



RULE-MAKING ORDER PERMANENT RULE ONLY

**CR-103P (December 2017)
(Implements RCW 34.05.360)**

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STATE OF WASHINGTON
FILED

DATE: July 24, 2018

TIME: 10:09 AM

WSR 18-16-024

Agency: Department of Financial Institutions, Division of Consumer Services

Effective date of rule:

Permanent Rules

- ☐ 31 days after filing.
☒ Other (specify) 9/1/2018 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- ☐ Yes ☒ No If Yes, explain:

Purpose: The rules must be amended to clarify the roles of parties investing in, owning, and servicing residential mortgage loans. The rules will provide additional detail to industry to help them comply with the law. Technical changes are also being made.

Citation of rules affected by this order:

New: WAC 208-620-441, -553, -585, -905, -920, -930, -935
Repealed: none
Amended: WAC 208-620-010, -011, -104, -231, -251, -260, -440, -490, -499, -520, -530, -550, -551, -567, -900
Suspended: none

Statutory authority for adoption: RCW 43.320.040, RCW 31.04.165.

Proposed in compliance with OFM Guidance 3.a. dated October 12, 2011

Other authority: none

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-11-104 on 5/21/18 (date).

Describe any changes other than editing from proposed to adopted version:

1. WAC 208-620-440. This section was reorganized by type of activity conducted under the Act and as set forth in section -441 immediately below.
2. WAC 208-620-441. This new section contains the residential mortgage loan servicing language as moved from -440. It includes the millage amount for servicing and divides the assessment activities assessed for reverse mortgages under origination and servicing, as applicable.
3. WAC 208-620-490(2)(k). The requirement to notify the department of termination from the GSE within ten days was moved to WAC 208-620-490(3)(e) to extend the time frame to twenty days. In addition, the other portion relating to notification of breach of contract, waiver, or nonperformance from GSE was moved to WAC 208-620-490(4)(a) to only require notice if the issue remains unresolved for more than ninety days.
4. WAC 208-620-520(5). The requirement for a compliance management system was moved to new section -585.
5. WAC 208-620-585. Section -940 was relocated to this section.
6. WAC 208-620-920. The requirement to respond to the borrower within fifteen business days was extended to thirty business days.
7. WAC 208-620-940. The section was moved to -585.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted on the agency's own initiative:

New	<u>7</u>	Amended	<u>16</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	<u>7</u>	Amended	<u>16</u>	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Date Adopted: 7/24/2018

Name: Charles Clark

Title: Director, Division of Consumer Services

Signature:



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.

"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." ((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.))~~
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 com-

munication 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.

"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 16-08-026, filed 3/30/16, effective 4/30/16)

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 or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

(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) **"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) **"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) **"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;

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

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

~~((d))~~ (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) "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.

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

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).

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

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

(2) Persons servicing loans purchased post closing.

(3) Persons servicing loans owned by other persons.

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

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

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

WAC 208-620-251 Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or

Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310. The main office (headquarters), wherever located, must be licensed.

(2) **Keeping records out-of-state.** ~~((The director may approve the maintenance of a licensee's records at an out of state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590.))~~ You must keep your books and records location information updated in the NMLS and provide the director with access to the books and records.

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

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

WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington? Yes. You may broker residential mortgage loans under the Consumer Loan Act. Brokered loans are subject to the annual assessment. See WAC ~~((208-620-440))~~ 208-620-441.

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

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

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

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

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

(b) The total principal loan amount of all Washington loans you made~~((, brokered, or purchased))~~ during the assessment year.

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

- ~~(a) The dollar amount of advances made; and
(b) The dollar amount of accrued interest.))~~

NEW SECTION

WAC 208-620-441 How do I calculate the annual assessment for my residential mortgage activity in Washington? (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** Master servicers must report their MSR volume but will not be assessed for residential mortgage loan servicing conducted by a subservicer licensed under this chapter pursuant to a servicing agreement. Each licensee will pay an amount based on the total annual volume of Washington residential mortgage loans serviced during the reporting year minus the adjusted total loan value of the loans in the year being assessed, multiplied by .00000746624. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any licensee will not exceed one hundred thousand dollars.

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

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

(b) The total principal loan amount of all Washington loans you made, brokered, or purchased during the assessment year.

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

(a)(i) The dollar amount of advances made at origination: You will be assessed pursuant to the formula in subsection (1)(a) of this section.

(ii) The dollar amount of advances made during servicing: You will be assessed at the millage identified in subsection (1)(b) of this section; and

(b) The dollar amount of accrued interest: You will be assessed at the millage identified in subsection (1)(b) of this section.

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

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) Ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your 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 cancellation or expiration of your Washington state business license;

(c) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator;

(g) Receipt of notification of a claim against your bond;

(h) A change in primary company contact ~~((or))~~, primary consumer complaint contact, location of your books and records; ~~((or))~~

(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) Your capital falling below the required government sponsored entity (GSE) minimum capital requirements, if applicable.

(3) **Post notification 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; or

(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.

~~((+5+))~~ (c) 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.

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

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

(1) Submit a surrender request through the NMLS within ten days of closing the company or surrendering the license; and

(2) File the final closure form, annual reports, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

(3) If your license has expired or you are otherwise locked out of the NMLS database, you must provide the documents described in subsection (2) of this section directly to the department.

(4) If you are a residential mortgage loan servicer, you must provide the department with a description of the disposition of your servicing volume, including the name of the purchaser and the specific notice to consumers about the sale of their servicing.

Any Washington loans in your portfolio and activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

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

WAC 208-620-520 ~~((How long must I maintain my records under the Consumer Loan Act?))~~ What are the records I must maintain and for how long must I maintain them? ~~((What are the records I must maintain? Licensees must maintain the following records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.))~~ Unless otherwise indicated in this section, 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;

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

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

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate 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 (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; and

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

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

(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((7)) or proper destruction of the records.

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

WAC 208-620-530 Can I maintain my records electronically? Yes.

(1) You may maintain records electronically if you also maintain the electronic display equipment and make it available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) You must provide records in hard copy upon request of the director.

(4) If you use a cloud service for records maintenance, the servers underlying that service must be located in the United States or its territories.

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

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;

(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 document that is signed by the borrower or providing the borrower with 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 ~~((thirty))~~ sixty business days when the loan is paid in full ~~((unless conditions exist that make compliance unreasonable))~~;

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

(15) Steering a borrower to 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) 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) 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) Receiving compensation for making the loan and for brokering the loan in the same transaction((-));

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

(20) 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 example 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) Servicing a usurious loan.

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

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

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

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

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

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

(e) Cease communication with the lender or investor.

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

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

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

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

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

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

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

(c) Purchasing force placed insurance at a price that is not commercially reasonable. You must terminate force placed insurance within thirty days of receiving evidence from the homeowner of the existence of coverage. You must refund to the homeowner all premiums for force placed insurance collected during any period of time for which the homeowner's private insurance was in place.

(3) You are additionally prohibited from:

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

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

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

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

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

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

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

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

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

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

(9) You are prohibited from knowingly or recklessly improperly onboarding a residential mortgage loan into your loan servicing system.

NEW SECTION

WAC 208-620-553 Conducting residential mortgage loan servicing activities in the United States or outside the United States. (1) You are prohibited from conducting the following activities from any location outside the United States or its territories:

- (a) Receiving payments and maintaining the payment records;
- (b) Collection activities;
- (c) Any communications with consumers; or
- (d) Receipt of data from or disbursement of data to borrowers.

(2) The following activities may be conducted from a location outside the United States or its territories:

- (a) Data entry;
- (b) Document review;
- (c) Recommendation for action;
- (d) Records searches;
- (e) Credit dispute analysis; or
- (f) Escrow account analysis.

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

WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act? (1) You may charge servicing fees authorized by the loan documents, by the act, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by 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 ((charged by)) you paid to the third party.

NEW SECTION

WAC 208-620-585 Compliance management system (CMS). Your CMS must contain, at a minimum, the following functionalities:

- (1) Board and management oversight; and
- (2) Compliance program, which includes:
 - (a) Policies and procedures;
 - (b) Training;
 - (c) Monitoring and/or audit; and
 - (d) Consumer complaint response.

For the details of each component, see the *Supervision and Examination Manual* from the Consumer Financial Protection Bureau (CFPB) at the following link: <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/>. The CMS-specific procedures can be used by an entity to self-assess the effectiveness of its CMS.

Your CMS must be maintained as part of your books and records.

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

WAC 208-620-825 What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages? (1) A description of all proprietary reverse mortgage products available to borrowers.

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

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

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

(a) All costs and charges to the consumer;

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

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

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

(e) Each of the assumed annual appreciation rates for the dwelling:

(i) Zero percent;

(ii) Four percent;

(iii) Eight percent((+)).

(f) Each of the following assumed loan periods:

(i) Two years;

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

(g) Reserved.

(5) Your complaint processing policies and procedures.

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

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

(8) A copy of your underwriting policies.

(9) A description of your title search methods.

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

(11) A copy of your appraisal practices.

(12) A copy of audited financial statements and unaudited balance sheet and income statement for the most recent end quarter for the last two years of audited financial statements. If you are relying on your parent company's capital to satisfy WAC 208-620-810(2), you must also include the parent company's last two years of audited financial

statements and the most recent end quarter unaudited balance sheet and income statement.

(13) Copies of your residential mortgage loan servicing policies and procedures.

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

WAC 208-620-900 ~~((What requirements must I comply with when))~~
Servicing residential mortgage loans((?))—General requirement. ~~((In addition to complying with all other provisions of this act you must:))~~ (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, you must comply with the following:

(a) Chapter 61.24 RCW and any other applicable state or federal law, regulation, and program.

(b) ~~((Comply with))~~ The federal Servicemembers Civil Relief Act.

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

(2) Servicing and ownership transfers or sales.

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

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

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

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

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

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

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

(3) Payment processing and fees.

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

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

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

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

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

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

~~(4) Maintenance of the escrow account.~~

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

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

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

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

~~(5) Borrower requests for information.~~

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

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

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

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

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

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

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

~~(iv) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes.~~

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

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

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

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

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

~~(iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request~~

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

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

(6) Loss mitigation.

(a) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

(i) Explain loss mitigation options and requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(ix) Perform an expedited review of any complete loan modification application submitted between thirty seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.~~

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

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

~~(A) An ineligible mortgage;~~

~~(B) An ineligible property;~~

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

~~(D) The loan was previously modified.~~

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

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

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

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

~~(e) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.~~

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

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

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

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

~~(7) Foreclosure.~~

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

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

~~(8)) (4) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as part of your books and records and must provide them to the department when directed to do so.~~

~~((9)) (5) See also WAC 208-620-551.~~

NEW SECTION

WAC 208-620-905 Servicing residential mortgage loans—Maintenance of the escrow account. (1)(a) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(b) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower.

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

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

NEW SECTION

WAC 208-620-920 Servicing residential mortgage loans—Borrower requests for information. (1) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

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

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

(2) You must provide at a minimum the following information:

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

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

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

(d) The telephone number and mailing address of an individual servicer representative 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 content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with subsection (3) of this section.

(5) In addition to the statement described in subsection (1)(b) 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. 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 re-

ceived from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(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 residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

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

NEW SECTION

WAC 208-620-930 Servicing residential mortgage loans—Loss mitigation. (1) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

- (a) Explain loss mitigation options and requirements;
- (b) Track documents submitted by the homeowner and documents provided to the homeowner;
- (c) Inform the homeowner of the status of their loss mitigation process;
- (d) Ensure the homeowner is considered for all loss mitigation options; and
- (e) Access individuals with the authority to delay or stop foreclosure proceedings.

(2) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. For any modification program, you must:

- (a) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days.
- (b) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.
- (c) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor

and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See subsection (3) of this section for additional requirements on borrower appeals.

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

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

(f) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (h) and (i) of this subsection.

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

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

(i) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

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

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

(i) An ineligible mortgage;

(ii) An ineligible property;

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

(iv) The loan was previously modified.

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

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

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

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

(5) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must

contain the name and contact information of specialist who is the borrower's primary or contact with the company.

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

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

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

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

NEW SECTION

WAC 208-620-935 Servicing residential mortgage loans—Foreclosure. (1) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

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