

WSR 19-17-004
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed August 8, 2019, 2:45 p.m.]

Angus W. Brodie
Deputy Supervisor
State Uplands

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-055.

Title of Rule and Other Identifying Information: WAC 332-120-080 Memorandum of understanding for bituminous surface treatment process, this new section under the survey monuments rules addresses land survey monument preservation in conjunction with county chip seal projects.

Hearing Location(s): On October 7, 2019, at 1:30 p.m., at the Department of Natural Resources (DNR) Tumwater Compound, 801 88th Avenue S.E., Main Conference Room, Tumwater, WA 98501-7019.

Date of Intended Adoption: November 1, 2019.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Mailstop 47030, Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1778, office 360-902-1181, by October 18, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To create a process for county engineers to enter into a memorandum of understanding (MOU) providing monument preservation during chip seal projects. This will allow for a reasonable way to be in compliance with RCW 58.24.040(8).

Reasons Supporting Proposal: Chip seal projects temporarily cover survey monuments but do not physically remove them. The chip seal has limited impact on access and ability to occupy those monumented positions. The MOU process will provide a cost savings to the county and DNR, and will greatly reduce paperwork.

Statutory Authority for Adoption: RCW 58.24.040(8).

Statute Being Implemented: RCW 58.24.040(8).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1181; Implementation and Enforcement: Bob Ray Knuth, PLS, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1190.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There is little added expense to comply with the proposed WAC amendment. The reports and other submittals are already required by the county road administration board.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

August 7, 2019

NEW SECTION

WAC 332-120-080 Memorandum of understanding for bituminous surface treatment process. The purpose of a memorandum of understanding (MOU) is to cooperatively promote a reasonable method of survey monument preservation throughout the bituminous surface treatment process, hereinafter referred to as chip seal, in lieu of an application for permit to remove or destroy a survey monument, per WAC 332-120-030.

A state, county, or city agency, which desires to conduct a chip seal that will temporarily cover survey monuments in the roadway, may enter into an MOU in lieu of a permit. The MOU must detail the conditions and methods and require the uncovering of the survey monuments within fourteen days after completion of the chip seal project. The agency must annually provide the department with a list of proposed chip seal overlays prior to commencing work. A report must be submitted within forty-five days after completion of work.

An agency not entering into an MOU for bituminous surface treatment projects is required to submit a permit application per WAC 332-120-030.

WSR 19-17-012
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 9, 2019, 1:32 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-220-320 from WSR 19-14-126 filed on July 3, 2019.

Jacalyn M. Hursey
Rules Coordinator

WSR 19-17-013
WITHDRAWAL OF PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

(By the Code Reviser's Office)

[Filed August 9, 2019, 2:45 p.m.]

WAC 390-16-013A, proposed by the public disclosure commission in WSR 19-02-070, appearing in issue 19-02 of the Washington State Register, which was distributed on January 16, 2019, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 19-17-014
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 (By the Code Reviser's Office)
 [Filed August 9, 2019, 2:48 p.m.]

WAC 220-353-080, proposed by the department of fish and wildlife in WSR 19-03-169, appearing in issue 19-03 of the Washington State Register, which was distributed on February 6, 2019, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 19-17-037
PROPOSED RULES
HEALTH CARE AUTHORITY
 [Filed August 15, 2019, 7:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-035.

Title of Rule and Other Identifying Information: WAC 182-535-1050 Dental-related services—Definitions, 182-535-1060 Dental-related services—Client eligibility, 182-535-1245 Access to baby and child dentistry (ABCD) program, 182-535A-0010 Orthodontic services—Definitions, and 182-535A-0020 Orthodontic treatment and orthodontic services—Client eligibility.

Hearing Location(s): On September 24, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 25, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 24, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by September 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is striking all references to dental managed care from these sections. Eligible clients will continue to receive their dental services through fee-for-service.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1109, sections 211 (1)(c) and 1111 (1)(c),

chapter 415, Laws of 2019, 66th legislature, 2019 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Pixie Needham, P.O. Box 45506, Olympia, WA 98504-2716 [98504-5502], 360-725-9967.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any additional costs or requirements on providers.

August 15, 2019
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1050 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. The medicaid agency also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

"**Access to baby and child dentistry (ABCD)**" is a program to increase access to dental services for medicaid eligible infants, toddlers, and preschoolers through age five. See WAC 182-535-1245 for specific information.

"**Alternate living facility**" is defined in WAC 182-513-1100.

"**American Dental Association (ADA)**" is a national organization for dental professionals and dental societies.

"**Anterior**" refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

"**Asynchronous**" means two or more events not happening at the same time.

"**Behavior management**" means using one additional professional staff, who is employed by the dental provider or clinic and who is not delivering dental treatment to the client,

to manage the client's behavior to facilitate dental treatment delivery.

"By-report" means a method of reimbursement in which the department determines the amount it will pay for a service when the rate for that service is not included in the agency's published fee schedules. Upon request the provider must submit a "report" that describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Caries" means carious lesions or tooth decay through the enamel or decay on the root surface.

- **"Incipient caries"** means the beginning stages of caries or decay, or subsurface demineralization.

- **"Rampant caries"** means a sudden onset of wide-spread caries that affects most of the teeth and penetrates quickly to the dental pulp.

"Comprehensive oral evaluation" means a thorough evaluation and documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

"Conscious sedation" means a drug-induced depression of consciousness during which a client responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

"Core buildup" means the building up of clinical crowns, including pins.

"Coronal" means the portion of a tooth that is covered by enamel.

"Crown" means a restoration covering or replacing the whole clinical crown of a tooth.

"Current dental terminology (CDT)" means a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

"Current procedural terminology (CPT)" means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Decay" means a term for caries or carious lesions and means decomposition of tooth structure.

"Deep sedation" means a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"Dental general anesthesia" see **"general anesthesia."**

"Dentures" means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"Denturist" means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

"Distant site (location of dental provider)" means the physical location of the dentist or authorized dental provider providing the dental service to a client through teledentistry.

"Edentulous" means lacking teeth.

"Endodontic" means the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

"EPSDT" means the agency's early and periodic screening, diagnostic, and treatment program for clients age twenty and younger as described in chapter 182-534 WAC.

"Extraction" see **"simple extraction"** and **"surgical extraction."**

"Flowable composite" means a diluted low-viscosity-filled resin-based composite dental restorative material that is used in cervical restorations and small, low stress bearing occlusal restorations.

"Fluoride varnish, rinse, foam or gel" means a substance containing dental fluoride which is applied to teeth, not including silver diamine fluoride.

"General anesthesia" means a drug-induced loss of consciousness during which a client is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Interim therapeutic restoration (ITR)" means the placement of an adhesive restorative material following caries debridement by hand or other method for the management of early childhood caries. It is not considered a definitive restoration.

"Limited oral evaluation" means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

"Limited visual oral assessment" means an assessment by a dentist or dental hygienist provided in a setting other than a dental office or dental clinic to identify signs of disease and the potential need for referral for diagnosis.

"Medically necessary" see WAC 182-500-0070.

"Oral evaluation" see **"comprehensive oral evaluation."**

"Oral hygiene instruction" means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

"Originating site (location of client)" means the physical location of the medicaid client as it relates to teledentistry.

"Partials" or **"partial dentures"** mean a removable prosthetic appliance that replaces missing teeth on either arch.

"Periodic oral evaluation" means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation.

"Periodontal maintenance" means a procedure performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival micro-

organisms, calculus, and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Periodontal scaling and root planing" means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Posterior" means the teeth (maxillary and mandibular premolars and molars) and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A, B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

~~("Prepaid ambulatory health plan (PAHP)" see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.)~~

"Prophylaxis" means the dental procedure of scaling and polishing which includes removal of calculus, plaque, and stains from teeth.

"Proximal" means the surface of the tooth near or next to the adjacent tooth.

"Radiograph (X-ray)" means an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

"Reline" means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

"Root canal" means the chamber within the root of the tooth that contains the pulp.

"Root canal therapy" means the treatment of the pulp and associated periradicular conditions.

"Root planing" means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation.

"Scaling" means a procedure to remove plaque, calculus, and stain deposits from tooth surfaces.

"Sealant" means a dental material applied to teeth to prevent dental caries.

"Simple extraction" means the extraction of an erupted or exposed tooth to include the removal of tooth structure, minor smoothing of socket bone, and closure, as necessary.

"Standard of care" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"Surgical extraction" means the extraction of an erupted or impacted tooth requiring removal of bone and/or sectioning of the tooth, and including elevation of mucoperiosteal flap if indicated. This includes related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone, and closure.

"Synchronous" means existing or occurring at the same time.

"Teledentistry" means the variety of technologies and tactics used to deliver HIPAA-compliant, interactive, real-

time audio and video telecommunications (including web-based applications) or store-and-forward technology to deliver covered services within the dental care provider's scope of practice to a client at a site other than the site where the provider is located.

"Temporomandibular joint dysfunction (TMJ/TMD)" means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

"Therapeutic pulpotomy" means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary" means the fee that the provider usually charges nonmedicaid customers for the same service or item. This is the maximum amount that the provider may bill the agency.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1060 Client eligibility. (1) Refer to WAC 182-501-0060 to see which apple health programs include dental-related services in their benefit package.

~~(2) ((Clients whose benefit package includes dental services are assigned a dental managed care plan. If a client is not eligible for a dental managed care plan, they receive services on a fee-for-service basis.~~

~~(3) Clients enrolled in an agency contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their dental services through that MCO or PAHP, except as described under WAC 182-538-095.~~

~~(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.~~

~~(b) Clients eligible for dental managed care on a voluntary basis include:~~

- ~~(i) American Indian/Alaska native (AI/AN) clients; and
(ii) Clients who reside in a county that has only one MCO or PAHP.~~

~~(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.~~

~~(4)) Managed care clients are eligible under apple health fee-for-service for covered dental-related services not covered by their managed care organization (MCO), subject to the provisions of this chapter and other applicable agency rules.~~

~~(3) See WAC 182-507-0115 for rules for clients eligible under the alien emergency medical program.~~

~~((5)) (4) Exception to rule procedures as described in WAC 182-501-0160 are not available for services that are excluded from a client's benefit package.~~

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

(i) Categorically needy program (CNP);

(ii) Limited casualty program-medically needy program (LCP-MNP);

(iii) Children's health program; ((~~☞~~))

(iv) State children's health insurance program (SCHIP);

or

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

(a) Oral health education;

(b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and

(c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) Only ABCD-certified dentists and other agency-approved certified providers are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) Is limited to one visit per day per family, up to two visits per child in a twelve-month period, per provider or clinic; and

(ii) Must include documentation of all of the following in the client's record:

(A) "Lift the lip" training;

(B) Oral hygiene training;

(C) Risk assessment for early childhood caries;

(D) Dietary counseling;

(E) Discussion of fluoride supplements; and

(F) Documentation in the client's record to record the activities provided and duration of the oral education visit.

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.

(g) Therapeutic pulpotomy;

(h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

(i) Resin-based composite crowns on anterior primary teeth; and

(j) Other dental-related services, as specified in the agency's current published documents.

(4) The client's record must show documentation of the ABCD program services provided.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535A-0010 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

"Adolescent dentition" means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

"Appliance placement" means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

"Cleft" means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

(a) Cleft lip;

(b) Cleft palate (involving the roof of the mouth); or

(c) Facial clefts (e.g., macrostomia).

"Comprehensive full orthodontic treatment" means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

"Craniofacial anomalies" means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

"Craniofacial team" means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

"Crossbite" means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

"Dental dysplasia" means an abnormality in the development of the teeth.

"Ectopic eruption" means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

"EPSDT" means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty

years of age and younger as described in chapter 182-534 WAC.

"Hemifacial microsomia" means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

"Interceptive orthodontic treatment" means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.

"Limited orthodontic treatment" means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

"Malocclusion" means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

"Maxillofacial" means relating to the jaws and face.

"Occlusion" means the relation of the upper and lower teeth when in functional contact during jaw movement.

"Orthodontics" means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

"Orthodontist" means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

"Permanent dentition" means those teeth that succeed the primary teeth and the additional molars that erupt.

~~("Prepaid ambulatory health plan" or "PAHP" see WAC 182-538-050. For the purpose of this chapter, dental managed care contractors are considered PAHPs.)~~

"Primary dentition" means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

"Transitional dentition" means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535A-0020 Client eligibility. (1) Subject to the limitations of this chapter, the medicaid agency covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate, for eligible clients through age twenty. Refer to WAC 182-501-0060 to see which Washington apple health programs include orthodontic services in their benefit package.

(2) ~~((Clients enrolled in an agency contracted managed care organization (MCO) or prepaid ambulatory health plan (PAHP) must receive their orthodontic services through that~~

~~MCO or PAHP, except as described under WAC 182-538-095. Clients whose benefit package includes dental services are assigned a dental managed care plan. If a client is not eligible for a dental managed care plan, they receive services on a fee-for-service basis.~~

~~(a) All clients are eligible for dental managed care benefits with the exception of clients receiving apple health benefits under a state-only program.~~

~~(b) Clients eligible for dental managed care on a voluntary basis include:~~

~~(i) American Indian/Alaska native (AI/AN) clients; and
(ii) Clients who reside in a county that has only one MCO or PAHP.~~

~~(c) See WAC 182-538-060 for more details regarding managed care choice and assignment.~~

~~(d) If a client receiving orthodontic services through an MCO or PAHP chooses to transfer to another MCO or PAHP or to fee-for-service (FFS) during active orthodontic treatment, the MCO or PAHP that initiated the orthodontic treatment remains responsible for payment until completion of the orthodontic treatment.~~

~~(e) If an FFS client transfers to an MCO or PAHP during active orthodontic treatment, the MCO or PAHP assumes payment responsibility until completion of the orthodontic treatment.~~

~~(3))~~ Eligible clients may receive the same orthodontic treatment and orthodontic-related services in recognized out-of-state bordering cities on the same basis as if provided in-state. See WAC 182-501-0175.

~~((4))~~ (3) Eligible clients may receive the same orthodontic treatment and orthodontic-related services for continued orthodontic treatment when originally rendered by a non-medicaid or out-of-state provider as follows:

(a) The provider must submit the initial orthodontic case study and treatment plan records with the request for continued treatment.

(b) The agency evaluates the initial orthodontic case study and treatment plan to determine if the client met the agency's orthodontic criteria per WAC 182-535A-0040 (1) through (3).

(c) The agency determines continued treatment duration based on the client's current orthodontic conditions.

(d) The agency does not cover continued treatment if the client's initial condition did not meet the agency's criteria for the initial orthodontic treatment. The agency pays a deband and retainer fee if the client does not meet the initial orthodontic treatment criteria.

WSR 19-17-050
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 16, 2019, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-098.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)?

Hearing Location(s): On September 24, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than September 25, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 24, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these changes to increase the payment standard for the PWA program based on the 2019-21 operating budget. An emergency rule-making order reflecting this grant increase was filed as WSR 19-14-055 with an effective date of July 1, 2019, while the department proceeds with permanent adoption of the amendments.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nicholas Swiatkowski, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4638.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

August 13, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)? (1) The payment standards for PWA cash assistance units with obligations to pay shelter costs are:

| Assistance Unit Size | Payment Standard |
|----------------------|----------------------|
| 1 | \$((497)) <u>363</u> |

(2) The payment standards for PWA cash assistance units with shelter provided at no cost are:

| Assistance Unit Size | Payment Standard |
|----------------------|----------------------|
| 1 | \$((420)) <u>221</u> |

WSR 19-17-052
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed August 16, 2019, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-015.

Title of Rule and Other Identifying Information: Standards for child care/early learning programs: WAC 110-300-0005 Definitions, 110-300-0016 Inactive status—Voluntary and temporary closure, 110-300-0020 Unlicensed programs, 110-300-0030 Nondiscrimination, 110-300-0100 General staff qualifications, 110-300-0107 In-service training, 110-300-0115 Staff records, 110-300-0120 Providing for personal, professional, and health needs of staff, 110-300-0205 Child, staff, and household member illness, 110-300-0335 Physical restraint, 110-300-0420 Prohibited substances, 110-300-0470 Emergency preparedness plan, 110-300-0475 Duty to protect children and report incidents, 110-305-2050 Child records—Contents, 110-305-2325 Notifiable conditions, 110-305-3250 Immunization tracking, and 110-305-3300 Immunizations—Exemption.

Hearing Location(s): On September 24, 2019, at 1:00 p.m., at 1110 Jefferson Street S.E., Baker Conference Room, Olympia, WA.

Date of Intended Adoption: September 27, 2019.

Submit Written Comments to: The Department of Children, Youth, and Families (DCYF) Rules Coordinator, P.O. Box 40975, Olympia, WA 98504, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by September 24, 2019.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by September 20, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Proposed WAC 110-300-0100 allows five years from the date of hire or promotion for a new child care center director, assistant

director, or program supervisor to complete an early childhood education state certificate or equivalent. The proposal also establishes the number of early childhood education core competencies college quarter credits these individuals must have completed at time of hire or promotion; (2) in proposed WAC 110-300-0005, the definition of "exempt" or "exemption" disallows a philosophical or personal objection to exempt a child enrolled in a day care center from the measles, mumps, and rubella vaccine and proposed WAC 110-305-2050, 110-305-3250, and 110-305-3300 also disallow a philosophical or personal objection; (3) proposed WAC 110-300-0115, 110-300-0120, and 110-305-2325, require child care center staff and volunteers to have received a measles, mumps, and rubella vaccine or show proof of immunity and require centers to keep these records for each staff member and volunteer; (4) in proposed WAC 110-300-0005, the definition of "disinfect" and "sanitize" align sanitization requirements with the state department of health's recommendations; (5) proposed WAC 110-300-0030 revises nondiscrimination requirements to ensure all classes protected under both the state and federal constitutions are identified; (6) in proposed WAC 110-300-005, the definition of "waiver" clarifies that waivers will be granted at DCYF's discretion; and (7) nonsubstantive amendments are proposed to improve readability.

Reasons Supporting Proposal: (1) DCYF is implementing Directive of the Governor 19-05, which directs that individuals employed or promoted to child care center director or assistant director be given five years from hire or promotion to complete professional development requirements. DCYF extends the accommodation to newly hired or promoted child care center program supervisors; (2) and (3) DCYF is implementing chapter 362, Laws of 2019, which is intended to promote immunity against vaccine preventable diseases by prohibiting child care centers from allowing on premises employees or volunteers who have not provided measles, mumps, and rubella immunization records or otherwise shown proof of immunity. Chapter 362 also disallows a philosophical or personal objection to exempt from the measles, mumps, and rubella vaccine children attending day care centers; (4) and (5) sanitization standards and nondiscrimination requirements are being amended at stakeholders' request; (6) the definition of waiver must be revised to align with WAC 110-300-0435, which regulates waivers from department rules and states that waivers are granted at the department's discretion.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065, and 43.216.250; chapter 43.216 RCW.

Statute Being Implemented: Chapter 362, Laws of 2019; RCW 43.216.250.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WAC 110-300-0100 is amended pursuant to Directive of the Governor 19-05 as it relates to child care center directors and assistant directors. DCYF voluntarily extends the accommodation described in Directive of the Governor 19-05 to child care center program supervisors.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Seattle, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies required to comply with RCW 34.05.328 (5)(a)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Chapter 362, Laws of 2019 (immunizations and immunization records), DCYF rules will conflict with RCW 28A.210.090 as revised by chapter 362 and potentially create confusion among the regulated community, thus potentially not minimizing children's exposure to measles as chapter 362 intended.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

For proposed WAC 110-300-0100 General staff qualifications:

SECTION 1:

Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule:

DCYF licenses center and family home child care providers. DCYF proposes this amendment to comply with Directive of the Governor 19-05, which directs DCYF to allow five years for newly hired and promoted child care center directors and assistant directors to complete the education required for their new positions. DCYF voluntarily extends the allowance to child care center program supervisors. These education requirements will equip the individuals who fill these child care center leadership positions with the necessary skills and knowledge to administer early learning programs that fully protect the health and safety of enrolled chil-

dren while delivering the best possible care. These goals are a critical part of DCYF's mission to develop children to their fullest potential and prepare the state's youngest learners for kindergarten.

SECTION 2:

Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are:

Table A:

| NAICS Code (4,5 or 6 digit) | NAICS Business Description | # of Businesses in WA | Minor Cost Threshold = 1% of Average Annual Payroll | Minor Cost Threshold = .3% of Average Annual Receipts |
|-----------------------------|----------------------------|-----------------------|---|---|
| 624410 | Child day care services | 2228* | \$1,548 | 937.9591562 |

* Based on data from the 2012 United States Census.

SECTION 3:

Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue:

Compliance with the proposed requirements detailed here is not likely to cause businesses to lose sales or revenue. Child care centers typically do not bear these costs; they are paid by the individuals who are employed by centers.

Proposed WAC 170-300-0100 [110-300-0100] identifies providers' age and education requirements. Education requirements are primarily early childhood education (ECE) certificates, or the equivalent. The state's community college system offers three stackable certificates that lead to an AA degree.

Probable costs for specific preservice education requirements for family home and center child care positions are:

| Position | Required Education | Probable Cost |
|--|--|---------------|
| Family Home Child Care | | |
| Licensee | ECE initial certificate | \$2,208 |
| Lead teacher (primary staff person) | ECE initial certificate | \$2,208 |
| Assistant teacher (secondary staff person) | high school diploma or GED certificate | \$120 (GED) |
| Center Child Care | | |
| Director | ECE state certificate | \$8,648 |
| Assistant director | ECE state certificate | \$8,648 |
| Program supervisor | ECE state certificate | \$8,648 |
| Lead teacher | ECE short certificate | \$3,680 |
| Assistant teacher | ECE initial certificate | \$2,208 |

Temporary increased administrative costs of \$15/hour may result if an early learning provider needs substitutes to replace employees who are released to complete coursework.

SECTION 4:

Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry:

Proposed WAC 170-300-0100 [110-300-0100] imposes a probable cost of \$2,208 on a family home provider who has not completed any coursework that will satisfy the education requirement. A family home provider may incur additional costs of a substitute while he or she completes the education requirement. The proposed rule may impose more-than-minor costs on centers who incur costs for substitutes if employees are released to complete coursework. This analysis assumes that center employees will be responsible for their individual education costs.

SECTION 5:

Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule:

Only small businesses are impacted.

SECTION 6:

If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why:

Reducing, modifying, or eliminating substantive regulatory requirements: DCYF is committed to collaborating with small business owners to develop equivalencies based on experience, licensing history, and coursework completed to satisfy the professional development requirements of proposed WAC 170-300-0100 [110-300-0100].

Simplifying, reducing, or eliminating recordkeeping and reporting requirements: DCYF provides an online system for tracking training and education requirements. This online system, MERIT, is used to register for DCYF-approved training that satisfies preservice and continuing training requirements. MERIT is also used to track college credits as they are earned. MERIT accounts are accessible by the individual, the individual's employer, and DCYF licensors. MERIT accounts follow individuals as they move from one industry employer to another and are also maintained for individuals who leave and return to the industry.

Reducing the frequently [frequency] of inspections: Not applicable.

Delaying compliance timetables: DCYF is supporting current providers by allowing five years from the initial rule's effective date of August 1, 2019, to complete the requirement and newly hired and promoted directors, assistant directors, and program supervisors in centers five years from the date of hire or promotion to complete the requirement.

Reducing or modifying fine schedules for noncompliance: Noncompliance does not result in fines.

Any other mitigation techniques suggested by small business[es] or their advocates: Providers who participate in early achievers, Washington's quality early learning rating system, are supported with free training, education scholarships, needs-based grants, quality improvement awards, and reimbursements for substitutes, all of which could be used to

offset the proposed WAC 170-300-0100 [110-300-0100] impact on their businesses.

SECTION 7:

Describe how small businesses were involved in the development of the proposed rule:

The initial rule was negotiated with representatives of family homes, centers, head start and early childhood education and assistance program providers, families, and DCYF licensing staff. Licensed providers were notified that DCYF is amending the rule in accordance with Directive of the Governor 19-05 and they were invited to comment on the draft.

A copy of the statement may be obtained by contacting Lori Anderson, P.O. Box 40975, Olympia, WA 98504-0975, phone 360-725-4670, email lori.anderson@dcyf.wa.gov.

August 16, 2019
Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-300-0005 Definitions. The following definitions apply to this chapter:

"Accessible to children" means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires an early learning provider to see and hear the children they are responsible for during higher risk activities. The provider must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act, as now and hereafter amended.

"Aide" is a person who offers support to the early learning program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

"Annual" means the calendar year, January 1st through December 31st.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Assistant director" is a person responsible for the overall management of the center early learning program including the facility and operations.

"Assistant teacher" is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Body of water" or **"bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children an early learning provider is authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Center early learning program" is a facility providing regularly scheduled care for a group of children birth through twelve years of age for periods of less than twenty-four hours a day, pursuant to RCW 43.216.010 (1)(a) (child day care center).

"Center early learning program licensee" or **"center licensee"** means an entity licensed and authorized by the department to operate a center early learning program.

"Certificate of exemption (COE)" means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(2), or an immunization form produced by the state immunization information system.

"Certificate of immunization status (child)" means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(1), or an immunization form produced by the state immunization information system.

"Certification" means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse" or **"neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than twenty-four hours a day.

"Child care basics" or **"CCB"** means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate" or **"CCA"** is a wood preservative and insecticide that contains roughly twenty-two percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the department of health's web site.

"Clean" or **"cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

"DCYF" or **"the department"** refers to the Washington state department of children, youth, and families.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder. (Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009).

"Developmentally appropriate" means:

(a) An early learning provider interacts with each child in a way that recognizes and respects the child's chronological and developmental age;

(b) Knowledge about how children grow and learn;

(c) Reflects the developmental level of the individual child; and

(d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management of a center early learning program including the facility and operation.

"Disability" or **"disabilities"** has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

(a) The application of a fragrance-free chlorine bleach and water solution following the ((~~manufacturer's instructions~~) department of health's current guidelines for mixing bleach solutions for child care and similar environments; or

(b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or **"potable water"** is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education (ECE) initial certificate" (twelve quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education (ECE) short certificate" (initial certificate plus eight quarter credits) is Washington's short certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate" (short certificate plus twenty-seven quarter credits) is Wash-

ington's state certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning program" refers to regularly scheduled care for a group of children birth through twelve years of age for periods of less than twenty-four hours, licensed by the department.

"Early learning program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Early learning program staff" refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

"Early learning provider" or **"provider"** refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center directors, assistant directors, program supervisors, lead teachers, assistants, aides, and volunteers.

"ECEAP" or **"early childhood education and assistance program"** is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to the Washington state department of children, youth, and families' current database of professional records of individual early learning providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalency" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or **"exemption"** (~~(in regards)~~) means, as applied to immunizations ((means)), a type of immunization status ((approved by the Washington state department of

health)) where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a child plans on attending or is attending a center early learning program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or **"expulsion"** means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Family home early learning program" means an early learning program licensed by the department where a family home licensee provides child care or education services for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216-010 (1)(c) (family day care provider).

"Family home early learning program licensee" or **"family home licensee"** means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

"Family living quarters" means a family home licensee or applicant's residence and other spaces or building on the premises.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

"Good repair" means about eighty percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Household member" means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

"Inactive" when used by the department to indicate a licensing status, means early learning providers who have requested and have been approved to temporarily cease caring for children and close their early learning program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"Infant" is a child birth through eleven months of age.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an early learning provider.

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395, as now or hereafter amended.

"Lead teacher" means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"License" means a permit issued by the department legally authorizing an applicant to operate an early learning program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonexpiring license" means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

"Personal needs" means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or a wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the

locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preschool-age children" means children thirty months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program supervisor" means the center early learning provider responsible for planning and supervising the learning and activity program.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or **"revoke"** when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the early learning program (for example: Feeding, diapering, toileting, napping, resting, playing, and learning).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the early learning program. Program changes shall be agreed to in writing and signed by all participants at the meeting.

Safety plans expire thirty calendar days after being signed by all parties. Safety plans may only be extended for an additional thirty days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the ((manufacturer's instructions)) department of health's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age children" means a child not less than five years of age through twelve years of age who is attending kindergarten or elementary school.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requiring professional medical care; poisoning; or an overdose of a chemical substance.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play" but does not include a car seat or infant swing.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any early learning provider providing care in the early learning program.

"Strengthening families program self-assessment" refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

(a) Parental resilience;

(b) Social connections;

(c) Knowledge of parenting and child development;

(d) Concrete support in times of need; and

(e) Social and emotional competence of children.

"Supervise" or "supervision" means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (24 inches).

"Technical assistance" means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Toddler" means a child twelve months through twenty-nine months of age.

"Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Tummy time" means placing an infant in a nonrestrictive prone position, lying on his or her stomach when not in sleeping equipment.

~~(("Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.))~~

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

"USDA" means the U.S. Department of Agriculture.

~~(("Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.))~~

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department (~~(must)~~) may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department (~~(must)~~) may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to guidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including,

but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0016 Inactive status—Voluntary and temporary closure. (1) If a center or family home licensee plans to temporarily close their early learning program for more than thirty calendar days, and this closure is a departure from the program's regular schedule, an early learning provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

- (a) The date the early learning program will cease operating;
- (b) The reasons why the licensee is going on inactive status; and
- (c) A projected date the early learning program will reopen.

(2) The requirements of this section do not apply to licensed early learning programs that have temporary closures beyond thirty calendar days as part of their regular schedule, such as programs based on the school year or seasonal occupation.

(3) A licensee may not request inactive status during their first initial licensing period (six months) unless for an emergency.

(4) An early learning provider must inform parents and guardians that the program will temporarily close.

(5) An early learning provider is responsible for notifying the department of changes to program status including voluntary closures, new household members or staff, or other program changes. Program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 110-06 WAC, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

- (a) Place the license on inactive status;
- (b) Inform the licensee that the license is inactive; and
- (c) Notify the following programs of the inactive status:
 - (i) The department's child care subsidy programs;
 - (ii) USDA Child and Adult Care Food Program (CACFP); and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a twelve-month period, the department must close the license for fail-

ing to comply with RCW 43.216.305(2). The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) The department may pursue enforcement actions after three failed attempts to monitor an early learning program if:

(a) The early learning provider has not been available to permit the monitoring visits;

(b) The monitoring visits were attempted within a three-month ~~((span to the monitoring due date))~~ time period; and

(c) The department attempted to contact the provider by phone during the third attempted visit while still on the early learning premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. After receiving notice of the intent to reopen, the department will:

(a) Conduct a health and safety visit of the early learning program within ten business days to determine that the provider is in compliance with this chapter;

(b) Activate the license and inform the licensee that the license is active; and

(c) Notify the following programs of the active status:

(i) The department's child care subsidy programs;

(ii) CACFP; and

(iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0020 Unlicensed programs. (1) If the department suspects that an individual or agency ~~((is))~~ suspected of providing unlicensed child care, the department must follow the requirements of RCW 43.216.360.

(2) If an individual decides to obtain a license, within thirty calendar days from the date of the department's notice in subsection (1) of this section, the individual or agency must submit a written agreement on a department form stating they agree to:

(a) Attend and participate in the next available department licensing orientation; and

(b) Submit a licensing application after completing orientation.

(3) The department's written notice under subsection (1) of this section must inform the individual or agency providing unlicensed child care:

(a) That the individual or agency must stop providing child care, pursuant to RCW 43.216.360;

(b) How to respond to the department;

(c) How to apply for a license;

(d) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;

(e) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(f) How to ask for a hearing, under chapter 34.05 RCW (Administrative Procedure Act), chapter 43.216 RCW, and chapter 110-03 WAC (department hearing rules).

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2) of this section within thirty calendar days from

the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

(5) A person providing unlicensed child care:

(a) Shall be guilty of a misdemeanor pursuant to RCW 43.216.365; and

(b) May be subject to an injunction pursuant to RCW 43.216.355.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0030 Nondiscrimination. (1) Early learning programs are defined by state ~~((and federal))~~ law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, ~~((ethnicity))~~ color, national origin, sex, honorably discharged veteran or military status, marital status, gender, sexual orientation, ~~((class,))~~ age, religion, or ability; and

(b) Comply with the requirements of the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) An early learning program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0100 General staff qualifications. All early learning providers must meet the following requirements prior to working:

(1) **Family home early learning program licensees** work from their private residence to provide early learning programing to a group of no more than twelve children present at one time.

(a) A family home licensee must meet the following qualifications upon application:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements pursuant to WAC 110-300-0105.

(b) A family home licensee must meet the following qualifications:

(i) Family home licensees must have an ECE initial certificate, or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective; and

(ii) Upon completion of the ECE initial certificate or equivalent, family home licensees must complete an ECE short certificate or equivalent within two years, as approved and verified in the electronic workforce registry by the department.

(A) If a family home licensee already has an existing ECE initial certificate or equivalent, the licensee must complete an ECE short certificate or equivalent within five years of licensure by the department.

(B) Five years from the date this rule takes effect, the family home licensee must complete an ECE short certificate or equivalent within three years.

(iii) Have their continued professional development progress documented annually.

(c) Family home licensees must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours, or designate a person with the qualifications of a family home licensee to be on-site when not present;

(ii) Comply with these foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program;

(iv) Have knowledge of community resources available to families, including resources for children with special needs and the ability to share these resources with families; and

(v) Oversee early learning program staff and support staff in creating and maintaining staff records.

(2) **Center early learning program licensees** must meet the requirements of a center director, listed in subsection (3) of this section, or hire a center director who meets the qualifications prior to being granted an initial license. Center licensees who fulfill the role of center director in their early learning program must complete all trainings and requirements for center directors.

(3) **Center directors or assistant directors** manage the early learning program and set appropriate program and staff expectations.

(a) A center director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A center director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) A center director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent ~~((and))~~ within five years of the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program and at least six months of experience in administration or management or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) If a center director does not meet the minimum qualification requirements, the center early learning program must employ an assistant director or program supervisor who meets the minimum qualifications of these positions;

(vi) Have their continued professional development progress documented annually.

(b) An assistant director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) An assistant director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) An assistant director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent ~~((and))~~ within five years of the time of hire.

(ii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program or two years of experience in administration or management, or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) Have their continued professional development progress documented annually.

(c) A center director or assistant director or equivalent must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours up to forty hours per week, or designate a person with the qualifications of an assistant director, program supervisor, or equivalent. A center director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;

(ii) Comply with foundational quality standards;

(ii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program (or designate a program supervisor with this responsibility);

(iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and

(v) Oversee professional development plans for early learning program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Observing and mentoring staff.

(4) **Center program supervisors** plan the early learning program services under the oversight of a center director or assistant director.

(a) A program supervisor must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) ~~((If a director or assistant director has an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:~~

~~(A) A program supervisor must complete))~~ Have an ECE state certificate or equivalent within five years of the date this section becomes effective or from the ((date)) time of hire or promotion, ((which ever is later;

~~(B) A program supervisor at the time of hire or promotion must have an ECE state certificate if the director or assistant director does not have an ECE state certificate.))~~ if a director or assistant director does not have an ECE state certificate or equivalent as required by this section;

- (iii) Have two years of experience as a teacher of children in any age group enrolled in any early learning program;
- (iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and
- (v) Have their continued professional development progress documented annually.
- (b) A program supervisor performs the following duties:
 - (i) Guide the planning of curriculum philosophy, implementation, and environmental design of the early learning program;
 - (ii) Comply with foundational quality standards;
 - (iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and
 - (iv) Manage the professional development plans and requirements for staff as needed.
- (c) One person may be the center director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (3)(a) and (b) of this section are met.

(5) Any individual hired or promoted into a position detailed in subsections (2), (3), and (4) of this section who does not have an ECE state certificate or equivalent as required under subsections (3)(a)(ii), (b)(ii), and (4)(a)(ii) of this section must instead meet the following requirement as approved and verified in the electronic workforce registry by the department:

| <u>If a center is licensed for this number of children:</u> | <u>Then the director, assistant director, or program supervisor must have completed at least this number of college quarter credits in early childhood education core competencies:</u> |
|---|---|
| <u>(a) 12 or fewer</u> | <u>10</u> |
| <u>(b) 13 to 24</u> | <u>25</u> |
| <u>(c) 25 or more</u> | <u>45</u> |

(6) **Lead teachers** are responsible for implementing the center or family home early learning program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.

- (a) A lead teacher must meet the following qualifications:
 - (i) Be at least eighteen years old;
 - (ii) Have a high school diploma or equivalent; and
 - (iii) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105.
- (b) A center lead teacher must meet the following requirements:
 - (i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed early learning program;
 - (ii) Progress towards an ECE short certificate or equivalent. A center lead teacher hired after this chapter becomes effective must have an ECE short certificate within two years

of receiving an ECE initial certificate, or seven years from being employed or promoted into this position at any licensed early learning program; and

- (ii) Have their professional development progress documented annually.
- (c) A family home lead teacher must meet the following requirements:
 - (i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted into this position at any licensed early learning program;
 - (ii) Prior to being in charge of their early learning program fifty percent or more of the time, a family home lead teacher must meet the qualifications of the family home licensee and complete or be registered in orientation training required in WAC 110-300-0105(1); and
 - (iii) Have their professional development progress documented annually.

~~((6))~~ (7) **Assistant teachers** help a lead teacher or licensee provide instructional support to children and implement developmentally appropriate programs in center or family home early learning programs.

- (a) An assistant teacher must meet the following qualifications:
 - (i) Be at least eighteen years old;
 - (ii) Have a high school diploma or equivalent; and
 - (iii) Have a minimum of an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted to this position at any licensed early learning program;
 - (iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and
 - (v) Have their professional development progress documented annually.
- (b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.
- (c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the provider must notify the department with a plan to manage the classroom.
- ~~((7))~~ (8) **Aides** provide classroom support to an assistant teacher, lead teacher, program supervisor, center director, assistant director, or family home licensee. Aides must meet the following qualifications:
 - (a) Be at least fourteen years old;
 - (b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;
 - (c) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;
 - (d) Have their professional development progress documented annually; and
 - (e) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead

teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee.

(i) Aides working nineteen hours per month or less can count towards ratio with applicable preservice requirements pursuant to WAC 110-300-0105 and without in-service training requirements pursuant to WAC 110-300-0107 (1)(a).

(ii) Aides who work twenty hours or more per month with a cumulative twelve months of employment must complete applicable preservice requirements pursuant to WAC 110-300-0105 and in-service training pursuant to WAC 110-300-0107 (1)(a).

~~((8))~~ (9) **Other personnel** who do not directly care for children and are not listed in subsections (1) through ~~((7))~~ (8) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-300-0105; and

(c) Complete program based staff policies and training, pursuant to WAC 110-300-0110.

~~((9))~~ (10) **Volunteers** help at early learning programs. Volunteers must meet the following qualifications:

(a) Be at least fourteen years old (volunteers must have written permission to volunteer from their parent or guardian if they are under eighteen years old);

(b) Work under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they:

(i) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(ii) Complete a TB test, pursuant to WAC 110-300-0105;

(iii) Complete the training requirements, pursuant to WAC 110-300-0106;

(iv) Complete program based staff policies and training, pursuant to WAC 110-300-0110; and

(v) Have their professional development progress documented annually.

(d) Occasional volunteers must comply with (a) and (b) of this subsection. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0107 In-service training. (1) An early learning provider must complete ten hours of annual in-service training after twelve months of cumulative employment.

(a) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, and assistant teachers must complete the department enhancing quality of early learning (EQEL) in-service training within thirty-six months of being hired in a licensed facility, unless the provider has completed a department approved alternative train-

ing. EQEL hours may count towards the ten hours of annual in-service training.

(b) Every thirty-six months, following the completion of EQEL or a department approved alternative training, family home licensees, center directors, assistant directors, and program supervisors, must complete a minimum of ten hours of in-service training "child development" and a minimum of ten hours of in-service training on "leadership practices."

(i) Child development training includes the following Washington state core competencies: Child growth and development, curriculum and learning environment, ongoing measurements of child progress, family and community partnerships, health, safety, nutrition, and interactions.

(ii) Leadership practices training includes the following Washington state core competencies: Program planning and development, professional development, and leadership.

(2) In-service training requirements of this chapter may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours that exceed the requirements of subsection (1) of this section may be carried over from one fiscal year to the next fiscal year.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0115 Staff records. (1) An early learning provider must establish a records system for themselves, household members, staff, and volunteers that complies with the requirements of this chapter. Early learning program staff records must be:

(a) Verified by the licensee, center director, assistant director, or program supervisor;

(b) Entered and maintained in the electronic workforce registry, if applicable. Paper records may be discarded once entered into the electronic workforce registry and confirmed by the department;

(c) Updated to delete staff names from the electronic workforce registry when no longer employed at the early learning program; and

(d) Kept on-site or in the program's administrative office in a manner that allows the department to review the records.

(2) Records for each early learning provider and staff member must include:

(a) First and last name;

(b) Date of birth;

(c) Job title;

(d) First and last day of employment, if applicable;

(e) Proof of professional credentials, requirements, and training for each early learning staff member, pursuant to WAC 110-300-0100 through 110-300-0110.

(3) A licensee, center director, assistant director, or program supervisor must maintain the following records for each early learning provider and program staff in a confidential manner. These records must be reviewable by the department and must include at a minimum:

(a) A copy of current government issued photo identification;

- (b) Emergency contact information;
- (c) Completed employment application or resume;
- (d) Annual observation, evaluation, and feedback information; ~~((and))~~
- (e) The licensee's Social Security number, federal EIN, or a written document stating the licensee does not possess either; and
- (f) Immunization records including exemption documents (center early learning programs only).

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0120 Providing for personal, professional, and health needs of staff. (1) A licensee must provide for the personal and professional needs of staff by:

- (a) Having a secure place to store personal belongings that is inaccessible to children;
- (b) Having a readily accessible phone to use for emergency calls or to contact the parents of enrolled children; and
- (c) Providing file and storage space for professional materials.

(2) An early learning provider must be excluded from the early learning premises when that provider's illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require a staff member to be excluded are pursuant to WAC 110-300-0205.

(3) If a staff person has not been vaccinated, or ~~((has not))~~ shown documented immunity to a vaccine preventable disease, that person may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010~~((, as now and hereafter amended))~~. A center early learning program staff person or volunteer who has not been vaccinated against or shown proof of immunity to measles, mumps, or rubella must not be allowed on the center early learning premises except as provided in (a) and (b) of this subsection.

(a) A center early learning program may allow a person to be employed or volunteer on the center early learning premises for up to thirty calendar days if the person signs a written attestation that he or she has received the measles, mumps, and rubella vaccine, or is immune from measles, but requires additional time to obtain and provide his or her immunization records. The required records must include immunization records indicating the employee or volunteer has received the measles, mumps, and rubella vaccine; or records that show proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.

(b) A center early learning program may allow a person to be employed or volunteer on the center early learning premises if the person provides the center early learning program with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090(3), that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. This subsection (3)(b) does not apply if a person's health care practitioner deter-

mines that the measles, mumps, and rubella vaccine is no longer contraindicated.

(4) An early learning program's health policy, pursuant to WAC 110-300-0500, must include provisions for excluding or separating staff with a contagious disease described in WAC 246-110-010, as now and hereafter amended.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0205 Child, staff, and household member illness. (1) An early learning provider must observe all children for signs of illness when they arrive at the early learning program and throughout the day. Parents or guardians of a child should be notified, as soon as possible, if the child develops signs or symptoms of illness.

(2) If an early learning provider becomes ill, a licensee, center director, assistant director, or program supervisor must determine whether that person should be required to leave the licensed early learning space.

(3) When a child becomes ill, an early learning provider (or school nurse, if applicable) must determine whether the child should be sent home or separated from others. A provider must supervise the child to reasonably prevent contact between the ill child and healthy children.

(4) An ill child must be sent home or reasonably separated from other children if:

- (a) The illness or condition prevents the child from participating in normal activities;
- (b) The illness or condition requires more care and attention than the early learning provider can give;
- (c) The required amount of care for the ill child compromises or places at risk the health and safety of other children in care; or
- (d) There is a risk that the child's illness or condition will spread to other children or individuals.

(5) Unless covered by an individual care plan or protected by the ADA, an ill child, staff member, or other individual must be sent home or isolated from children in care if he or she has:

- (a) A fever 101 degrees Fahrenheit for children over two months (or 100.4 degrees Fahrenheit for an infant younger than two months) by any method, and behavior change or other signs and symptoms of illness (including sore throat, earache, headache, rash, vomiting, diarrhea);
- (b) Vomiting two or more times in the previous twenty-four hours;
- (c) Diarrhea where stool frequency exceeds two stools above normal per twenty-four hours for that child or whose stool contains more than a drop of blood or mucus;
- (d) A rash not associated with heat, diapering, or an allergic reaction;
- (e) Open sores or wounds discharging bodily fluids that cannot be adequately covered with a waterproof dressing or mouth sores with drooling;

(f) Lice, ringworm, or scabies. Individuals with head lice, ringworm, or scabies must be excluded from the child care premises beginning from the end of the day the head lice or scabies was discovered. The provider may allow an indi-

vidual with head lice or scabies to return to the premises after receiving the first treatment; or

(g) A child who appears severely ill, which may include lethargy, persistent crying, difficulty breathing, or a significant change in behavior or activity level indicative of illness.

(6) At the first opportunity, but in no case longer than twenty-four hours of learning that an enrolled child, staff member, volunteer or household member has been diagnosed by a health care professional with a contagious disease listed in WAC 246-110-010(3), as now and hereafter amended, an early learning provider must provide written notice to the department, the local health jurisdiction, and the parents or guardians of the enrolled children.

(7) An early learning provider must not take ear or rectal temperatures to determine a child's body temperature.

(a) Providers must use developmentally appropriate methods when taking infant or toddler temperatures (for example, digital forehead scan thermometers or underarm (~~auxiliary~~) methods);

(b) Oral temperatures may be taken for preschool through school-age children if single-use covers are used to prevent cross contamination; and

(c) Glass thermometers containing mercury must not be used.

(8) An early learning provider may readmit a child, staff member, volunteer or household member into the early learning program area with written permission of a health care provider or health jurisdiction stating the individual may safely return after being diagnosed with a contagious disease listed in WAC 246-110-010(3), as now and hereafter amended.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0335 Physical restraint. (1) An early learning provider must have written physical restraint protocols pursuant to WAC 110-300-0490, and implement such protocols only when appropriate and after complying with all requirements of WAC 110-300-0330 and 110-300-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened, and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation;

(c) Developmentally appropriate; and

(d) Only performed by early learning providers trained in a restraint technique pursuant to WAC 110-300-0106(9).

(3) No person may use bonds, ties, blankets, straps, car seats, high chairs, activity saucers, or heavy weights (including an adult sitting on a child) to physically restrain children.

(4) Licensees, center directors, assistant directors, program supervisors, lead teachers or trained staff must remove him or herself from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another early learning provider is present. If an early learning provider observes another staff using inappropriate restraint techniques, the staff must intervene.

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint (~~(to the child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within twenty-four hours)~~), pursuant to WAC 110-300-0475 ~~(2)(f)~~;

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(c) Document the incident in the child's file, including the date, time, early learning program staff involved, duration and what happened before, during and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, and the parents or guardians, to address underlying issues and reduce need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0420 Prohibited substances. (1) Chapter 70.160 RCW prohibits smoking in public places and places of employment.

(2) Pursuant to RCW 70.160.050, an early learning provider must:

(a) Prohibit smoking, vaping, or similar activities in licensed indoor space, even during nonbusiness hours;

(b) Prohibit smoking, vaping, or similar activities in licensed outdoor space unless:

(i) Smoking, vaping or similar activities occurs during nonbusiness hours; or

(ii) In an area for smoking or vaping tobacco products that is not a "public place" or "place of employment," as defined in RCW 70.160.020.

(c) Prohibit smoking, vaping, or similar activities in motor vehicles used to transport enrolled children;

(d) Prohibit smoking, vaping, or similar activities by any provider who is supervising children, including during field trips;

(e) Prohibit smoking, vaping, or similar activities within twenty-five feet from entrances, exits, operable windows, and vents, pursuant to RCW 70.160.075; and

(f) Post "no smoking or vaping" signs. Signs must be clearly visible and located at each building entrance used as part of the early learning program.

(3) An early learning provider must:

(a) Prohibit any person from consuming or being under the influence of alcohol on licensed space during business hours;

(b) Prohibit any person within licensed space from consuming or being under the influence of illegal drugs or (~~mis-used~~) prescription drugs to the extent that it interferes with the care for children as required by this chapter;

(c) Store any tobacco or vapor products, or the packaging of tobacco or vapor products in a space that is inaccessible to children;

(d) Prohibit children from accessing cigarette or cigar butts or ashes;

(e) Store any cannabis or associated paraphernalia out of the licensed space and in a space that is inaccessible to children; and

(f) Store alcohol in a space that is inaccessible to children (both opened and closed containers).

(4) A center early learning provider must prohibit any person from using, consuming, or being under the influence of cannabis in any form on licensed space.

(5) A family home early learning provider must prohibit any person from using, consuming, or being under the influence of cannabis products in any form on licensed space during business hours.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0470 Emergency preparedness plan.

(1) An early learning provider must have and follow a written emergency preparedness plan. The plan must be reviewed and approved by the department prior to when changes are made. Emergency preparedness plans must:

(a) Be designed to respond to fire, natural disasters, and other emergencies that might affect the early learning program;

(b) Be specific to the early learning program and able to be implemented during hours of operation;

(c) Address what the provider would do if he or she has an emergency and children may be left unsupervised;

(d) Address what the early learning program must do if parents are not able to get to their children for up to three days;

(e) Must follow requirements in chapter 212-12 WAC, Fire marshal standards, as now or hereafter amended and the state fire marshal's office requirements if a center early learning program;

(f) Be reviewed at program orientation, annually with all early learning program staff with documented signatures, and when the plan is updated; and

(g) Be reviewed with parents or guardians when a child is enrolled and when the plan is updated.

(2) The written emergency preparedness plan must cover at a minimum:

(a) Disaster plans, including fires that may require evacuation:

(i) An evacuation floor plan that identifies room numbers or names of rooms, emergency exit pathways, emergency exit doors, and ~~((for family home based programs,))~~ emergency exit windows ~~((if applicable))~~ for family-home based programs as described in WAC 51-51-0326;

(ii) Methods to be used for sounding an alarm and calling 911;

(iii) Actions to be taken by a person discovering an emergency;

(iv) How the early learning provider will evacuate children, especially those who cannot walk independently. This

may include infant evacuation cribs (for center early learning programs), children with disabilities, functional needs requirements, or other special needs;

(v) Where the alternate evacuation location is;

(vi) What to take when evacuating children, including:

(A) First-aid kit(s);

(B) Copies of emergency contact information;

(C) Child medication records; and

(D) Individual children's medication, if applicable.

(vii) How the provider will maintain the required staff-to-child ratio and account for all children;

(viii) How parents or guardians will be able to contact the early learning program; and

(ix) How children will be reunited with their parents or guardians after the event.

(b) Earthquake procedures including:

(i) What a provider will do during an earthquake;

(ii) How a provider will account for all children; and

(iii) How a provider will coordinate with local or state officials to determine if the licensed space is safe for children after an earthquake.

(c) Public safety related lockdown scenarios where an individual at or near an early learning program is harming or attempting to harm others with or without a weapon. This plan must include lockdown of the early learning program or shelter-in-place steps including:

(i) How doors and windows will be secured to prevent access, if needed; and

(ii) Where children will safely stay inside the early learning program.

(d) How parents or guardians will be contacted after the emergency ends.

(3) An early learning provider must keep on the premises a three day supply of food, water, and life-sustaining medication for the licensed capacity of children and current staff for use in case of an emergency.

(4) An early learning provider must practice and record emergency drills with staff and children as follows:

(a) Fire and evacuation drill once each calendar month;

(b) Earthquake, lockdown, or shelter-in-place drill once every three calendar months;

(c) Emergency drills must be conducted with a variety of staff and at different times of the day, including in the evening and during overnight hours for early learning programs that care for children during those hours; and

(d) Drills must be recorded on a department form and include:

(i) The date and time of the drill;

(ii) The number of children and staff who participated;

(iii) The length of the drill; and

(iv) Notes about how the drill went and how it may be improved.

(5) In areas where local emergency plans are already in place, such as school districts, an early learning program may adopt or amend such procedures when developing their own plan.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0475 Duty to protect children and report incidents. (1) Pursuant to RCW 26.44.030, when an early learning provider has reasonable cause to believe that a child has suffered abuse or neglect, that provider must report such incident, or cause a report to be made, to the proper law enforcement agency or the department. "Abuse or neglect" has the same meaning here as in RCW 26.44.020.

(2) ~~((An early learning provider must report by phone upon knowledge of the following to:))~~ If an early learning provider knows or has reason to know that an act, event, or occurrence described in (a) through (f) of this subsection, the early learning provider must report by telephone to the individuals, department, and other listed government agencies the action, event, or occurrence.

(a) Law enforcement or the department at the first opportunity, but in no case longer than forty-eight hours:

(i) The death of a child while in the early learning program's care or the death from injury or illness that may have occurred while the child was in care;

(ii) A child's attempted suicide or talk about attempting suicide;

(iii) Any suspected physical, sexual or emotional child abuse;

(iv) Any suspected child neglect, child endangerment, or child exploitation;

(v) A child's disclosure of sexual or physical abuse; or

(vi) Inappropriate sexual contact between two or more children.

(b) Emergency services (911) immediately, and to the department within twenty-four hours:

(i) A child missing from care, triggered as soon as staff realizes the child is missing;

(ii) A medical emergency that requires immediate professional medical care;

(iii) A child who is given too much of any oral, inhaled, or injected medication;

(iv) A child who took or received another child's medication;

(v) A fire or other emergency;

(vi) Poisoning or suspected poisoning; or

(vii) Other dangers or incidents requiring emergency response.

(c) Washington poison center immediately after calling 911, and to the department within twenty-four hours:

(i) A poisoning or suspected poisoning;

(ii) A child who is given too much of any oral, inhaled, or injected medication; or

(iii) A child who took or received another child's medication;

(iv) The provider must follow any directions provided by Washington poison center.

(d) The local health jurisdiction or the department of health immediately, and to the department within twenty-four hours about an occurrence of food poisoning or reportable contagious disease as defined in chapter 246-110 WAC, as now or hereafter amended;

(e) The department at the first opportunity, but in no case longer than twenty-four hours, upon knowledge of any per-

son required by chapter 110-06 WAC to have a change in their background check history due to:

(i) A pending charge or conviction for a crime listed in chapter 110-06 WAC;

(ii) An allegation or finding of child abuse, neglect, maltreatment or exploitation under chapter 26.44 RCW or chapter 388-15 WAC;

(iii) An allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) A pending charge or conviction of a crime listed in the director's list in chapter 110-06 WAC from outside Washington state, or a "negative action" as defined in RCW 43.216.010.

(f) A child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within twenty-four hours, about using physical restraint on a child as described in WAC 110-300-0335.

(3) In addition to reporting to the department by phone or email, an early learning provider must submit a written incident report of the following on a department form within twenty-four hours:

(a) Situations that required an emergency response from emergency services (911), Washington poison center, or department of health;

(b) Situations that occur while children are in care that may put children at risk including, but not limited to, inappropriate sexual touching, neglect, physical abuse, maltreatment, or exploitation; and

(c) A serious injury to a child in care.

(4) An early learning provider must immediately report to the parent or guardian:

(a) Their child's death, serious injury, need for emergency or poison services; or

(b) An incident involving their child that was reported to the local health jurisdiction or the department of health.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-305-2050 Child records—Contents. (1) An enrollment record is required for every child who is enrolled and counted in capacity. Each child's enrollment record must include the following:

(a) The child's beginning enrollment date;

(b) End of enrollment date for children no longer in the licensee's care;

(c) The child's birth date;

~~(d)((+)) The child's ((current)) immunization records((; on a DOH certificate of immunization status (CIS) form signed by the parent or guardian; or~~

~~((ii) A DOH certificate of exemption (COE) form signed by the parent for religious, philosophical, or personal exemption; or~~

~~((iii) A DOH certificate of exemption (COE) form signed by the parent and a health care professional for a medical exemption)) and immunization exemption records;~~

(e) The child's health history that includes:

(i) Known health conditions such as allergies, asthma, and diabetes;

- (ii) Date of last physical exam; and
- (iii) Date of last dental exam((±)).
- (f) The names, phone numbers, and addresses of persons authorized to pick up the child;
- (g) Emergency contacts((~~- If no emergency contact is available, a written emergency contact plan may be accepted~~));
- (h) Parent or guardian information including name, phone numbers, address, and contact information for reaching the family while the child is in care;
- (i) Medical and dental care provider names and contact information, if the child has providers((~~- If the child has no medical or dental provider, the parent or guardian must provide a written plan for medical or dental injury or incident~~)); and
- (j) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian.

(2)(a) The child's immunization records and immunization exemption records must include the following:

(i) The child's current immunization record, on a DOH certificate of immunization status (CIS) form, signed by the parent or guardian;

(ii) A DOH certificate of exemption (COE) form signed by the parent or legal guardian that declares a religious belief, philosophical, or personal objection immunization exemption authorized under RCW 28A.210.090 (1)(b) or (c); and

(iii) A DOH certificate of exemption (COE) form signed by the parent and a health care practitioner for a medical exemption authorized under RCW 28A.210.090 (1)(a).

(b) A philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine under this section.

(c) If no emergency contact is available as described in subsection (1)(g) of this section, a written emergency contact plan may be accepted.

(d) If the child has no medical or dental provider as discussed in subsection (1)(i) of this section, the parent or guardian must provide a written plan for medical and dental injuries or incidents.

(3) If applicable, a child's records must include:

(a) Injury/incident reports (see WAC ((~~170-297-3575 and 170-297-3600~~)) 110-305-3575 and 110-305-3600);

(b) A medication authorization and administration log (see WAC ((~~170-297-3375~~)) 110-305-3375);

(c) A plan for special or individual needs of the child (see WAC ((~~170-297-0050~~)) 110-305-0050); and

(d) Documentation of use of physical restraint (see WAC ((~~170-297-6250~~)) 110-305-6250).

((~~(3)~~)) (4) The child's records must include signed parent permissions (see WAC ((~~170-297-6400~~)) 110-305-6400) as applicable for:

- (a) Field trips;
- (b) Transportation; and
- (c) Visiting health professionals providing services to the child at the child care program site.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-305-2325 Notifiable conditions. (1) The licensee or designee must report a staff person, volunteer, or child diagnosed with a notifiable condition as defined in chapter 246-101 WAC to the local health jurisdiction or the state department of health.

(2) The licensee or designee must contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

(3) A person must be excluded from the program when diagnosed with a notifiable condition and must not return to the program until approved to do so by the local health officer. A licensed school age child care center staff person or volunteer who has not been vaccinated against or shown proof of immunity to measles, mumps, or rubella must not be allowed on the school age child care center premises except as provided in (a) and (b) of this subsection.

(a) A licensed school age child care center program may allow a person to be employed or volunteer on the school age child care center premises for up to thirty calendar days if the person signs a written attestation that he or she has received the measles, mumps, and rubella vaccine, or is immune from means, but requires additional time to obtain and provide his or her immunization records. The required records must include immunization records indicating the employee or volunteer has received the measles, mumps, and rubella vaccine; or records that show proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.

(b) A school age child care center program may allow a person to be employed or volunteer on the school age child care center premises if the person provides the school age child care center with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090(3), that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. This subsection (3)(b) of this section does not apply if a person's health care practitioner determines that the measles, mumps, and rubella vaccine is no longer contraindicated.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-305-3250 Immunization tracking. The licensee or designee is required to track each child's immunization status in accordance with WAC 246-105-060. The child care program must:

(1) Keep all DOH approved forms described in WAC 246-105-050 for each enrolled child((±)).

(2) Keep a list of currently enrolled children with ((~~medical, religious, philosophical, or personal~~)) an immunization exemption((s)) authorized under RCW 28A.210.080 and 28A.210.090. This list must be sent to the local health department upon request((±)).

(3) Return the department of health certificate of immunization status (CIS) or applicable form to the parent when the child is withdrawn from the child care program. A child

care program may not withhold from the parent a child's health department-approved form for any reason, including nonpayment of child care program fees(~~and~~).

(4) Provide access to immunization records of each child enrolled to agents of the state or local health department.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-305-3300 Immunizations—Exemption. ~~((The))~~ (1) A school age child care center program may accept a child without any immunizations if the parent or guardian provides a DOH certificate of exemption (COE) form ((indicating a medical, religious, philosophical, or personal exemption as provided in WAC 246-105-060)) under the following circumstances:

(a) A COE form signed by the parent or legal guardian that declares a religious belief, philosophical, or personal objection immunization exemption authorized under RCW 28A.210.090 (1)(b) or (c); or

(b) A COE form signed by a health care practitioner for a medical exemption authorized under RCW 28A.210.090 (1)(a).

(2) A philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

WSR 19-17-056
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed August 19, 2019, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-23-082.

Title of Rule and Other Identifying Information: WAC 182-502-0016 Continuing requirements and 182-502-0017 Employee education about false claims recovery (new section).

Hearing Location(s): On September 24, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 25, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 24, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by September 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is updating this section to provide notice to providers and sup-

port enforcement of compliance with state and federal requirements related to the operations of entities receiving more than \$5 million in medicaid payments annually, including but not limited to such entities providing information about the False Claims Act and establishing written policies for employees.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 U.S.C. Sec. 1396 (a)(68).

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Greg Sandoz, P.O. Box 45502, Olympia, WA 98504-2716 [98504-5502], 360-725-1624.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose significant costs or requirements on providers.

August 19, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-003, filed 4/22/15, effective 5/23/15)

WAC 182-502-0016 Continuing requirements. (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, medicaid agency billing instructions, ~~((numbered memoranda))~~ provider alerts issued by the agency, and other written directives from the agency;

(c) Inform the agency of any changes to the provider's application or contract(~~(s)~~) including, but not limited to, changes in:

(i) Ownership (see WAC 182-502-0018);

(ii) Address or telephone number;

(iii) Professional practicing under the billing provider number; or

(iv) Business name.

(d) Retain a current professional state license, registration, certification ~~((and))~~ or applicable business license for the service being provided, and update the agency of all changes;

(e) Inform the agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, disciplinary decision, disciplinary action or other action(s)(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;

(h) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC 182-502-0010 (2)(j) for information on the agency's screening process;

(i) Pass any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;

(j) Maintain professional and general liability coverage to the extent the provider is not covered:

(i) Under agency, center, or facility professional and general liability coverage; or

(ii) By the Federal Tort Claims Act, including related rules and regulations;

(k) Not surrender, voluntarily or involuntarily, (~~his or her~~) the provider's professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(l) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice; and

(m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information including, but not limited to, disclosures;

(ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(n) Comply with the employee education requirements regarding the federal and the state false claims recovery laws, the rights and protections afforded to whistleblowers, and related provisions in Section 1902 of the Social Security Act (42 U.S.C. 1396a(68)) and chapter 74.66 RCW when applicable. See WAC 182-502-0017 for information regarding the

agency's requirements for employee education about false claims recovery.

(2) A provider may contact the agency with questions regarding its programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the agency's programs.

(3) The agency may refer the provider to the appropriate state health professions quality assurance commission.

NEW SECTION

WAC 182-502-0017 Employee education about false claims recovery. (1) The medicaid agency (agency) requires any entity (including providers) that makes or receives medical assistance payments from the agency or the agency designee of at least \$5,000,000 annually under the state plan to meet the requirements of Section 1902 (a)(68) of the Social Security Act in order to receive payments.

(2) **Entity policies and procedures.** Entities must adopt and disseminate policies and procedures for their employees, contractors, and agents regarding federal and state false claims and whistleblower protection laws.

(a) Written policies and procedures may be in paper or electronic form, but must be readily available to all employees, contractors, and agents.

(b) If the entity has an employee handbook, it must include a specific discussion of the laws described in written policies regarding the rights of employees to be protected as whistleblowers, and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

(3) **Entity.** An "entity" may include, but is not limited to, individual providers, a governmental agency, organization, unit, corporation, partnership, or other business arrangement irrespective of the form of business structure by which it exists or whether for-profit or not-for-profit.

(a) An organization may have multiple subsidiaries, locations, federal employer identification numbers (FEIN), or provider numbers and still be combined for the purposes of meeting the definition of an entity.

(b) Whether subsidiaries would be aggregated or viewed as separate entities depends on the corporate structure and assessment of the largest separate organizational unit that furnishes medicaid health care items or services.

(c) The agency and its designee administering the medicaid program, or any agent performing an administrative function, are not considered entities.

(4) **Payments received.** For any entity that receives medical assistance payments under the state plan of at least \$5,000,000 annually, the total amount includes:

(a) All payments received by an entity who furnishes items or services at one or more location(s);

(b) All payments received by an entity who furnishes items or services under one or more contractual or other payment arrangement(s);

(c) Only the amounts received from the agency or the agency designee. The amounts paid by a managed care organization (MCO) to the entity are only counted against the

MCO, not the entity, when calculating the \$5,000,000 threshold; and

(d) Only payments received from Washington state. Payments from multiple states are not aggregated to reach the \$5,000,000 annual threshold.

(5)(a) **Annual monitoring.** At the conclusion of each federal fiscal year, the agency identifies who qualifies as an entity subject to the requirements in Section 1902 (a)(68) of the Social Security Act.

(b) If the agency determines that an entity is subject to and must comply with Section 1902 (a)(68) of the act:

(i) The agency provides written notice to the entity that it must comply;

(ii) The entity must submit an attestation to the agency under penalty of perjury to verify the entity has adopted and disseminated compliant written policies as required; and

(iii) The agency may request copies of the written policies and proof of dissemination to verify compliance with the requirements.

(c) If the agency does not receive the required documentation by the due date, the agency sends a warning to the entity to become compliant by a specified deadline.

(d) If the entity remains noncompliant after the deadline, the agency ceases medical assistance payments until the entity is compliant.

WSR 19-17-061

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 19, 2019, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-112.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): On October 1, 2019, at 10:00 a.m., at the Wanamaker Meeting Room, Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501. Individuals planning to comment should arrive to [at] OSPI by 10:00 a.m.

Date of Intended Adoption: October 4, 2019.

Submit Written Comments to: Patti Enbody, Director, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, email patti.enbody@k12.wa.us, by October 1, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by September 24, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Districts received a one time legislative salary and benefit increase included in the transportation operations allocation for the 2018-19 school year to reflect the compensation increase with the passage of E2SSB 6362. Districts may not have time to utilize

the increase in funds and may face recovery of transportation funds not expended. OSPI is therefore proposing to amend WAC 392-141-410 to allow a one year only carryover of unspent funds for the 2019-20 school year to prevent the recovery of 2018-19 allocation.

Reasons Supporting Proposal: Based upon the passage of E2SSB 6362, this new section will allow districts a one year only carryover of unspent funds for the 201-19 [2018-19] school year to prevent the recovery of 2018-19 allocation.

Statutory Authority for Adoption: RCW 28A.150.290.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: Patti Enbody, OSPI, Student Transportation, 360-725-6122; and Enforcement: T. J. Kelly, OSPI, Chief Financial Officer, 360-725-6301.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

August 19, 2019

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

WAC 392-141-410 Recovery of transportation funds.

The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the allowable student transportation program costs under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the state recovery rate as calculated in the district annual financial report;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

(4) Special rule for the 2019-20 school year only. School districts may carry over state pupil transportation allocations that were not expended for allowable student transportation program costs from the 2018-19 school year to the 2019-20 school year.

Funds transferred into the transportation vehicle fund shall not be included as allowable transportation program costs for recovery calculations.

WSR 19-17-063
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed August 20, 2019, 8:49 a.m.]

WAC 388-78A-3180, proposed by the department of social and health services in WSR 19-04-080, appearing in issue 19-04 of the Washington State Register, which was distributed on February 20, 2019, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 19-17-065
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed August 20, 2019, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-150.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-76-10401 Home and community-based setting requirements. This new section requires homes to comply with federal home and community-based services requirements.

Hearing Location(s): On September 24, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than September 25, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU

RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 24, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal incorporates the federal requirements for home and community-based settings. This will help adult family home providers understand their obligations and improve their ability to comply with them. The proposal will also ensure that residents are receiving care in a homelike setting and reducing their dependence on institutions or isolating settings. These regulations improve quality of life in adult family homes by giving residents greater opportunities to make decisions about their lives and care.

Reasons Supporting Proposal: DSHS has a funding waiver from Centers for Medicaid and Medicare Services through the home and community-based settings program. As part of our agreement for this waiver, we must adopt this rule. Failure to do so could result in the loss of the waiver and the funding source, which would result in fewer homes, fewer beds, and fewer people to regulate this setting. This proposal benefits residents, adult family home providers, and the department.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: None.

Rule is necessary because of federal law, 42 C.F.R. § 441.530.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, 253-234-6061.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt under RCW 34.05.-328 (5)(b)(iii), rules adopting or incorporating by reference without material change federal statutes or regulations.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 42 C.F.R. § 441.530. These regulations apply to home and community-based settings, which include adult family homes. Without the proposed rule, our adult family home program would be out of compliance with medicaid rules.

August 14, 2019
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-76-10401 Home and community-based setting requirements. (1) The home must ensure that the following conditions are present for each resident:

(a) Privacy in each resident's bedroom, including lockable doors when chosen, with only the resident or residents who live in the room and appropriate staff having the key;

(b) Choice of roommates;

(c) Freedom to decorate and furnish their room within the terms of the notice of rights and service agreement;

(d) Freedom and support to control their own schedule;

(e) Access to food and water at any time; and

(f) Having visitors at any time, although nothing in this section requires an adult family home to provide a visitor with food or a place to sleep.

(2) When conditions under subsection (1) of this section cannot be met, the home must ensure the following elements are in place before implementing a modification:

(a) The specific assessed need for the modification is identified in the resident's assessment and negotiated care plan;

(b) The resident's negotiated care plan documents less intrusive methods and interventions that were tried prior to the modification but did not work;

(c) The details of the modification are clearly described in the resident's assessment and negotiated care plan, including how the modification addresses the resident's specific assessed need;

(d) The modification is agreed to by the resident or the resident's legal representative; and

(e) The modification must not cause the resident harm.

(3) All modifications must be reviewed annually with the assessment and negotiated care plan, and evidence of its effectiveness or lack thereof must be documented in both.

(4) Any modification must be discontinued if there is no longer a need for it or it is no longer effective.

WSR 19-17-072**PROPOSED RULES****PUGET SOUND****CLEAN AIR AGENCY**

[Filed August 20, 2019, 11:02 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): On September 26, 2019, at 8:45 a.m., at the Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101.

Date of Intended Adoption: September 26, 2019.

Submit Written Comments to: Robert Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email robs@psc Clean Air Agency, fax 206-343-7522, by September 25, 2019.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email robs@psc Clean Air Agency, by September 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 3.11**, the agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index for the Seattle/Tacoma/Bellevue area increased by 2.66 percent for the 2018 calendar year, which amounts to an increase of \$522.00 in the maximum civil penalty amount.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25, this section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2018. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2019.

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the mate-

rial adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

August 20, 2019
Craig Kenworthy
Executive Director

AMENDATORY SECTION

SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((~~19,609.00~~)) 20,131.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~19,609.00~~)) 20,131.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed

with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2018~~) 2019.

WSR 19-17-077 PROPOSED RULES SECRETARY OF STATE

[Filed August 20, 2019, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-101.

Title of Rule and Other Identifying Information: Permanent adoption of WAC changes for the presidential primary. These updates and changes to rules for other election processes are necessary to conform with statutory changes from the 2019 legislative session and ESB 5273.

Hearing Location(s): On September 27, 2019, at 9:00 a.m., at 520 Union Avenue, Olympia, 98504.

Date of Intended Adoption: September 30, 2019.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email sheryl.moss@sos.wa.gov, fax 360-664-4169, by September 26, 2019.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4146, fax 360-664-4169, email Sheryl.moss@sos.wa.gov, by September 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation and ESB 5273.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: Chapter 29A.56 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

August 20, 2019

Mark Neary

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-219-050 Procedures to be followed when changing primary date. If the date of the presidential primary is changed pursuant to RCW 29A.56.020 from the ~~((fourth))~~ second Tuesday in ~~((May))~~ March to another date, the secretary of state shall promptly notify the county auditors and the chairperson of the national committee of each major political party, in writing, of that date.

AMENDATORY SECTION (Amending WSR 15-24-001, filed 11/18/15, effective 12/19/15)

WAC 434-219-120 Certification of candidates. (1) Per chapter 29A.56 RCW (section 2, chapter 7, Laws of 2019), the party chair for each major party must provide that party's official list of candidates to the secretary of state no later than sixty-three days prior to the primary. This list must include the full name of each candidate, the form of the candidate's name as it will appear on the ballot and a signature of the party chair certifying the list as the official party candidates.

(2) Per RCW 29A.56.040(4) each major party may request that the ballot for that party include a response position allowing the voter to indicate the voter's preference for having delegates to the party's national convention remain uncommitted.

(3) Immediately following the ~~((last day for candidates to withdraw))~~ receipt of each major party's official list of candidates, the secretary of state shall certify to the county audi-

tors ~~((and state and national chairpersons of the major political parties))~~ the final list of candidates who will appear on the presidential primary ballot and a response position for uncommitted if requested by either party.

(4) Per chapter 29A.56 RCW (section 2, chapter 7, Laws of 2019), if a major party chooses to accept votes for write-in candidates in the primary, the party chair for that major party must provide that party's official list of write-in candidates no later than the seventh day prior to the primary. This list must include the full name of each write-in candidate, and a signature of the party chair certifying the list as the official party write-in candidates.

(5) Immediately following the last day for major political parties to submit write-in candidates, the secretary of state shall certify to the county auditors the final list of official write-in candidates to be counted for each party for the presidential primary.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-219-140 Party declarations. (1) No later than August 15th in the calendar year preceding the year in which the presidential preference primary is to be held, the state chair of each major party shall submit in writing to the secretary of state the exact wording of any party declaration required by rules of the state or national party.

(2) The secretary of state shall certify the language of each major party's declaration to the county auditors no later than August 30th in the calendar year preceding the year in which the presidential preference primary is to be held.

~~((3) Each registered voter desiring to participate in the presidential primary of a major party that requires a declaration shall subscribe to the declaration.))~~

AMENDATORY SECTION (Amending WSR 15-24-001, filed 11/18/15, effective 12/19/15)

WAC 434-219-155 Ballot materials. (1) Each county shall print declarations on the return envelopes in the same format and color as prescribed by the secretary of state which must include:

(a) The standard declaration per WAC 434-230-015 printed on the return envelope along with each political party declaration.

(b) Each political party declaration printed with a checkbox for voters to indicate the party declaration to which they subscribe.

(c) One signature line to serve as both the voter's standard ballot declaration and the signature for the voter's political party declaration.

(2) In addition to ballot requirements listed in WAC 434-230-015:

(a) County auditors must issue consolidated ballots that include the political party ballots printed on one side of a single sheet of paper.

(b) Each ballot must specify the election as "Presidential Primary."

(c) A political party checkbox must not be printed on the ballot.

(d) A "Democratic Party" heading within or under a blue shaded bar and a "Republican Party" heading within or under a red shaded bar printed immediately above the associated list of candidates. Other major political parties included in the primary must have similar headings and color.

(e) The ballot lists of candidates for president for each political party shall be printed in the following order:

The major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first. Other major political parties must follow according to the votes cast for their nominees for president at the last presidential election.

(f) Candidates shall be listed in alphabetical order within each political party as certified by the secretary of state.

(g) Following each list of candidates shall be a response position ~~((and a space for writing in the name of a candidate))~~ for a voter to indicate a preference for delegates to the party's national convention to remain uncommitted, if inclusion of the response position is requested by that political party.

(h) Following each list of candidates and any response position for uncommitted, shall be a space for writing in the name of a candidate.

(i) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are not limited to, printing a smaller point size or different type style.

(3) In addition to other instructions normally provided to voters, the county auditor shall include an insert. The insert must provide specific instructions on how to mark the ballot so the ballot will be counted in accordance with the political party declaration signed on the return envelope in substantially the same format as provided by the secretary of state.

(4) Provisional, service, overseas, special absentee and electronically delivered ballots must include political party declarations. If the political party declarations are not printed on the return envelopes, both the ballot and political party declaration must be printed on ~~((a))~~ separate sheets of paper. The voter must be instructed to sign and place the declaration sheet into the ballot return envelope, outside the security envelope. Signatures on both the ballot declaration and the political party declaration are required to count a ballot.

(5) The following WAC sections do not apply to presidential primaries: WAC 434-230-025, 434-230-035, 434-230-045, 434-230-055, ~~((434-230-085,))~~ 434-230-090, and 434-230-110.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-219-190 Special election held in conjunction with the presidential primary. If a presidential primary occurs ~~((at the same election as a special election))~~ on an election date described in RCW 29A.04.330, all measures or candidates for office for which the voters are eligible to vote at that special election shall be listed on the ballot in such a manner that each voter can identify and vote on those candi-

dates or measures separately from the presidential primary candidates.

AMENDATORY SECTION (Amending WSR 15-24-001, filed 11/18/15, effective 12/19/15)

WAC 434-219-230 Processing of ballots. (1) Each registered voter desiring to participate in the presidential primary of a major party that requires a declaration shall subscribe to the declaration in order for their vote to be counted.

(2) If the voter selected a political party declaration, a notation of the party selected must be made in the voter's registration file.

~~((2))~~ (3) If the voter fails to submit a marked and signed political party declaration on the return ballot envelope, the auditor shall send at least one notice by either mail or email and advise the voter of the correct procedures for completing the declaration. If a voter submits a marked and signed political party declaration by the day before the primary is certified, the voter's ballot may be counted if all other requirements are met.

Exception: A political party selection on a federal write-in absentee ballot form substitutes for the political party declaration.

~~((3))~~ (4) Ballots must be sorted according to major party declaration choice before ~~((it is removed))~~ removal from the return envelope. Once ~~((the))~~ a ballot is removed from the return envelope and secrecy envelope, it must be inspected and processed consistent with the party declaration. Ballots that have been removed from the return and secrecy envelopes must be processed and stored by party.

(5) If the voter writes in a candidate name, the ballot should be processed in the same manner as WAC 434-262-160, however only votes for candidates contained on an official party list of write-in candidates may be counted.

AMENDATORY SECTION (Amending WSR 15-24-001, filed 11/18/15, effective 12/19/15)

WAC 434-219-235 Statewide standards on what is a vote—Presidential primary. The following standards determine the validity of political party declarations on a presidential primary return envelope and ballot. All standards listed in WAC 434-261-086 apply to ballots.

(1) ~~((The first returned marked and signed political party declaration is the determining factor;))~~ In order for a ballot to be valid and included in the ballot count, the ballot must contain one marked political party declaration, if a declaration has been provided by the party, a valid voter signature, and meet other requirements in law and rule. Only a vote on the ballot within the party the voter selected shall be ~~((counted))~~ included in the ballot count. Ballots must be rejected by the county canvassing board for the following reasons:

(a) Political party declarations.

(i) The voter selects both political party declarations.

(ii) The voter fails to provide a marked and signed political party declaration by the day before certification of the primary.

(b) Ballots.

(i) The voter votes for a candidate on the ballot not matching the political party declaration.

(ii) The voter votes for candidates in more than one party.

(2) When the voter modifies a party name or wording of a selected political party declaration, the party checkbox is considered unmarked and the voter must be contacted per WAC 434-219-230. Such alterations may include:

(a) Modification of a party name or wording of a selected political party declaration.

(b) A strike through a party name or wording of a selected party declaration without also making another party choice.

(3) When a voter makes a correction to a political party selection, the canvassing board shall consider the voter's intent.

(a) If the voter strikes through a party name or wording of a party declaration, it is considered a correction only when the voter clearly selects another party declaration. Corrections may be resolved in the same manner as marks made on a ballot according to WAC 434-261-086 (1)(c), (d), and (e).

(b) If the voter does not mark inside a party checkbox, a mark or written instruction made outside the party checkbox may still indicate a choice when one declaration is clearly selected. Voter intent issues for marks made outside the party checkbox may be resolved in the same manner as marks made on a ballot according to WAC 434-261-086 (1)(b) and (c).

Exception: One mark that strikes through a party name or wording of the party declaration does not indicate a selection.

AMENDATORY SECTION (Amending WSR 16-11-038, filed 5/11/16, effective 5/11/16)

WAC 434-219-290 Certification of presidential primary by secretary of state. County canvassing boards shall certify the results of the presidential primary (~~fourteen~~) ten days following the primary. The county auditor shall transmit the returns to the secretary of state immediately. Not later than seventeen days following the presidential primary, the secretary of state shall certify the results of the presidential primary and notify the candidates and the chairperson of the national and state committees of each major political party of the votes cast for all candidates listed on the ballot.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-219-310 Mandatory statutory recount provisions do not apply. The provisions of (~~chapter 29A-64~~) RCW 29A.64.021 regarding mandatory statutory recounts do not apply to a presidential primary.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-219-060 Designation of candidates by secretary of state.

WAC 434-219-080 Petition process for ballot access.

WAC 434-219-090 Form of the nominating petition.

WAC 434-219-100 Verification of signatures by secretary of state.

WAC 434-219-110 Determination of sufficiency.

WAC 434-219-115 Withdrawal.

WSR 19-17-078
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 20, 2019, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-090.

Title of Rule and Other Identifying Information: Chapter 296-19A WAC, Vocational rehabilitation.

Hearing Location(s): On October 2, 2019, at 10:00 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S117/S118, Tumwater, WA 98501.

Date of Intended Adoption: October 22, 2019.

Submit Written Comments to: Laurinda Grytness, Department of Labor and Industries, Insurance Services, P.O. Box 44329, Olympia, WA 98504-4329, email Laurinda.grytness@Lni.wa.gov, fax 360-902-6706, by October 4, 2019, by 6:00 p.m.

Assistance for Persons with Disabilities: Contact Tara Osuna, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Tara.Osuna@Lni.wa.gov, by September 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will support the department's vocational recovery effort by:

- Ensuring expectations of vocational providers are better aligned with the return to work language in RCW 51.32.095.
- Addressing certain requirements for vocational firms.
- Outlining when and to what degree vocational providers may be subject to corrective action or sanctions.

Early intervention services and reporting:

WAC 296-19A-040, proposes changing the name of early intervention services to vocational recovery services to align with other related, proposed amendments and with the language of RCW 51.32.095. Clarifies that self-insurers may make any of the listed referrals and/or provide services to address priorities listed in RCW 51.32.095(2).

WAC 296-19A-045, removes WAC 296-19A-050 What are vocational recovery services?, from the list of rules about vocational rehabilitation referrals that apply only to state fund claims, in alignment with the proposed amendment to WAC 296-19A-040.

WAC 296-19A-050, in the past, this rule limited the focus of vocational providers to return to work options with the employer of injury or the current employer. The proposed amendment outlines a new service (called vocational recovery) which requires vocational recovery services through the

return-to-work priorities (a) through (g) in RCW 51.32.095 (2). The proposed amendments support the department's expectations of vocational providers to provide worker-centric services that address work disability, use best practices to increase worker engagement and activation, and focus on assisting the worker with their needs and return to work goals.

WAC 296-19A-060, the proposed amendment replaces early intervention progress reports with a vocational recovery plan, strategies, and next steps. After submitting the vocational recovery plan to the department and the worker, the vocational provider sends an update every thirty days.

Assessment services (ability to work assessment):

WAC 296-19A-065, under current rules, when return to work options with the employer of injury are exhausted or do not exist, the vocational provider recommends an ability to work assessment, which focuses on determining whether a worker may be eligible for retraining. The proposed amendment, when combined with the proposed changes in WAC 296-19A-050, eliminates the gap in services by redefining ability to work assessment as an activity that generally occurs only after the vocational provider has applied the services outlined in the new vocational recovery rule (WAC 296-19A-050), documented their efforts, and those services did not result in a return to work or a valid job offer.

Qualifications to provide vocational services:

WAC 296-19A-210, the proposed amendment outlines requirements for vocational firms to receive referrals, including completing and submitting the firm provider agreement and updating it at least annually, adhering to guidelines for distribution of unassigned firm referrals, and submitting, implementing, and reporting on a department-approved quality assurance plan.

Proposed new rules on vocational provider/firm conduct:

The current rules are very limited regarding vocational rehabilitation counselor behaviors or conduct; the majority of these rules address adherence to other rules and billing policies. The department proposes new rules to address these issues.

WAC 296-19A-262, lists actions related to conduct that may result in corrective action or sanctions.

WAC 296-19A-264, outlines the potential corrective actions or sanctions.

WAC 296-19A-266, describes how the department will handle complaints or allegations of sexual misconduct/contact by a vocational provider, outlining when and to what degree they may be subject to corrective action or sanctions.

WAC 296-19A-268, clarifies that vocational providers are subject to background checks at least once every two years and prior to receiving referrals for services.

WAC 296-19A-269, makes provisions for independent review for permanent sanctions.

Proposed for repeal:

WAC 296-19A-260 What are the possible consequences for a provider that does not comply with the RCWs, WACs, or department policies?

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100 and 51.36.110.

Statute Being Implemented: RCW 51.32.095.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Laurinda Grytness, Tumwater, Washington, 360-902-6362; Implementation: Ryan Guppy, Tumwater, Washington, 360-902-5931; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Laurinda Grytness, Department of Labor and Industries, Insurance Services, P.O. Box 44329, Olympia, WA 98504-4329, phone 360-902-6362, fax 360-902-6706, TTY 360-902-4252, email Laurinda.grytness@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The delivery of vocational recovery services, with a worker-centric approach and application of best practices, will increase the likelihood of workers' return to work and/or stay at work, and decrease work disability and associated costs. This is expected to result in an overall cost savings to the workers' compensation system. Currently, the first vocational intervention on a claim is an ability to work assessment (AWA). Under the proposed rules, vocational recovery services will be the first intervention and limited scope AWAs will be performed only when no return to work options are identified with vocational recovery services. In 2018, the department began a pilot to test the vocational recovery services. As discussed in the cost-benefit analysis, the average costs of first AWA services is \$3,059 compared to an average cost of the vocational recovery pilot of \$2,100. Twenty percent of the department's pilot vocational recovery referrals moved to AWA, with average costs of subsequent AWA of \$2,315. Looking at total number of referrals in 2018, the vocational recovery services costs would result in a total average claim cost of approximately \$18.5 million compared to an approximate cost of \$22 million for AWA services as the first intervention. In addition, employers pay premiums on a per worker-hour/unit basis for each assigned risk class so there is no potential for any disproportionate impact on small businesses even if the overall cost to claims was increased.

Specific to vocational providers, the department will pay vocational providers for appropriately billed services. Vocational firms generally consider oversight planning in their administrative overhead, and the department has worked closely with a representative group of firm owners and managers to identify quality assurance elements that can be evaluated and validated through existing methods and processes.

August 20, 2019

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 17-19-089, filed 9/19/17, effective 10/20/17)

WAC 296-19A-040 What vocational rehabilitation services require authorization? (1) All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: (~~Early intervention~~) Vocational recovery; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Self-insurers may also make any of the listed referrals and/or provide any other services they consider appropriate to address priorities listed in RCW 51.32.095(2). Each referral is a separate authorization for vocational rehabilitation services.

(2) Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-045 Which rules under "vocational rehabilitation referrals" apply only to state fund claims? WAC (~~296-19A-050,~~) 296-19A-060, 296-19A-080, 296-19A-098, 296-19A-118, and 296-19A-125 through 296-19A-137 pertain only to referrals for vocational rehabilitation services made by the department for state fund claims.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-050 What are (~~early intervention~~) vocational recovery services? (~~Early intervention services are intended to help an industrially injured or ill worker return to work, or continue to work, for the employer of injury or the current employer. These services include, but are not limited to, the following:~~

(1) ~~Discussing early return to work options with the employer, worker, and attending physician;~~

(2) ~~Identifying return to work goals and barriers that may interfere with or prevent the industrially injured or ill worker from returning or continuing to work;~~

(3) ~~Assisting employers with offers of employment;~~

(4) ~~Planning and working with the referral source on necessary job modifications and prejob accommodations;~~

(5) ~~Performing job analyses; and~~

(6) ~~Assessing the industrially injured or ill worker's need for preferred worker status and educating the worker on the preferred worker benefit, if appropriate.)~~ (1) Vocational recovery services are intended to ensure appropriate support is provided to an industrially injured or ill worker so that they return to work, continue to work, or are enabled to become employable at gainful employment consistent with the priorities listed in RCW 51.32.095 (2)(a) through (g) with the highest priority given to returning a worker to employment:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer including transitional return to work;

(c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills; and

(g) Modification of a new job with a new employer.

(2) In each case referred to a vocational provider, the vocational recovery services include work disability prevention best practices identified by the department and periodically published through policy bulletins available from the department and recorded with the office of the code reviser. These best practice services include, but are not limited to, the following which must be addressed by the vocational provider prior to consideration of when and which of the priorities listed in subsection (1) of this section may be most appropriate for the worker:

(a) Identify and, as appropriate, use their skills and professional judgment along with accessing available community resources that do not impose a cost on the department or injured worker to proactively address barriers that may interfere with or prevent the worker from returning to any work, including transitional or modified work;

(b) Assist the worker in identifying return to work goals and steps necessary to achieve those goals; and

(c) Assess the worker's potential preferred worker status, educating the worker and employer(s) on transitional and permanently modified work, the Washington stay at work program, and the preferred worker benefits, if appropriate.

(3) Vocational recovery services also include, but are not limited to, those described below specific to the priorities listed in RCW 51.32.095(2).

(a) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), in evaluating the priorities listed in RCW 51.32.095 (2)(a) through (d) which involve return to work with the same employer, the vocational provider will:

(i) Except for return to work at the previous job with the same employer, assist the worker with job readiness and job placement services, if applicable;

(ii) Plan and work with the worker, the employer, the attending provider, and the department or self-insured employer to identify and pursue possible return to work opportunities and any necessary job modifications and prejob accommodations, when applicable;

(iii) Work with the worker and the employer to develop job description(s) or job analysis(es) that include the physical demands necessary to perform the work. Vocational providers must use their professional judgment when determining whether a job description or job analysis is appropriate, except during an ability to work assessment as outlined in WAC 296-19A-065 during which job analyses are required;

(iv) Based on the job description or descriptions, obtain approval from the attending provider that the job or jobs are appropriate for the worker's accepted condition(s), when applicable;

(v) Assist the employer with an offer of employment, and assist with resolution of disagreements about job offers, if needed;

(vi) Assist the employer with accessing return to work incentives such as those offered through the Washington stay at work and preferred worker programs, when applicable;

(vii) Document all offers of employment and the worker's response;

(viii) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(b) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), for the priorities listed in RCW 51.32.095 (2)(e) through (g) which involve return to work at a job with a new employer, the vocational provider will:

(i) Assist the worker with job readiness and job placement services, and in identifying opportunities through WorkSource partners and other organizations that support return to work;

(ii) Assist the worker to develop a resume or work history as a tool to identify the worker's knowledge, skills, and interests;

(iii) Plan and work with the worker, the new employer, if applicable, the attending provider, and the department or self-insured employer on necessary job modifications and prejob accommodations;

(iv) Work with the worker and with the new employer, if applicable, to develop a job description that includes the physical demands necessary to perform the work;

(v) Based on the job description or descriptions, obtain medical approval from the worker's attending provider that the job or jobs are appropriate for the worker's accepted conditions;

(vi) Assist the new employer with an offer of employment, if needed;

(vii) Assist the new employer with accessing return to work incentives such as those offered through the preferred worker program, if applicable;

(viii) Document all offers of employment and the worker's response;

(ix) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(4) To ensure appropriate assistance has been provided or offered to the worker so that they return to work, continue to work, or are enabled to become employable as outlined in subsections (2) and (3) of this section the vocational provider must document their efforts to provide the services outlined in subsection (3)(a)(i) through (viii) and (b)(i) through (ix) of this section, including offers of employment and the worker's response(s), prior to requesting a referral for an ability to work assessment as described in WAC 296-19A-065.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-060 What reports does the department require when ~~((early intervention))~~ **vocational recovery** services are provided at its request? (1) ~~((Prog-~~

~~ress reports.))~~ The vocational ~~((rehabilitation))~~ provider must ~~((submit a written progress report))~~ engage the worker to develop a vocational recovery plan. The vocational recovery plan should include the needs and goals of the worker and steps or strategies to address these. The plan may change as appropriate for the worker's needs and goals. A copy or copies of the vocational recovery plan must be provided to the worker and to the department~~((, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The progress report must include the following:~~

~~(a) Summarized results of all contacts the provider had with the industrially injured or ill worker, employer of injury or current employer, and medical provider(s);~~

~~(b) Summary of all actions taken including progress on previously recommended actions;~~

~~(c) Identification and analysis of any barriers preventing completion of the referral; and~~

~~(d) Description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions)).~~ Every thirty days, the vocational provider must provide to the department and to the worker a brief summary of steps taken since the last update to address the worker's needs and goal(s). Examples include, but are not limited to, progress in resolving the worker's concerns and barriers to returning to work such as meetings with an employer or employers, meetings with the worker's attending provider, helping the worker understand the claim and vocational processes, and engaging the worker in community resources and/or WorkSource.

(2) Closing reports. The vocational provider must ~~((always submit an early intervention))~~ submit a vocational recovery closing report at the conclusion of services unless advised otherwise by the department. In the report the provider must include or address:

~~(a) ((A brief description of the industrially injured or ill worker's work history;~~

~~(b) Summary of the industrially injured or ill worker's education, training, licenses, and certificates;~~

~~(c) A medically reviewed job analysis for the job of injury and any other return to work options;~~

~~(d) Description of the worker's medical status and physical capacities;~~

~~(e) Indication of which return to work priority relates to the situation;~~

~~(f) Any other supporting documentation;~~

~~(g) The date the worker returned to work and the monthly salary or wage, or document attempts to obtain this information, if applicable;~~

~~(h) Documentation that no return to work options exist with the employer of injury or current employer, if applicable.))~~ Whether a return to work outcome was achieved and, if so, whether the return to work is considered temporary, permanent, modified, or transitional;

(b) If a return to work outcome was not achieved, an outline of the vocational provider's efforts as required in WAC 296-19A-050(4).

(3) The provider must notify the department orally and in writing within two working days after learning of an unsuccessful return to work by the injured worker.

(4) The provider must notify the department orally and in writing within two working days after learning of a return to work by the injured worker.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-065 What ~~((are))~~ is an ability to work assessment ~~((services))~~? ~~((Assessment services are used by))~~ (1) Workers may be referred to a vocational provider for assessment activities at the discretion of the department or self-insured employer to determine if a worker ~~((should))~~ is eligible to receive vocational rehabilitation plan development services. Assessment ~~((services))~~ activities will generally occur after all of the following:

(a) The vocational provider has applied the services outlined in WAC 296-19A-050 What are vocational recovery services?;

(b) The services did not result in a return to work or a valid job offer or offers; and

(c) The vocational provider has documented such efforts.

(2) During an ability to work assessment, the vocational provider will maintain regular communication with the worker, addressing the worker's concerns, assisting to resolve barriers, as appropriate, and updating them on assessment activities to include information requested and/or collected.

(3) Assessment activities may include, but are not limited to, the following:

~~((1))~~ (a) Documenting work restrictions;

~~((2))~~ (b) Performing job analyses;

~~((3))~~ (c) Evaluating the worker's ability to work at the job of injury;

(4) Assessing) or any other job including an assessment of the worker's transferable skills;

~~((5))~~ (d) Conducting labor market surveys as defined in WAC 296-19A-140;

~~((6))~~ Evaluating the worker's ability to work at any other job;

~~((7))~~ (e) Evaluating the worker's ability to benefit from plan development services, including any and all vocational testing considered necessary to support a recommendation for retraining eligibility, if appropriate; ~~((and~~

~~((8))~~ (f) Documenting a recommendation to the department or self-insured employer on whether the worker is employable at gainful employment, consistent with RCW 51.32.095 (2)(a) through (g) or whether vocational plan development is both necessary and likely to make the worker employable at gainful employment;

(g) Assessing the worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit(-); and

(h) If a worker indicates an interest in returning to work and, in the professional judgment of the vocational provider, the worker has the necessary skills and abilities to do so consistent with their medical restrictions, the vocational provider may provide those services listed in WAC 296-19A-050 as they deem appropriate.

AMENDATORY SECTION (Amending WSR 04-08-045, filed 3/31/04, effective 7/1/04)

WAC 296-19A-210 What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers? Provider community commentary, expert opinion and best practices suggest that there is a correlation between a higher quality level of vocational rehabilitation services and higher qualifications of vocational rehabilitation providers. To ensure the provision of the highest possible quality of vocational rehabilitation services, the department shall only issue a provider number to persons, firms, partnerships, corporations, and other legal entities that meet the following qualification requirements:

(1) Vocational rehabilitation counselor (VRC).

(a) VRCs not registered with the department and applying for a provider number with the department effective on or after December 1, 2000, must meet the following minimum qualifications:

| | | |
|--------------------------------|---|--|
| Education Masters Degree | Experience 1 year full-time industrial insurance experience | Certification and CRC or CDMS or ABVE |
| OR | | |
| Bachelors Degree | 2 years full-time industrial insurance experience | and CRC or CDMS |

CRC = Certified Rehabilitation Counselor

CDMS = Certified Disability Management Specialist

ABVE = American Board of Vocational Experts

(b) VRCs registered with the department as of November 30, 2000, will be required to meet the qualification criteria in (a) of this subsection no later than November 30, 2010.

(c) The VRC assigned to or directly receiving the referral from the referral source is responsible for all work performed by any vocational provider on that referral.

(2) VRC supervisor of interns (supervisor).

(a) The supervisor must meet the qualification requirements for a VRC in subsection (1)(a) and (b) of this section.

(b) The supervisor must provide proof of a total of five years full-time experience providing, evaluating, analyzing and/or assessing vocational services. For the purposes of this rule, "vocational services" are those defined in WAC 296-19A-010(2). At least three of the five years must be under Title 51 RCW.

(c) A maximum of thirty-six months in intern status may be counted toward the five years of experience needed to become a supervisor.

(d) Supervisors are expected to monitor and assist in the training and professional development of interns under their supervision, in order to ensure that interns develop the requisite knowledge and professional skills to become competent VRCs. A supervisor's responsibilities(-) include, but are not limited to:

(i) Monitoring billing;

(ii) Monitoring work;

(iii) Monitoring professional behavior;

(iv) Promoting professional development and assisting the intern in meeting the department's requirements to become a VRC; and

(v) Communicating statute, rule and policy.

(3) Forensic services—In order to provide forensic services to the department, on or after the effective date of this rule, a VRC must provide proof of five years full-time experience providing direct vocational services to Washington state industrially injured or ill workers, and must possess a CRC or ABVE certification. Vocational providers previously approved to provide this service, under chapter 296-19A WAC, will retain that status.

(4) Intern.

(a) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must meet the following minimum qualifications:

| Degree | Internship Length |
|---|--|
| Masters Degree in field acceptable to CRC or CDMS or ABVE | Equal to required experience to obtain CRC or CDMS or ABVE certification including at least 1 year working with industrially injured or ill workers. |
| OR | |
| Bachelors Degree in field acceptable by CDMS | Equal to required experience to obtain CDMS certification including at least 2 years working with industrially injured or ill workers. |

(b) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must obtain one of the required VRC certifications within one year of completing their required internship. Interns will remain in internship status during this time frame.

(c) Interns registered with the department as of November 30, 2000, will be required to apply for a provider number with the department and may work as an intern until the end of their current internship. Upon completion of the internship the intern may submit an application to the department as a VRC. These providers must obtain one of the required VRC certifications by November 30, 2010.

(d) All interns are required to conform to Title 51 RCW, department rules, and department policies. All interns granted a provider number by the department must be supervised by a VRC supervisor.

(e) No person shall serve as an intern under these rules for more than seventy-two months of full-time experience, or its equivalent, working with industrially injured or ill workers. The intern must notify the department when there is a change in the status of an internship.

(5) Interns may not receive referrals directly from the department or self-insured employers. Interns may perform aspects of vocational rehabilitation services under the supervision of a VRC supervisor.

(6) Providers who receive or are assigned referrals must comply with all electronic security requirements in place for accessing department files.

(7) Providers registered with the department as of November 30, 2000, who do not meet the above qualification requirements within the ten-year period will no longer be eligible to provide vocational rehabilitation services to industrially injured or ill workers and the department will terminate their provider number(s).

(8) Business requirements for vocational rehabilitation firms.

(a) (~~Providers~~) Vocational rehabilitation firms must comply with all federal and state laws, regulations and other requirements with regard to business operations. This includes, but is not limited to, a unique federal tax identification number (federal employer identification number, individual tax identification number, or Social Security number) and, if hiring employees or opting for coverage as a self-employed sole proprietor, a unified business identifier and industrial insurance account in good standing. In order to be eligible to receive referrals from the department, (~~providers~~) firms must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(b) Providers must be covered by general liability insurance, automobile liability insurance, errors and omission insurance, malpractice insurance, and industrial insurance if required by Title 51 RCW.

(c) (~~Providers~~) Vocational rehabilitation firms may be partnerships, corporation, sole proprietors, or other legal entities. The firms must have services and facilities that provide injured workers a private and professionally suitable location in which to discuss vocational rehabilitation services issues. In order to be eligible to receive referrals from the department, (~~providers~~) firms must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(d) Vocational rehabilitation firms and providers must have telephone-answering capability during regular business hours, Monday through Friday. In order to be eligible to receive referrals from the department, (~~providers~~) firms must satisfy the requirements set forth in (c) and (d) of this subsection in every service location in which they wish to operate.

(e) In order to receive referrals made by the department, (~~providers~~) firms must maintain or have access to equipment that can utilize the department's remote access system for transmitting vocational referrals.

(9) In order to receive referrals from the department, vocational rehabilitation firms must first:

(a) Complete the vocational rehabilitation firm provider agreement, attesting to and providing documentation required by the department of adherence to the requirements in subsection (8) of this section;

(b) Submit an updated firm provider agreement at least annually;

(c) Adhere to the guideline for distribution of unassigned firm vocational referrals as signed by the firm owner or manager;

(d) Submit, implement, and periodically report on a department approved quality assurance plan at intervals determined by the department. For purposes of this section, "quality assurance plans" document the process the vocational firm will use to ensure certain services or tasks are completed consistent with statutory requirements, rules, and department policies. Examples of possible quality assurance elements that would be reported on and addressed in a firm's plan include completion and submission of a vocational recovery plan, face-to-face meetings with workers and other claim parties under certain circumstances, and contacting the worker every fourteen days during a retraining plan.

(e) Results and remedial actions as outlined in the department approved quality assurance plan must be provided to the department at intervals set forth in the policy. Elements of quality assurance plans may be periodically updated by the department. Vocational rehabilitation firms will be given at least sixty days' notice of changes in quality assurance elements, reporting frequency, or other intended updates to quality assurance expectations.

(10) The department may ((assign a provider number)) make referrals to a vocational rehabilitation firm, partnership, corporation, sole proprietor, or other legal entity so long as substantial control over the daily management of the ((vocational rehabilitation firm, partnership, corporation or other legal)) entity is performed by a VRC that satisfies the qualifications set forth in this rule.

NEW SECTION

WAC 296-19A-262 What actions related to conduct, behavior, or ethical violations by a credentialed vocational provider, intern, or firm may result in corrective action or sanctions? (1) Internal staff and parties to a claim can submit concerns or complaints to the department about a vocational provider or firm at any time. The department's program that is responsible for the conduct of vocational providers reviews all concerns and complaints. The program's intent is to resolve the issues at the lowest possible level, for example, through conversation and collaboration with the vocational provider and their firm.

(2) However, a vocational provider and/or vocational firm may be subject to corrective action or sanctions for conduct that does not comply or is inconsistent with the applicable laws and policies including, but not limited to:

- (a) Title 51 RCW, Industrial insurance;
- (b) Chapter 49.60 RCW, Discrimination—Human rights commission;
- (c) Washington Administrative Code;
- (d) Medical aid fee schedule and payment policies;
- (e) Department policies.

(3) Examples that may warrant investigation and/or corrective action or sanctions include, but are not limited to:

- (a) Situations involving a real or perceived conflict of interest;
- (b) Misrepresentation;
- (c) Situations where the vocational provider or firm has, or is perceived to have, abused the relationship between the vocational provider and the worker.

NEW SECTION

WAC 296-19A-264 What potential corrective actions or sanctions may the department order or direct, and who is responsible for administering the sanction(s)? (1) Corrective actions or sanctions can include, but are not limited to:

- (a) Reprimand;
- (b) Remedial education courses and/or other educational or training programs;
- (c) Temporary supervision when meeting with a client; and/or
- (d) Probation;
- (e) Inability to receive payment or recoupment of payments, plus interest, made to the provider;
- (f) Assessment of penalties;
- (g) Denial or rejection of a request for payment;
- (h) Temporary placement of a provider on prepayment review, requiring submission of supporting documents prior to payment;
- (i) Rejection of a provider's application to provide vocational rehabilitation services;
- (j) Permanent restrictions such as supervision when meeting with a client or placement on prepayment review; or
- (k) Permanent revocation of the unique identifier for the vocational rehabilitation counselor or intern (VRC ID). Permanent revocation means the provider cannot obtain a provider number, bill, or receive referrals for services from the department or a self-insured employer. Termination of credentials by a credentialing body for any reason will result in immediate revocation of the VRC ID number.

(2) The department may consider its prior actions in determining the appropriate corrective actions or sanctions.

(3) The department shall communicate temporary corrective actions or sanctions against an individual vocational provider or intern by notice to the vocational firm and to the individual. The notice shall include how to request reconsideration from the department or appeal the decision to the board of industrial insurance appeals.

(4) The firm is responsible for developing an oversight plan to be provided to the department within thirty days of the notice.

(a) The department will notify the firm of its acceptance of the plan within fifteen days of receipt.

(b) If the plan is unacceptable, the department will alter the plan and submit it to the firm owner or manager for signature and implementation within thirty days.

(5) Until temporary corrective actions or sanctions are completed, the department will report them to another hiring firm when the new firm requests a provider number for the vocational provider to whom the action/sanction applies. The new firm will be responsible for completing the oversight that was originally agreed to by the department.

(6) If temporary actions/sanctions apply to a firm or to a sole proprietor, the department will develop an oversight plan and communicate it to the firm owner or manager.

(7) Permanent vocational provider sanctions or restrictions, including revocation of the VRC ID number, shall be effective fifteen days after notice is issued to the vocational provider and to the firm employing the provider. The notice shall include all of the following:

- (a) The basis for the action;
- (b) How to request reconsideration from the department or appeal the decision to the board of industrial insurance appeals; and
- (c) How the provider and/or firm can submit a response or additional information for the department's consideration.
- (8) Records of corrective actions and sanctions are available for five years to any party by submitting a request to the department's public records unit.
- (9) The department may report corrective actions or sanctions to the appropriate credentialing body or bodies.

fact? (1) Specific to allegations of sexual misconduct or contact, the department will initiate an investigation by department staff or by an external investigative agency following a complaint or an internal request for review. The department shall determine any appropriate sanctions after receiving the investigation report.

(2) Sexual misconduct or sexual contact with any party involved in a worker's compensation claim for which the provider is providing services will result in corrective actions or sanctions based on the table below. These parties include, but are not limited to: The injured worker, the worker's immediate family members, employer, medical and other service provider(s), and legal counsel.

NEW SECTION

WAC 296-19A-266 How will the department handle complaints or allegations of sexual misconduct or con-

| Sexual Misconduct or Sexual Contact (including convictions of sexual misconduct) | | | | |
|--|---|--|---|--|
| Severity | Tier/Conduct | Sanction Range In Consideration of Aggravating & Mitigating Circumstances | | Duration |
| | | Minimum | Maximum | |
| Least ↓ | A-Any conduct, contact, or statements of a sexual or romantic nature | Conditions may include reprimand, training, short-term monitoring, and/or evaluation to be performed by the VRC's vocational firm and reported to the department. | Minimum conditions and oversight by the vocational firm and reported to the department at least every six months for three years which may include supervision when meeting with a client and/or probation. | 0-3 years |
| ↓ | B-Sexual contact, romantic relationship, or sexual statements that risk or result in client harm | Oversight for two years which may include training, probation, suspension, practice restrictions, monitoring, supervision when meeting with a client, and/or evaluation to be monitored by the vocational firm and reported to the department at least every six months. | Minimum conditions for up to five years or permanent restrictions or revocation of the VRC ID number. | 2-5 years Unless permanent revocation of VRC ID number |
| ↓ Greatest | C-Sexual contact involving force and/or intimidation, and convictions of sexual offenses in RCW 9.94A.030 | Permanent revocation of the VRC ID number. | | Permanent Revocation of VRC ID number |

(3) The department shall report all cases of sexual misconduct or contact that result in sanctions to the appropriate credentialing body.

subject to periodic criminal background checks at least once every two years, in addition to satisfying a background check before receiving a provider number. The department shall determine whether pending criminal charges or a conviction may warrant suspension or revocation of a VRC ID number.

NEW SECTION

WAC 296-19A-268 Are vocational providers subject to criminal background checks? Vocational providers have unsupervised access to injured workers and their personal identifiers and medical information. Because of this, they are

NEW SECTION

WAC 296-19A-269 What are the provisions for independent review for permanent sanctions? (1) The depart-

ment shall establish an independent review panel of at least three private sector vocational providers. The panel will act as consultants whenever the department believes misconduct or failure to pass a criminal background check may warrant permanent restrictions or revocation of the VRC ID number.

(2) At least one member of the panel must hold the same credential as that of the provider whose conduct is under review, unless the provider is an intern.

(3) The review panel shall receive:

(a) A copy of the investigative report; and

(b) The results of the background check, and/or any complaint(s) with the names of the vocational provider and their employing vocational firm redacted.

(4) The department shall consider the feedback of the review panel when making its final decision on the level of permanent restrictions or revocation of the VRC ID number.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-19A-260 What are the possible consequences for a provider that does not comply with the RCWs, WACs, or department policies?

WSR 19-17-079
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Credit Unions Division)
 [Filed August 20, 2019, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-10-047.

Title of Rule and Other Identifying Information: Parity requests. Procedures for requesting powers and authorities authorized in other states.

Hearing Location(s): On October 2, 2019, at 10:00 a.m., at 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: October 2, 2019.

Submit Written Comments to: Cristina Diaz, P.O. Box 41200, Olympia, WA 98501, email Cristina.Diaz@dfi.wa.gov, fax 877-330-6870, by September 25, 2019.

Assistance for Persons with Disabilities: Contact Cristina Diaz, phone 360-902-8718, fax 877-330-6870, TTY 800-833-6384, email Cristina.Diaz@dfi.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a new rule, which will provide procedures for requesting powers and authorities allowed in other states. These powers and authorities are permitted under a new law, HB 1247.

Reasons Supporting Proposal: To make the notice process and requirements clear for credit unions that are requesting approval to use powers allowed in other states.

Statutory Authority for Adoption: RCW 31.12.516.

Statute Being Implemented: RCW 31.12.402.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of financial institutions, credit unions division, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Amy Hunter, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8778; and Implementation: Doug Lacy-Roberts, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8753.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not an agency identified in RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 21, 2019
 Amy B. Hunter
 Director of Credit Unions

NEW SECTION

WAC 208-400-040 Parity requests. Procedures for requesting powers and authorities authorized in other states.

(1) A credit union must send written notice to the director, by United States mail or by electronic delivery, of its intent to exercise a power or authority that it would have if it were an out-of-state credit union.

(2) The written request must provide the following information in order to be considered complete:

(a) A description of the specific proposed powers or authorities and how the power or authority will serve the convenience and advantage of the credit union's members;

(b) The state law citations upon which the powers or authorities are based;

(c) A description of the policies, procedures, or other documents the credit union will use in implementing the powers or authorities;

(d) A description of how the powers or authorities will impact the credit union's safety and soundness, including net worth and earnings; and

(e) Any actions planned to mitigate the safety and soundness risks created by the requested powers and authorities.

(3) The director shall grant a parity request if the director finds:

(a) The request is in accordance with the requirements of RCW 31.12.404;

(b) The power or authority is in the interests of the members of the credit union and maintains the fairness of competition and parity between state-chartered credit unions and out-of-state credit unions; and

(c) The power or authority can be implemented by the credit union in a safe and sound manner.

(4) The director may ask the credit union to waive or extend the thirty day response time set forth in RCW 31.12.-404(4).

(5) Absent a waiver or extension, if the director takes no action on the request within thirty days of delivery of the notice, the right to exercise the power is deemed granted.

(6) The director may attach restrictions or limitations on a credit union's new powers or authorities.

WSR 19-17-083
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed August 21, 2019, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-056.

Title of Rule and Other Identifying Information: WAC 182-502-0002 Eligible provider types.

Hearing Location(s): On September 24, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than September 25, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 24, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by September 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this section to add dental health aide therapist (DHAT) to the list of eligible providers who can be reimbursed for providing services to medicaid clients in tribal facilities.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1109, Section 211(49), 2019 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Jessie Dean, P.O. Box 45502, Olympia, WA 98504-2716 [98504-5502], 360-725-1649.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules

unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any additional cost or requirements on providers.

August 21, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-054, filed 2/27/14, effective 3/30/14)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
 - (a) Advanced registered nurse practitioners;
 - (b) Anesthesiologists;
 - (c) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531-1410 through 182-531-1436:
 - (i) Certified agency-affiliated counselors;
 - (ii) Certified counselors; and
 - (iii) Certified counselor advisors.
 - (d) Audiologists;
 - (e) Chemical dependency professionals:
 - (i) Mental health care providers; and
 - (ii) Peer counselors.
 - (f) Chiropractors;
 - (g) Dentists;
 - (h) Dental health aide therapists, as provided in chapter 70.350 RCW;
 - (i) Dental hygienists;
 - ((+)) (j) Denturists;
 - ((+)) (k) Dietitians or nutritionists;
 - ((+)) (l) Hearing aid fitters/dispensers;
 - ((+)) (m) Marriage and family therapists;
 - ((+)) (n) Mental health counselors;
 - ((+)) (o) Mental health care providers;
 - ((+)) (p) Midwives;
 - ((+)) (q) Naturopathic physicians;
 - ((+)) (r) Nurse anesthetist;
 - ((+)) (s) Ocularists;
 - ((+)) (t) Occupational therapists;
 - ((+)) (u) Ophthalmologists;
 - ((+)) (v) Opticians;
 - ((+)) (w) Optometrists;
 - ((+)) (x) Orthodontists;
 - ((+)) (y) Orthotist;
 - ((+)) (z) Osteopathic physicians;
 - ((+)) (aa) Osteopathic physician assistants;
 - ((+)) (bb) Peer counselors;
 - ((+)) (cc) Podiatric physicians;
 - ((+)) (dd) Pharmacists;
 - ((+)) (ee) Physicians;

- ~~((ee))~~ (ff) Physician assistants;
 - ~~((ff))~~ (gg) Physical therapists;
 - ~~((gg))~~ (hh) Prosthetist;
 - ~~((hh))~~ (ii) Psychiatrists;
 - ~~((ii))~~ (jj) Psychologists;
 - ~~((jj))~~ (kk) Radiologists;
 - ~~((kk))~~ (ll) Registered nurse delegators;
 - ~~((ll))~~ (mm) Registered nurse first assistants;
 - ~~((mm))~~ (nn) Respiratory therapists;
 - ~~((nn))~~ (oo) Social workers; and
 - ~~((oo))~~ (pp) Speech/language pathologists.
- (2) Agencies, centers and facilities:
- (a) Adult day health centers;
 - (b) Ambulance services (ground and air);
 - (c) Ambulatory surgery centers (medicare-certified);
 - (d) Birthing centers (licensed by the department of health);
 - (e) Cardiac diagnostic centers;
 - (f) Case management agencies;
 - (g) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of behavioral health and recovery (DBHR), and contracted through either:
 - (i) A county under chapter 388-810 WAC; or
 - (ii) DBHR to provide chemical dependency treatment services.
 - (h) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DBHR);
 - (i) Community AIDS services alternative agencies;
 - (j) Community mental health centers;
 - (k) Diagnostic centers;
 - (l) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
 - (m) Family planning clinics;
 - (n) Federally qualified health centers (designated by the federal department of health and human services);
 - (o) Genetic counseling agencies;
 - (p) Health departments;
 - (q) Health maintenance organization (HMO)/managed care organization (MCO);
 - (r) HIV/AIDS case management;
 - (s) Home health agencies;
 - (t) Hospice agencies;
 - (u) Hospitals;
 - (v) Indian health service facilities/tribal 638 facilities;
 - (w) Tribal or urban Indian clinics;
 - (x) Inpatient psychiatric facilities;
 - (y) Intermediate care facilities for the mentally retarded (ICF-MR);
 - (z) Kidney centers;
 - (aa) Laboratories (CLIA certified);
 - (bb) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
 - (cc) Neuromuscular and neurodevelopmental centers;
 - (dd) Nurse services/delegation;
 - (ee) Nursing facilities (approved by the DSHS aging and long-term support administration);
 - (ff) Pathology laboratories;
 - (gg) Pharmacies;
 - (hh) Private duty nursing agencies;

- (ii) Radiology - Stand-alone clinics;
 - (jj) Rural health clinics (medicare-certified);
 - (kk) School districts and educational service districts;
 - (ll) Sleep study centers; and
 - (mm) Washington state school districts and educational service districts.
- (3) Suppliers of:
- (a) Blood, blood products, and related services;
 - (b) Durable and nondurable medical equipment and supplies;
 - (c) Complex rehabilitation technologies;
 - (d) Infusion therapy equipment and supplies;
 - (e) Prosthetics/orthotics;
 - (f) Hearing aids; and
 - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
- (a) Transportation brokers;
 - (b) Spoken language interpreter services agencies;
 - (c) Independent sign language interpreters; and
 - (d) Eyeglass and contact lens providers.

WSR 19-17-084
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Division of Consumer Services)
 [Filed August 21, 2019, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-014.

Title of Rule and Other Identifying Information: Chapter 208-620 WAC implementing the Consumer Loan Act (CLA), chapter 31.04 RCW, specifically including amendments for provisions on temporary authority to conduct business for mortgage loan originators (MLO), and amendments to student education loan servicing rules.

Hearing Location(s): On September 24, 2019, at 10:30 a.m. - 12:00 p.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: October 22, 2019.

Submit Written Comments to: Sara Rietcheck, P.O. Box 41200, Olympia, WA 98504-1200, email sara.rietcheck@dfi.wa.gov, sign up for the GovDelivery email subscription system from the DFI web site, access the rule-making page on the DFI web site at www.dfi.wa.gov, by September 17, 2019, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sara Rietcheck, phone 360-902-8793, TTY 360-664-8126, email sara.rietcheck@dfi.wa.gov, sign up for the GovDelivery email subscription system from the DFI web site, access the rule-making page on the DFI web site at www.dfi.wa.gov, by September 17, 2019, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to implement amendments (Section 106 of S. 2155, Public Law No. 115-174) to the federal SAFE Act (the fed-

eral law requiring the licensure of individual MLOs). Other amendments may include changes to the rules regulating student education loan servicers to reduce conflict with federal law[s] or rules, and technical changes for clarity and consistency.

Reasons Supporting Proposal: The federal SAFE Act regulating the licensure of MLOs was amended and we want CLA rules to be helpful to MLOs seeking that authority. The rules are proposed for amendment to continue to provide harmonization with the federal laws regulating student education loan servicers where appropriate.

Statutory Authority for Adoption: RCW 43.320.040, 31.04.165.

Statute Being Implemented: Chapter 31.04 RCW.

Rule is necessary because of federal law, Section 106 of S. 2155, Public Law No. 115-174.

Name of Proponent: DFI, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8800; Implementation and Enforcement: Richard St. Onge, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-0511.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 21, 2019
Richard St. Onge
Acting Director
Division of
Consumer Services

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

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

(1) If you do not provide the borrower with a compliant federal disclosure of the loan terms and conditions and cost of

financing you must provide the buyer with a disclosure prescribed by the director.

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

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

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

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

(1) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

(2) Supervise your loan processor or underwriting employees; or

(3) Supervise your licensed mortgage loan originators.

(4) Specifically:

(a) Any manager or any person who takes a residential mortgage loan application in Washington, negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location.

(b) Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location.

(c) Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license. Washington licensed loan originators must work from a licensed location.

(5) As to subsections (2) and (3) of this section licensure is for the day-to-day operational supervisors.

(6) Supervisory plans must be written. The details of the plan and how it is implemented must include consideration of the location of the supervisor and employees supervised, the number of employees supervised, and the volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

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

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.

(3) A licensee servicing student education loans for Washington state borrowers may apply to the director to waive or adjust the annual assessment amount.

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

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) Legal or trade name; or

(d) Ownership control of ten percent or more.

(2) **NMLS update within ten days.** You must amend your NMLS record and upload supporting documents, if applicable, 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)~~) or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation.

(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;

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

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

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

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

(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.

(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;

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

~~((e) Within forty five days of))~~ (5) **Written notice to the department within thirty days.** You must notify the department in writing within thirty days after an occurrence of any of the following:

~~(a) 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(~~(-~~

~~(-))~~);

(b) Actions by employees discovered, known, or reasonably should have known. This includes illegal, fraudulent, or any other act that could subject the company to a violation described in RCW 31.04.027.

(6) **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 18-24-013, filed 11/27/18, effective 1/1/19)

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 ((+046)) 1026;

(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) **Are there additional disclosure requirements related to interest rate locks? Yes. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(b) of this section. Changes to a locked interest rate can only occur for valid reasons such as changes in loan to value, credit scores, or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate.**

(6) **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))~~ **(7) 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))~~ **(8) Student education loans.**

(a) All loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, the licensee must disclose to all service members their rights under state and federal service member laws and regulations.

(b) Refinance 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))~~ **(9)** Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

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

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) Residential mortgage loan servicing documents.

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

(b) You must maintain all notices from GSEs, if applicable, that relate specifically to your loan servicing activities. This includes, but is not limited to, notices of noncompliance with the servicing agreement.

(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 18-24-013, filed 11/27/18, effective 1/1/19)

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. If you are in compliance with the department of education contractual requirements, you are not subject to this subsection;

(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 knowingly and willfully making any omission of material fact in connection with any ~~((application or any information))~~ reports filed with the department by a licensee or 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) 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 which results in increased interest, costs, fees, or charges payable by the borrower;

(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;

(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;

(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;

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

(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;

(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 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;

(23) Servicing a usurious loan;

(24) Misrepresenting a residential mortgage loan as a business purpose loan.

NEW SECTION

WAC 208-620-554 Conducting student education 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; or
- (e) Credit dispute analysis.

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

WAC 208-620-555 (~~What fees are allowed and when can they be collected from the borrower under the Consumer Loan Act?~~) Allowable loan fees and timing of collection. (1) Residential mortgage loans. This subsection does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(a) Origination fees. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

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

(c) Third-party fees. The only third-party fees you may collect from the borrower before a loan is closed is the actual cost of the credit report and appraisal. You may collect from the borrower reimbursement for fees you actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender. You must provide a copy of the appraisal to the borrower even if you do not receive reimbursement for the cost of the appraisal.

(d) On adjustable rate residential mortgage loans you may include a prepayment penalty or fee as long as the penalty or fee expires at least sixty days prior to the initial reset period.

(2) Nonmortgage loans. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) ~~(Third-party fees. This subsection applies to residential and nonresidential lending.)~~ All loans.

(a)(i) Insurance fees. You may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(ii) You may only sell single premium credit insurance to a borrower at the inception of coverage if the sale is in compliance with chapter 48.18 RCW.

(b) Third-party fees.

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

~~((b))~~ (ii) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid.

~~((e))~~ (iii) You may use a borrower's credit card information for payment of the credit report or appraisal when paid directly to the third-party service provider.

~~((d))~~ (iv) You may charge a nonrefundable rate lock fee when agreed to in writing by the borrower. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, if the borrower does not qualify for a loan, or if the loan is denied based on the property appraisal. See also WAC 208-620-510(3).

~~((4))~~ (c) Late payment penalties. You may not charge more than ten percent of any installment payment delinquent ten days or more.

~~((5))~~ (d) Attorneys' fees. You may charge reasonable attorneys' fees when a debt is referred for collection to an attorney who is not your salaried employee, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure ~~(when a debt is referred for collection to an attorney who is not your salaried employee).~~

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

~~((7))~~ (e) Discount points.

~~((a))~~ (i) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(ii) You must be able to show a definitive mathematical relationship between discount points paid and the interest rate obtained via a rate sheet or pricing engine that was in effect when the interest rate was locked.

~~((b))~~ (iii) Any applicable residential mortgage loan program add-on fees must be disclosed as part of the discount points.

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

WAC 208-620-560 (~~What fees are not allowed when making loans under the Consumer Loan Act?~~) Restricted or conditional loan fees. This section ~~((does not~~

~~apply to~~) applies to nonmortgage loans, junior lien mortgages, and first lien residential mortgages ((loans)) originated by lenders who are **NOT** creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(1) **Filing fees.** You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) **Dishonored check fees.** You may charge or collect twenty-five dollars or the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the financial institution drawn upon. Only one fee may be collected with respect to a particular check, draft, ACH, or other transfer even if it has been returned or denied more than once.

~~(3) ((Credit and noncredit insurance.~~

~~(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and non-credit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.~~

~~(b) You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.~~

~~(4)) Fees on existing loans. ((Unless otherwise pre-empted under the Depository Institutions Deregulatory and Monetary Control Act,)) If you make a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line must be limited as follows:~~

(a) You must only charge an origination fee on that part of the new loan not used to pay the amount due on the previous loan;

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

(c) The limits in (a) and (b) of this subsection do not apply if you refund the origination fee on the existing loan or credit line;

(d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

~~((5) Discount points.~~

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

~~(b) Any applicable program add-on fees must be disclosed as part of the discount points.~~

~~(6)) (4) Administrative fees. ((On nonmortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act,)) You must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.~~

~~((7) Underwriting fees. You must not collect an underwriting fee.~~

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

~~(a) Any nonmortgage loan;~~

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

~~(c) Any junior lien mortgage loan; or~~

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

NEW SECTION

WAC 208-620-563 Prohibited fees on certain loans.

This section applies to nonmortgage loans, junior lien mortgages, and first lien residential mortgages originated by lenders who are **NOT** creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(1) **Underwriting fee.** You must not collect an underwriting fee.

(2) **Prepayment penalty.** You must not collect a prepayment penalty.

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

WAC 208-620-620 How do I have to identify my business when I advertise? You must identify the business using your Washington consumer loan name as entered in the NMLS. You may also use an approved DBA name if you include the main office name as entered in the NMLS ~~((and))~~ or license number. For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

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

WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that ~~((any))~~ the URL address ~~((you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your name as entered in the NMLS in addition to any other names or words in the URL address))~~ does not misrepresent the identity of your company or contain any misleading, deceptive, or otherwise prohibited language. URL addresses may be used as DBA names upon request to and approval from DFI. See also WAC 208-620-620 and 208-620-622.

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

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

~~(1) ((Main or home page-~~

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

~~((b) If mortgage)) company's and any loan originator's primary landing page.~~

~~(2) If loan originators are named, their license numbers must closely follow the names. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number. See the definition of license number for ways to display your license number. See WAC 208-620-710(26).~~

~~((e) The main or home page must also contain)) (3) A link to the NMLS consumer access web site page for the company.~~

~~((2) Branch office web page - No DBA. Comply with subsection (1) of this section.~~

~~(3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must also contain the main office name as entered in the NMLS, license number, be in compliance with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.~~

~~(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the sponsoring licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's name as entered in the NMLS and license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your name as entered in the NMLS followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See also WAC 208-620-710(26).)~~

~~(4) If the company uses a DBA, the page must also contain the company's name as entered in the NMLS or license number.~~

~~(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.~~

~~(6) Oversight. The company is responsible for ((web site)) content displayed on all ((company web pages)) electronic advertisements used to solicit Washington consumers ((including main, branch, and mortgage loan originator web pages)).~~

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

WAC 208-620-630 **What are some of the advertising restrictions I must comply with? (1) Licensees are prohibited from advertising with envelopes or stationery, or using images in an electronic format, that are designed to resemble a government mailing or other method of communication that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:**

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

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

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

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

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

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

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

(3) The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised? Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) Must I quote the annual percentage rate when discussing rates with a borrower? Yes. You must quote the

annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., Part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. ~~((Therefore, they are a false or deceptive statement or representation prohibited by RCW 31.04.027.))~~

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. ~~((This is a violation of RCW 31.04.027 (2), (7), and (12).))~~ See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 C.F.R. Sec. 251.1(g) (2003)), available at (<http://www.ftc.gov/bep/guides/free.htm>, 16 C.F.R. Sec. 251.1(g) (2003)) <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/guide-concerning-use-word-free-similar>.

(9) **How can I advertise a discounted rate?** You must clearly and conspicuously disclose in the advertisement at a minimum, the cost of the discount to the borrower and that the rate is discounted. ~~((Not including that information is a violation of RCW 31.04.027(7).))~~

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

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

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to trans-

mit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

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

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

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

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

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

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

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

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

(9) **Do loan processors and underwriters have to be licensed as loan originators?** W-2 employee loan processors and underwriters are not required to have a loan originator license provided they work under the supervision and instruction of an individual licensed or exempt from licensing and do not hold themselves out as able to conduct the activities of a loan originator.

(10) May loan processors work on files from an unlicensed location? A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker;

(b) The loan processor does not conduct any of the activities of a licensed loan originator;

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

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

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

(2) **How do I apply for a mortgage loan originator license?** Your application consists of filing an online application through the NMLS and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLS. In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department. See also WAC 208-620-715 Temporary authority to originate loans.

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

(a) **Be eighteen years or older.**

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

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

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

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

(f) **Provide a bond.**

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

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

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

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

(g) **File a quarterly call report.** Reserved.

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

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

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

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

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

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

(5) **What will happen if my loan originator license application is incomplete?** After submitting your online application through the NMLS and filing the required infor-

mation and documentation with the department, the department will notify you of any application deficiencies.

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

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

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

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

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

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

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

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

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

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

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

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

(16) When may the department issue interim loan originator licenses? To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expi-

ration date. The license applicant must meet the minimum requirements to obtain a license under the S.A.F.E. Act to receive an interim license.

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

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

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

(i) Paying the annual assessment fee; and

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

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

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

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

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

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

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

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

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

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

(24) Must I include my loan originator license number on any documents? You must include your license num-

ber closely following your name as entered in the NMLS on (a) through (d) of this subsection. An example of closely following is: Your name as entered in the NMLS followed by your title (if you use one) followed by your license number.

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

(b) Business cards.

(c) All advertisements and marketing that contain your name as entered in the NMLS.

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

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

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

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

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

(d) When taking a residential mortgage loan application.

(26) May I conduct business and advertise under a name other than the name on my loan originator license? You must use the name on your license when you are conducting business and in your advertisements with the following exceptions:

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

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

(a) Answers to the NMLS generated disclosure questions or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation;

(b) Sponsorship status;

(c) Residence address;

(d) Any change in the information supplied to the director in your original application; or

(e) A change to your response to a disclosure question within NMLS. You must upload any document that is the basis for your changed response.

NEW SECTION

WAC 208-620-715 Temporary authority to originate loans. (1) **What is temporary authority to originate loans?** Temporary authority to act as a loan originator permits qualified MLOs who are changing employment from a depository institution to a state-licensed mortgage company and qualified state-licensed MLOs seeking licensure in another state, to originate loans while completing any state-specific

requirements for licensure including, but not limited to, education and testing.

(2) **Who is eligible for temporary authority?** An MLO that is: (a) Employed and sponsored through NMLS by a state-licensed mortgage company; and (b) either: (i) Registered in NMLS as an MLO during the one year preceding the application submission; or (ii) licensed as an MLO during the thirty-day period preceding the date of application.

(3) **How do I receive temporary authority?**

(a) You must be employed and sponsored by a company licensed in Washington;

(b) You must file a license application pursuant to WAC 208-660-350 (1)(a) through (d); and

(c) You must not have any disqualifying criminal history or had an MLO license denied, revoked, or suspended in any jurisdiction.

(4) **How long can I operate under temporary authority?** Temporary authority begins on the date an eligible MLO submits a license application. It ends when the earliest of the following occurs: (a) The MLO withdraws the application; (b) the state denies or issues a notice of intent to deny the application; (c) the state grants the license; or (d) one hundred twenty days after the application submission if the application is listed on NMLS as incomplete.

(5) **Can my license application be denied during the period of temporary authority?** Yes. Your application can be denied at any time during the application review process.

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

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

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

(a) Three hours of federal law and regulations;

(b) Three hours of ethics, which includes instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) At least four hours of training specifically related to Washington law.

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

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

(4) **Does prelicensing education expire?** Yes. After completing prelicensing education you must apply for licensure within three years.

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

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

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

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. If you are in compliance with an applicable federal program, you are deemed in compliance with this subsection.

(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.

(5) You must review all borrowers against the Department of Defense database monthly and apply the borrower entitlements based on that matching. You must keep a written policy and procedure for this practice as part of your books and records. If you are in compliance with an applicable federal requirement, you are deemed in compliance with this subsection.

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

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. If you are in compliance with an applicable federal requirement, you are deemed in compliance with this subsection.

(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) Unless you are complying with an applicable federal requirement, 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 statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-620-240 Once I am licensed, does the act apply to all loans I broker or make?

WSR 19-17-085

PROPOSED RULES

OFFICE OF THE CODE REVISER

[Filed August 21, 2019, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-076.

Title of Rule and Other Identifying Information: The office of the code reviser is updating chapter 1-21 WAC, Rule making, to amend WAC 1-21-010, 1-21-015, 1-21-020, 1-21-030, 1-21-040, 1-21-060, 1-21-070, 1-21-140, 1-21-150 and 1-21-170; and add new WAC 1-21-008, 1-21-035, 1-21-072, 1-21-074, 1-21-076, 1-21-078, 1-21-079, and 1-21-125.

Hearing Location(s): On October 4, 2019, at 2:00 p.m., at the Pritchard Building, 1st Floor Dining Room, 415 15th Avenue S.W., Olympia, WA 98504.

Date of Intended Adoption: October 11, 2019.

Submit Written Comments to: Jennifer Meas, P.O. Box 40551, Olympia, WA 98504-0551, email Jennifer.Meas@leg.wa.gov, by October 3, 2019.

Assistance for Persons with Disabilities: Contact Jennifer Meas, phone 360-786-6698, TTY 711, email Jennifer.Meas@leg.wa.gov, by September 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of the code reviser is adding and clarifying rules for the Washington State Register, including acceptable formatting for emphasis and font size; corrections and withdrawals; electronic filing system down protocol; when to contact the office of code reviser by phone; joint administrative rules review committee requests for review; rules coordinator, public records officer and notice of public meetings publication requirements and available templates; and interpretive/policy statements and rules development agenda publication requirements.

The office of the code reviser anticipates that agencies will benefit from the clarification of the filing and rule-making process and the public will benefit from a streamlined and consistent process and formatting.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 1.08.110, 34.05.210, 34.05.385, and 34.08.030.

Statute Being Implemented: Chapter 34.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the code reviser, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Meas, P.O. Box 40551, Olympia, WA, 360-786-6698; Implementation and Enforcement: Office of the Code Reviser, P.O. Box 40551, Olympia, WA, 360-786-6777.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The office of the code reviser is not a listed agency in RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 12, 2019
Kathleen Buchli
Code Reviser

NEW SECTION

WAC 1-21-008 Electronic filing. Agencies are encouraged to use the office of the code reviser's electronic filing system for the filing of documents to be published in the *Washington State Register*.

(1) To participate in electronic filing, agencies must first complete and submit a physical copy of the registration letter for electronic filing which may be found at the office of the code reviser web site in the *Washington State Register* section (<http://leg.wa.gov/CodeReviser/Pages/E-Filing.aspx>). The agency must designate a contact person, phone number, and the email address that will receive all official stamped filings returned by the office of the code reviser. Only one registration per agency.

(2) To file electronically, agencies submit only Word documents (CR forms or agency typed documents) and .pdfs of rules text prepared by a typing service (provided by our office), if applicable, to EFileWSR@leg.wa.gov. Submit only one filing per email (one filing may have multiple attachments). Documents in alternative formats will not be accepted. Required signatures must be affixed to the Word documents where applicable. After submitting an email to the electronic filing system, you will receive an automatically generated reply sent from the electronic filing system to confirm that your email was received. **IMPORTANT:** If you do not receive this auto-generated reply within a matter of minutes, please contact the office of the code reviser **immediately** by phone to ascertain if the electronic filing system is not functioning properly. **DO NOT** resend your document(s) until instructed to do so by code reviser staff.

(3) If the agency needs to correct or withdraw submitted document(s) before that filing has been published, contact the office of the code reviser's editor or assistant editor immediately by phone or by email. **IMPORTANT:** Do not send regular correspondence or questions to the electronic filing email address. For corrections to efilings or withdrawals from publication, please contact the office of the code reviser by phone for guidance on how to proceed.

(4) Electronic filings must be **received** by our office by noon on the cut-off date for inclusion in a particular issue. Filings received at 12:01 p.m. or later on the date of cutoff will appear in the next issue and hearing and adoption dates

may need to be delayed so the agency is in compliance with the Administrative Procedure Act.

(5) If you do not receive the official stamped copy from the office of the code reviser by 9:00 a.m. on the day after submitting your document(s), contact the office of the code reviser by phone to inquire.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-010 Preproposal statement of inquiry. To solicit comments from the public as required by RCW 34.05.310 on a subject of possible rule making, but before a formal notice is filed under RCW 34.05.320, an agency shall complete and file with the office of the code reviser a CR-101 form (preproposal statement of inquiry). This requirement does **not** apply to all rule making. The exceptions are set forth in RCW 34.05.310(4).

The text of the new rule is neither required nor recommended at this stage, but if text is submitted for filing, it must meet the form and style requirements of WAC 1-21-110 through 1-21-130.

You must submit the Word version electronically to EFileWSR@leg.wa.gov or submit the original, plus a minimum of three copies, in person or by mail. The filing will appear in the *Washington State Register* in accordance with the schedule provided in WAC 1-21-040. Note that the CR-101 must be published at least thirty days before the CR-102 form (proposed rule making) may be filed.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-015 Expedited rule making. (1) Expedited rule making filed under RCW 34.05.353 includes both the expedited adoption of rules and the expedited repeal of rules.

(2) An agency shall file notice for the expedited rule making with the office of the code reviser on a CR-105 form (expedited rule making). The agency must file the full text of a proposed new or amendatory rule, along with the CR-105 form. The text must meet the form and style requirements of WAC 1-21-110 through 1-21-130. The filing will appear in the *Washington State Register* in accordance with the schedule provided in WAC 1-21-040. The expedited rule making must be published in the *Washington State Register* at least forty-five days before the agency may file a CR-103 form (rule-making order).

(3) WAC sections proposed for expedited repeal should be listed by citation and caption only, either individually or by entire chapter.

(4) The agency shall either file the expedited rule-making package electronically and the office of the code reviser will forward a stamped copy to the joint administrative rules review committee; or the agency may submit, in person or by mail, the original and six copies of the expedited rule-making package (form and text). The office of the code reviser will keep the original and two copies and return four stamped copies to the agency. The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-020 Notice—Form, contents, numbers.

(1) An agency shall file a regular notice of proposed rule making under RCW 34.05.320 with the office of the code reviser on a CR-102 form (proposed rule making). The agency must file the full text of the proposed rule along with the notice form (RCW 34.08.020). This filing must be at least thirty days after the CR-101 form, if required, was published (RCW 34.05.310).

(2) The agency shall either file the rule-making package electronically and the office of the code reviser will forward a stamped copy to the joint administrative rules review committee; or the agency may submit, in person or by mail, the original and six copies of the notice package (form and text). The office of the code reviser will keep the original and two copies and return four stamped copies to the agency. The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-030 Notice period—*Washington State Register* distribution date. (1) Under RCW 34.05.320, notice of proposed rule making must be published in the *Washington State Register* at least twenty days before the agency may hold a hearing on the proposal. The *Washington State Register* is distributed on the first and third Wednesdays of each month. If a distribution date falls on a state holiday as determined by RCW 1.16.050, the distribution date of that *Washington State Register* will be delayed until Thursday.

(2) In counting the twenty-day notice period, consider the distribution date of the pertinent *Washington State Register* as day twenty; count down to day zero to find the first day on which a hearing may be held; cf. RCW 1.12.040 and *State ex rel. Earley v. Batchelor*, 15 Wn.2d 149 (1942).

(3) The schedule of closing dates provided online at <http://leg.wa.gov/CodeReviser/Documents/basecalendar.pdf>; or on page 2 of each published *Washington State Register* applies this section and WAC 1-21-040 to the current year. In case of a discrepancy between the WAC rules and the schedule, the rules have priority.

NEW SECTION

WAC 1-21-035 Joint administrative rules review committee—Review rules. (1) The joint administrative rules review committee (JARRC) reviews all proposed, expedited (or withdrawals of either), and adopted (permanent and emergency) WAC rules.

(2) Electronically submitted WSR filings are automatically forwarded to the JARRC by the office of the code reviser. Agencies hand or mail delivered filings will need to forward three copies of the stamped filing to JARRC.

AMENDATORY SECTION (Amending WSR 17-12-039, filed 6/1/17, effective 8/2/17)

WAC 1-21-040 *Washington State Register* material—Time for filing. To permit sufficient lead time for the editorial, data capture, and printing process, material to be published in a particular issue of the *Washington State Register* must have received the electronic filing email or be in the physical possession of and filed in the office of the code reviser according to the following schedule:

(1) If the material has been prepared and completed by the office of the code reviser's order typing service (OTS), by 12:00 noon on the fourteenth day before the distribution date of that issue of the *Washington State Register*; or

(2) If the material has been prepared by any means other than OTS and it contains:

(a) No more than fourteen pages, by 12:00 noon on the fourteenth day before the distribution date of that *Washington State Register*; or

(b) More than fourteen but less than thirty-four pages, by 12:00 noon on the twenty-eighth day before the distribution date of that *Washington State Register*; or

(c) Thirty-four or more pages, by 12:00 noon on the forty-second day before the distribution date of that *Washington State Register*.

The office of the code reviser's filing forms will be included in this page count.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-060 Withdrawal of proposal. Under RCW 34.05.335 a proposed rule may be withdrawn any time before adoption. The agency shall provide notice of withdrawal to the office of the code reviser by a letter or memorandum signed by the person who signed the original notice, or by that person's designee. The ~~((agency shall send a copy of the withdrawal notice to the))~~ joint administrative rules review committee needs to receive an electronic copy (forwarded by the office of the code reviser) or three hard copies of the withdrawal of proposal notice.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-070 Administrative order. (1) The ~~((administrative order by which an agency adopts a rule))~~ permanent rule making shall be done on a CR-103P form ~~((rule-making order))~~ or an emergency rule on a CR-103E form provided by the office of the code reviser or, if required by agency practice, on an agency form that provides the information required by RCW 34.05.360.

(2) The agency shall file ~~((with))~~ electronically and the office of the code reviser will forward a stamped copy to the joint administrative rules review committee; or the agency may submit, in person or by mail, the original and six copies of the permanent or emergency package (form and text). The joint administrative rules review committee has requested that the agency forward electronic copy of the stamped filing or the agency is required to submit three ((of these)) copies of the rule to the committee for purposes of legislative review.

The agency should keep ~~((the remaining))~~ a copy ~~((for))~~ in its files.

NEW SECTION

WAC 1-21-072 Rules coordinator designation. Under RCW 34.05.312, each agency shall designate a rules coordinator. The agency and mailing address of the rules coordinator shall be submitted for publication in the *Washington State Register* at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation. To submit a new designation or make changes to an existing designation, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. You may use the template found on the code reviser web site at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

NEW SECTION

WAC 1-21-074 Public records officer designation. Under RCW 42.56.580, each state and local agency shall appoint and publicly identify a public records officer.

For state agencies, the name and contact information of the agency's public records officer must be published in the *Washington State Register* at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation. To submit a new designation or make changes to an existing designation, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. You may use the template found on the code reviser web site at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

Local agencies are not required to publish their designations in the *Washington State Register*. The name and contact information of the local agency's public records officer who will oversee the agency's compliance within the public records disclosure requirements of this chapter must be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on the agency's internet site, or including it in its publications.

NEW SECTION

WAC 1-21-076 Notices of public meetings. (1)(a) Under RCW 42.30.075 state agencies that hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January 1st of each year for publication in the *Washington State Register*. To submit a public meeting notice, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. You may use the template found on the code reviser web site at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

(b) Notice of any change from such meeting schedule must be published in the *Washington State Register* for distribution at least twenty days prior to the rescheduled meeting

date. To submit a change to a public meeting notice already published, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. You may use the template found on the code reviser web site at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

(2) Agendas of public meetings are not published in the *Washington State Register*. RCW 42.30.080 lists the call and notice requirements for special meetings which do not need to be published in the *Washington State Register*.

NEW SECTION

WAC 1-21-078 Interpretive and/or policy statements. Under RCW 34.05.230(4), whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the *Washington State Register* a statement describing the subject matter of the interpretive or policy statement and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained. To submit a summary of an interpretive or policy statement, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser.

NEW SECTION

WAC 1-21-079 Rules development agenda. Under RCW 34.05.314, each state agency shall prepare a semiannual agenda for rules under development. The agency shall file the agenda with the code reviser for publication in the *Washington State Register* not later than January 31st and July 31st of each year. To submit a rules development agenda, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. The agency shall also submit the agenda to the director of financial management, the joint administrative rules review committee, and any other state agency that may reasonably be expected to have an interest in the subject of rules that will be developed.

NEW SECTION

WAC 1-21-125 Style and formatting. (1) All material should be submitted in 10 point type and Times New Roman font. If needed, 8 point type is acceptable for tables. Tables must not exceed regular page width and landscape tables must be published as an image.

(2) Excessive use of emphasis is not recommended, on behalf of the reader. Avoid unnecessary bold, italics, and all caps. Underscore is only used to indicate new material in agency rules and should not be used for emphasis. Color should not be used for emphasis.

(3) Lower case the names of state agencies, divisions, commissions, committees, etc.

(4) Do not underscore web and email addresses. Neither will appear as hyperlinks in the published products.

(5) For filings other than CR forms, leave the bottom right corner of the first page vacant for the placement of the office of the code reviser's stamp.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-140 Review of previously adopted rules.

When an agency is required under RCW 34.05.630 to review permanent or emergency rules previously adopted, the agency shall file notice of the review with the code reviser on a CR-104 form (review of previously adopted rules). The agency shall file electronically at EFileWSR@leg.wa.gov or submit the original and six copies of the notice. Four copies will be returned to the agency, three of which shall be delivered to the joint administrative rules review committee. The notice is subject to the twenty-day requirement of RCW 34.05.320. The text of the rule under review is not needed with this notice.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-150 Exemptions from publication.

Agency rules that are likely to be omitted from WAC publication by the office of the code reviser under the authority of RCW 34.05.210((;)) may, upon application by the agency to the office of the code reviser for an exemption, be exempted by the office of the code reviser from the form and style requirements of this chapter, other than requirements that are imposed by statute. An application for exemption must be made and approved before filing the rules.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-170 Official forms. Agencies may obtain the following official forms from the office of the code reviser upon request:

- (1) Form CR-101 Preproposal statement of inquiry;
- (2) Form CR-102 Proposed rule making;
- (3) Form CR-103P Rule-making order (permanent);
- (4) Form CR-103E Rule-making order (emergency);
- (5) Form CR-104 Review of previously adopted rules;

and

- ~~((5))~~ (6) Form CR-105 Expedited rule making.

WSR 19-17-090
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Division of Consumer Services)
 [Filed August 21, 2019, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-015.

Title of Rule and Other Identifying Information: Chapter 208-660 WAC implementing the Mortgage Broker Practices Act (MBPA); chapter 19.146 RCW, specifically including proposed provisions on temporary authority to conduct business for mortgage loan originators (MLO). Other amendments may include changes to the rules regulating trust accounts to reduce conflict with other state laws, and technical changes for clarity and consistency.

Hearing Location(s): On September 24, 2019, at 10:30 a.m. - 12:00 p.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: October 22, 2019.

Submit Written Comments to: Sara Rietcheck, P.O. Box 41200, Olympia, WA 98504-1200, email sara.rietcheck@dfi.wa.gov, sign up for the GovDelivery email subscription system from the DFI web site, access the rule-making page on the DFI web site at www.dfi.wa.gov, by September 17, 2019, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sara Rietcheck, phone 360-902-8793, TTY 360-664-8126, email sara.rietcheck@dfi.wa.gov, sign up for the GovDelivery email subscription system from the DFI web site, access the rule-making page on the DFI web site at www.dfi.wa.gov, by September 17, 2019, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to implement amendments (Section 106 of S. 2155, Public Law No. 115-174) to the federal SAFE Act (the federal law requiring the licensure of individual MLOs).

Reasons Supporting Proposal: The federal SAFE Act regulating the licensure of MLOs was amended and we want MBPA rules to be helpful to MLOs seeking the authority under the amendments.

Statutory Authority for Adoption: RCW 43.320.040, 19.146.225.

Statute Being Implemented: Chapter 19.146 RCW.

Rule is necessary because of federal law, Section 106 of S. 2155, Public Law No. 115-174.

Name of Proponent: DFI, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8800; and Implementation and Enforcement: Richard St. Onge, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-0511.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards,

including fees set or adjusted under the authority of RCW 19.80.045.

August 21, 2019
Richard St. Onge
Acting Director
Division of
Consumer Services

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

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

~~("Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.~~

~~"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.)~~

"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 in writing or electronically submitted, including 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.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

~~("Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan, or residential mortgage loan modification, for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan or loan modification.)~~

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the

licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

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

~~("Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.~~

~~"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.)~~

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;

- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty per cent of the voting interests of another person; or

- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;
- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;
- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

~~("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.

~~("Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(c).)~~

~~"Director" means the director of financial institutions.)~~

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate or loan estimate and applicable settlement statement as a dollar amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

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

~~("Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.)~~

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

~~("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 statutes and regulations" ((used in these rules are)) means the following:~~

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., 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.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

- "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 Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

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

- "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), P.L. 110-289, effective July 30, 2008, codified at 12 U.S.C. 5101; Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telemarketing Sales Rule, 16 C.F.R. Part 310.

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

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;
- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

- Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice

officers, trust companies, and other licensed or chartered financial service providers; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"License number" means the 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 mortgage broker licensed by the director; or~~
- ~~The principal(s) or designated broker of a mortgage broker; or~~
- ~~A loan originator licensed by the director; or~~
- ~~Any person subject to licensing under RCW 19.146.200; or~~
- ~~Any person acting as a mortgage broker or loan originator subject to any provisions of the act.~~

"Loan originator" or "mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- ~~Takes a residential mortgage loan application; or~~
- ~~Offers or negotiates terms of a 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.~~

~~"Loan originator" also includes a person who holds themselves out to the public as 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 mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.~~

~~For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.~~

~~"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.~~

~~"Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "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 borrower to obtain information necessary for the processing of a 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.~~

~~"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, 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. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:~~

- (a) ~~Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;~~
- (b) ~~Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;~~
- (c) ~~Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;~~
- (d) ~~Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and~~
- (e) ~~Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this definition.~~

~~"Loan originator" 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.~~

~~The definition of loan originator 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 licensed individually as loan originators.)~~

~~"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.~~

~~(("Loan processor." See WAC 208-660-106.)~~

~~"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.~~

~~(("Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)~~

~~For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to antici-~~

~~pate a credit decision under Regulation X, 12 C.F.R. Part 1024.2(b).~~

~~For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.~~

~~"Mortgage broker" also includes any person who for direct or indirect compensation or gain or in the expectation of direct or indirect 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 broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

~~("Mortgage loan originator" means the same as "loan originator.")~~

"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.

~~("Nontraditional mortgage product" means any mortgage product other than a thirty year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.)~~

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

~~("Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.)~~

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Rate lock agreement" means an agreement with a borrower made by a mortgage broker, loan originator, or lender in which the mortgage broker, loan originator, or lender agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) 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

(b) Is registered with, and maintains a unique identifier through, the NMLS.

~~("Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.~~

~~For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.~~

~~"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 208-660-105.)~~

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

- A single family home;

- A duplex;

- A triplex;

- A fourplex;

- A single condominium in a condominium complex;

- A single unit within a cooperative;

- A manufactured home; or

- A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

- An apartment building or dwelling of five or more units; or

- A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

~~("S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.)~~

"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. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker 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.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

~~("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.)~~

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

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

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-008 Exemptions. (1) **Who is exempt from all provisions of the act?** Any person doing business under the laws of the state of Washington or the United States and any federally insured depository institution doing business under the laws of any other state relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof.

(2) **Who is exempt from licensing as a mortgage loan originator?**

(a) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; or

(b) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(3) **If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(4) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(5) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

(6) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(e) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(7) **Are independent contractor loan originators exempt from licensing?** No. An independent contractor working as a loan originator must hold a loan originator license.

(8) **What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or cor-

porate instrumentality of any of these entities in this subsection (b).

(c) Registered mortgage loan originators, or any individual required to be registered, employed by entities exempt from the act.

(d) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

(9) When is a CLI provider exempt from the licensing requirements of the act? ((A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020(1)(a), (c), (d), or (f); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or loan estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(10) When is a CLI provider required to have a mortgage broker license?

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example—License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number,

contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example—License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(11) Must the CLI provider provide any disclosures?

(a) Yes. If a borrower using or accessing the CLI service pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(12) Are CLI system providers subject to enforcement under the act? Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.)) See WAC 208-660-140.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-106 How does the department interpret the definition of loan processor in RCW 19.146.010(12)? "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. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. A loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license. See WAC 208-60-300(13).

NEW SECTION

WAC 208-660-107 How does the department interpret the definition of "licensee" in RCW 19.146.010(10)? "Licensee" means:

- A mortgage broker licensed by the director;
- The principal(s) or designated broker of a mortgage broker;
- A loan originator licensed by the director;
- Any person subject to licensing under RCW 19.146.-200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

NEW SECTION

WAC 208-660-108 How does the department interpret the definition of "loan originator" in RCW 19.146.-010(11)? "Loan originator" or "mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- Takes a residential mortgage loan application; or
- Offers or negotiates terms of a 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.

"Loan originator" also includes a person who holds themselves out to the public as 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 mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.

"Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this paragraph, "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 borrower to obtain information necessary for the processing of a 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.

"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, 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. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this definition.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Sec. 101(53D) of Title 11, U.S.C.

The definition of loan originator 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 licensed individually as loan originators.

NEW SECTION

WAC 208-660-109 How does the department interpret the definition of "mortgage broker" in RCW 19.146.010(14)? "Mortgage broker" means any person who

for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 12 C.F.R. Part 1024.2(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker" also includes any person who for direct or indirect compensation or gain or in the expectation of direct or indirect 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.

NEW SECTION

WAC 208-660-143 Computer loan information (CLI) providers. (1) **When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), or (f); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (4) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or loan estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(2) When is a CLI provider required to have a mortgage broker license?

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(3) Must the CLI provider provide any disclosures?

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(4) **Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-163 Mortgage brokers—Licensing.

(1) **How do I apply for a mortgage broker license?** Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must complete an online application through the NMLS.

(c) **Pay the application and license fees.** You will have to pay application fees to cover the costs of processing the application. You must also pay a separate annual license fee. See WAC 208-660-550 Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond based upon the annual loan origination volume of the mortgage broker. See WAC 208-660-175 (1)(e).

(2) **What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) **Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) **What specific information will the department consider to determine if the mortgage broker business**

will be operated honestly, fairly, and in compliance with applicable law?

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, denied, suspended, or restricted within the prior five years.

(b) Whether the applicant has ever had a license denied or revoked under this chapter or any similar state statute, including a license for insurance, securities, consumer lending, or escrow.

(c) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(d) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(e) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(f) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(g) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(h) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(i) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) **What will happen if my mortgage broker license application is incomplete?** If your application is incomplete your file will be marked "pending-deficient" in the NMLS. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

(6) **How do I withdraw my application for a mortgage broker license?** You may request to withdraw the application through the NMLS.

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

(8) **What are my rights if the director denies my license application (~~for a~~), or denies, suspends, or revokes my mortgage broker license? The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.**

You have the right to request an administrative hearing (~~pursuant to the Administrative Procedure Act, chapter 34.05 RCW~~). To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing. See also WAC 208-660-009.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(9) **~~(What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked? The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.~~**

~~(10))~~ **May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, non-exempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

~~((11))~~ **(10) May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

~~((12))~~ **(11) How do I change information on my mortgage broker license?** You must file a license amendment application through the NMLS. See also WAC 208-660-400.

~~((13))~~ **(12) When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

~~((14))~~ **(13) When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The

license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

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

~~((15))~~ **(14) How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) Complete a renewal request through the NMLS.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(iii) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

~~((16))~~ **(15) If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal on or before the last day of February each year, you may renew an expired license. However, if you renew your license after the expiration, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((15))~~ (14) of this section for the license renewal requirements.

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

If you fail to comply with the renewal request requirements by March 1st of each year, you must apply for a new license.

~~((17))~~ **(16) May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

~~((18))~~ **(17) What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by submitting a surrender request through the NMLS and submitting a completed departmental closure form. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

~~((19))~~ **(18) May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-175 Mortgage brokers—Surety bond.
(1) **What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the mortgage broker's ~~((full))~~ corporate name ~~((, unified business identifier (UBI),))~~ and NMLS unique identifier.

~~((The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power of attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.))~~ The following chart shows the surety bond amount required for the annual loan origination volume of the licensee in the state of Washington:

| Loan Volume in Millions | Bond Amount |
|-------------------------|-------------|
| \$40+ | \$60,000 |
| \$20 to \$40 | \$40,000 |
| \$0 to \$20 | \$20,000 |

(f) If you only offer residential mortgage loan modification services, your bond amount is twenty thousand dollars, initially and thereafter.

(2) Who provides mortgage broker surety bonds? To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

~~((What do I do with the surety bond once I receive it from my insurance company? You must sign the original surety bond and include the surety bond and the attached power of attorney with your license application package.))~~

(4)) What happens to my mortgage broker license if my surety bond is canceled? Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

~~((5))~~ **(4) May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

~~((6))~~ **(5) Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of

any provision of the act or these rules by you or your employees or independent contractors.

~~((7))~~ **(6) Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

~~((8) How may I)~~ **(7) How does a person make a claim against a licensed mortgage broker's surety bond?** The department can provide ~~((you with))~~ the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

~~((9))~~ **(8) How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-195 Mortgage brokers—Branch offices. **(1) May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLS to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) If my branch offices are under separate ownership, does that limit my liability for their activities? No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) If my branch offices are under separate ownership, what level of supervision must I maintain? Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) How do I apply for a mortgage broker branch office license? As the licensed mortgage broker, you must apply for a branch office license through the NMLS and receive approval from the department before operating from any location other than your licensed location. You must be in good standing. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) What does the department consider when reviewing an application for a branch office license? The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the physical address listed in the application can be verified as a branch office location.

(6) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(7) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLS.

(8) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(9) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must submit an online renewal and pay the branch office annual assessment fee through the NMLS.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(10) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal by the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (9) of this section for the license renewal requirements.

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

If you fail to comply with the renewal request requirements by February 28th, each year, you must apply for a new license.

(11) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(12) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(13) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct busi-

ness under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker main office license number together.

(c) See WAC 208-660-180(10).

(14) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(15) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(16) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. You and the designated broker are responsible for the business conducted at all locations.

(17) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(18) **Must I have a designated broker at each branch?** No. You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(19) **If I want ~~((to move))~~ my licensed company ~~((under the sponsorship))~~ to become a branch of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office ~~((with the NMLS)), if necessary, and~~ has sponsored each of the licensed loan originators ~~((through the NMLS and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license)).~~

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-350 Loan originators—Licensing. (1) How do I apply for a loan originator license? Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS system. See also WAC 208-660-352 Temporary authority to originate loans. You also must:

(a) **Be eighteen years or older.**

(b) **Pass a licensing test.** You must take and pass the NMLS test. See WAC 208-660-360 Loan originators—Testing.

(c) **Prove your identity.** You must provide information to prove your identity.

(d) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee

to the NMLS. See WAC 208-660-550 Department fees and costs.

(e) **Complete prelicensing education.** You must complete prelicensing education before submitting the license application. See WAC 208-660-355.

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

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

(b) **License revocations.**

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of (b) and (c) of this subsection, a "similar statute" may include statutes involving other financial services, such as insurance, securities, escrow or banking.

(c) **Criminal history.**

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

(d) **Financial background.**

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or judgments or other government liens or filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) **What will happen if my loan originator license application is incomplete?** After submitting your online application through the NMLS, the department will notify you of any application deficiencies.

(4) **How do I withdraw my application for a loan originator license?** Once you have submitted the online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the NMLS application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application. The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLS.

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

(6) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. **See also WAC 208-660-009.**

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

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

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

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

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

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

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

notify you and all the companies you are working with of the new working relationship if approved.

(14) When may the department issue interim loan originator licenses? To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license. In no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

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

(16) How do I renew my loan originator license?

(a) You must continue to meet the minimum standards for license issuance. See RCW 19.146.310.

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

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education. See WAC 208-660-370.

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

(17) If I let my loan originator license expire, must I apply to get a new license? If you complete all the requirements for renewal on or before the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (16) of this section for the license renewal requirements.

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

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

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

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

(20) What happens to the loan applications I originated before my loan originator license expired? Because loan files belong to the licensed mortgage broker, existing loan applications must be processed by the licensed mortgage

broker, unless the borrower makes a written demand that the loan file be transferred to another licensed entity. See WAC 208-660-300 (5) and (6).

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

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

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

(23) Must I include my license number on any documents? You must include your license number closely following your license name on (a) through (d) of this subsection. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number.

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

(b) Business cards.

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

(d) Any state or federal form that requires your license number. See also WAC 208-660-350(25).

(24) When must I disclose my loan originator license number? In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

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

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

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

(d) When taking a residential mortgage loan application.

(25) May I conduct business and advertise under a name other than the name on my loan originator license? You must use the name on your license when you are conducting business and in your advertisements with the following exceptions: Except, use of your middle name is not required. Except, you may use only your middle and last name; except, you may use a nickname as your first name if it is registered in NMLS on your MU4 as an "other" name.

(26) Will I have to obtain an individual bond if the company I work for is exempt from licensing? Reserved.

(27) Will I have to file quarterly call reports if I have an individual bond? Reserved.

NEW SECTION

WAC 208-660-352 Temporary authority to originate loans. (1) What is temporary authority to originate loans? Temporary authority to act as a loan originator permits qual-

ified MLOs who are changing employment from a depository institution to a state-licensed mortgage company and qualified state-licensed MLOs seeking licensure in another state, to originate loans while completing any state-specific requirements for licensure including, but not limited to, education and testing.

(2) **Who is eligible for temporary authority?** An MLO that is: (a) Employed and sponsored through NMLS by a state-licensed mortgage company; and (b) either: (i) Registered in NMLS as an MLO during the one year preceding the application submission; or (ii) licensed as an MLO during the thirty-day period preceding the date of application.

(3) **How do I receive temporary authority?**

(a) You must be employed and sponsored by a company licensed in Washington;

(b) You must file a license application pursuant to WAC 208-660-350 (1)(a) through (d); and

(c) You must not have any disqualifying criminal history or had an MLO license denied, revoked, or suspended in any jurisdiction.

(4) **How long can I operate under temporary authority?** Temporary authority begins on the date an eligible MLO submits a license application. It ends when the earliest of the following occurs: (a) The MLO withdraws the application; (b) the state denies or issues a notice of intent to deny the application; (c) the state grants the license; or (d) one hundred twenty days after the application submission if the application is listed on NMLS as incomplete.

(5) **Can my license application be denied during the period of temporary authority?** Yes. Your application can be denied at any time during the application review process.

AMENDATORY SECTION (Amending WSR 13-06-022, filed 2/27/13, effective 4/1/13)

WAC 208-660-355 Loan originators—Prelicensing education. (1)(a) **Must I obtain prelicensing education before I will be given a license?** Yes. You must complete at least twenty-two hours of prelicensing education from an NMLS approved provider. The prelicensing education must include at least three hours of federal law and regulations; three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; two hours related to lending standards for the nontraditional mortgage product marketplace; and at least four hours of training specifically related to Washington law.

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

(2) **Who provides prelicensing education?** The NMLS approves course providers and courses for prelicensing education. See the NMLS Resource Center for a list of approved providers and courses.

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

(4) **Does prelicensing education expire?** Yes. After completing prelicensing education you must apply for licensure within three years.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **What are my ((quarterly)) NMLS mortgage call report filing requirements?** You are required to file accurate and complete mortgage call reports, including residential mortgage loan activity reports and financial condition reports, through the NMLS on the dates and in a form prescribed by the director or NMLS.

(2) **As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?**

(a) **Notification required.** You must notify the director through amendment to the NMLS and upload supporting documents, if applicable, to a change of:

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

(ii) Sponsorship status of a mortgage loan originator;

(iii) Answers to the NMLS generated disclosure questions or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation.

(b) **Prior notification required.** You must notify the director in writing twenty days prior to a change of:

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

(ii) Legal or trade name; or

(iii) A change of ownership control of twenty percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(c) **Post notification within ten business days.** You must notify the director through the NMLS or in writing to the director within ten days after an occurrence of any of the following:

(i) Change in mailing address, telephone number, fax number, or email address;

(ii) Cancellation or expiration of its Washington state business license;

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

(iv) ~~((Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;~~

~~((v)))~~ Receipt of notification of cancellation of your surety bond;

~~((vi)))~~ (v) Receipt of notification of license revocation proceedings against you in any state;

~~((vii)))~~ (vi) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

~~((viii)))~~ (vii) Name and mailing address of your registered agent if you are out-of-state.

(d) **Post notification within twenty business days.** You must notify the director in writing within twenty business

days after the occurrence of any of the following developments:

(i) 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;

(ii) The receipt of service of notice of the filing of any material litigation against you; or

(iii) The change in your residential address or telephone number.

(e) **Other post notification.** Within ~~((forty-five))~~ thirty 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 208-660-480.

(3) **As a licensed mortgage loan originator, what are my reporting responsibilities?** You must notify the director through amendment to the NMLS and upload supporting documents, if applicable, within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation;

(b) Sponsorship status with a licensed mortgage broker;

(c) Residence address; or

(d) Any change in the information supplied to the director in your original application.

(4) **Must I notify the department of the physical address of my mortgage broker books and records?** Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through NMLS. If the location of your books and records changes, you must provide the department, through the NMLS, with the new physical address within five business days of the change.

(5) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, through NMLS, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(6) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(7) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Notify the department in writing and provide requested information. At the effective date of sale, update and file all required information through the NMLS for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(d) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(8) **Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your MU1 record through the NMLS.

(9) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(10) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Notify the director within ten business days after filing the bankruptcy.

(b) Respond to the department's request for information about the bankruptcy.

(11) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(12) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(13) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(14) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(15) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(16) **Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(17) **Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-410 Trust accounting. (1) **What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction. Funds received by a broker from a settlement agent or lender, on or after closing, for payments the broker made, or will make, to third-party service providers are not trust funds.

(2) **Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

(3) **Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?** Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

(4) **Must I have a trust account if I do not receive any trust funds?** No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

(5) **Must I have a trust account if I am a mortgage broker exempt from licensing under the act?** Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), and (g) are not required to have a trust account even if they receive trust funds.

(6) **What does it mean to receive trust funds "on behalf of borrowers"?** Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers ~~(or) or the seller in a real estate transaction (or an escrow company or lender reimbursing a mortgage broker for payments advanced)~~ are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

(7) **What forms of payment must trust funds take?** Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds including, but not limited to, bank wires, ACH authorization, credit card or debit transactions, or online payments through a web site.

(8) **How do I receive trust funds through electronic transmission?**

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

(9) **When must I deposit trust funds?** You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

(10) **How must I document deposits?**

(a) You must document all deposits to the trust account(s) ~~((by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker))~~ and maintain a record indicating that the funds were actually deposited into the proper account(s).

(b) You must ~~((post))~~ document and maintain a record for the deposit of electronic funds ~~((by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include)), including a traceable identifying name or number supplied by the ((federally insured)) financial institution or transferring entity. ((You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.))~~

(11) **May I deposit funds other than trust funds into my trust account?** You may advance your own funds into

the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

(12) **May a loan originator accept trust funds?** A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(13) **May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party provider services without depositing the check into a trust account?** Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12).

(14) **May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services?** A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(15) **Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a third party?** A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(16) **If a mortgage broker receives funds on or after closing from a ((third party, such as a closer)) settlement agent, or a lender, ((as reimbursement for advances)) for the payment of third-party provider services, are these funds considered trust funds? ((Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.)) No.**

(17) **What books and records must I keep regarding my trust account?** You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of:

(i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and

(ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

(18) **What is a "subaccount"?** A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

(19) **May I transfer funds between a borrower's sub-accounts?** If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

(20) **May I be reimbursed for funds that I have advanced into the trust account?**

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may

receive reimbursement for such deposit at closing into your general business bank account provided:

(i) All third-party providers' charges associated with your deposit have been paid; and

(ii) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

(21) May I disburse trust funds through electronic transmission? Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

(22) How must I handle trust account disbursements?

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as specified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(23) What are the requirements concerning the checks I write from my trust account? You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

(24) What disbursements are prohibited? Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

(25) When may a mortgage broker transfer excess funds from a borrower subaccount?

(a) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full.

(b) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account. The disbursements must be made by a check drawn or electronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

(26) What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied? Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

(27) What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount? The mortgage broker must follow the procedures provided by the department of revenue's unclaimed property division to handle any trust funds held for a borrower who cannot be located.

(28) Is a mortgage broker responsible for all disbursements out of the trust account? Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

(29) If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds? Because these funds are not trust funds, the mortgage broker may ~~((either))~~:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due ~~((it to its))~~ the broker to the broker's general account; ~~((or))~~

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party service providers and insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the applicable settlement statement or final HUD-1, less any amounts already received by the mortgage broker, and must

be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed; or

(c) Deposit the entire check into the broker's general account and pay any third-party service providers.

(30) Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider? The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

(31) ~~((How do I pay a third party provider's fees if escrow disburses the funds to me and I don't have a trust account? You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.~~

~~(32) If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check or wired funds to me after closing that ~~((has))~~ includes fees ~~((in it))~~ for third-party service providers, may I deposit the check into my ~~((business))~~ general account and pay those third-party providers immediately? ~~((No. You must not deposit those fees into your business account under any circumstances.~~~~

~~(33) After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third party providers, will the department take action against me for a violation of the trust fund requirements? Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:~~

~~(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or~~

~~(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.~~

~~((34)) Yes.~~

(32) How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds? When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

~~((35)) (33) May mortgage brokers using an interest-bearing trust account keep the interest?~~ No. Mortgage bro-

kers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

~~((36)) (34) Are there any separate requirements for a computerized accounting system?~~ Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

(A) Trust account deposit register;

(B) Trust account check register;

(C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

~~((37)) (35) Are there penalties for violating trust account requirements under RCW 19.146.050?~~ A violation of this section is a class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?

(a) Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(b) If a lender is providing disclosures to the borrower, you must maintain copies of those disclosures and a copy of your agreement with the lender about the provision of disclosures; failure to do so would result in a violation.

(2) What is the disclosure required under RCW 19.146.030(1)? A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. An estimate made in good faith of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) What is the disclosure required under RCW 19.146.030(2)? Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure in compliance with the requirements of Regulation Z, Truth-in-Lending Act and Regulation X, RESPA as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

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

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

(ii) The expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) ~~((If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and~~

~~((v)) The date the rate lock agreement was provided to the borrower; and~~

~~((v)) Any other terms of the rate lock agreement((;)).~~

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

~~((e)) 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;~~

~~((f)) 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 the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure;~~

~~((g)) See subsection (7) of this section if the borrower initially chooses to float rather than lock the interest rate;~~

~~((h)) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent; and~~

~~((i)) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded. If the mortgage broker does not collect trust funds of any kind, the disclosure is not required.~~

(4) What is the disclosure required under RCW 19.144.020?

(a) You must provide the borrower with a clear, brief, one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(b) Disclosure in compliance with the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 12 C.F.R. 1024.7 is considered compliance with this disclosure requirement.

(5) How do I disclose the lender's credit or charge for the interest rate?

(a) You must disclose the credit or charge for the interest rate as a dollar amount credited to the borrower on the good faith estimate or loan estimate.

(b) You must direct the settlement service provider to disclose the credit or charge for the interest rate on the applicable settlement statement. The amount must be expressed as a dollar amount.

(c) Failure to properly disclose the credit or charge for the interest rate is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) Are there additional disclosure requirements related to interest rate locks? Yes. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(c) of this section. Changes to a locked interest rate can only occur for valid reasons such as changes in loan to value, credit scores, or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate.

(7) What must I disclose to the borrower if they do not choose to enter into a rate lock agreement? 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 good faith estimate or loan estimate required by TILA is deemed compliance with this subsection.

(8) Will a rate lock agreement always guarantee the interest rate and terms? No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

(9) How do I disclose the payment of a rate lock fee?

In a table funded transaction, 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 the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(10) Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)? Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal loan estimate form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal loan estimate only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate or loan estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X or the Truth in Lending Act and Regulation Z, as now or hereafter amended. However, the federal good faith estimate or loan estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)? Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate or loan estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure? Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the applicable settlement statement or final HUD-1 do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and simi-

lar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate or loan estimate and applicable settlement statement? If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

(14) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the applicable settlement statement and the incorrect disclosure was made by an independent escrow agent, title company, or lender? If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate or loan estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the applicable settlement statement, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)? Generally, the department may request, direct, or order you to refund fees.

(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers? Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate or loan estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate or loan estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change? Was the change due to a valid change of circumstance as allowed under RESPA?

(c) How were the costs disclosed in each good faith estimate or loan estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the applicable settlement statement or final

HUD-1 exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) If I failed to provide the initial good faith estimate or loan estimate under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take? If you have not provided the initial good faith estimate or loan estimate as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take? If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) Under what circumstances must I redisclose the initial disclosures required under the act? Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

- (a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.
- (b) The initial fixed period.
- (c) Any balloon payment requirements.
- (d) Interest only options and any changes to the options.
- (e) Lien position of the loan.
- (f) Terms and the number of months or years for amortization purposes.
- (g) Prepayment penalty terms and conditions.
- (h) Any other term or condition that may be specific to a certain loan product.

(20) If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030? If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(21) Is a mortgage broker that table funds a loan exempt from disclosures? No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(22) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers? If you are unable to

complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

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

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes, stationery, or images in an electronic format that are designed to resemble a government agency mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

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

(b) Images, including those in electronic format, designed to resemble official government communications, such as IRS or U.S. Treasury, or other government agencies.

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

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

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the

purportedly "free" item through the negotiation process. ~~((This is a violation of RCW 19.146.0201 (2), (7), and (11).))~~ See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 C.F.R. §251.1(g) (2003)) available at ~~((http://www.ftc.gov/bep/guides/free.htm))~~ <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/guide-concerning-use-word-free-similar>.

(4) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisements must be reasonably understandable. Consumers must be able to read or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. The disclosure of the APR must be as prominent or more prominent than any other rates disclosed in the advertisement, regardless of the form of the advertisement.

(5) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(6) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., Part 1026.26 provides guidance for using the annual percentage rate in oral disclosures.

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

(8) **When I present a business card to a potential borrower, must I make the disclosures required under RCW 19.146.030?** No. You are not required to make those disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(9) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(10) **If I advertise using a borrower's current loan information, what must I disclose about that informa-**

tion? When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with:

- (a) The name of the source of the information;
- (b) A statement that you are not affiliated with the borrower's lender; and
- (c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-445 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that ~~((any))~~ the URL address ~~((you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address))~~ does not misrepresent the identity of your company or contain any misleading, deceptive, or otherwise prohibited language. URL addresses may be used as DBA names upon request to and approval from DFI.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-446 When ~~((I advertise))~~ advertising using the internet or any electronic form (including, but not limited to, text messages), is there specific content the advertisements must contain? Yes. ~~((You))~~ Companies, including branches, and loan originators must provide the following language, in addition to any other, on ~~((your))~~ web pages, social media pages the licensee controls, or in any medium where ~~((you hold yourself))~~ the licensee holds themselves out as being able to provide the services:

(1) ~~((Main office's home web page. (a)))~~ The company's ~~((license))~~ name as entered in the NMLS and license number must be displayed on the ~~((licensee's home web))~~ company's and any loan originator's primary landing page.

~~((b))~~ (2) If loan originators are named, their license numbers must closely follow the names. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See WAC 208-660-350(25).

~~((c))~~ The home web page must also contain (3) A link to the NMLS consumer access web site page for the company.

~~((d))~~ (4) If the company uses a DBA ~~((on a home web page))~~, the page must also contain the company's ~~((license))~~ name ~~((and))~~ as entered in the NMLS or license number.

~~((2))~~ Branch office web page. Comply with subsection (1) of this section.

~~((3))~~ Loan originator web page. If a loan originator maintains a separate web page, the sponsoring licensee's name and license number must appear on the web page. The web page must also contain the loan originator's license name and

~~license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See WAC 208-660-350 (25).~~

~~(4) Social media pages or other online advertisements.~~

~~(a) The company's license name and license number must be displayed on the page.~~

~~(b) If the company uses a DBA, the company license name and license number must be displayed on the page along with the DBA name.~~

~~(c) If a page is created by a loan originator, the company license name and license number, along with the loan originator's license number must be displayed on the page.)~~

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.

(6) Oversight. The company is responsible for content displayed on all electronic advertisements used to solicit Washington consumers.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-500 Prohibited practices. (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate, loan estimate, or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Making or funding a loan by any means other than table funding.

(h) 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. This includes leaving blanks on a document and instructing the borrower to sign the document with the blanks or providing the borrower with documents with blanks. You are not prohibited from marking some information blanks with "N/A" if the information is not applicable to the transaction.

(i) Willfully filing a lien on property without a legal basis to do so.

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

(k) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(l) 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.

(m) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

- (ii) A deceptive increase in interest rate.
- (iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.
- (iv) A deceptive increase in fees or other costs.
- (v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.
- (vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.
- (vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.
- (viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.
- (ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(5).
- (n) Engage 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.
- (o) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.
- (p) Making any payment, directly or indirectly, 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.
- (q) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.
- (r) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).
- (s) Failing to pay third-party providers within the applicable timelines.
- (t) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.
- (u) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).
- (v) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.
- (w) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.
- (x) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(y) Receiving compensation or any thing 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.

(z) Abandoning 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.

(4) What additional practices are prohibited when providing residential mortgage loan modification services? You are prohibited from:

- (a) Collecting an advance fee;
- (b) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services;
- (c) Failing to provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. See also WAC 208-660-430(23);
- (d) As a condition to providing loan modification services requiring or encouraging a borrower to:
 - (i) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;
 - (ii) Sign a waiver of his or her right to contest a future foreclosure;
 - (iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;
 - (iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;
 - (v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or
 - (e) Entering into any contract or agreement to purchase a borrower's property;
 - (f) Failing in a timely manner to:
 - (i) Communicate with or on behalf of the borrower;
 - (ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;
 - (g) Engaging in false or misleading advertising. In addition to WAC ((~~208-620-630~~) 208-660-440), examples of false or misleading advertising include:
 - (i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;
 - (ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;
 - (h) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe

that the borrower's credit record may be negatively affected by the mortgage loan modification.

(5) **What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(6) **What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(7) **When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

(a) **Consumer protection.**

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

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

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

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

(8) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 1024, Appendix A.

(9) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate, loan estimate, or similar document provided that such fee is disclosed in compliance with the act and these rules.

(10) **How do I disclose my mortgage broker fees on the good faith estimate or loan estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate or loan estimate and settlement statement or similar document as required by the act and Regulations X or Z.

(11) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless there is a valid change of circumstance as allowed under RESPA and:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

WSR 19-17-095

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 18-10—Filed August 21, 2019, 11:52 a.m.]

Continuance of WSR 19-16-147.

Preproposal statement of inquiry was filed as WSR 19-02-085.

Title of Rule and Other Identifying Information: Ecology is proposing to amend the oil spill contingency plan rule (chapter 173-182 WAC). This chapter requires regulated vessels, facilities, and pipelines that handle or transport oil to have an approved plan in place for responding to oil spills. Oil spill contingency plans include information about how to make notifications and contract for the appropriate equipment and trained personnel to respond to spills that may occur.

We are filing this notice to inform the public of an additional public hearing (webinar) we are holding on Thursday, September 26, 2019, at 6:00 p.m.

The comment period has not changed. Comments are due October 6, 2019.

Hearing Location(s): September 26, 2019, at 6:00 p.m., webinar. Ecology is providing an additional opportunity to provide comments on the rule making.

To join the meeting online from your computer, tablet or smartphone: <https://global.gotomeeting.com/join/696815493>.

You can also dial in using a phone, United States: +1 (571) 317-3122, Access Code: 696-815-493.

There will be a presentation on the rule update and a question and answer session, followed by the hearing.

Date of Intended Adoption: December 18, 2019.

Submit Written Comments to: Sonja Larson, Department of Ecology, Spills Prevention, Preparedness, and Response Program, 300 Desmond Drive S.E. (parcel delivery), Lacey, WA 98503, or P.O. Box 47600 (United States postal), Olympia, WA 98502, submit comments by mail, online, or at the hearing(s), online <http://cs.ecology.commentinput.com/?id=V6ATc>, by October 6, 2019.

Assistance for Persons with Disabilities: Contact ecology's Americans with Disabilities Act coordinator, phone 360-407-6831, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email ecyADAcordinator@ecy.wa.gov, by September 15, 2019.

Statutory Authority for Adoption: RCW 90.56.210, 88.46.060 Contingency plans.

Statute Being Implemented: RCW 90.56.210, 88.46.060 Contingency plans.

Name of Proponent: Department of ecology, governmental.

August 21, 2019
Bari Schreiner
Agency Rules Coordinator
Rules and Accountability Section Manager