

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

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

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

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

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

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

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

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

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

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

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

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

(a) Takes a residential mortgage loan application; or

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

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

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

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

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

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

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

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

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

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

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

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

(a) Regulated activities.

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

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

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

(iv) Otherwise finalizing collection through the foreclosure process.

(b) Regulated persons.

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

(ii) "Master servicer." Persons responsible for ongoing servicing administration either by directly servicing or through servicing agreements with licensed or exempt subservicers. Except that the director may issue a license waiver to a master servicer servicing or administering the servicing of fewer than twenty-five loans.

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

(c) Persons not regulated.

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.320.040, and 31.04.165. WSR 18-24-013, § 208-620-011, filed 11/27/18, effective 1/1/19; WSR 18-16-024, § 208-620-011, filed 7/24/18, effective 9/1/18. Statutory Authority: Chapter 43.320 RCW, RCW 31.04.165. WSR 16-08-026, § 208-620-011, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 43.320.040 and 31.04.165. WSR 13-24-024, § 208-620-011, filed 11/22/13, effective 1/1/14.]