

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

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

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

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

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

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

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

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

~~("Borrower." See WAC 208-620-011.)~~

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

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

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

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

~~("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. Sec. 1735f-7a.

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

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

"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.

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

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

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

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 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.

"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).

"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).

"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." See WAC 208-620-011(2).)~~

~~"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.)~~

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

~~("License" means a license issued under the authority of this chapter with respect to a single place of business.)~~

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

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

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

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

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

~~(("Loan processor." See WAC 208-620-011.))~~

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

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

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

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

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

~~(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or~~

~~(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.~~

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

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

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

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

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

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

"NMLS" means 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.

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

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

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

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

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

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

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

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

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

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney

inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

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

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

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

~~"Residential mortgage loan modification services." See WAC 208-620-011.~~

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

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

~~"Service or servicing a loan." See WAC 208-620-011.~~

~~"Simple interest method." See WAC 208-620-011.)~~

~~"State" means the state of Washington.~~

~~"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.~~

~~"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.~~

"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. Sec. 6101 to 6108.

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

~~("Third party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.~~

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

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

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

~~"Underwriter." See WAC 208-620-011.)~~

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

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015? (1) **"Borrower"** means an individual who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan for personal, family, or household use, or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification. **"Borrower" also includes a "student education loan borrower."**

(2) ~~("Individual servicing a residential mortgage loan" means a person who on behalf of a lender or servicer licensed or exempt from licensing in this state: Collects or attempts to collect payments on existing obligations due and owing to the licensed or exempt lender or servicer, including payments of principal, interest, escrow amounts, and other amounts due; works with borrowers to collect data and make decisions necessary to modify either temporarily or permanently terms of the obligations; or otherwise finalizes collection through the foreclosure process. For the purpose 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 borrowers for performing the described activities.~~

~~(3-))~~ **"Director"** means the director of the department of financial institutions or his or her designated representative.

(3) **"Educational institution" means:**

(a) An entity that offers educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree beyond the secondary level;

(b) Any location where an entity is offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession; and

(c) Any establishment licensed under chapter 18.16 RCW that offers curriculums of instruction in the practice of cosmetology, hair design, barbering, esthetics, master esthetics, manicuring, or instructor-trainee.

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

(5) "Individual servicing a residential mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed or exempt 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.

(6) "License" means a license issued under the authority of this chapter with respect to a single place of business.

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

((4)) (8) "Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain:

(a) Takes a residential mortgage loan application; or

(b) Offers or negotiates terms of a residential mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

(i) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

(ii) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

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

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the

public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

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

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

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

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

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

((+5)) (10) "S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

(11) "Service" or "servicing a loan" means, with respect to residential mortgage loans, the following:

(a) Regulated activities.

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

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

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

(iv) Otherwise finalizing collection through the foreclosure process.

(b) Regulated persons.

(i) "Servicer." Persons directly engaged in servicing.

(ii) "Master servicer." Persons responsible for ongoing servicing administration either by directly servicing or through servicing

agreements with licensed or exempt subservicers. Except that the director may issue a license waiver to a master servicer servicing or administering the servicing of fewer than twenty-five loans.

(iii) "Subservicer." Persons directly servicing pursuant to a servicing agreement with a master servicer.

(c) Persons not regulated.

(i) "Investor." Persons holding securities or other types of instruments backed by pools of residential mortgage loans. Investors are not servicers, master servicers, or subservicers.

(ii) "Note buyers." Persons who purchase mortgage loans without servicing rights and who are not servicers, master servicers, or subservicers.

((+6)) (12) **"Simple interest method"** means the method of computing interest payable on a loan by applying the rate of interest specified in the note or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Interest may not be compounded or payable in advance.

(a) Each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

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

(13) **"Student education loan"** means:

(a) Any loan solely for personal, family, or household use to finance postsecondary education and costs of attendance at an educational institution, or any subsequent loan to refinance the former; and

(b) Any loan to refinance a payment plan or accounts receivable with a higher education institution if the student is not enrolled in the higher education institution.

(14) **"Student education loan servicer"** does not include the following when engaged in the activity of collecting student education loans in default:

(a) Collection agencies licensed in Washington under chapter 19.16 RCW; and

(b) An attorney licensed in Washington collecting student education loans in default as part of providing legal services. This attorney exclusion may be extended to the attorney's bona fide legal practice, but is otherwise an individual exclusion and may not be extended to a separate business entity.

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

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

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

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

(4) Under RCW 31.04.025 (2)(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)(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), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025(3), 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 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-230 Do I need a consumer loan license to lend money, extend credit ((or)), service or modify the terms of residential mortgage loans, or service student education loans? (1) Yes. If you do

not qualify for an exemption under RCW 31.04.025 or 31.04.420, you must hold a license to:

(a) Be located in Washington and lend money, extend credit, ~~((~~or~~))~~ 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~~))~~, service or modify residential mortgage loans on Washington real estate, or service student education loans for Washington residents;

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-300 If I want to operate my business from more than one office, do I have to license each location? Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, student education loan servicing location, or direct solicitation location. ~~((You must provide evidence of surety bond coverage for each branch and meet all other license requirements.))~~ You may not operate until a license is granted for that location.

AMENDATORY SECTION (Amending WSR 17-01-124, filed 12/20/16, effective 1/1/18)

WAC 208-620-320 What is the amount of the surety bond required for my consumer loan license? (1) Surety bond amounts are based on ~~((loan origination))~~ the volume of your activity from prior years. If there is no prior year volume, the surety bond amount required at application is thirty thousand dollars. For purposes of this section, ~~(("))~~ references to loan origination volume ~~((" means a volume of))~~ mean closed loans.

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

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

(3) Residential mortgage loans ~~((origination))~~.

(a) Origination. If you only originate residential mortgage loans, the surety bond amount is based on the annual dollar amount of residential mortgage loans you originate. Use the chart in subsection (2) of this section for the bond amount.

(b) Servicing. If you only service residential mortgage loans, a bond requirement may only arise if you elect a surety bond in lieu of the required net worth in WAC 208-620-322, or you sponsor a Washington mortgage loan originator.

(c) Origination and servicing. If you originate and service residential mortgage loans, your surety bond amount will be based on your origination volumes. See the table in subsection (2) of this section.

(d) Brokering. If you only broker residential mortgage loans, your surety bond amount ~~((at application is thirty thousand dollars. There after subject to annual adjustment the surety bond amount))~~ will be based on the total annual principal amount of the loans brokered. See the table in subsection (2) of this section.

(4) Combined nonresidential and residential loan origination. If you originate both nonresidential and residential loans, your bond amount will be based on the combined origination volume. See the table in subsection (2) of this section.

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

(6) Student education loan servicing. If you only service student education loans, the surety bond amount is thirty thousand dollars.

AMENDATORY SECTION (Amending WSR 17-01-124, filed 12/20/16, effective 1/1/18)

WAC 208-620-322 What are the capital requirements for a nondepository residential mortgage loan servicer applicant ~~((and))~~ or licensee servicing loans not guaranteed by a government sponsored entity (GSE) and/or government corporation?

(1)(a) An applicant or licensee servicing residential mortgage loans not including any GSE or government corporation loans must maintain a minimum tangible net worth, based on its nationwide servicing portfolio, as follows:

0-199 loans	\$100,000
200-299 loans	\$200,000
300-399 loans	\$300,000
400-499 loans	\$400,000
500-599 loans	\$500,000
600-699 loans	\$600,000
700-799 loans	\$700,000
800-899 loans	\$800,000
900-999 loans	\$900,000

1,000 plus loans

\$1,000,000

(b) Alternatively the applicant or licensee may maintain a one million dollar surety bond in lieu of tangible net worth.

(c) In addition, the applicant or licensee must maintain liquidity (to include operating reserves) of .00035 times the unpaid principal balance of the portfolio.

(2) An applicant or licensee (~~(with)~~) servicing twenty-five or fewer (~~(loans)~~) Washington residential mortgage accounts may apply to the director to waive or adjust one or more of these capital requirements. In considering such a request the director will consider whether the licensee has a positive net worth and adequate operating reserves. For purposes of this section, "operating reserves" are funds set aside in anticipation of future payments or obligations and are included in liquidity.

(3) Licensees must annually or more frequently report, as prescribed by the director, on liquidity (including operating reserves) and tangible net worth.

(4) Any licensee that does not maintain the standards in this section is subject to action by the director including that authority in RCW 31.04.165(4).

(5) The following definitions apply to this section:

(a) Tangible net worth means total equity minus receivables due from affiliated entities, minus goodwill and other intangible assets, and minus the carrying value of pledged assets net of the associated liabilities of the pledged assets.

(b) Liquidity means unrestricted cash and cash equivalents, investment grade securities that are available for sale or held for trade, and unused/available portion of committed servicing advance lines.

NEW SECTION

WAC 208-620-324 What are the capital requirements for a student education loan servicer? (1)(a) An applicant or licensee servicing student education loans must maintain a minimum tangible net worth of two hundred fifty thousand dollars.

(b) In addition, the applicant or licensee must maintain liquidity (to include operating reserves) of .00035 times the unpaid principal balance of the nationwide portfolio.

(2) An applicant or licensee servicing student education loans for Washington state borrowers may apply to the director to waive or adjust the capital requirements. In considering such a request, among other things, the director will consider the number of loans being serviced and whether the applicant or licensee has a positive net worth and adequate operating reserves. For purposes of this section, "operating reserves" are funds set aside in anticipation of future payments or obligations and are included in liquidity.

(3) Licensees servicing student education loans must annually or more frequently report, as prescribed by the director, on liquidity (including operating reserves) and tangible net worth.

(4) Any licensee servicing student education loans that does not maintain the standards in this section is subject to action by the director, including that authority in RCW 31.04.165(4).

(5) The following definitions apply to this section:

(a) Tangible net worth means total equity minus receivables due from affiliated entities, minus goodwill and other intangible assets, and minus the carrying value of pledged assets net of the associated liabilities of the pledged assets.

(b) Liquidity means unrestricted cash and cash equivalents, investment grade securities that are available for sale or held for trade, and the unused/available portion of committed servicing advance lines (funding facilities).

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

WAC 208-620-327 How often will my bond amount change? Your bond amount may change annually depending on your volume of (~~loan origination and residential mortgage loans serviced in Washington. See RCW 31.04.045(6))~~) Washington activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-328 For purposes of the annual assessment and surety bond calculation, how often must I report my (~~loan origination and residential mortgage loan servicing volume~~) Washington activity? You must report your (~~loan origination and residential mortgage loan servicing volume~~) volume of activity as directed and on the form prescribed by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a gross misdemeanor or felony, or who has had a ~~((lending-related))~~ 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 in-

dependent contractor, or person subject to the act, who has had a license to (~~engage in lending, or performance of a settlement service related to lending, including loan modifications,~~) 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.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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

NEW SECTION

WAC 208-620-442 How do I calculate the annual assessment for my student education loan servicing activity in Washington? Pursuant to RCW 31.04.400, your annual assessment is an amount sufficient to cover the costs of the department's administration of the program, and to fund the student achievement council's student loan advocate. For purposes of this section, "portfolio" means all student education loan servicing accounts, including those held for investment.

(1) **Calculation of the annual assessment for student education loans serviced.** The amount of the annual assessment is determined by multiplying the adjusted total loan volume of the loans in the year being assessed by .0000384616.

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

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

(b) The total principal loan balance of Washington student education loans added to your portfolio during the assessment year.

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

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) **Prior notification required.** You must amend your NMLS record at least ten days prior to a change of your:

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

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

~~(c) ((Name and mailing address of your registered agent if you are located outside the state;~~
~~(d))~~ Legal or trade name; or
~~((e))~~ (d) Ownership control of ten percent or more~~((f) A closure or surrender of the license. See WAC 208-620-499)).~~
(2) ~~((Post notification))~~ **NMLS update within ten days.** You must amend your NMLS record within ten days after an occurrence of any of the following:
(a) A change in mailing address, telephone number, fax number, or email address;
(b) A change in the name and mailing address of your registered agent if you are located outside the state;
(c) A closure of surrender of your license. See WAC 208-620-499;
(d) Termination of sponsorship of a loan originator;
(e) A change in primary company contact or primary consumer complaint contact; or
(f) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response.
(3) **Written notice to the department within ten days.** You must notify the department in writing within ten days after an occurrence of any of the following:
(a) A cancellation or expiration of your Washington state business license;
~~((e))~~ (b) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;
~~((d))~~ (c) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;
~~((e))~~ (d) Receipt of notification of cancellation of your surety bond;
~~((f) Termination of sponsorship of loan originator;~~
~~(g))~~ (e) Receipt of notification of a claim against your bond;
~~((h) A change in primary company contact, primary consumer complaint contact, location of your books and records;~~
~~(i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response; or~~
~~(j))~~ (f) For student education loan servicers servicing for the federal government, the occurrence of any event that alters the condition of the business to the extent it would no longer qualify for a federal contract;
(g) Notification of termination from servicing student education loans for the federal government, if applicable;
(h) Notification from a GSE of a breach of contract, waiver, or nonperformance if the reason for the notification remains unresolved for more than ninety days;
(i) Notification from the federal government of a breach of contract, waiver, nonperformance if the reason for the notification remains unresolved for more than ninety days; or
(j) Your capital falling below the required government sponsored entity (GSE) minimum capital requirements, if applicable.
~~((3) Post notification))~~ (4) **NMLS update within twenty days.** You must amend your NMLS record within twenty days after the occurrence of any of the following developments:
(a) Receipt of notification of license revocation procedures against your license in any state;

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

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

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

~~(e) Notification of termination from the GSE, if applicable.~~

~~(4) Other.~~

~~(a) You must amend your NMLS record after receiving notification from the GSE of a breach of contract, waiver, or nonperformance if the reason for the notification remains unresolved for more than ninety days.~~

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

~~((e))~~ (e) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-620-573.

(5) Student education loan servicers. In addition to keeping records in compliance with the act, servicers of student education loans must also collect, maintain, and report to the department specific information about the student education loans in their portfolio. Such information includes, but is not limited to, and as applicable: Loan volume; default, refinance, and modification information; loan type (subsidized or unsubsidized, Stafford or Direct, PLUS, etc.) information; and collection practices.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

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, regulations and programs that apply to lending or brokering loans, ~~((e))~~ servicing residential mortgage loans, including applicable reverse mortgage, or servicing student education loans including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the S.A.F.E. Act, the Federal Trade Commission Telemarketing Sales Rule, and the Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014.

WAC 208-620-510 What are my disclosure obligations to consumers?

Some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and HELOCS. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

(1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

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

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

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

(ii) The date of the rate lock and expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) Any other terms and conditions of the rate lock agreement; and

(v) The date the rate lock agreement was provided to the borrower.

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

(d) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(e) You may rely on a broker's rate lock agreement if it complies with this subsection.

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

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

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

(c) A good faith estimate or loan estimate that conforms with RESPA, Regulation X, 12 C.F.R. Part 1024 and TILA, Regulation Z, 12 C.F.R. Part 1016;

(d) A rate lock disclosure containing the following:

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

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

(B) The date of the rate lock and the expiration date of the rate lock;

(C) The rate of interest locked;

(D) The date the rate lock was provided to the borrower; and

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

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

(e) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

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

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

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

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

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

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

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

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

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

(7) **Student education loans.** In addition to the applicable disclosures required for all consumer loans made by a licensee, for all consumer loans made by a licensee that are a refinance of a federal student education loan, the licensee must provide to the borrower a clear and conspicuous disclosure that some repayment and forgiveness options available under federal student education loan programs, including without limitation, income-driven repayment plans, economic hardship deferments, or public service loan forgiveness, will no longer be available to the borrower if he or she chooses to refinance federal student education loans with one or more consumer loans.

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

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-515 What authority do I have after my license has been issued? Once your license has been issued you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as authorized in RCW 31.04.115 provided that:

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

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

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

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

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

(6) Service student education loans.

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

WAC 208-620-520 What are the records I must maintain and for how long must I maintain them? Unless otherwise indicated in this section, and as applicable, you must maintain the following records for a minimum of three years after making the final entry, or the period of time required by federal law, whichever is longer:

(1) **General records.** Each licensee must maintain electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to making loans or servicing residential mortgage loans.

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any electronic advertising distributed by facsimile computer, or other electronic or wireless network.

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

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information, if applicable;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement, if applicable;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document, if applicable;

(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 or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures under RESPA;

(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 (for example, the final HUD-1, HUD-1A or federal closing disclosure);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

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

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

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

(4) Loan servicing documents.

(a) You must maintain servicing agreements as part of your records.

(b) You must maintain all notices from GSEs, if applicable.

(c) You must maintain recorded telephone conversations with consumers for three years after the date of the call or longer if required by another law.

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

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

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

(1) Failure to provide the exact pay-off amount as of a certain date within seven business days after being requested in writing to do so by a borrower of record or their authorized representative. Student education loan servicers must comply with this subsection or an applicable federal program requirement;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Collecting more than forty-five days of prepaid interest at the time of loan closing;

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

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

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

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

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

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

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

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

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

(13) Failing to reconvey title to collateral, if any, within sixty business days when the loan is paid in full;

(14) ~~((Intentionally))~~ Failing to timely and completely comply with any directive, subpoena, or order issued by the department;

(15) Negligently delaying the closing of a residential mortgage loan ((for the sole purpose of increasing)) which results in increased interest, costs, fees, or charges payable by the borrower;

~~((15))~~ (16) Negligently delaying the refinance or modification of a student education loan which results in increased interest, costs, fees, or other charges payable by the borrower or which results in the proposed refinancing or modification becoming unavailable, or both;

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

~~((16))~~ (18) Failing to indicate on all residential mortgage loan applications, initial and revised, the company's unique identifier, the loan originator's unique identifier, and the date the application was taken or revised;

~~((17))~~ (19) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

~~((18))~~ (20) Receiving compensation for making the loan and for brokering the loan in the same transaction;

~~((19))~~ (21) Charging a fee in a residential mortgage loan transaction that is more than the fees allowed by the state or federal agency overseeing the specific type of loan transaction. Examples include, but are not limited to, loans insured or guaranteed by the Veterans Administration, Home Equity Conversion Mortgages insured by HUD, and loans offered through the United States Department of Agriculture Rural Development;

~~((20))~~ (22) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An ex-

ample is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted;

((21)) (23) Servicing a usurious loan.

NEW SECTION

WAC 208-620-569 What fees can I charge the student education loan borrower when servicing student education loans? (1) You may charge servicing fees authorized by the loan documents, by the act, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient fund fees as authorized by the loan documents or as allowed under WAC 208-620-560(2), and wire transfer fees for wire transfers requested by the borrower.

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

(3) You may not charge a consumer for fees you paid to third parties in excess of the fee you paid to the third party.

(4) Fees which are not timely charged to a borrower's account pursuant to RCW 31.04.405 must be waived, or if already collected, must be returned to the borrower within fifteen calendar days.

STUDENT EDUCATION LOAN SERVICING REQUIREMENTS

NEW SECTION

WAC 208-620-950 Servicing student education loans—General requirements. (1) Other applicable laws, regulations, and programs. A violation of an applicable state or federal law, regulation, or program is a violation of this act. In addition to complying with all other provisions of this act and rules, you must comply with the following: All applicable federal program requirements.

(2) Communications. If the student education loan borrower did not provide authorization for electronic communications during the origination process, you must provide the borrower with a specific, separate document seeking the borrower's authorization to receive all communications electronically. If the borrower responds affirmatively (agreeing), you must retain the borrower's agreement to receive electronic communications.

(3) Payment processing and fees.

(a) You must assess any incurred fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than

thirty days after assessing the fee. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. You may also provide the information via email if the borrower has assented to receive electronic communications.

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

(c) You must notify the borrower if a payment is received but not credited, or treated as credited. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the student education loan current. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. You may also provide the information via email if the borrower has assented to receive electronic communications.

(4) You must provide, free of charge on your web site, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers, as well as the availability of a student loan advocate to provide assistance. The requirement to provide information on the availability of a student loan advocate may be satisfied by language referring the student education loan borrower to their state's relevant authority. This information or these links shall be prominently placed and provided via written correspondence or email with the borrower at least once per calendar year. Alternatively, you may provide a toll-free telephone number where a student education loan borrower may speak to a single point of contact about loan repayment and loan forgiveness options.

NEW SECTION

WAC 208-620-960 Servicing student education loans—Requests for information. (1) You must make a reasonable attempt to comply with a borrower's request for information about the student education loan account and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

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

(b) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error,

and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(2) You must provide, at a minimum, the following information to a borrower's request described in this section:

(a) Whether the account is current or, if the account is not current, an explanation of why the account is not current and the date the account became past due;

(b) The current balance due on the student education loan, including the principal due, the amount of funds, if any, held in a suspense account, if any, and whether there are any shortages known to the servicer;

(c) The identity, address, and other relevant information about the current holder, owner, or assignee of the student education loan; and

(d) The telephone number and mailing address of the servicer's business unit where the borrower will reach an individual with the information and authority to answer questions and resolve disputes.

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

(4) If the borrower applies for or attempts to certify progress toward a discharge or refund of amounts paid on their federal student education loans with the United States Department of Education, you must provide explanations to the borrower on any decision made with respect to their application.

(5) In addition to the statement described in subsection (2) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower to the servicer at the address the servicer has provided to the borrower for such requests for information. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

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

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

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

(d) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free state-

ment annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

NEW SECTION

WAC 208-620-970 Servicing student education loans—Acquiring, transferring, or selling servicing activities. If you are acquiring, transferring, or selling servicing activities of federal student education loans in compliance with the department of education contractual requirements, you are not subject to the following requirements of this section.

(1) When acquiring servicing rights from another servicer you must:

(a) Notify the student education loan borrowers in writing no more than sixty days and no less than forty-five days before the effective date of the transfer of the students' loans to provide them with:

(i) The effective date of the transfer of servicing, and the date at which you will begin to accept payments relating to the loan, if different;

(ii) The name, mailing address, and toll-free telephone number for your designated points of contact, as well as the designated points of contact for the transferring servicer, at which the borrower can obtain answers to inquiries;

(iii) A statement that the transfer of servicing does not affect any term or condition of the student education loan other than the entity servicing the loan;

(iv) Information about how to obtain a payment history from you or the transferring servicer, including a count of payments that qualify toward any forgiveness options, as applicable;

(v) A notification indicating whether an alternative repayment plan or loan consolidation application is pending, if available; and

(vi) Information about how to appropriately direct and submit a complaint to the United States Department of Education, the student loan advocate, student loan ombuds, and other relevant federal or state agencies that collect borrower complaints, in the event of a servicing error. This requirement may be satisfied by language referring the student education loan borrower to their state's relevant authority.

(b) Continue processing student education loan modification requests, including applications for income-driven repayment, loan forgiveness, or loan consolidation received by you or the transferring servicer during the transfer process, if applicable; and

(c) Retain records necessary to maintain the borrower's uninterrupted enrollment in their existing repayment plan.

(2) When transferring or selling the servicing of loans you must:

(a) Notify the student education loan borrowers in writing no more than sixty days and no less than forty-five days before the effective date of the transfer of the students' loans to provide them with:

(i) If available, the effective date of the transfer of servicing, and the date at which you will no longer accept payments relating to the loan, if different;

(ii) The name, mailing address, and toll-free telephone number for your designated points of contact, as well as the designated points of contact for the receiving servicer, at which the borrower can obtain answers to inquiries; and

(iii) A statement that the transfer of servicing does not affect any term or condition of the student education loan other than the entity servicing the loan; and

(b) Inform the receiving servicer if a student education loan modification request is pending, if applicable.