AMENDATORY SECTION (Amending WSR 22-24-048, filed 11/30/22, effective 12/31/22)

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

(1) "Act" means the Consumer Loan Act, chapter 31.04 RCW.

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

(3) "Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026, implementing the Truth in Lending Act.

(4) "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.

(5) "Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Part 103.

(6) "Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

(7) "Business day" means Monday through Friday excluding federally recognized bank holidays.

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

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

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

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

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

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

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

(15) "Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692, 12 C.F.R. Part 1006.

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

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

(18) "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.

(19) "Higher education institution" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the council for higher education. RCW 28B.07.020(4).

(20) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

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

(22) "Lender" means any person that extends money to a borrower with the expectation of being repaid.

(23) "License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

(24) "Licensed location" means a main office or branch office, including an individual loan originator's residence, where the licensee conducts business under the act with Washington residents<u>, persons physically located in Washington,</u> or Washington residential real estate and the licensee has obtained a main or branch license through NMLS for that location.

(25) "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.

(26) "Loan originator" means the same as mortgage loan originator.

(27) "Loan originator's residence" means a loan originator's primary or secondary residence located in the United States.

(28) "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.

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

involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

(30) "NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

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

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

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

(34) "RCW" means the *Revised Code of Washington.*

(35) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (c) 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; (d) 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 (e) offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

(36) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024.

(37) "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.

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

(39) "State" means the state of Washington.

(40) "Student education loan borrower" means:

(a) Any resident of this state who has received or agreed to pay a student education loan; or

(b) Any person who shares responsibility with such resident for repaying the student education loan.

(41) "Student education loan servicing" or "service a student education loan" means:

(a) Receiving any scheduled periodic payments from a student education loan borrower pursuant to the terms of a student education loan;

(b) Applying the payments of principal and interest and such other payments with respect to the amounts received from a student education loan borrower, as may be required pursuant to the terms of a student education loan;

(c) Working with the student education loan borrower to collect data, or collecting data, to make decisions to modify the loan; or

(d) Performing other administrative services with respect to a student education loan including collection activities. "Student education loan servicing" does not include third-party student education loan modification services.

(42) "Subsidiary" means a person that is controlled by another.

(43) "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.

(44) "Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. Sec. 6101 to 6108.

(45) "Telemarketing Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

(46) "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 ((~~(2)~~)) (4)(a), (b), (d), (g) through (i), and (k) through ((~~(m)~~)) (n).

(2) Under RCW 31.04.025 ((~~(2)~~)) (4)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) Under RCW 31.04.025 ((~~(2)~~)) (4)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary dwelling.

(4) Under RCW 31.04.025 ((~~(2)~~)) (4)(f), a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings. See also WAC 208-620-232.

(5) Under RCW 31.04.025 ((~~(2)~~)) (4)(j), a nonprofit housing organization seeking exemption must meet the following standards:

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

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

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

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

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

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

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

(6) Under RCW 31.04.025((~~(3)~~)) (5), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025((~~(3)~~)) (5), individuals who extend credit on the sale of their primary dwelling.

(8) Investors. See WAC 208-620-011(5).

(9) Note buyers. See WAC 208-620-011(5).

(10) Under RCW 31.04.420:

(a) Trade, technical, vocational, or apprentice programs that teach skills related to a specific job, and postsecondary schools that service their own student education loans;

(b) Persons servicing five or fewer student education loans;

(c) Guarantors of federal student loans that do not also service federal student loans;

(d) The United States or any department or agency thereof, to the extent it is servicing student education loans that it originated;

(e) Any state, county, city, or any department or agency thereof, but only to the extent it is servicing student education loans that it originated; and

(f) Persons providing third-party student education loan modification services. See RCW 31.04.015(38).

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-230 Do I need a consumer loan license to lend money, extend credit, service or modify the terms of residential mortgage loans, or service student education loans? ((~~(1)~~)) Yes. ((~~If you do~~)) Any person that does not qualify for an exemption under RCW 31.04.025 or 31.04.420((~~, you~~)) must hold a license to do any of the following from any location:

((~~(a) Be located in Washington and~~)) (1) Make a loan, lend money, or extend credit((~~, service or modify residential mortgage loans, or service student education loans;~~

~~(b) Be located outside Washington and lend money or extend credit~~)) to Washington residents((~~,~~)) or any person physically located in Washington;

(2) Service ((~~or~~)), modify, or provide loan modification services for residential mortgage loans on Washington real estate((~~, or~~));

(3) Service student education loans for Washington residents or any person physically located in Washington;

((~~(c) From any location solicit or~~)) (4) Advertise or solicit by or through any means the provision of products or services identified

in this section to Washington residents ((~~including but not limited to mail, brochure, telephone, print, radio, television, internet, or any other electronic means~~)) or any person physically located in Washington;

((~~(d) From any location conduct business under the act~~)) (5) Conduct any of the activities in subsections (1) through (4) of this section by or through any means, including electronically, mail, print, or radio with Washington residents ((~~by mail or internet~~)) or any person physically located in Washington;

((~~(e)~~)) (6) Hold ((~~yourself~~)) themself out as able to conduct any of the activities in ((~~(a) through (d)~~)) (1) through (5) of this ((~~subsection~~)) section.

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

~~(3) See also WAC 208-620-232 for residential mortgage loans.~~))

AMENDATORY SECTION (Amending WSR 18-16-024, filed 7/24/18, effective 9/1/18)

WAC 208-620-231 Who must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating a Washington resident((s)) or person physically located in Washington? (1) Persons servicing loans they originated.

(2) Persons servicing loans purchased post closing.

(3) Persons servicing loans owned by other persons.

(4) See also WAC 208-620-011(5) and 208-620-104.

AMENDATORY SECTION (Amending WSR 19-21-157, filed 10/22/19, effective 11/24/19)

WAC 208-620-232 Can I make a small number of residential mortgage loans without being licensed at the company level? Yes. Pursuant to RCW 31.04.025((~~(3)~~)) (5) you may be eligible to make five or fewer residential mortgage loans during a calendar year without holding a company level license. You must apply for and obtain the license waiver for each transaction. If you are eligible for and receive the license waiver, you must comply with certain conditions including the following:

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

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

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

NEW SECTION

WAC 208-620-236 How does the department interpret the Predatory Loan Prevention Act? (1) A person that purports to act as an agent, service provider, or in another capacity for another person that is exempt pursuant to RCW 31.04.025(4) is a lender and must have a consumer loan company license if:

(a) A loan exceeds the interest rate permitted under RCW 31.04.105(1), and either:

(b) The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest in the loan as set forth in subsection (3) of this section; or

(c) The totality of the circumstances indicate that the person is the lender and the transaction is structured to evade the requirements of the act as set forth in subsection (4) of this section.

(2) Any person making, offering, assisting, or arranging for a borrower to obtain a loan with a greater rate of interest, consideration, or charge than permitted by the act through any method is engaging in device, subterfuge, or pretense to evade the requirements of the act in violation of RCW 31.04.025(2).

(3) A person holds, acquires, or maintains the predominant economic interest in a loan when the person directly or indirectly:

(a) Places their own money at risk at any time during the loan transaction;

(b) Bears the benefits and risks of the loan; or

(c) Advertises, arranges, or facilitates the loan, and:

(i) Holds the right, requirement, or the right of first refusal to purchase the loan or other form of participation in the loan; or

(ii) Purchases, retains, or otherwise obtains more than a 50 percent economic or financial interest in any loan including, but not limited to, a loan program or other loan pooling vehicle.

(4) The totality of the circumstances indicates that a person is the lender when the person directly or indirectly:

(a) Designs, controls, or operates the loan program;

(b) Acts as a lender in at least one other jurisdiction while purporting to act as an agent, service provider, or in another capacity for another person that is exempt from the act;

(c) Indemnifies, insures, or protects a person that is exempt from the act for any costs or risks associated with or related to the loan;

(d) Advertises, markets, holds itself out as, or otherwise identifies itself as the lender or does not clearly and conspicuously disclose in all materials and disclosures that an exempt entity is the lender of the loans; or

(e) Provides money to another person that is exempt from the act for the purpose of funding the loan.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-371 May I employ someone to work with a Washington resident((s)), person physically located in Washington, or Washington property who has been convicted of a gross misdemeanor or felony, or

who has had a financial services-related license revoked or suspended? No. (1) Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to:

(a) A gross misdemeanor involving dishonesty or financial misconduct; or

(b) A felony in a domestic, foreign, or military court:

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

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

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

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee or independent contractor, or person subject to the act, who has had a license to provide financial services revoked or suspended in this state or any state.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-620-556	What fees must I refund to the borrower if I provide services subject to the act but do not have a license?