgage loan originators employed by an entity that is exempt from the act;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

8/17/09 4:28 PM[11] OTS-2460.2

(4) A 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 that do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

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COMPANY LICENSING

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-230 Do I need (~~to apply for~~) a consumer loan license if I am lending money in the state of Washington? If you are in the business of making secured or unsecured loans of money or credit (~~(at rates above those allowed under chapter 19.52 RCW, the Usury Act,)~~) and you do not qualify for an exception under RCW 31.04.025, you must hold a license (~~(to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change)~~) under this act.

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-230, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-230, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-235 Is there a maximum rate of interest allowed under the act? Yes. The note rate of interest may not (~~exceeding~~) exceed twenty-five percent per annum (~~are allowed~~)).

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[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-235, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-235, filed 1/27/06, effective 2/27/06.]

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

WAC 208-620-240 Once I am licensed, does the act apply to all loans I make ((~~or only those above twelve percent~~))? Yes.
All loans you make ((~~as a licensee~~)) to Washington residents and loans secured by Washington residential real estate are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual ((~~fee~~)) assessment.

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[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-240, filed 1/27/06, effective 2/27/06.]

Deleted: (2) All loans you broker for Washington residents are also subject to the authority and restrictions of the act including the provision relating to the calculation of the annual assessment unless you hold a license under chapter 19.146 RCW. If you do hold that additional license, the loans you broker are subject to that act and are not subject to the annual assessment under this act.

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

WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans ((subject to the act)) without being licensed? No. The act ((~~applies to all loans made by licensees and~~)) does not provide an exemption for a de minimus number of loans. ((~~If you are not licensed, the act does not apply to your transactions.~~)) See WAC 208-620-230.

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-245, filed 1/27/06, effective 2/27/06.]

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

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

(1) If you broker loans under the Consumer Loan Act

license, you are subject to the act and the loans are subject to
the annual assessment under WAC 208-620-240.

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subject to

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

[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-
260, filed 7/22/08, effective 8/22/08. Statutory Authority:
RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085,
31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and
31.04.175. 06-04-053, § 208-620-260, filed 1/27/06, effective
2/27/06.]

NEW SECTION

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

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

~~WAC 208-620-280 How do I apply for a consumer loan license? ((1) Application. An applicant for a consumer loan company license must complete a consumer loan license application form and include all of the following:~~

~~(a) In regard to each principal, officer or member of the board of directors:~~

~~(i) The names, addresses, occupation and prior employment history including a statement of their experience and qualifications;~~

~~(ii) A description of any material litigation in which they are involved;~~

~~(iii) A signed authorization for a background investigation on a form provided by the department;~~

~~(iv) A complete set of fingerprints taken by an authorized law enforcement officer, if requested; and~~

~~(v) An independent credit report obtained from a recognized credit reporting agency, if requested;~~

~~(b) A current financial statement as of the most recent quarter end, prepared in accordance with generally accepted~~

~~accounting principles. The statement does not have to be audited but must include a statement of assets and liabilities and a profit and loss statement;~~

~~(c) A current, dated organizational chart for the applicant with names and titles of all officers, managers and supervisory personnel;~~

~~(d) A current, dated organizational chart identifying the holding companies, affiliates, and subsidiaries of the applicant and percentage owned or controlled;~~

~~(e) A certificate of existence/authorization obtained from the Washington secretary of state;~~

~~(f) A valid surety bond in the amount specified in WAC 208-620-320;~~

~~(g) For out of state licensees, the name, address, phone number, and fax number of its registered agent;~~

~~(h) The location of its records;~~

~~(i) A description of any current material civil litigation involving the company or any of the officers, directors or owners; and~~

~~(j) The fee required under WAC 208-620-290.~~

~~(2) **Completion of an application.** An application is not considered to be complete unless:~~

~~(a) All documents and other information requested by the department have been submitted in a completed form; and~~

~~(b) There are no unresolved complaints filed with the department or other outstanding regulatory or law enforcement issues concerning the applicant and its principals, officers and~~

~~directors-))~~ (1) Your application consists of an on-line filing through the NMLSR, and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

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

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(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;

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(b) Personal history;

(c) Experience;

(d) Business record; and

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

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

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-280, filed 1/27/06, effective 2/27/06.]

NEW SECTION

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. 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.

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NEW SECTION

WAC 208-620-282 How do I withdraw my application for a license? You may withdraw the application through the NMLSR.

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NEW SECTION

WAC 208-620-284 What are my rights if the director denies my application for a license? You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied. See WAC 208-620-615.

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

WAC 208-620-290 What fees (~~((will I be charged))~~) must I pay for my application for a consumer loan license? (1) (~~(Application)~~) NMLSR fees. You must pay the system fee when you create your record in the NMLSR.

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(2) DFI fees. You must pay \$95.55 per hour for review and investigation of the following:

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(a) New consumer loan company license;

(b) New branch office license;

8/17/09 4:28 PM[22] OTS-2460.2

(c) Notice of change of control; or

(d) Opinions rendered regarding interpretations of statutes and rules.

~~((2))~~ (3) **Licenses.** You must pay \$106.71 for issuance of
the following licenses:

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(a) New or replacement main office licenses; or

(b) New or replacement branch licenses.

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-290, filed 1/27/06, effective 2/27/06.]

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

WAC 208-620-300 If I want to open more than one office, do I have to file an application for each location? ~~((A licensee must complete a consumer loan license application))~~ Yes. You must have a record in the NMLSR for each consumer loan company branch office, loan servicing location, or direct solicitation location, and provide evidence of surety bond coverage for ~~((any))~~ each branch. ~~((The director may require that all or some of the information provided in the original application be updated.))~~

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[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-300, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? ~~((1) Loans not secured by real estate. For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.~~

~~((2) Loans secured by real estate. For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars.)) The bond amount is based on the annual dollar amount of loans you originate.~~

(1)	<u>Zero to five million in loans originated:</u>	<u>\$30,000</u>
(2)	<u>Five million to fifteen million:</u>	<u>\$50,000</u>
(3)	<u>Fifteen million to thirty million:</u>	<u>\$100,000</u>
(4)	<u>Thirty million and above:</u>	<u>\$150,000</u>

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-320, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-320, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-320, filed 1/27/06, effective 2/27/06.]

NEW SECTION

WAC 208-620-325 What will my bond amount be in the first year of licensing? Your initial bond amount will be based on either your prior year's loan origination volume ~~or~~ thirty thousand dollars, whichever is greater. See the bonding chart in WAC 208-620-~~320~~.

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NEW SECTION

WAC 208-620-327 How often will my bond amount change?

Your bond amount may change annually depending on your volume of business. You must report your loan origination volume each year during the annual assessment period. If your annual assessment shows an increase in the loan origination volume, you must increase your bond and provide DFI with proof of having a bond in the new amount by April 1st of each year.

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

WAC 208-620-340 Do I have any alternative to maintaining a surety bond? ((~~Bond substitute~~)) You may use a bond substitute, as defined in WAC 208-620-010, that meets the following requirements:

- (1) The company must be a Washington business corporation.

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WAC 208-620-326 How soon after initial licensing will my bond amount change? You must report your loan origination volume to DFI six months after the date of your license issuance. With that report you must adjust your bond according to the table in WAC 208-620-320 and you must provide DFI with proof of that adjusted amount within sixty days of six months after the date of your license issuance. (Any NMLSR issues here?)¶

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~~((A licensee that is a Washington business corporation may maintain a bond substitute, as defined in WAC 208-620-010, in lieu of a surety bond.))~~

(2) ~~((Amount of the bond substitute.))~~ The company's ~~((licensee must maintain))~~ unimpaired capital must be maintained in an amount so that the aggregate sum of the ~~((licensee's))~~ 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.

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(3) ~~((Long-term subordinated debt.))~~ The company's long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the ~~((licensee's))~~ company's debt for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the ~~((licensee's))~~ company's assets is junior to claims by the state or a consumer under the act. The licensee must file with the director a subordination agreement in favor of the state.

(4) ~~((Bad debts and uncollectible judgments. A licensee that maintains a bond substitute))~~ The company may 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 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) ~~((Review of requirements.))~~ 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).

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-340, filed 1/27/06, effective 2/27/06.]

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

WAC 208-620-360 What if I use a bond substitute and my unimpaired capital falls below the minimum? A ((licensee)) company that does not maintain a sufficient bond substitute ((shall)) must notify the director within ten days of the decrease in unimpaired capital. The department will then direct you to obtain and file a surety bond in the amount required by WAC 208-620-320. You must comply within twenty days. If you obtain a surety bond under this section you must maintain the surety bond for five years after the date of noncompliance. During this five-year period, the director will not accept a bond substitute.

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[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-360, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 8/17/09 4:28 PM[29] OTS-2460.2

31.04.175. 06-04-053, § 208-620-360, filed 1/27/06, effective 2/27/06.]

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

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

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

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(2) ~~Fails to demonstrate financial responsibility,~~

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experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

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

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

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

indictment, or a criminal misdemeanor charge involving dishonesty or financial misconduct; 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;

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

Deleted: Misrepresentations or omissions.

(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;

Deleted: Prior business conduct.

(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.

Deleted: Failure to complete the application.

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-370, filed 1/27/06, effective 2/27/06.]

NEW SECTION

WAC 208-620-371 May I employ someone who has been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, or who has had a lending-related license revoked or suspended? No. Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee who has been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony from participating in the affairs of any licensee. For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or employee who will or does originate loans, supervise loan originators, or manage the loan production activities of the licensee. Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee who has had a license to engage in lending, or performance of a settlement service related to lending, suspended in this state or any state. The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee to originate loans, supervise loan originators or manage the loan production activities of the licensee, without first conducting a background check.

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NEW SECTION

WAC 208-620-372 Am I responsible for the actions of my employees and independent contractors? Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

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NEW SECTION

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WAC 208-620-373 What happens to loans in the pipeline if a mortgage loan originator leaves my company? Existing loan applications must be processed by another licensed loan originator in the company. At the borrower's written request, the loan can be transferred to another entity.

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NEW SECTION

WAC 208-620-374 What action must I take in the NMLSR if I fire a loan originator or if the loan originator quits? You must go into the NMLSR and terminate your sponsorship of the loan originator within five days of the firing or quitting.

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

WAC 208-620-380 Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and

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must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590. (~~Agreement to allow access to the records is a condition of licensing of an out of state location.~~)

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

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-380, filed 1/27/06, effective 2/27/06.]

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

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

(1) **Annual report and assessment due March 1st.** You must provide the completed consolidated annual report, through the NMLSR by March 1st of each year. The worksheet(~~7~~) and annual

fee must be provided directly to the department by March 1st of each year.

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

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

(a) The assessment paid the previous year;

(b) The average annual assessment paid in the previous two years; or

(c) Fifteen hundred dollars.

[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-430, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-430, filed 1/27/06, effective

2/27/06.]

NEW SECTION

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WAC 208-620-431 What are my quarterly filing requirements?

Placeholder for NMLSR call reports.

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

WAC 208-620-440 How do I calculate my annual assessment for activity in Washington? (1) **Calculation of the annual assessment.** 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.

(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.

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[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-440, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-440, filed 1/27/06, effective 2/27/06.]

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

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) Prior notification required. ((A licensee)) You must ((~~notify the director in writing~~)) amend your NMLSR record at least ten days prior to a change of ((~~the licensee's~~)) your:

(a) Principal place of business or any of ((~~its~~)) branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of ((~~the out-of-state licensee's~~)) 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.

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(2) **Post notification within ten days.** ((A licensee)) You must ((~~notify the director in writing~~)) amend your NMLSR 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 ((~~its~~)) your Washington state master business license;

(c) Change in ((~~its~~)) 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; or

(e) Receipt of notification of cancellation of ((~~the licensee's~~)) your surety bond;

(f) Termination of sponsorship of loan originator.

(3) **Post notification within twenty days.** ((A licensee)) You must ((~~notify the director in writing~~)) amend your NMLSR record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of ((~~the institution of~~)) license revocation procedures against your license in any state ((~~against the licensee~~));

(b) The filing of a felony indictment or information related to lending or brokering activities ((~~of the licensee,~~)) against you or any officer, board director, or principal ((~~of~~

~~the licensee~~) or an indictment or information involving dishonesty (~~of the licensee,~~) against you or any officer, board director, or principal (~~of the licensee~~);

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

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

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

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-490, filed 1/27/06, effective 2/27/06.]

NEW SECTION

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) You must amend your NMLSR record using the closure/surrender form ten days prior to the closing.

(2) You must file the final annual report, 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) Any Washington loans in your portfolio and CLA activity remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

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PLEASE NOTE: 500 has been added back in for purpose of amendment.

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

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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 amend your NMLSR record at least ten days prior to the closing.

Deleted: immediately notify the department using the Consumer Loan Office Closure Form. You must also return the original license.

[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-500, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-500, filed 1/27/06, effective 2/27/06.]

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

WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with? You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the SAFE Act, and the Federal Trade Commission Telephone Sales Rule, 16 C.F.R. Part 310.

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-505, filed 1/27/06, effective 2/27/06.]

NEW SECTION

WAC 208-620-506 Must my underwriting analysis of a borrower's loan application include a determination of the borrower's ability to repay the loan? Yes. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of the borrower's ability to repay the obligation. The analysis of a borrower's repayment capacity must include the debt to income ratio; the assets, net worth, or equity; and any prepayment penalty clauses.

NEW SECTION

WAC 208-620-507 What elements of an ability to repay analysis must be part of my underwriting policy? (1) Your underwriting policy must include:

- A procedure for evaluating and documenting a borrowers' ability to repay
- Standards used to evaluate the borrower's ability to repay by final maturity at the fully-indexed rate
- A policy that provides the assumption of a fully-amortizing repayment schedule in determining the borrower's ability to repay
- An evaluation of any negative amortization on a borrower's ability to repay
- Standards for verifying the borrower's income, current employment and reasonably expected future income
- Standards for verifying the borrower's assets, net worth or equity in the subject property

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- Standards for an acceptable range for the borrower's debt to income ratio based on the loan type (conventional, reduced documentation, stated income)
- Demonstration that the DTI ratio includes all of the borrower's contractual obligations
- Standards for counseling borrowers on the impact of their decision to accept a mortgage with an adjustable rate, balloon payment, or other alternative product or feature
- Standards on the substitution of a credit score in place of income, assets, or net worth
- Standards for due diligence of third-party originators including pre-relationship review, verifications of borrower information, responsibility for initial RESPA compliance, responsibility for Adverse Action notice compliance, and post-closing reviews
- Procedures for notifying borrowers about prepayment penalties

(2) You must demonstrate consistent and uniform application of the elements in (1) in your in-house compliance and audit departments.

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

WAC 208-620-510 What are my disclosure obligations to consumers ((~~under the Consumer Loan Act~~))? (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 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. 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) Rate Locks. Within three days, including Saturdays, of receipt of a loan application you must provide the borrower with the following disclosure about the interest rate: (a) If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are

subject to change.

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

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following: (i) The length of the lock-in period; (ii) the expiration date of the lock-in rate; (iii) the lock-in interest rate; (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; (v) any other terms of the lock-in agreement.

(3) **Brokered loans.**

(a) Within three business days following receipt of a loan application you must provide to each borrower a good faith estimate that conforms with RESPA 24 C.F.R. 3500.

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

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

(d) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(e) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following: (i) The length of the lock-in period; (ii) the expiration date of the lock-in rate; (iii) the lock-in interest rate; (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; (v) any other terms of the lock-in agreement.

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

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[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-510, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-511 What is the disclosure required under RCW 19.144.020? ((See)) (1) You must provide the borrower with a clear, brief one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(2) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(3) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(4) You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part 226, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(5) The department has developed model forms that comply with this provision. See the department's web site. See also RCW 19.144.020 and WAC 208-600-200.

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78.
09-01-159, § 208-620-511, filed 12/23/08, effective 1/23/09.]

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NEW SECTION

WAC 208-620-513 What information must I obtain from a borrower prior to pulling a credit report? You must collect the borrower's name, monthly income, Social Security number, the property address, an estimate of the value of the property, and the mortgage loan amount sought. If the submission is for a purchase mortgage loan and a specific property has not been identified you may obtain a credit report for a prequalification.

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

WAC 208-620-515 What authority do I have as a licensee?

As a licensee you may:

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(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages;

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(2) In connection with the making of a non-first mortgage loan or non-mortgage loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the

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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) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay 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;

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(4) The powers listed in (1) and (2) of this subsection apply only to junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans and nonmortgage loans.

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

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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.

(6) Agree with the borrower for the payment of a nonrefundable rate lock fee. The fee may be retained if the borrower chooses to not go through with the loan. The fee may not be retained if the borrower rescinds the loan under Regulation Z or if the lock period expires and the borrower goes elsewhere.

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() Charge and collect a fee for underwriting.

(7) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more.

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((+4)) (8) Collect from the debtor 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.

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((+5)) (9) Make open-end loans as provided in the act.

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((+6)) (10) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, and other insurance or products approved by the Washington state Office of the Insurance Commissioner and the director.

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[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-

Deleted: (8) Agree with the borrower to provide loan modification services. The agreement must be in writing.

515, filed 7/22/08, effective 8/22/08. Statutory Authority:
RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085,
31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and
31.04.175. 06-04-053, § 208-620-515, filed 1/27/06, effective
2/27/06.]

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

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

(1) **General records.** Each licensee must preserve the
books, accounts, records, papers, documents, files, and other
information relevant to a loan for a minimum of twenty-five
months after making the final entry on that loan at a location
approved by the director.

(2) **Advertising records.** (~~A licensee must maintain a copy
of all advertising for a period of twenty five months at a
location approved by the director. Such copies shall include~~)
These records include newspaper and print advertising, scripts
of radio and television advertising, telemarketing scripts, all
direct mail advertising, and any advertising distributed
directly by delivery, facsimile or computer network.

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

8/17/09 4:28 PM[52] OTS-2460.2

(a) Mortgage transaction documents;

(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;

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(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; and

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

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

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-520, filed 1/27/06, effective 2/27/06.]

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

WAC 208-620-550 What business practices are prohibited?

Under 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;~~

Deleted: Disclosure of payoff amount.

(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;~~

Deleted: Recognition of payment delivery.

(3) ~~Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or~~

Deleted: Charging a fee for best efforts.

commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) (~~False advertising of rates and fees. Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time.~~) 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;

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

Deleted: False filing.

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

Deleted: Influencing appraisers.

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

Deleted: Documents with blanks.

(8) (~~False advertising. Soliciting business using advertising that includes:~~

~~(a) An envelope or stationery that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing,~~

~~such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;~~

~~(b) An envelope or stationery containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;~~

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

~~(d) Any suggestion or representation that the solicitation is from an entity other than the licensee;~~

~~(e) Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to WAC 208-620-630;~~

~~(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;

Deleted: Inclusion of taxes and insurance.

~~((10))~~ (9). Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

Deleted: Force placed insurance.

~~((11))~~ (10). Willfully filing a lien on property without

Deleted: Filing an inappropriate lien.

a legal basis to do so;

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

Deleted: Threats and coercion.

~~((13))~~ (12) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable.

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(13) Using a compensation model that is based on a loan's interest rate or other terms.

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.(a) Provides commissions to loan originators based on the interest rate being above the par rate; or¶
.(b) Compensates for hitting minimums; or¶
.(c) Pays overages.

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

(15) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator;

(16) Failing to indicate on all residential mortgage loan applications the company unique identifier, the loan originator unique identifier, and the date the application was taken.

[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-550, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-550, filed 1/27/06, effective 2/27/06.]

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-560 What are the fee restrictions (~~((are there for charging fees on junior lien loans other than the loan origination fee when acting as a lender or correspondent lender))~~) under the Consumer Loan Act? (1) **Filing fees.** You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party.

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(2) **Dishonored check fees.** You must not charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

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(3) **Fees for third-party services.** 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)

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at the time of application for the loan or at any time thereafter except as prohibited.

(4) **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.~~

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(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.~~

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(5) **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 (~~(shall)~~) must be limited as follows:

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(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;~~

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

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(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.

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

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(7) **Administrative fees.** On non-first liens, you must not collect a document preparation fee, a processing fee or a courier fee unless paid to an unrelated third party and agreed to in advance by the borrower.

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(8) Underwriting fees. On non-first liens, you must not collect an underwriting fee.

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

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(a) Any nonmortgage loan (~~made at rates authorized by the act~~);

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

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(c) Any junior lien mortgage loan (~~made at rates authorized by the act~~); or

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

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[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78.

09-01-159, § 208-620-560, filed 12/23/08, effective 1/23/09.

Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045,

31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115,

31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-560,

filed 1/27/06, effective 2/27/06.]

NEW SECTION

WAC 208-620-561 What fees can I collect on VA loans?

Reserved.

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AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-565 What fees am I allowed and not allowed to charge or receive when acting as a broker under the act? (1)

When acting as a broker under the act, you are allowed to:

(a) Charge and collect a broker's fee.

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

(c) Charge a processing fee.

(2) When acting as a broker under the act, you are NOT allowed to:

8/17/09 4:28 PM[61] OTS-2460.2

- (a) Charge or receive fees on discount points;
- (b) Charge or receive a loan origination fee in addition to a broker's fee; or
- (c) Charge or receive an underwriting fee.

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-565, filed 12/23/08, effective 1/23/09.]

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

WAC 208-620-570 What are the grounds for suspending or revoking a consumer loan company license? The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

- (1) **Failing to pay.** Fails to pay a fee due the department;
 - (2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;
 - (3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;
 - (4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license
- 8/17/09 4:28 PM[62] OTS-2460.2

limitations or significant fines;

(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 ((~~any~~)) 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 ((~~any~~)) 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.

[Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-570, filed 1/27/06, effective 2/27/06.]

NEW SECTION

WAC 208-620-601 What assistance may the department seek in conducting an investigation or examination of my business? In order to carry out the purposes of RCW 31.04.145, the director may:

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

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

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

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

(5) Accept audit reports made by an independent certified

public accountant for the licensee, individual, or person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

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

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PLEASE NOTE: 208-620-613 IS PULLED BACK IN FOR PURPOSES OF AMENDMENT.

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WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines, what topics must be included?

(1) The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker loans under your CLA license, your policies and procedures must comply with WAC 208-660-~~500~~. For purposes of this section, the definition of

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"subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

(a) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis

of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

(i) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

(ii) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

✎ Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.

✎ Very high or no limits on how much the payment amount or the interest rate may increase.

✎ Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of

repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

✎ Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

✎ Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the underwriting decision and the borrower's repayment capacity.

(iii) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

(b) Risk management. The scope of the risk management activities should be determined by the volume of nontraditional

mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

(i) Acceptable product attributes;

(ii) Production, sales and securitization practices;

(iii) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;

(iv) Growth and volume limits by loan type;

(v) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;

(vi) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Perform due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting,

WAC (8/17/09 4:28 PM) [69]

or terminating the third party originator;

(vii) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

(c) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

✎ Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.

✎ Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.

✎ If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum

payments.

✎ Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

✎ Borrowers must be made aware of any pricing premium based on reduced documentation.

✎ Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

(d) Control standards.

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.

NEW SECTION

WAC 208-620-614 What Washington law protects my rights when my license is suspended or revoked? The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

[]

NEW SECTION

WAC 208-620-615 Application of the Administrative Procedure Act. (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

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

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which

the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

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

(a) Whether an applicant for a loan originator license meets the requirements of RCW 31.04.XXX;

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

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

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

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As

used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

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

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

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

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

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

number of pages allowed for submission of written documents, including supporting exhibits.

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

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

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

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

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

WAC 208-620-620 How do I have to identify my business when I advertise? You must either identify the business using your Washington consumer loan license number (NMLSR unique identifier) or use the name on your Washington Main Office Consumer Loan license.

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Comment [If1]: This needs to be researched.

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

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

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

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

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

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

8/17/09 4:28 PM[78] OTS-2460.2

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

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

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

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

(3) The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the

advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?

Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

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

(5) May a licensee advertise rates or fees as the "lowest" or "best"? No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(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 (~~(19.146.0201)~~) 31.04.027 (2), (7), and (~~(11)~~) (10). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-630, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-630, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-630, filed 1/27/06, effective 2/27/06.]

8/17/09 4:28 PM[81] OTS-2460.2

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

WAC 208-620-640 What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act? You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act.

[Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-640, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-640, filed 1/27/06, effective 2/27/06.]

LOAN ORIGINATOR LICENSING

NEW SECTION

WAC 208-620-700 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. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. Loan files are the property and responsibility of the company named on the loan application. The company must transmit the information within five business days after receiving the borrower's written request.

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

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

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

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

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

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by who is licensed or exempt from licensing under Washington law.

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

(9) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt consumer

loan company and do not hold themselves out as able to conduct the activities of a loan originator.

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NEW SECTION

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

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

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

(a) Be eighteen years or older.

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

(i) The work experience must be in one or more of the

following, within the last five years:

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

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

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

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

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

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

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

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

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

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

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

residential mortgage company.

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

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

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

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

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

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

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(4) In addition to reviewing my application, what else will

the department consider to determine if I qualify for a loan originator license?

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

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

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

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

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

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

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

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

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

(7) **When will the department consider my loan originator license application to be abandoned?** If you do not respond as directed by the department, and within fifteen days, 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.

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(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.

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(9) **May I transfer, sell, trade, assign, loan, share, or**

give my loan originator license to someone else? No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

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

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

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

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

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

license is inactive.

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

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

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

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

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

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

- (i) Paying the annual assessment fee; and
- (ii) Meeting the continuing education requirement.

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

(19) **If I let my loan originator license expire, must I**

apply to get a new license? If you complete all the requirements for renewal before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

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

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

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

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

(23) May I surrender my loan originator's license? Yes.

Only you may surrender your license before the license expires through the NMLSR.

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

(24) 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.

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

(26) Must I include my loan originator license number (NMLSR unique identifier) on any documents? You must include your license number (NMLSR unique identifier) immediately following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

(27) When must I disclose my loan originator license number (NMLSR unique identifier)? In the following situations you must disclose your loan originator license number (NMLSR unique

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identifier) and the name and license number of the company you are associated with:

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

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

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

(d) When taking a residential mortgage loan application.

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

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NEW SECTION

WAC 208-620-720 Loan originator--Prelicensing education.

Must I complete prelicensing education in order to receive a

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loan originator license? Yes. (1) You must complete at least

twenty hours of prelicensing education approved by the NMLSR.

The prelicensing education must include: (a) three hours of

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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 two hours of training specifically related to

Washington law.

(2) You will receive credit for having completed the prelicensing education for every state once you have successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state.

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NEW SECTION

WAC 208-620-725 Loan originator--Testing. Must I pass a test prior to becoming a loan originator? Yes. (1) You must take and pass the NMLSR sponsored loan originator test. The test has two parts; one on federal law and regulation, and one on Washington specific law and regulation. You must receive a score of seventy-five percent or higher to pass the test.

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

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

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

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

(6) After passing the NMLSR loan originator test, will I

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

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

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NEW SECTION

WAC 208-620-730 Loan originator--Continuing education.

(1) **How many clock hours of loan originator continuing education must I have each year?** You must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics (which must include instruction on fraud, consumer protection, and fair lending issues); and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(3) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education

courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(4) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(5) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-620-XXX to renew your license if you miss the December 31st renewal deadline.

(6) **How will I know which courses and providers satisfy the continuing education requirement?** NMLSR will publish information about approved continuing education providers on their web site.

(7) How do I provide the department with proof of the continuing education courses I have completed? (a) For SAFE required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information. (b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

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Information about the continuing education you have taken will be provided directly to the NMLSR by the provider. DFI may request additional information

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PROPRIETARY REVERSE MORTGAGE PRODUCTS

NEW SECTION

WAC 208-620-800 What definitions are applicable to this section? (1) Advance. A payment from the lender to the borrower.

(2) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of Housing and Urban Development.

(3) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(4) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(5) "Reverse mortgage broker or lender" means a licensee under the Washington state Consumer Loan Act, chapter 31.04 RCW, 8/17/09 4:28 PM[101] OTS-2460.2

or a person exempt from licensing pursuant to federal law.

(6) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the borrower's dwelling;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

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NEW SECTION

WAC 208-620-805 Does this section apply to the FHA approved Home Equity Conversion Mortgage (HECM) product? No.
This section does not apply to the HECM product or to any federally administered reverse mortgage product.

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NEW SECTION

WAC 208-620-810 What requirements must I meet to make proprietary reverse mortgage products to Washington residents?

You must meet the following requirements before offering proprietary reverse mortgage loans to Washington residents:

(1) Obtain and maintain an irrevocable standby letter of credit approved by the director from a financial institution approved by the director in your favor in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans on your books and those expected to be made over the next twelve months, or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years.

(a) The financial institution that provides the letter of credit required in subsection (1) of this section may not be affiliated with you.

(b) If you have had a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years you are exempt from the requirements in subsection (1) of this section.

(2) Maintain a minimum capital of ten million dollars.

You may rely on the capital of your parent to satisfy this requirement. However, for any year in which you rely on your

parent's capital, you must provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the parent to you to make a minimum of ten million dollars available to you as a capital contribution in connection with its reverse mortgage lending program.

(3) Subsections (1) and (2) of this section do not apply to you if you:

(a) Only originate proprietary reverse mortgage loans with full disbursement of the proceeds; or

(b) Only originate proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. You must obtain a written commitment to purchase from the investor prior to the loan closing and must arrange for the delivery of the loans to the investor within ten days of the loan closing.

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NEW SECTION

WAC 208-620-820 What specific loan terms and conditions are allowed or required in the proprietary reverse mortgages I make to Washington residents? (1) Loan prepayment.

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(a) Prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, must be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this subsection, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender.

(b) You may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrowers.

(c) You must provide no less than thirty days prior written notice of any permissible prepayment penalty under this section.

(2) Interest rate. A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) Late advances.

(a) ~~If you make a late advance you must pay a late charge~~ of ten percent of the entire amount that should have been advanced to the borrower. A late advance is a scheduled monthly

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advance that you do not mail or electronically transfer to the borrower on or before the first business day of the month, or within five business days of the date you receive the borrower's request, or such other regularly scheduled contractual date.

(b) For each additional day you fail to make the advance, you must pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. You must pay late charges from your funds and they may not be added to the unpaid principal balance.

(c) You forfeit the right to interest and monthly servicing fee for any months you fail to make a timely advance.

(4) Loan acceleration. The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents.

(5) Repayment. Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to

become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a satisfactory manner, as specified in the loan documents;

(c) Your right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations commences on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement;

(d) If the borrower mortgaged one hundred percent of the full value of the house, the amount owed will be the lesser amount of:

(i) The fair market value of the house, minus the sale costs; or

(ii) The outstanding balance of the loan.

(e) If the borrower mortgaged less than one hundred percent of the full value of the house, the amount owed by the borrower ~~must not be greater than the outstanding balance of the loan or the percentage of the fair market value (minus sale costs, as provided in the contract)~~, whichever amount is less.

(f) The lender ~~must~~ enforce the debt only through the sale of the property and ~~must~~ not obtain a deficiency judgment against the borrower.

(6) Fee disclosure. Using conspicuous, bold sixteen-point

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or larger type, you must disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(7) Deed of trust disclosure. The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan."

(8) Ancillary products. You or any other party that participates in the origination of a reverse mortgage loan must not require an applicant for a reverse mortgage to purchase an annuity, insurance, or another product as a condition of obtaining a reverse mortgage loan. You or the broker of a reverse mortgage loan must not:

(a) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(c) Provide marketing information or annuity sales leads to anyone regarding the prospective borrower or receive any compensation for such an annuity sale or referral; or

(d) You or any other party that participates in the origination of a reverse mortgage loan must maintain safeguards, acceptable to the department of financial institutions, to

ensure that you do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product.

(9) Borrower counseling. Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, you must refer the prospective borrower to an independent housing counseling agency approved by the federal department of Housing and Urban Development for counseling. The counseling must meet the standards and requirements established by the federal department of Housing and Urban Development for reverse mortgage counseling. You must provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone. Telephone counseling will only be used for counseling at the borrower's request. You must create and maintain a form that includes the borrower's signature for telephone counseling requests.

(10) Counseling certification. You must not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be

signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. You must maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage.

(11) Minimum age. You may not make a reverse mortgage loan to any Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan.

(12) Advances. Except for the initial disbursement of moneys to the closing agent, you must issue advances directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

(13) Rescission rights. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the Truth in Lending Act, Regulation Z, 12 C.F.R. Sec. 226.

(14) Property appraisals. Prior to execution of the loan and at the end of the loan term, you must obtain an independent appraisal of the property value, or use the current year's tax assessment valuation of the property. You must provide copies of these appraisals to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

NEW SECTION

208-620-825 What other program information must I submit to the director for approval before offering or making proprietary reverse mortgages?

(1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

(i) All costs and charges to the consumer;

(ii) All advances to and for the benefit of the consumer;

(iii) Any shared appreciation or equity in the dwelling that you are entitled under the contract to receive.

(iv) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);

(v) Each of the assumed annual appreciation rates for the dwelling: (A) 0 percent; (B) 4 percent; (C) 8 percent;

(vi) Each of the following assumed loan periods: (A) two years; (B) the actuarial life expectancy of the consumer to

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become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday;

[(vii) other actuarial life expectancies?]

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policy.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

Comment [If2]: Do a search for money and moneys

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NEW SECTION

WAC 208-660-830 What disclosures must I provide to a borrower? (1) Counseling disclosure. You must provide the following plain language statement in conspicuous bold sixteen-point type or larger, prior to receiving a complete and final loan application: "Important notice to reverse mortgage loan applicant: A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity. If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate. It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

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

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NEW SECTION

WAC 208-620-850 What is the process I must follow to obtain the department's approval of my proprietary reverse mortgage product? Reserved.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-270 Can I make a loan subject to the act without first getting a license?

WAC 208-620-285 If my application is incomplete when I file it with the department, what will happen?

WAC 208-620-460 Must I file my annual report even if I go out of business during the year?

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WAC 208-620-470 Do I need to notify the department
if I move the location of my
office?

WAC 208-620-475 Must I notify the department if I
cease doing business in this state
if I am doing business in other
states?

WAC 208-620-500 What are my reporting requirements
if I want to close one or more of
my branch offices?

WAC 208-620-512 If I pull a credit report on a
consumer who has identified a
specific property on a purchase
and sales agreement or contract,
or is refinancing a specific
property, is that enough to
trigger the required disclosures
under RESPA and TILA?