
SENATE BILL 6406

State of Washington

61st Legislature

2010 Regular Session

By Senators Franklin, Benton, Hobbs, McDermott, and Berkey; by request of Department of Financial Institutions

Read first time 01/13/10. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to licensing residential mortgage loan servicers
2 through the national mortgage licensing service and clarifying the
3 existing authority of the department of financial institutions to
4 regulate residential mortgage loan modification services under the
5 consumer loan act and mortgage broker practices act; amending RCW
6 31.04.035, 31.04.045, 31.04.055, 31.04.085, 31.04.093, 31.04.165,
7 31.04.277, 19.144.080, 19.146.010, 19.146.210, and 19.146.310;
8 reenacting and amending RCW 31.04.015; adding new sections to chapter
9 31.04 RCW; adding new sections to chapter 19.146 RCW; repealing RCW
10 31.04.2211; and providing an effective date.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12 **Sec. 1.** RCW 31.04.015 and 2009 c 149 s 12 and 2009 c 120 s 2 are
13 each reenacted and amended to read as follows:

14 The definitions set forth in this section apply throughout this
15 chapter unless the context clearly requires a different meaning.

16 (1) "Add-on method" means the method of precomputing interest
17 payable on a loan whereby the interest to be earned is added to the
18 principal balance and the total plus any charges allowed under this
19 chapter is stated as the loan amount, without further provision for the

1 payment of interest except for failure to pay according to loan terms.
2 The director may adopt by rule a more detailed explanation of the
3 meaning and use of this method.

4 (2) "Applicant" means a person applying for a license under this
5 chapter.

6 (3) "Borrower" means any person who consults with or retains a
7 licensee or person subject to this chapter in an effort to obtain or
8 seek information about obtaining a loan, regardless of whether that
9 person actually obtains such a loan.

10 (4) "Depository institution" has the same meaning as in section 3
11 of the federal deposit insurance act on July 26, 2009, and includes
12 credit unions.

13 (5) "Director" means the director of financial institutions.

14 (6) "Federal banking agencies" means the board of governors of the
15 federal reserve system, comptroller of the currency, director of the
16 office of thrift supervision, national credit union administration, and
17 federal deposit insurance corporation.

18 (7) "Individual servicing a mortgage loan" means a person on behalf
19 of a lender or servicer licensed by this state, who collects or
20 receives payments including payments of principal, interest, escrow
21 amounts, and other amounts due, on existing obligations due and owing
22 to the licensed lender or servicer for a residential mortgage loan when
23 the borrower is in default, or in reasonably foreseeable likelihood of
24 default, working with the borrower and the licensed lender or servicer,
25 collects data and makes decisions necessary to modify either
26 temporarily or permanently certain terms of those obligations, or
27 otherwise finalizing collection through the foreclosure process.

28 (8) "Insurance" means life insurance, disability insurance,
29 property insurance, involuntary unemployment insurance, and such other
30 insurance as may be authorized by the insurance commissioner.

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

33 (10) "Licensee" means a person to whom one or more licenses have
34 been issued.

35 (11) "Loan" means a sum of money lent at interest or for a fee or
36 other charge and includes both open-end and closed-end loan
37 transactions.

1 (12) "Loan processor" means an individual who performs clerical or
2 support duties as an employee at the direction of and subject to the
3 supervision and instruction of a person licensed, or exempt from
4 licensing, under chapter 19.146 RCW.

5 (13) "Making a loan" means advancing, offering to advance, or
6 making a commitment to advance funds to a borrower for a loan.

7 (14) "Mortgage broker" means the same as defined in RCW 19.146.010,
8 except that for purposes of this chapter, a licensee or person subject
9 to this chapter cannot receive compensation as both a consumer loan
10 licensee making the loan and as a consumer loan licensee acting as the
11 mortgage broker in the same loan transaction.

12 (15)(a) "Mortgage loan originator" means an individual who for
13 compensation or gain (i) takes a residential mortgage loan application,
14 or (ii) offers or negotiates terms of a residential mortgage loan.
15 "Mortgage loan originator" does not include any individual who performs
16 purely administrative or clerical tasks; and does not include a person
17 or entity solely involved in extensions of credit relating to timeshare
18 plans, as that term is defined in section 101(53D) of Title 11, United
19 States Code. For the purposes of this definition, administrative or
20 clerical tasks means the receipt, collection, and distribution of
21 information common for the processing of a loan in the mortgage
22 industry and communication with a consumer to obtain information
23 necessary for the processing of a residential mortgage loan.

24 (b) "Mortgage loan originator" also includes an individual who for
25 compensation or gain performs residential mortgage loan modification
26 services or holds himself or herself out as being able to perform
27 residential mortgage loan modification services.

28 (c) "Mortgage loan originator" does not include a person or entity
29 that only performs real estate brokerage activities and is licensed or
30 registered in accordance with applicable state law, unless the person
31 or entity is compensated by a lender, a mortgage broker, or other
32 mortgage loan originator or by any agent of such a lender, mortgage
33 broker, or other mortgage loan originator. For the purposes of chapter
34 120, Laws of 2009, the term "real estate brokerage activity" means any
35 activity that involves offering or providing real estate brokerage
36 services to the public, including:

37 (i) Acting as a real estate agent or real estate broker for a
38 buyer, seller, lessor, or lessee of real property;

1 (ii) Bringing together parties interested in the sale, purchase,
2 lease, rental, or exchange of real property;

3 (iii) Negotiating, on behalf of any party, any portion of a
4 contract relating to the sale, purchase, lease, rental, or exchange of
5 real property, other than in connection with providing financing with
6 respect to such a transaction;

7 (iv) Engaging in any activity for which a person engaged in the
8 activity is required to be registered or licensed as a real estate
9 agent or real estate broker under any applicable law; and

10 (v) Offering to engage in any activity, or act in any capacity,
11 described in ~~((b))~~ (c)(i) through (iv) of this subsection.

12 ~~((e))~~ (d) This subsection does not apply to an individual
13 servicing a mortgage loan before July 1, 2011.

14 (e) This subsection does not apply to employees of a housing
15 counseling agency approved by the United States department of housing
16 and urban development unless the employees of a housing counseling
17 agency are required under federal law to be individually licensed as
18 mortgage loan originators.

19 (16) "Nationwide mortgage licensing system and registry" means a
20 mortgage licensing system developed and maintained by the conference of
21 state bank supervisors and the American association of residential
22 mortgage regulators for the licensing and registration of mortgage loan
23 originators.

24 (17) "Officer" means an official appointed by the company for the
25 purpose of making business decisions or corporate decisions.

26 (18) "Person" includes individuals, partnerships, associations,
27 limited liability companies, limited liability partnerships, trusts,
28 corporations, and all other legal entities.

29 (19) "Principal" means any person who controls, directly or
30 indirectly through one or more intermediaries, alone or in concert with
31 others, a ten percent or greater interest in a partnership; company;
32 association or corporation; or a limited liability company, and the
33 owner of a sole proprietorship.

34 (20) "Registered mortgage loan originator" means any individual who
35 meets the definition of mortgage loan originator and is an employee of
36 a depository institution; a subsidiary that is owned and controlled by
37 a depository institution and regulated by a federal banking agency; or

1 an institution regulated by the farm credit administration and is
2 registered with, and maintains a unique identifier through, the
3 nationwide mortgage licensing system and registry.

4 (21) "Residential mortgage loan" means any loan primarily for
5 personal, family, or household use that is secured by a mortgage, deed
6 of trust, or other equivalent consensual security interest on a
7 dwelling, as defined in section 103(v) of the truth in lending act, or
8 residential real estate upon which is constructed or intended to be
9 constructed a dwelling.

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

16 (23) "Residential mortgage loan modification services" includes
17 negotiating, attempting to negotiate, arranging, attempting to arrange,
18 or otherwise offering to perform a residential mortgage loan
19 modification. "Residential mortgage loan modification services" also
20 includes the collection of data for submission to an entity performing
21 mortgage loan modification services. "Residential mortgage loan
22 modification services" do not include actions by individuals servicing
23 a mortgage loan before July 1, 2011.

24 (24) "S.A.F.E. act" means the secure and fair enforcement for
25 mortgage licensing act of 2008, Title V of the housing and economic
26 recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

27 ((+23)) (25) "Senior officer" means an officer of a licensee at
28 the vice president level or above.

29 ((+24)) (26) "Service or servicing a loan" means on behalf of the
30 lender or investor of a residential mortgage loan: (a) Collecting or
31 receiving payments on existing obligations due and owing to the lender
32 or investor, including payments of principal, interest, escrow amounts,
33 and other amounts due; (b) collecting fees due to the servicer; (c)
34 working with the borrower and the licensed lender or servicer to
35 collect data and make decisions necessary to modify certain terms of
36 those obligations either temporarily or permanently; (d) otherwise
37 finalizing collection through the foreclosure process; or (e) servicing
38 a reverse mortgage loan.

1 (27) "Service or servicing a reverse mortgage loan" means, pursuant
2 to an agreement with the owner of a reverse mortgage loan:
3 Calculating, collecting, or receiving payments of interest or other
4 amounts due; administering advances to the borrower; and providing
5 account statements to the borrower or lender.

6 (28) "Simple interest method" means the method of computing
7 interest payable on a loan by applying the annual percentage interest
8 rate or its periodic equivalent to the unpaid balances of the principal
9 of the loan outstanding for the time outstanding with each payment
10 applied first to any unpaid penalties, fees, or charges, then to
11 accumulated interest, and the remainder of the payment applied to the
12 unpaid balance of the principal until paid in full. In using such
13 method, interest shall not be payable in advance nor compounded, except
14 that on a loan secured by real estate, a licensee may collect at the
15 time of the loan closing up to but not exceeding forty-five days of
16 prepaid interest. The prohibition on compounding interest does not
17 apply to reverse mortgage loans made in accordance with the Washington
18 state reverse mortgage act. The director may adopt by rule a more
19 detailed explanation of the meaning and use of this method.

20 ~~((+25))~~ (29) "Third-party residential mortgage loan modification
21 services" means residential mortgage loan modification services offered
22 or performed by any person other than the owner or servicer of the
23 loan.

24 (30) "Third-party service provider" means any person other than the
25 licensee or a mortgage broker who provides goods or services to the
26 licensee or borrower in connection with the preparation of the
27 borrower's loan and includes, but is not limited to, credit reporting
28 agencies, real estate brokers or salespersons, title insurance
29 companies and agents, appraisers, structural and pest inspectors, or
30 escrow companies.

31 ~~((+26))~~ (31) "Unique identifier" means a number or other
32 identifier assigned by protocols established by the nationwide mortgage
33 licensing system and registry.

34 **Sec. 2.** RCW 31.04.035 and 2009 c 120 s 4 are each amended to read
35 as follows:

36 No person may engage in the business of making secured or unsecured

1 loans of money, credit, or things in action, or servicing residential
2 mortgage loans, without first obtaining and maintaining a license in
3 accordance with this chapter, except those exempt under RCW 31.04.025.

4 **Sec. 3.** RCW 31.04.045 and 2009 c 120 s 5 are each amended to read
5 as follows:

6 (1) Application for a license under this chapter must be made to
7 the nationwide mortgage licensing system and registry or in the form
8 prescribed by the director. The application must contain at least the
9 following information:

10 (a) The name and the business addresses of the applicant;

11 (b) If the applicant is a partnership or association, the name of
12 every member;

13 (c) If the applicant is a corporation, the name, residence address,
14 and telephone number of each officer and director;

15 (d) The street address, county, and municipality from which
16 business is to be conducted; and

17 (e) Such other information as the director may require by rule.

18 (2) As part of or in connection with an application for any license
19 under this section, or periodically upon license renewal, each officer,
20 director, and owner applicant shall furnish information concerning his
21 or her identity, including fingerprints for submission to the
22 Washington state patrol, the federal bureau of investigation, the
23 nationwide mortgage licensing system and registry, or any governmental
24 agency or entity authorized to receive this information for a state and
25 national criminal history background check; personal history;
26 experience; business record; purposes; and other pertinent facts, as
27 the director may reasonably require. As part of or in connection with
28 an application for a license under this chapter, or periodically upon
29 license renewal, the director is authorized to receive criminal history
30 record information that includes nonconviction data as defined in RCW
31 10.97.030. The department may only disseminate nonconviction data
32 obtained under this section to criminal justice agencies. This section
33 does not apply to financial institutions regulated under chapters 31.12
34 and 31.13 RCW and Titles 30, 32, and 33 RCW.

35 (3) In order to reduce the points of contact which the federal
36 bureau of investigation may have to maintain, the director may use the

1 nationwide mortgage licensing system and registry as a channeling agent
2 for requesting information from and distributing information to the
3 department of justice or any governmental agency.

4 (4) In order to reduce the points of contact which the director may
5 have to maintain, the director may use the nationwide mortgage
6 licensing system and registry as a channeling agent for requesting and
7 distributing information to and from any source so directed by the
8 director.

9 (5) At the time of filing an application for a license under this
10 chapter, each applicant shall pay to the director or through the
11 nationwide mortgage licensing system and registry an investigation fee
12 and the license fee in an amount determined by rule of the director to
13 be sufficient to cover the director's costs in administering this
14 chapter.

15 (6) Each applicant shall file and maintain a surety bond, approved
16 by the director, executed by the applicant as obligor and by a surety
17 company authorized to do a surety business in this state as surety,
18 whose liability as such surety shall not exceed in the aggregate the
19 penal sum of the bond. The penal sum of the bond shall be a minimum of
20 thirty thousand dollars and based on the annual dollar amount of loans
21 originated or residential mortgage loans serviced. The bond shall run
22 to the state of Washington as obligee for the use and benefit of the
23 state and of any person or persons who may have a cause of action
24 against the obligor under this chapter. The bond shall be conditioned
25 that the obligor as licensee will faithfully conform to and abide by
26 this chapter and all the rules adopted under this chapter. The bond
27 will pay to the state and any person or persons having a cause of
28 action against the obligor all moneys that may become due and owing to
29 the state and those persons under and by virtue of this chapter. In
30 lieu of a surety bond, if the applicant is a Washington business
31 corporation, the applicant may maintain unimpaired capital, surplus,
32 and long-term subordinated debt in an amount that at any time its
33 outstanding promissory notes or other evidences of debt (other than
34 long-term subordinated debt) in an aggregate sum do not exceed three
35 times the aggregate amount of its unimpaired capital, surplus, and
36 long-term subordinated debt. The director may define qualifying "long-
37 term subordinated debt" for purposes of this section.

1 **Sec. 4.** RCW 31.04.055 and 2001 c 81 s 5 are each amended to read
2 as follows:

3 (1) The director shall issue and deliver a license to the applicant
4 to make loans in accordance with this chapter at the location specified
5 in the application if, after investigation, the director finds that:

6 (a) The applicant has paid all required fees;

7 (b) The applicant has submitted a complete application in
8 compliance with RCW 31.04.045;

9 (c) Neither the applicant nor its officers or principals have had
10 a license issued under this section or any other section, in this state
11 or another state, revoked or suspended within the last five years of
12 the date of filing of the application;

13 (d) Neither the applicant nor any of its officers or principals
14 have been convicted of a gross misdemeanor involving dishonesty or
15 financial misconduct or a felony or a violation of the banking laws of
16 this state or of the United States within seven years of the filing of
17 an application; ~~((and))~~

18 (e) The financial responsibility, experience, character, and
19 general fitness of the applicant are such as to command the confidence
20 of the community and to warrant a belief that the business will be
21 operated honestly, fairly, and efficiently within the purposes of this
22 chapter; and

23 (f) Neither the applicant nor any of its principals have provided
24 unlicensed residential mortgage loan modification services in this
25 state in the five years prior to the filing of the present application.

26 (2) If the director does not find the conditions of subsection (1)
27 of this section have been met, the director shall not issue the
28 license. The director shall notify the applicant of the denial and
29 return to the applicant the bond posted and the sum paid by the
30 applicant as a license fee, retaining the investigation fee to cover
31 the costs of investigating the application. The director shall approve
32 or deny every application for license under this chapter within ninety
33 days from the filing of a complete application with the fees and the
34 approved bond.

35 **Sec. 5.** RCW 31.04.085 and 2001 c 81 s 7 are each amended to read
36 as follows:

37 (1) A licensee shall, for each license held by any person, on or

1 before the first day of each March, pay to the director an annual
2 assessment as determined by rule by the director. The licensee shall
3 be responsible for payment of the annual assessment for the previous
4 calendar year if the licensee had a license for any time during the
5 preceding calendar year, regardless of whether they surrendered their
6 license during the calendar year or whether their license was suspended
7 or revoked. At the same time the licensee shall file with the director
8 the required bond or otherwise demonstrate compliance with RCW
9 31.04.045.

10 (2) The director may establish a different yearly assessment fee
11 for persons servicing residential mortgage loans.

12 **Sec. 6.** RCW 31.04.093 and 2001 c 81 s 8 are each amended to read
13 as follows:

14 (1) The director shall enforce all laws and rules relating to the
15 licensing and regulation of licensees and persons subject to this
16 chapter.

17 (2) The director may deny applications for licenses for:

18 (a) Failure of the applicant to demonstrate within its application
19 for a license that it meets the requirements for licensing in RCW
20 31.04.045 and 31.04.055;

21 (b) Violation of an order issued by the director under this chapter
22 or another chapter administered by the director, including but not
23 limited to cease and desist orders and temporary cease and desist
24 orders;

25 (c) Revocation or suspension of a license to conduct lending or
26 residential mortgage loan servicing, or to provide settlement services
27 associated with lending or residential mortgage loan servicing, by this
28 state, another state, or by the federal government within five years of
29 the date of submittal of a complete application for a license; or

30 (d) Filing an incomplete application when that incomplete
31 application has been filed with the department for sixty or more days,
32 provided that the director has given notice to the licensee that the
33 application is incomplete, informed the applicant why the application
34 is incomplete, and allowed at least twenty days for the applicant to
35 complete the application.

36 (3) The director may suspend or revoke a license issued under this
37 chapter if the director finds that:

1 (a) The licensee has failed to pay any fee due the state of
2 Washington, has failed to maintain in effect the bond or permitted
3 substitute required under this chapter, or has failed to comply with
4 any specific order or demand of the director lawfully made and directed
5 to the licensee in accordance with this chapter;

6 (b) The licensee, either knowingly or without the exercise of due
7 care, has violated any provision of this chapter or any rule adopted
8 under this chapter; or

9 (c) A fact or condition exists that, if it had existed at the time
10 of the original application for the license, clearly would have allowed
11 the director to deny the application for the original license. The
12 director may revoke or suspend only the particular license with respect
13 to which grounds for revocation or suspension may occur or exist unless
14 the director finds that the grounds for revocation or suspension are of
15 general application to all offices or to more than one office operated
16 by the licensee, in which case, the director may revoke or suspend all
17 of the licenses issued to the licensee.

18 (4) The director may impose fines of up to one hundred dollars per
19 day upon the licensee, its employee or loan originator, or other person
20 subject to this chapter for:

21 (a) Any violation of this chapter; or

22 (b) Failure to comply with any order or subpoena issued by the
23 director under this chapter.

24 (5) The director may issue an order directing the licensee, its
25 employee or loan originator, or other person subject to this chapter
26 to:

27 (a) Cease and desist from conducting business in a manner that is
28 injurious to the public or violates any provision of this chapter;

29 (b) Take such affirmative action as is necessary to comply with
30 this chapter; or

31 (c) Make restitution to a borrower or other person who is damaged
32 as a result of a violation of this chapter.

33 (6) The director may issue an order removing from office or
34 prohibiting from participation in the affairs of any licensee, or both,
35 any officer, principal, employee or loan originator, or any person
36 subject to this chapter for:

37 (a) False statements or omission of material information from an

1 application for a license that, if known, would have allowed the
2 director to deny the original application for a license;

3 (b) Conviction of a gross misdemeanor involving dishonesty or
4 financial misconduct or a felony;

5 (c) Suspension or revocation of a license to engage in lending or
6 residential mortgage loan servicing, or perform a settlement service
7 related to lending or residential mortgage loan servicing, in this
8 state or another state;

9 (d) Failure to comply with any order or subpoena issued under this
10 chapter; or

11 (e) A violation of RCW 31.04.027.

12 (7) Whenever the director determines that the public is likely to
13 be substantially injured by delay in issuing a cease and desist order,
14 the director may immediately issue a temporary cease and desist order.
15 The order may direct the licensee to discontinue any violation of this
16 chapter, to take such affirmative action as is necessary to comply with
17 this chapter, and may include a summary suspension of the licensee's
18 license and may order the licensee to immediately cease the conduct of
19 business under this chapter. The order shall become effective at the
20 time specified in the order. Every temporary cease and desist order
21 shall include a provision that a hearing will be held upon request to
22 determine whether the order will become permanent. Such hearing shall
23 be held within fourteen days of receipt of a request for a hearing
24 unless otherwise specified in chapter 34.05 RCW.

25 (8) A licensee may surrender a license by delivering to the
26 director written notice of surrender, but the surrender does not affect
27 the licensee's civil or criminal liability, if any, for acts committed
28 before the surrender, including any administrative action initiated by
29 the director to suspend or revoke a license, impose fines, compel the
30 payment of restitution to borrowers or other persons, or exercise any
31 other authority under this chapter.

32 (9) The revocation, suspension, or surrender of a license does not
33 impair or affect the obligation of a preexisting lawful contract
34 between the licensee and a borrower.

35 (10) Every license issued under this chapter remains in force and
36 effect until it has been surrendered, revoked, or suspended in
37 accordance with this chapter. However, the director may on his or her

1 own initiative reinstate suspended licenses or issue new licenses to a
2 licensee whose license or licenses have been revoked if the director
3 finds that the licensee meets all the requirements of this chapter.

4 **Sec. 7.** RCW 31.04.165 and 2009 c 120 s 30 are each amended to read
5 as follows:

6 (1) The director has the power, and broad administrative
7 discretion, to administer and interpret this chapter to facilitate the
8 delivery of financial services to the citizens of this state by
9 consumer loan companies, residential mortgage loan servicers, and
10 mortgage loan originators subject to this chapter. The director shall
11 adopt all rules necessary to administer this chapter and to ensure
12 complete and full disclosure by licensees of lending transactions
13 governed by this chapter.

14 (2) If it appears to the director that a licensee is conducting
15 business in an injurious manner or is violating any provision of this
16 chapter, the director may order or direct the discontinuance of any
17 such injurious or illegal practice.

18 (3) For purposes of this section, "conducting business in an
19 injurious manner" means conducting business in a manner that violates
20 any provision of this chapter, or that creates the reasonable
21 likelihood of a violation of any provision of this chapter.

22 (4) The director or designated persons, with or without prior
23 administrative action, may bring an action in superior court to enjoin
24 the acts or practices that constitute violations of this chapter and to
25 enforce compliance with this chapter or any rule or order made under
26 this chapter. Upon proper showing, injunctive relief or a temporary
27 restraining order shall be granted. The director shall not be required
28 to post a bond in any court proceedings.

29 **Sec. 8.** RCW 31.04.277 and 2009 c 120 s 27 are each amended to read
30 as follows:

31 Each consumer loan company licensee who makes, services, or brokers
32 a loan secured by real property shall submit to the nationwide mortgage
33 licensing system and registry reports of condition, which must be in
34 the form and must contain the information as the nationwide mortgage
35 licensing system and registry may require.

1 NEW SECTION. **Sec. 9.** (1) A residential mortgage loan servicer
2 must comply with the following requirements:

3 (a) The requirements of chapter 19.148 RCW;

4 (b) Any fee that is assessed by a servicer must be assessed within
5 forty-five days of the date on which the fee was incurred and must be
6 explained clearly and conspicuously in a statement mailed to the
7 borrower at the borrower's last known address no more than thirty days
8 after assessing the fee;

9 (c) All amounts received by a servicer on a residential mortgage
10 loan at the address where the borrower has been instructed to make
11 payments must be accepted and credited, or treated as credited, within
12 one business day of the date received, provided that the borrower has
13 provided sufficient information to credit the account. If a servicer
14 uses the scheduled method of accounting, any regularly scheduled
15 payment made prior to the scheduled due date must be credited no later
16 than the due date. If any payment is received and not credited, or
17 treated as credited, the borrower must be notified of the disposition
18 of the payment within ten business days by mail at the borrower's last
19 known address. The notification must identify the reason the payment
20 was not credited or treated as credited to the account, as well as any
21 actions the borrower must take to make the residential mortgage loan
22 current;

23 (d) Any servicer that exercises the authority to collect escrow
24 amounts on a residential mortgage loan held for the borrower for
25 payment of insurance, taxes, and other charges with respect to the
26 property shall collect and make all such payments from the escrow
27 account and ensure that no late penalties are assessed or other
28 negative consequences result for the borrower;

29 (e) The servicer shall make reasonable attempts to comply with a
30 borrower's request for information about the residential mortgage loan
31 account and to respond to any dispute initiated by the borrower about
32 the loan account. The servicer:

33 (i) Must maintain written or electronic records of each written
34 request for information regarding a dispute or error involving the
35 borrower's account until the residential mortgage loan is paid in full,
36 sold, or otherwise satisfied;

37 (ii) Must provide a written statement to the borrower within
38 fifteen business days of receipt of a written request from the

1 borrower. The borrower's request must include the name and account
2 number, if any, of the borrower, a statement that the account is or may
3 be in error, and sufficient detail regarding the information sought by
4 the borrower to permit the servicer to comply. At a minimum, the
5 servicer's response to the borrower's request must include the
6 following information:

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

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

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

18 (D) The telephone number and mailing address of a servicer
19 representative with the information and authority to answer questions
20 and resolve disputes; and

21 (iii) May charge a fee for preparing and furnishing the statement
22 in (e)(ii) of this subsection not exceeding thirty dollars per
23 statement; and

24 (f) Promptly correct any errors and refund any fees assessed to the
25 borrower resulting from the servicer's error.

26 (2) In addition to the statement in subsection (1)(e)(ii) of this
27 section, a borrower may request more detailed information from a
28 servicer, and the servicer must provide the information within fifteen
29 business days of receipt of a written request from the borrower. The
30 request must include the name and account number, if any, of the
31 borrower, a statement that the account is or may be in error, and
32 provide sufficient detail to the servicer regarding information sought
33 by the borrower. If requested by the borrower this statement must
34 include:

35 (a) A copy of the original note, or if unavailable, an affidavit of
36 lost note; and

37 (b) A statement that identifies and itemizes all fees and charges
38 assessed under the loan transaction and provides a full payment history

1 identifying in a clear and conspicuous manner all of the debits,
2 credits, application of and disbursement of all payments received from
3 or for the benefit of the borrower, and other activity on the
4 residential mortgage loan including escrow account activity and
5 suspense account activity, if any. The period of the account history
6 shall cover at a minimum the two-year period prior to the date of the
7 receipt of the request for information. If the servicer has not
8 serviced the residential mortgage loan for the entire two-year time
9 period the servicer shall provide the information going back to the
10 date on which the servicer began servicing the home loan, and identify
11 the previous servicer, if known. If the servicer claims that any
12 delinquent or outstanding sums are owed on the home loan prior to the
13 two-year period or the period during which the servicer has serviced
14 the residential mortgage loan, the servicer shall provide an account
15 history beginning with the month that the servicer claims any
16 outstanding sums are owed on the residential mortgage loan up to the
17 date of the request for the information. The borrower may request
18 annually one statement free of charge.

19 NEW SECTION. **Sec. 10.** (1) In addition to any other requirements
20 under federal or state law, an advance fee may not be collected for
21 residential mortgage loan modification services unless a written
22 disclosure summary of all material terms, in the format adopted by the
23 department under subsection (2) of this section, has been provided to
24 the borrower.

25 (2) The department shall adopt by rule a model written fee
26 agreement, and any other rules necessary to implement this section.
27 This may include, but is not limited to, usual and customary fees for
28 residential mortgage loan modification services.

29 NEW SECTION. **Sec. 11.** (1) In addition to complying with all
30 requirements for loan originators under this chapter, third-party
31 residential mortgage loan modification services providers must:

- 32 (a) Provide a written fee disclosure summary as described in
33 section 10 of this act before accepting any advance fee;
- 34 (b) Not receive an advance fee greater than seven hundred fifty
35 dollars;

1 (c) Not charge total fees in excess of usual and customary charges,
2 or total fees that are not reasonable in light of the service provided;
3 and

4 (d) Immediately inform the borrower in writing if the owner of the
5 loan requires additional information from the borrower, or if it
6 becomes apparent that a residential mortgage loan modification is not
7 possible.

8 (2) As a condition for providing a loan modification or loan
9 modification services, third-party residential mortgage loan
10 modification services providers and individuals servicing a residential
11 mortgage loan must not require or encourage a borrower to:

12 (a) Sign a waiver of his or her legal defenses, counterclaims, and
13 other legal rights against the servicer for future acts;

14 (b) Sign a waiver of his or her right to contest a future
15 foreclosure;

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

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

20 (e) Cease communication with the lender, investor, or loan
21 servicer.

22 (3) Failure to comply with subsection (1) of this section is a
23 violation of RCW 19.144.080.

24 **Sec. 12.** RCW 19.144.080 and 2008 c 108 s 9 are each amended to
25 read as follows:

26 It is unlawful for any person in connection with making, brokering,
27 (~~or~~) obtaining, or modifying a residential mortgage loan to directly
28 or indirectly:

29 (1)(a) Employ any scheme, device, or artifice to defraud or
30 materially mislead any borrower during the lending process; (b) defraud
31 or materially mislead any lender, defraud or materially mislead any
32 person, or engage in any unfair or deceptive practice toward any person
33 in the lending process; or (c) obtain property by fraud or material
34 misrepresentation in the lending process;

35 (2) Knowingly make any misstatement, misrepresentation, or omission
36 during the mortgage lending process knowing that it may be relied on by

1 a mortgage lender, borrower, or any other party to the mortgage lending
2 process;

3 (3) Use or facilitate the use of any misstatement,
4 misrepresentation, or omission, knowing the same to contain a
5 misstatement, misrepresentation, or omission, during the mortgage
6 lending process with the intention that it be relied on by a mortgage
7 lender, borrower, or any other party to the mortgage lending process;
8 or

9 (4) Receive any proceeds or anything of value in connection with a
10 residential mortgage closing that such person knew resulted from a
11 violation of subsection (1), (2), or (3) of this section.

12 **Sec. 13.** RCW 19.146.010 and 2009 c 528 s 1 are each amended to
13 read as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Affiliate" means any person who directly or indirectly through
17 one or more intermediaries, controls, or is controlled by, or is under
18 common control with another person.

19 (2) "Application" means the same as in Regulation X, Real Estate
20 Settlement Procedures, 24 C.F.R. Sec. 3500.

21 (3) "Borrower" means any person who consults with or retains a
22 mortgage broker or loan originator in an effort to obtain or seek
23 advice or information on obtaining or applying to obtain a residential
24 mortgage loan for himself, herself, or persons including himself or
25 herself, regardless of whether the person actually obtains such a loan.

26 (4) "Computer loan information systems" or "CLI system" means a
27 real estate mortgage financing information system that facilitates the
28 provision of information to consumers by a mortgage broker, loan
29 originator, lender, real estate agent, or other person regarding
30 interest rates and other loan terms available from different lenders.

31 (5) "Department" means the department of financial institutions.

32 (6) "Designated broker" means a natural person designated as the
33 person responsible for activities of the licensed mortgage broker in
34 conducting the business of a mortgage broker under this chapter and who
35 meets the experience and examination requirements set forth in RCW
36 19.146.210(1)(e).

37 (7) "Director" means the director of financial institutions.

1 (8) "Employee" means an individual who has an employment
2 relationship with a mortgage broker, and the individual is treated as
3 an employee by the mortgage broker for purposes of compliance with
4 federal income tax laws.

5 (9) "Federal banking agencies" means the board of governors of the
6 federal reserve system, comptroller of the currency, director of the
7 office of thrift supervision, national credit union administration, and
8 federal deposit insurance corporation.

9 (10) "Independent contractor" or "person who independently
10 contracts" means any person that expressly or impliedly contracts to
11 perform mortgage brokering services for another and that with respect
12 to its manner or means of performing the services is not subject to the
13 other's right of control, and that is not treated as an employee by the
14 other for purposes of compliance with federal income tax laws.

15 (11)(a) "Loan originator" means a natural person who for direct or
16 indirect compensation or gain, or in the expectation of direct or
17 indirect compensation or gain (i) takes a residential mortgage loan
18 application for a mortgage broker, or (ii) offers or negotiates terms
19 of a mortgage loan. "Loan originator" also includes a person who holds
20 themselves out to the public as able to perform any of these
21 activities. "Loan originator" does not mean persons performing purely
22 administrative or clerical tasks for a mortgage broker. For the
23 purposes of this subsection, "administrative or clerical tasks" means
24 the receipt, collection, and distribution of information common for the
25 processing of a loan in the mortgage industry and communication with a
26 borrower to obtain information necessary for the processing of a loan.
27 A person who holds himself or herself out to the public as able to
28 obtain a loan is not performing administrative or clerical tasks.

29 (b) "Loan originator" also includes a natural person who for direct
30 or indirect compensation or gain or in the expectation of direct or
31 indirect compensation or gain performs residential mortgage loan
32 modification services or holds himself or herself out as being able to
33 perform residential mortgage loan modification services.

34 (c) "Loan originator" does not include a person or entity that only
35 performs real estate brokerage activities and is licensed or registered
36 in accordance with applicable state law, unless the person or entity is
37 compensated by a lender, a mortgage broker, or other mortgage loan
38 originator or by any agent of such a lender, mortgage broker, or other

1 mortgage loan originator. For purposes of this chapter, the term "real
2 estate brokerage activity" means any activity that involves offering or
3 providing real estate brokerage services to the public, including:

4 (i) Acting as a real estate agent or real estate broker for a
5 buyer, seller, lessor, or lessee of real property;

6 (ii) Bringing together parties interested in the sale, purchase,
7 lease, rental, or exchange of real property;

8 (iii) Negotiating, on behalf of any party, any portion of a
9 contract relating to the sale, purchase, lease, rental, or exchange of
10 real property, other than in connection with providing financing with
11 respect to such a transaction;

12 (iv) Engaging in any activity for which a person engaged in the
13 activity is required to be registered or licensed as a real estate
14 agent or real estate broker under any applicable law; and

15 (v) Offering to engage in any activity, or act in any capacity,
16 described in ~~((b))~~ (c)(i) through (iv) of this subsection.

17 ~~((c))~~ (d) "Loan originator" does not include a person or entity
18 solely involved in extensions of credit relating to timeshare plans, as
19 that term is defined in section 101(53D) of Title 11, United States
20 Code.

21 (e) This subsection does not apply to employees of a housing
22 counseling agency approved by the United States department of housing
23 and urban development unless the employees of a housing counseling
24 agency are required under federal law to be licensed individually as
25 loan originators.

26 (12) "Loan processor" means an individual who performs clerical or
27 support duties as an employee at the direction of and subject to the
28 supervision and instruction of a person licensed, or exempt from
29 licensing, under this chapter ~~((19.146 RCW))~~.

30 (13) "Lock-in agreement" means an agreement with a borrower made by
31 a mortgage broker or loan originator, in which the mortgage broker or
32 loan originator agrees that, for a period of time, a specific interest
33 rate or other financing terms will be the rate or terms at which it
34 will make a loan available to that borrower.

35 (14) "Mortgage broker" means any person who for compensation or
36 gain, or in the expectation of compensation or gain (a) assists a
37 person in obtaining or applying to obtain a residential mortgage loan

1 or (b) holds himself or herself out as being able to assist a person in
2 obtaining or applying to obtain a residential mortgage loan.

3 (15) "Mortgage loan originator" has the same meaning as "loan
4 originator."

5 (16) "Nationwide mortgage licensing system and registry" means a
6 mortgage licensing system developed and maintained by the conference of
7 state bank supervisors and the American association of residential
8 mortgage regulators for the licensing and registration of mortgage loan
9 originators.

10 (17) "Person" means a natural person, corporation, company, limited
11 liability corporation, partnership, or association.

12 (18) "Principal" means any person who controls, directly or
13 indirectly through one or more intermediaries, or alone or in concert
14 with others, a ten percent or greater interest in a partnership,
15 company, association, or corporation, and the owner of a sole
16 proprietorship.

17 (19) "Residential mortgage loan" means any loan primarily for
18 personal, family, or household use secured by a mortgage or deed of
19 trust on residential real estate upon which is constructed or intended
20 to be constructed a single family dwelling or multiple family dwelling
21 of four or less units.

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

28 (21) "Residential mortgage loan modification services" includes
29 negotiating, attempting to negotiate, arranging, attempting to arrange,
30 or otherwise offering to perform a residential mortgage loan
31 modification. "Residential mortgage loan modification services" also
32 includes the collection of data for submission to any entity performing
33 mortgage loan modification services.

34 (22) "S.A.F.E. act" means the secure and fair enforcement for
35 mortgage licensing act of 2008, or Title V of the housing and economic
36 recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

37 ~~((+21+))~~ (23) "Third-party provider" means any person other than a
38 mortgage broker or lender who provides goods or services to the

1 mortgage broker in connection with the preparation of the borrower's
2 loan and includes, but is not limited to, credit reporting agencies,
3 title companies, appraisers, structural and pest inspectors, or escrow
4 companies.

5 ~~((+22))~~ (24) "Third-party residential mortgage loan modification
6 services" means residential mortgage loan modification services offered
7 or performed by any person other than the owner or servicer of the
8 loan.

9 (25) "Unique identifier" means a number or other identifier
10 assigned by protocols established by the nationwide mortgage licensing
11 system and registry.

12 **Sec. 14.** RCW 19.146.210 and 2006 c 19 s 11 are each amended to
13 read as follows:

14 (1) The director shall issue and deliver a mortgage broker license
15 to an applicant if, after investigation, the director makes the
16 following findings:

17 (a) The applicant has paid the required license fees;

18 (b) The applicant has complied with RCW 19.146.205;

19 (c) Neither the applicant, any of its principals, or the designated
20 broker have had a license issued under this chapter or any similar
21 state statute suspended or revoked within five years of the filing of
22 the present application;

23 (d) Neither the applicant, any of its principals, or the designated
24 broker have been convicted of a gross misdemeanor involving dishonesty
25 or financial misconduct or a felony within seven years of the filing of
26 the present application;

27 (e) The designated broker~~((7))~~: (i) Has at least two years of
28 experience in the residential mortgage loan industry; and (ii) has
29 passed a written examination whose content shall be established by rule
30 of the director;

31 (f) The applicant, its principals, and the designated broker have
32 demonstrated financial responsibility, character, and general fitness
33 such as to command the confidence of the community and to warrant a
34 belief that the business will be operated honestly, fairly, and
35 efficiently within the purposes of this chapter; ~~((and))~~

36 (g) Neither the applicant, any of its principals, or the designated
37 broker have been found to be in violation of this chapter or rules; and

1 (h) Neither the applicant, any of its principals, nor the
2 designated broker have provided unlicensed residential mortgage loan
3 modification services in this state in the five years prior to the
4 filing of the present application.

5 (2) If the director does not find the conditions of subsection (1)
6 of this section have been met, the director shall not issue the
7 license. The director shall notify the applicant of the denial and
8 return to the applicant the bond or approved alternative and any
9 remaining portion of the license fee that exceeds the department's
10 actual cost to investigate the license.

11 ~~(3) ((The director shall issue a mortgage broker license under this~~
12 ~~chapter to any licensee issued a license under chapter 468, Laws of~~
13 ~~1993, that has a valid license and is otherwise in compliance with the~~
14 ~~provisions of this chapter.~~

15 ~~(4))~~ A license issued pursuant to this section expires on the date
16 one year from the date of issuance which, for license renewal purposes,
17 is also the renewal date. The director shall adopt rules establishing
18 the process for renewal of licenses.

19 ~~((+5))~~ (4) A licensee may surrender a license by delivering to the
20 director written notice of surrender, but the surrender does not affect
21 the licensee's civil or criminal liability or any administrative
22 actions arising from acts or omissions occurring before such surrender.

23 ~~((+6))~~ (5) To prevent undue delay in the issuance of a license and
24 to facilitate the business of a mortgage broker, an interim license
25 with a fixed date of expiration may be issued when the director
26 determines that the mortgage broker has substantially fulfilled the
27 requirements for licensing as defined by rule.

28 **Sec. 15.** RCW 19.146.310 and 2009 c 528 s 10 are each amended to
29 read as follows:

30 (1) The director shall issue and deliver a loan originator license
31 if, after investigation, the director makes the following findings:

32 (a) The loan originator applicant has paid the required license
33 fees;

34 (b) The loan originator applicant has met the requirements of RCW
35 19.146.300;

36 (c) The loan originator applicant has never had a license issued

1 under this chapter or any similar state statute revoked except that,
2 for the purposes of this subsection, a subsequent formal vacation of a
3 revocation is not a revocation;

4 (d)(i) The loan originator applicant has not been convicted of a
5 gross misdemeanor involving dishonesty or financial misconduct or has
6 not been convicted of, or pled guilty or nolo contendere to, a felony
7 in a domestic, foreign, or military court within seven years of the
8 filing of the present application; and

9 (ii) The loan originator applicant has not been convicted of, or
10 pled guilty or nolo contendere to, a felony in a domestic, foreign, or
11 military court at any time preceding the date of application if the
12 felony involved an act of fraud, dishonesty, breach of trust, or money
13 laundering;

14 (e) The loan originator applicant has passed a written examination
15 whose content shall be established by rule of the director;

16 (f) The loan originator applicant has not been found to be in
17 violation of this chapter or rules;

18 (g) The loan originator applicant has demonstrated financial
19 responsibility, character, and general fitness such as to command the
20 confidence of the community and to warrant a belief that the business
21 will be operated honestly and fairly within the purposes of this
22 chapter. For the purposes of this section, an applicant has not
23 demonstrated financial responsibility when the applicant shows
24 disregard in the management of his or her financial condition. A
25 determination that an individual has shown disregard in the management
26 of his or her financial condition may include, but is not limited to,
27 an assessment of: Current outstanding judgments, except judgments
28 solely as a result of medical expenses; current outstanding tax liens
29 or other government liens and filings; foreclosures within the last
30 three years; or a pattern of seriously delinquent accounts within the
31 past three years; (~~and~~)

32 (h) The loan originator licensee has completed, during the calendar
33 year preceding a licensee's annual license renewal date, a minimum of
34 eight hours of continuing education as established by rule of the
35 director; and

36 (i) Neither the applicant, any of its principals, nor the
37 designated broker have provided unlicensed residential mortgage loan

1 modification services in this state in the five years prior to the
2 filing of the present application.

3 (2) If the director does not find the conditions of subsection (1)
4 of this section have been met, the director shall not issue the loan
5 originator license. The director shall notify the loan originator
6 applicant of the denial and return to the loan originator applicant any
7 remaining portion of the license fee that exceeds the department's
8 actual cost to investigate the license.

9 (3) The director shall issue a new loan originator license under
10 this chapter to any licensee that has a valid license and is otherwise
11 in compliance with this chapter.

12 (4) A loan originator license issued under this section expires on
13 the date one year from the date of issuance which, for license renewal
14 purposes, is also the renewal date. The director shall establish rules
15 regarding the loan originator license renewal process created under
16 this chapter.

17 (5) A loan originator licensee may surrender a license by
18 delivering to the director written notice of surrender, but the
19 surrender does not affect the loan originator licensee's civil or
20 criminal liability or any administrative actions arising from acts or
21 omissions occurring before such surrender.

22 (6) To prevent undue delay in the issuance of a loan originator
23 license and to facilitate the business of a loan originator, an interim
24 loan originator license with a fixed date of expiration may be issued
25 when the director determines that the loan originator has substantially
26 fulfilled the requirements for loan originator licensing as defined by
27 rule.

28 NEW SECTION. Sec. 16. (1) In addition to any other requirements
29 under federal or state law, an advance fee may not be collected for
30 residential mortgage loan modification services unless a written
31 disclosure summary of all material terms, in the format adopted by the
32 department under subsection (2) of this section, has been provided to
33 the borrower.

34 (2) The department shall adopt by rule a model written fee
35 agreement, and any other rules necessary to implement this section.
36 This may include, but is not limited to, usual and customary fees for
37 residential mortgage loan modification services.

1 NEW SECTION. **Sec. 17.** (1) In addition to complying with all
2 requirements for loan originators under this chapter, third-party
3 residential mortgage loan modification services providers must:

4 (a) Provide a written fee disclosure summary as described in
5 section 16 of this act before accepting any advance fee;

6 (b) Not receive an advance fee greater than seven hundred fifty
7 dollars;

8 (c) Not charge total fees in excess of usual and customary charges,
9 or total fees that are not reasonable in light of the service provided;
10 and

11 (d) Immediately inform the borrower in writing if the owner of the
12 loan requires additional information from the borrower, or if it
13 becomes apparent that a residential mortgage loan modification is not
14 possible.

15 (2) As a condition for providing a loan modification or loan
16 modification services, third-party residential mortgage loan
17 modification services providers and individuals servicing a residential
18 mortgage loan must not require or encourage a borrower to:

19 (a) Sign a waiver of his or her legal defenses, counterclaims, and
20 other legal rights against the servicer for future acts;

21 (b) Sign a waiver of his or her right to contest a future
22 foreclosure;

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

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

27 (e) Cease communication with the lender, investor, or loan
28 servicer.

29 (3) Failure to comply with subsection (1) of this section is a
30 violation of RCW 19.144.080.

31 NEW SECTION. **Sec. 18.** An individual defined as a mortgage loan
32 originator may not engage in the business of a mortgage loan originator
33 without first obtaining and maintaining annually a license under this
34 chapter. Each licensed mortgage loan originator must register with and
35 maintain a valid unique identifier issued by the nationwide mortgage
36 licensing system and registry.

1 NEW SECTION. **Sec. 19.** RCW 31.04.2211 (Mortgage loan originator--
2 License required--Unique identifier required) and 2009 c 528 s 14 are
3 each repealed.

4 NEW SECTION. **Sec. 20.** Sections 9 through 11 of this act are each
5 added to chapter 31.04 RCW.

6 NEW SECTION. **Sec. 21.** Sections 16 through 18 of this act are each
7 added to chapter 19.146 RCW.

8 NEW SECTION. **Sec. 22.** This act takes effect July 1, 2010.

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