

Chapter 208-512 WAC

BANKS AND TRUST COMPANIES

(Formerly chapter 50-12 WAC)

WAC

208-512-020	Characterization of "federal fund transactions."
208-512-030	Definitions and characterization of time deposits.
208-512-045	Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.
208-512-050	Limiting loans to officers.
208-512-060	Accounts in excess of one hundred thousand dollars.
208-512-070	Nonbankable assets.
208-512-080	Purchase or sale of United States government securities—Resale or repurchase agreement.
208-512-090	Purchase or sale of United States government securities solely for customers' account not within purview of RCW 30.04.200.
208-512-100	Leasing bank premises—Limitations.
208-512-110	Investment securities—Permissible investments.
208-512-115	Investment securities—Proper management.
208-512-116	Investment securities—Investment in investment companies.
208-512-117	Investments in corporations.
208-512-120	Promulgation.
208-512-130	Purpose.
208-512-140	Definitions.
208-512-150	Assessing the record of performance.
208-512-160	Rating assignment.
208-512-170	Rating for period January 1, 1986 through December 31, 1986.
208-512-180	Limitation on single investment.
208-512-190	Investment in qualifying community investments.
208-512-200	Consideration of performance record in meeting community credit needs in approving and disapproving applications.
208-512-210	Promulgation.
208-512-220	Purpose.
208-512-230	Definitions.
208-512-240	General limitations.
208-512-250	General limitation—Loans fully secured by readily marketable collateral.
208-512-260	Combining loans to separate borrowers.
208-512-270	Loans to corporations.
208-512-280	Loans to partnerships, joint ventures, and associations.
208-512-290	Exceptions to the lending limits.
208-512-300	Transitional rules.
208-512-310	Insurance agency activities—Promulgation.
208-512-320	Insurance agency activities—Purpose.
208-512-330	Insurance agency activities—Definitions.
208-512-340	Insurance agency activities—General rule.
208-512-350	Insurance agency activities—Exceptions.
208-512-360	Insurance agency activities—Subsidiary.
208-512-370	Insurance agency activities—Enforcement.
208-512-400	Purpose of these rules.
208-512-410	What is the "guidance"?
208-512-420	What does the guidance require of banks, savings banks and savings associations?
208-512-430	Is there a list of subjects that banks, savings banks and savings associations must include in their policies and procedures?
208-512-440	Where can I read the guidance documents?
208-512-450	Why do I need to read the federal guidance documents?
208-512-460	What will the division of banks do about compliance with guidance policies and procedures?

WAC 208-512-020 Characterization of "federal fund transactions." When a bank purchases funds for reserve purposes or sells excess funds to another bank so that such bank may meet its reserve requirements, these transactions between banks have been commonly referred to as "overnight borrowings," "overnight security transactions," or "federal fund transactions." "Federal fund transactions" would nor-

mally occur when member banks purchase funds for reserve purposes through the Federal Reserve System or when such banks sell excess funds through the Federal Reserve System to another member bank so that such bank may meet its reserve requirements. However, for the purpose of uniformity, all future transactions of this sort, whether through the Federal Reserve System or between banks, may be referred to as "federal fund transactions."

This type of transaction takes the form of a transfer of funds from the seller to the buyer. Payment is usually made by the purchasing bank the following day in the amount of the funds purchased and for a specified fee.

Such a transaction does not create, on the part of the buyer, an obligation subject to RCW 30.04.140 but is considered a purchase of such funds.

Conversely, such a transaction does not create a loan or investment subject to RCW 30.04.110 on the part of the seller, but is to be considered a sale of such funds.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-020, filed 8/22/00, effective 9/22/00; Order 3, § 50-12-020, filed 12/23/68.]

WAC 208-512-030 Definitions and characterization of time deposits. The term "time deposits" means "time certificates of deposit" and, "time deposits, open account," as defined below.

(1) **Time certificates of deposit.** The term "time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable:

(a) On a certain date, specified in the instrument, not less than thirty days after the date of the deposit; or

(b) At the expiration of a specified period not less than thirty days after the date of the instrument; or

(c) Upon written notice to be given not less than thirty days before the date of repayment.

(2) **Time deposits, open account.** The term "time deposit, open account," means a deposit, other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than thirty days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than thirty days in advance of withdrawals.

A time deposit is a deposit and therefore not subject to individual bank and trust company lending limits, as prescribed by RCW 30.04.110. However, before a bank or trust company may deposit its funds with another bank in the form of a time deposit, the depository bank must first be appointed a depository by a vote of a majority of the directors of the

depositing bank and approved as a depository by the director of the department of financial institutions.

If a bank acquires a time deposit with a bank that has not been approved as a depository by the director of the department of financial institutions, such transaction shall be considered to be an investment and subject to the bank's lending limitation.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-030, filed 8/22/00, effective 9/22/00; Order 2, § 50-12-030, filed 12/23/68.]

WAC 208-512-045 Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks. (1) The director shall collect the following fees:

(a) Hourly charges for services plus actual expenses for review of application and attendant investigation for:

- (i) New bank or trust company;
- (ii) Conversion to a state chartered institution;
- (iii) Alien bank to establish and operate an office or bureau in the state;
- (iv) Certificate conferring trust powers;
- (v) Branch;
- (vi) Merger, consolidation, or reorganizational agreement;
- (vii) Relocation of main office or branch;
- (viii) An out-of-state bank holding company acquisition and control of more than five percent of the shares of voting stock or substantially all of the assets of a bank, trust company, national banking association or bank holding company, the principal operations of which are conducted within this state;

(ix) The purchase or sale of a branch;

(x) Voluntary or involuntary liquidation of a bank or trust company pursuant to chapter 30.44 RCW or for acting as conservator of a bank or trust company pursuant to chapter 30.46 RCW;

(xi) Conversion from a mutual savings bank to a stock savings bank;

(xii) Notice of change of control.

(b) Hourly charges for opinions rendered regarding interpretations of statutes and rules.

(c) \$100.00 for issuing the following certificates:

- (i) Branch certificate;
- (ii) Increase or decrease of capital stock certificate;
- (iii) Certificate of authority;
- (iv) Certificate of good standing;
- (v) Other.

(d) \$100.00 for filing articles of incorporation, or amendments thereof, or other certificates required to be filed with the director.

(e) Fifty cents per page for furnishing copies of papers filed with the director.

(2) The hourly fee for services shall be \$90.00 per employee hour expended. The director may require a lump sum payment in advance to cover the anticipated cost of review and investigation of the activities described in subsection (1)(a) and (b) of this section. In no event shall the lump sum payment required under this section exceed actual amounts derived in subsection (1)(a) and (b) of this section.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-045, filed 2/27/01, effective 3/30/01; 00-17-141, amended and recodified as § 208-512-045, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.095. 91-18-055, § 50-12-045, filed 8/30/91, effective 9/30/91; 90-12-008, § 50-12-045, filed 5/25/90, effective 6/25/90.]

WAC 208-512-050 Limiting loans to officers. (1) A bank or trust company may make the following loans to any of its officers:

(a) A loan secured by a first lien on a dwelling if at the time the loan is made:

(i) The dwelling secured is expected to be both owned by the officer and used by him as his residence after the loan is made; and

(ii) No other such loan made by the bank or trust company to the officer under the authority of (a) of this subsection is outstanding;

(b) A loan to finance the education of an officers' children; and

(c) Any other secured or unsecured loan including a line of credit which, at the time the loan is made, is not in excess of the greater of \$25,000 or 2.5% of capital and unimpaired surplus as defined in RCW 30.12.060(2), but in no event for an amount greater than \$100,000.

(2) A bank or trust company shall not make a loan under subsection (1) of this section to an officer which, at the time the loan is made, exceeds the greater of \$25,000 or 5% of capital and unimpaired surplus as defined in RCW 30.12.-060(2) unless a resolution authorizing a loan for a greater amount is adopted by a vote of a majority of the board of directors of the bank or trust company prior to the making of such loan, and the vote and resolution is entered in the corporate minutes.

(3) In no case shall the total liability of an officer to a bank or trust company under subsection (1) of this section exceed either \$500,000, unless approved in advance for a greater amount by a majority of the board of directors prior to the making of any loan in excess of this amount, or the limit prescribed by RCW 30.04.110, whichever is less. When computing the total outstanding liability of an officer of a bank or trust company belonging to an affiliated group of two or more corporations, all loans to the officer from the affiliated corporations shall be aggregated, including but not limited to loans from:

(a) The bank or trust company's parent bank holding company; or

(b) Any other corporation held by the bank or trust company's parent bank holding company; or

(c) A subsidiary of the bank or trust company; or

(d) A subsidiary of any other corporation if such corporation is held by the bank or trust company's parent bank holding company.

(4) Any loan to an officer of a bank that does not require specific prior approval by a majority of the board of directors by resolution or otherwise pursuant to subsections (2) and (3) of this section shall be promptly reported to the board of directors and duly reflected in the minutes of the next regular board meeting.

(5) For purposes of this section, the words "loan" and "loans" shall mean all extensions of credit by the bank or trust company including but not limited to the purchase, discount,

or acquisition, as security or otherwise, of any debt or obligation of any officer owed to any other person.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-050, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-050, filed 9/13/85; 84-03-036 (Order 58), § 50-12-050, filed 1/13/84; 79-04-042 (Order 40), § 50-12-050, filed 3/23/79; Order 31, § 50-12-050, filed 10/2/75; Order 4, § 50-12-050, filed 5/15/69, effective 6/16/69.]

WAC 208-512-060 Accounts in excess of one hundred thousand dollars. A mutual savings bank may accept or hold accounts in excess of one hundred thousand dollars on the following terms and conditions:

(1) Such accounts in the aggregate are placed in assets of similar maturity;

(2) The following records are maintained at all times with respect to each such account:

- (a) The name(s) and address(es) of the depositor(s);
- (b) The manner in which the account is held;
- (c) The amount of the initial deposit;
- (d) The contemplated time of withdrawal, if known;
- (e) The interest rate; and

(f) Such other information available to the mutual savings bank as the director may from time to time require in order to carry out the duties of his office;

(3) A separate report maintained showing at all times the aggregate total of all such accounts accepted or held; and

(4) Asset liquidity records and controls are maintained. The director may from time to time impose such requirements or restrictions as he deems appropriate in connection with accepting or holding one or more such accounts, based upon the nature and size of the account, the condition of the mutual savings bank accepting the same, the general economic conditions then existing, and such other factors as the director may deem relevant to the prudent operation of the mutual savings bank accepting or holding the account.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-060, filed 8/22/00, effective 9/22/00; Order 29, § 50-12-060, filed 10/2/75; Order 7 and Emergency Order 6, § 50-12-060, filed 1/7/70.]

WAC 208-512-070 Nonbankable assets. In determining whether an asset of a bank, mutual savings bank or trust company is bankable all of the circumstances of the asset shall be weighed, including but not limited to the following:

- (1) Character of the borrower
- (2) Capacity of the borrower
- (3) Capital of the borrower
- (4) Collateral, sufficiency of
- (5) Economic conditions pertaining to the type of business in which the borrower is engaged
- (6) Conformance to general banking standards as then currently practiced in the banking industry.

If, in the examination of a bank, mutual savings bank or trust company, an examiner finds an asset which in his opinion, after weighing all the circumstances of the asset, is nonbankable, the director may require that such asset be charged off the books of the bank, mutual savings bank or trust company.

Within fifteen days following the next meeting of the board of directors following receipt of written notice from the director to charge off such asset, but in no event more than

(11/4/08)

forty-five days following receipt of such written notice, the bank, mutual savings bank or trust company, shall write the same off as an asset or file a written statement with the director explaining why, in its opinion, the asset should not be so treated. After considering such written statement and within ten days after receipt thereof, the director will notify the bank in writing of his decision as to the treatment of the asset.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-070, filed 8/22/00, effective 9/22/00; Order 9, § 50-12-070, filed 5/9/72.]

WAC 208-512-080 Purchase or sale of United States government securities—Resale or repurchase agreement.

The purchase or sale of securities of, or fully guaranteed as to principal and interest by, the United States government and agencies thereof, or a fractional undivided interest therein by a bank, under an agreement or agreements to resell or repurchase the interest transferred, or a portion thereof, at the end of a stated period, shall not constitute an obligation subject to the lending limit of RCW 30.04.110, an indebtedness or liability of the bank within the meaning of RCW 30.04.150, a borrowing for the purposes of reloaning within the meaning of RCW 30.04.160, nor a pledge or hypothecation of securities or assets of the bank to a depositor or creditor within the meaning of RCW 30.04.140.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-080, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 83-03-020 (Order 51), § 50-12-080, filed 1/13/83; Order 28, § 50-12-080, filed 9/10/74.]

WAC 208-512-090 Purchase or sale of United States government securities solely for customers' account not within purview of RCW 30.04.200.

The provisions of RCW 30.04.200 shall not prohibit banks or the officers or employees thereof in the course of their employment from purchasing and selling securities and stocks without recourse, solely upon the order and for the account of customers of the bank, or from dealing in, underwriting and purchasing for the account of the bank obligations of, or obligations guaranteed as to principal and interest by, the United States or agencies thereof or of any state or political subdivision thereof.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-090, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 83-01-082 (Order 49), § 50-12-090, filed 12/17/82.]

WAC 208-512-100 Leasing bank premises—Limitations. A bank or trust company may lease part of the premises in which it conducts its day-to-day business pursuant to RCW 30.04.210 to persons engaged in nonbanking or nontrust business activities subject to the following limitations:

(1) No director, officer, or employee of such bank or trust company may have any direct or indirect financial interest in the lessee's business activities conducted on the premises leased;

(2) No bank or trust company may receive commissions or other revenues from the lessee other than periodic rental payments received under terms that are usual and customary in leasing space used for similar commercial purposes as determined by the supervisor;

(3) No lessee may have access to security areas of the bank or trust company's premises, nor may a lessee conduct

business activities on a bank or trust company's premises other than during regular banking hours;

(4) No director, officer, or employee of a bank or trust company may be employed by, or serve in any fiduciary capacity for a corporation or other person leasing the premises of such bank or trust company for such business activities;

(5) No bank or trust company may exercise managerial control over the lessee's business activities or assume, guarantee, or otherwise become obligated for the lessee's debts or legal obligations;

(6) No bank or trust company may advertise a lessee's business activities conducted on such bank or trust company's premises as a service provided by the bank or trust company, or otherwise represent that the lessee's business activities are not independently owned and operated;

(7) No bank or trust company may use tying arrangements involving the sale of a lessee's goods or services offered on such bank or trust company's premises or in any other way require purchase of a lessee's goods or services as a condition for granting credit or performing services.

(8) For purposes of this section, the term "bank or trust company" means any person or corporation operating under the provisions of Title 30 RCW directly or indirectly affiliated with the lessor.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-100, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-100, filed 9/13/85.]

WAC 208-512-110 Investment securities—Permissible investments. A bank or trust company may purchase or hold obligations of a single obligor which are "investment securities," as defined below, and meet the following guidelines for proper "investment security" management. The term "investment security" shall mean a marketable obligation evidencing indebtedness of any person, copartnership, association, or corporation; of the government of the United States or any agency thereof; of any state, or political subdivision thereof; or of any publicly owned entity that is an instrumentality of a state or municipal corporation in the form of bonds, notes, and/or debentures. They exclude investments which are predominately speculative but shall include:

(1) Type I securities which a bank may deal in, purchase, and sell for its own account without limitation. These securities include:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or agency of the United States, including obligations of such departments or agencies representing an interest in a loan or pool of loans;

(c) General obligations of a state or political subdivision including but not limited to obligations of a county, city, town, municipal corporation, or any publicly owned entity that is an instrumentality of a state or municipal corporation;

(d) Obligations of any state or political subdivision of a state if a state or political subdivision of a state having general powers of taxation has unconditionally promised to make sufficient funds available for full repayment of the obligation; and

(e) Revenue bonds issued by public improvement agencies.

(2) Type II securities which a bank may deal in, purchase and sell for its own account subject to a twenty percent of capital and surplus limitation and any limitation set forth in WAC 50-12-115 (2)(c). These include obligations issued by any state or political subdivision, or any agency of a state or political subdivision for housing, university or dormitory purposes. Such obligations include:

(a) Obligations issued by any state or a political subdivision for the purpose of financing the construction or improvement of facilities at or used by a university or a degree-granting college-level institution, or financing loans for studies at such institutions; and

(b) Obligations which finance the construction or improvement of facilities used by a hospital, provided that the hospital is a department or a division of a university, or otherwise provides a sufficient nexus with university purposes.

(3) Type III securities which a bank may purchase and sell for its own account with a twenty percent of capital and surplus limitation and any limitation set forth in WAC 208-512-115 (2)(c), but may not deal in. These include investment securities issued by corporations, provided that such securities have received in the most recent edition one of the four highest rating grades by Standard and Poor's, Moodys, or equivalent rating service. Unrated securities must be investment grade and be of equivalent quality to the four highest rating grades and where the investment characteristics are distinctly or predominately not speculative.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-110, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-110, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-20-036 (Order 70), § 50-12-110, filed 9/30/87. Statutory Authority: RCW 30.12.060. 85-19-052 (Order 62), § 50-12-110, filed 9/13/85.]

WAC 208-512-115 Investment securities—Proper management. (1) A bank may purchase a Type I security for its own account, provided it is permissible under the provisions of Title 30 RCW and this regulation, if through prudent banking judgment it determines there is adequate evidence that the obligor will be able to perform all necessary undertakings in connection with the security, including all debt service requirements.

(2)(a) A bank may purchase a Type II or III security for its own account when through prudent banking judgment (which may be based in part upon estimates which it believes to be reliable), it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with the security, including all debt service requirements, and that the security is marketable so that it can be sold with relative promptness at a fair market value.

(b) A bank may, subject to the limitations set forth in (c) of this subsection, purchase a security of Type II or III for its own account although its judgment with respect to the obligor's ability to perform is based predominantly upon estimates it believes to be reliable. This subsection permits a bank to exercise a somewhat broader range of judgment with respect to a more restricted portion of its investment portfolio.

(c) If a bank holds at any time Type II or III securities which would not be eligible for purchase pursuant to (a) of this subsection in a total amount in excess of five percent of the bank's capital and surplus, they are to be charged down to market value or a specific reserve is to be established within ninety days.

(3) Each bank shall maintain in its files credit information adequate to demonstrate that it has exercised prudence in making the determinations and carrying out the transactions involving underwriting, dealing in, and purchase and sale of investment securities. This information shall be retained:

(a) When securities are purchased for the bank's own portfolio, as long as the security remains in the portfolio;

(b) When securities are underwritten by the bank, for the maturity or the life of the security; and

(c) With regard to dealer activities, for periods set forth in the relevant rules of the municipal securities rule-making board.

(4) When a bank purchases an investment security convertible into stock or with stock purchase warrants attached, entries must be made by the bank at the time of purchase to write down the cost of such security to an amount which represents the investment value of the security considered independently of the conversion feature or attached stock purchase warrants. Purchase of securities convertible into stock at the option of the issuer is prohibited.

(5) When an investment security is purchased at a price exceeding par or face value, the bank shall:

(a) Charge off the entire premium at the time of purchase; or

(b) Provide for a program to amortize the premium paid or that portion of premium remaining after the write-down subject to subsection (2) of this section so that such premium or portion thereof shall be entirely extinguished at or before the maturity of the security.

(6) Each bank shall take measures to insure the cumulative investment holdings do not exceed the limitations for a specific investment set forth in Title 30 RCW.

(7) The board of directors, a committee thereof, or a duly appointed committee of senior level management shall review at least quarterly the bank's investment portfolio to insure compliance with the provisions contained in WAC 208-512-110 through 208-512-116.

(8) The restrictions and limitations set forth in this section do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avoid a loss in connection with a debt previously contracted.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-115, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-115, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-20-036 (Order 70), § 50-12-115, filed 9/30/87.]

WAC 208-512-116 Investment securities—Investment in investment companies. A bank or trust company may invest in shares of an investment company provided that all of the following conditions are met:

(1) The investment company must be registered with Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933 or be a

(11/4/08)

privately offered fund sponsored by an affiliated commercial bank.

(2) The shareholder has a fair and equal proportionate undivided interest in the underlying assets of the investment company calculated pursuant to the Investment Company Act of 1940.

(3) When an investment company's assets consist solely of and are expressly limited to obligations that are eligible for unlimited investment (Type I) as described in WAC 208-512-100, there is no limit on the bank's investment. However, where the investment companies portfolio contains, or is permitted to contain, securities subject to the bank's investment or lending limitations, investment by the bank shall be subject to a twenty percent of capital and surplus limitation.

(4) The shareholders are protected against personal liability for acts or obligations of the investment company.

(5) The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific investment companies and recorded in the official board minutes; and procedures, standards, and controls for managing such investments are implemented prior to acquirement of these investments.

(6) If the investment company makes use of futures, forwards, options, repurchase agreements and securities lending arrangements, their use must be consistent with standards adopted for use of such instruments in the bank's portfolio.

(7) Regulatory reporting of holdings in investment companies is consistent with established standards for "marketable equity securities."

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-116, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-116, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140(7). 92-04-027, § 50-12-116, filed 1/28/92, effective 2/28/92. Statutory Authority: RCW 30.08.140. 87-20-036 (Order 70), § 50-12-116, filed 9/30/87.]

WAC 208-512-117 Investments in corporations. Nothing in WAC 208-512-110, 208-512-115, or 208-512-116 shall limit the authority of a bank or trust company to invest in corporations or entities, with the prior authorization of the director, pursuant to RCW 30.04.127, (section 1, chapter 498, Laws of 1987).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-117, filed 2/27/01, effective 3/30/01; 00-17-141, amended and recodified as § 208-512-117, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-24-042 (Order 71), § 50-12-117, filed 11/25/87.]

WAC 208-512-120 Promulgation. The division of banks, hereinafter referred to as the "division," after due and proper notice, and pursuant to chapter 30.60 RCW hereby adopts and promulgates the following rules and regulations, effective January 1, 1986.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-120, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-120, filed 12/30/86.]

WAC 208-512-130 Purpose. This regulation is intended to encourage banks chartered under Title 30 RCW to help meet the credit needs of their local community or

communities; to provide guidance to banks as to how the division will assess the records of these banks in satisfying their continuing and affirmative obligations to help meet the credit needs of the local communities, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of those banks; and to provide for proper consideration of those records in connection with certain applications.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-130, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-130, filed 12/30/86.]

WAC 208-512-140 Definitions. For purposes of interpreting and administering the provisions and procedures contained herein, the definitions of terms used shall be identical to the corresponding definitions set forth in the Community Reinvestment Act of 1977, Public Law 95-128, sections 801-806, 12 U.S.C. 2901, et seq. and regulations promulgated pursuant thereto; provided, these definitions are not inconsistent with the context used, or otherwise defined, in this regulation.

The term "division" means the division of banks of the state of Washington. The term "supervisor" means the director of the department of financial institutions.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-140, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-140, filed 12/30/86.]

WAC 208-512-150 Assessing the record of performance. In connection with its examination of a bank, the division shall assess the record of performance of the bank in helping to meet the credit needs of its entire community, including low-income and moderate-income neighborhoods, consistent with safe and sound operation of the bank. The division will review the bank's Community Reinvestment Act statement(s) and any other written and signed reports, documents, or comments prepared or filed by the bank with the division, or one or more federal bank regulatory agencies, and will use this material as part of or in lieu of an investigation as set forth by RCW 30.60.010. The foregoing material, together with such additional information as may be deemed necessary and obtained by investigation performed by the division, will be considered in assessing the bank's record of performance, based upon the following factors:

(1) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(2) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(3) The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(4) Any practices intended to discourage applications for types of credit set forth in the institution's Community Reinvestment Act statement(s);

(5) The geographic distribution of the institution's credit extensions, credit applications and credit denials;

(6) Evidence of prohibited discriminatory or other illegal credit practices;

(7) The institution's record of opening and closing offices and providing services at offices;

(8) The institution's participation, including investments, in local community development projects;

(9) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(10) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(11) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(12) Other factors that, in the judgment of the director, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-150, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-150, filed 12/30/86.]

WAC 208-512-160 Rating assignment. (1) Based upon the foregoing investigation and assessment, the director shall annually assign to the bank a numerical community reinvestment rating based on a one through five scoring system in accordance with RCW 30.60.010. Such numerical scores shall represent performance assessments as follows:

- | | |
|-------------------------------|---|
| (a) Excellent performance: | 1 |
| (b) Good performance: | 2 |
| (c) Satisfactory performance: | 3 |
| (d) Inadequate performance: | 4 |
| (e) Poor performance: | 5 |

(2) For each calendar year commencing after December 31, 1986, the most recent community reinvestment rating assigned to the bank by the director shall be used as a basis for limiting the funds invested in real property and improvements thereof pursuant to RCW 30.04.212. These investments shall be limited to a percentage of capital, surplus, and undivided profits, as follows:

- | | |
|--|----------------|
| (a) Excellent performance-rating (1): | 10% limitation |
| (b) Good performance-rating (2): | 8% limitation |
| (c) Satisfactory performance-rating (3): | 6% limitation |
| (d) Inadequate performance-rating (4): | 3% limitation |
| (e) Poor performance-rating (5): | no investment |

No bank may at any time be required to dispose of any investment made in accordance with this section because the bank is not then authorized to acquire such investment, if such investment was lawfully acquired by the bank at the time of acquisition.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-160, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-160, filed 12/30/86.]

WAC 208-512-170 Rating for period January 1, 1986 through December 31, 1986. For the period January 1, 1986 through December 31, 1986, the rating assigned to all state chartered banks shall be a "1"; provided, however, that if a bank has been assigned a CRA rating of 3 or less in the most recent compliance report prepared by the FDIC or the Federal Reserve, the division deems the ten percent limitation for this period to be excessive, and an unsafe and unsound banking practice, and the bank shall be allowed to invest only the amount which would be allowable pursuant to RCW 30.04.-212 if the rating of the most recent compliance report of the FDIC or Federal Reserve were assigned to the bank for the period January 1, 1986 through December 31, 1986.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-170, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-170, filed 12/30/86.]

WAC 208-512-180 Limitation on single investment. The total investment by a bank in a single parcel of real property, and improvements thereon, shall not exceed twenty-five percent of the aggregate amount of such bank's real estate investments allowed by RCW 30.04.212.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-180, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-180, filed 12/30/86.]

WAC 208-512-190 Investment in qualifying community investments. (1) An amount equal to ten percent of the aggregate amount invested in real estate by a bank pursuant to RCW 30.04.212 shall be placed in qualifying community investments as defined in subsection (3) of this section.

(2) A qualifying community investment made by an entity that wholly owns a bank, is wholly owned by a bank, or is wholly owned by an entity that wholly owns the bank, shall be deemed to have been made by a bank to satisfy the requirements of subsection (1) of this section.

(3) The term "qualifying community investment" means any direct or indirect investment or extension of credit made by a bank in projects or programs designed to develop or redevelop areas in which persons with low-incomes or moderate-incomes reside, designed to meet the credit needs of such low-income or moderate-income areas, or that primarily benefits low-income and moderate-income residents of such areas. The term includes, but is not limited to, any of the following investments within the state of Washington:

(a) Investments in governmentally insured, guaranteed, subsidized, or otherwise sponsored programs for housing, small farms, or business that address the needs of the low-income and moderate-income areas.

(b) Investments in residential mortgage loans, home improvement loans, housing rehabilitation loans, and small business or small farm loans originated in low-income and moderate-income areas, or the purchase of such loans originated in low-income and moderate-income areas.

(c) Investments for the preservation or revitalization of urban or rural communities in low-income and moderate-income areas.

The term does not include personal installment loans, or loans made for the purchase of, or secured by, an automobile.

(11/4/08)

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-190, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-190, filed 12/30/86.]

WAC 208-512-200 Consideration of performance record in meeting community credit needs in approving and disapproving applications. The division shall consider, among other factors, the record of performance of the applicant in helping to meet the credit needs of the applicant's entire community, including low-income and moderate-income neighborhoods in determining the approval or disapproval for the following applications:

- (1) For a new branch or satellite facility;
- (2) For a purchase of assets;
- (3) For a merger;
- (4) For an acquisition;
- (5) For authority to engage in a business activity;
- (6) For a conversion from a national bank to a state-chartered bank; and
- (7) Such other application as the director may consider appropriate.

The performance record need not be considered for subsections (2), (3), and (4) of this section where solvency and safety soundness of the bank is threatened. Assessment of an institution's CRA performance may be a basis for denying an application.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-200, filed 8/22/00, effective 9/22/00. Statutory Authority: Chapter 30.60 RCW, RCW 30.04.212 and 30.04.214. 87-02-010 (Order 66), § 50-12-200, filed 12/30/86.]

WAC 208-512-210 Promulgation. The division of banks, hereinafter referred to as the "division," after due and proper notice, and pursuant to the provisions of RCW 30.04.111 hereby adopts and promulgates the following rules and regulations, effective September 9, 1987.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-210, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-210, filed 9/30/87.]

WAC 208-512-220 Purpose. These rules and regulations are intended to prevent one individual, or relatively small group, from borrowing an unduly large amount of the bank's funds. Further, the intention is also to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-220, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-220, filed 9/30/87.]

WAC 208-512-230 Definitions. (1) The term "person" shall include an individual, sole proprietor, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(2) The term "loans and extensions of credit" means any direct or indirect advance of funds to a person made on a basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a

person. "Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in this section, and includes a renewal, modification, or extension of the maturity date of a loan or extension of credit. Provided, the term "loan or extension of credit" does not include a renewal, extension or restructuring of an existing loan, with interest paid current and no further advance of funds, by a bank under the direction and control of a conservator appointed by the director.

(3) The term "contractual commitment to advance funds" means:

(a) An obligation on the part of the bank to make payments (directly or indirectly) to a designated third party contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party; or

(b) An obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit, guarantees, puts, and other similar arrangements. Undisbursed loan funds, loan commitments not yet drawn upon which do not fall under this definition, and commercial letters of credit or similar instruments are not considered contractual commitments to advance funds.

(4) The term "readily marketable collateral" means financial instruments and bullion which are saleable under ordinary circumstances with reasonable promptness at a fair market value determined by daily quotations based on actual transactions on an auction or a similarly available daily bid and ask price market.

(5) The term "financial instruments" shall include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

(6) The term "current market value" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(7) The term "capital" will include the amount of common stock outstanding and unimpaired, the amount of preferred stock outstanding and unimpaired, and capital notes or debentures issued pursuant to chapter 30.36 RCW.

(8) The term "surplus" shall include capital surplus, reflecting the amounts paid in excess of the par or stated value of capital stock, or amounts contributed to the bank other than for capital stock, and amounts transferred to surplus from undivided profits pursuant to resolution of the board of directors.

(9) The term "subsidiary" means:

(a) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such person, or is held by it with power to vote;

(b) Any company the election of a majority of whose directors is controlled in any manner by such person; or

(c) Any company with respect to the management or policies of which such person has power, directly or indirectly, to exercise a controlling influence, as determined by the division, after notice and opportunity for hearing.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-230, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 88-16-066 (Order 74), § 50-12-230, filed 8/1/88; 87-20-022 (Order 69), § 50-12-230, filed 9/30/87.]

WAC 208-512-240 General limitations. The total loans and extensions of credit by a state bank or trust company to a person outstanding at one time and not fully secured by collateral in a manner defined in WAC 208-512-250 shall not exceed twenty percent of the capital and surplus of the bank or trust company.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-240, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-240, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-240, filed 9/30/87.]

WAC 208-512-250 General limitation—Loans fully secured by readily marketable collateral. (1) Loans or extensions of credit by a state bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus. However, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 208-512-240 exceed forty-five percent, the division of banks will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-512-240.

(2) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(3) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(4) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking actions.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-250, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.08.140. 87-24-042 (Order 71), § 50-12-250, filed 11/25/87. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-250, filed 9/30/87.]

WAC 208-512-260 Combining loans to separate borrowers. (1) Loans or extensions of credit to one person will be attributed to other persons when:

(a) The proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the particular transaction. A "common enterprise" is presumed to exist when:

(a) The expected source of repayment for each loan or extension of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them.

(3) Substantial financial interdependence occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(4) Throughout this section the term "control" is presumed to exist when one or more persons acting in concert directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-260, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-260, filed 9/30/87.]

WAC 208-512-270 Loans to corporations. Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person need not be combined where the bank has determined that the person and subsidiaries involved are not engaged in a "common enterprise." If members of a corporate group (a person and all its subsidiaries) are either:

(1) Substantially financially interdependent; or

(2) Engaged in "common enterprise," then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group. Conversely, if members of a corporate group are neither substantially financially interdependent nor engaged in "common enterprise," then the loans to different members are separately subject to a twenty percent limitation. In no event may the total amount of loans or extensions of credit by a state bank to a corporate group exceed fifty percent of the bank's capital and surplus.

(11/4/08)

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-270, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-270, filed 9/30/87.]

WAC 208-512-280 Loans to partnerships, joint ventures, and associations. (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of WAC 208-512-210 through 208-512-300, be considered loans or extensions of credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association are considered loans or extensions of credit to the partnership, joint venture, or association if one or more of the tests presented in WAC 208-512-260(1) is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture or association will not be attributed to other members of the partnership, joint venture, or association unless one or more of the tests set forth in WAC 208-512-260(1) is satisfied with respect to such other members. The tests set forth in WAC 208-512-260(1) shall be deemed satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in subsection (1) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the partnership or membership agreement are not to be held liable for the debts or actions of the partnerships, joint venture, or association. However, the rules set forth in WAC 208-512-260(1) are applicable to such partners or members.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-280, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-280, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-280, filed 9/30/87.]

WAC 208-512-290 Exceptions to the lending limits.

(1) Discount of commercial or business paper: Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(a) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in the fabrication of a product, or to be used for any other business purposes which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

(b) Since the basis for unlimited credit stems from the anticipated sale of a commodity to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Consequently,

although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default occurred must thereafter be taken into consideration in determining whether additional loans or extensions of credit may be made. These same principles of disqualification apply to any renewal or extension of either the entire loan or an installment thereof.

(2) Bankers' acceptances: The purchase of banker's acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(a) Acceptances by a state bank of "ineligible" drafts, i.e., time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the general twenty percent limitation of RCW 30.04.111.

(b) During any period within which a state bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to appropriate limitations.

(3) Loans secured by bills of lading or warehouse receipts covering readily marketable staples: Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(a) This exception allows a state bank to make loans or extensions of credit to one person in an amount equal to thirty-five percent of its capital and surplus in addition to the general twenty percent limitation.

(b) A readily marketable staple means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral. Staples eligible for this exception must be non-perishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primary to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify [qualify] at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable staples.

(c) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(d) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten months if secured by nonperishable staples, and (ii) not more than six months if secured by refrigerated or frozen staples.

(e) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of the instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by one of these documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(f) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

(g) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with a registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(4) Loans secured by United States obligations: Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(a) This exception applies only to loans or extensions of credit which are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(b) If the market value of the collateral declines so that the loan is no longer in conformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days.

(c) Securities issued by any department, agency, bureau, board, commission or establishment of the United States, or any corporation wholly owned, directly or indirectly, shall not be considered eligible collateral for purposes of this section, unless such securities shall be direct obligation of or fully guaranteed as to principal and interest by the United States.

(5) Loans to or guaranteed by a federal agency: Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency,

bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(a) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(b) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(c) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(6) Loans secured by segregated deposit accounts: Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(a) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(b) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(c) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in non-conformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for state banks to take deposits denominated in foreign currencies.

(7) Unpaid purchase price of sale of bank property: The unpaid portion of the purchase price of a sale of bank property, if secured by that property, shall not be subject to any limitation based on capital and surplus.

(a) Any sale of bank property, resulting in an unpaid purchase price exceeding the bank's lending limit must be approved in advance of the sale by the board of directors, including the terms of payment of such unpaid purchase price, and if the purchase is by a director, officer or employee of the bank, shall conform to Regulation O of the Federal Reserve System and RCW 30.12.050.

(b) The bank must ensure that a security interest has been perfected in the collateral, including execution and recording or filing of documents and any other action required by state law.

(8) Discount of installment consumer paper.

(a) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to twenty per centum of capital and surplus.

(b) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(c) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(d) For purposes of this subsection, "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(e) For purposes of this subsection, "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(f) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's chairman or chief executive officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(g) If a loan under this section is in default and the dealer or seller of the loan has contractually committed to repur-

chase the paper, then the loan will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

(h) If loan payments are received and/or controlled by the dealer or seller of the paper and remitted to the bank, then those loans will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-290, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-290, filed 9/30/87.]

WAC 208-512-300 Transitional rules. (1) Loans or extensions of credit which were in violation of RCW 30.04.111 prior to the relevant effective dates of WAC 208-512-210 through this section will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in WAC 208-512-210 through this section. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A state bank which has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 as of the relevant effective dates of WAC 208-512-210 through this section may make additional advances to such person after those dates if the additional advances are permitted under WAC 208-512-210 through this section. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 prior to the relevant effective dates of WAC 208-512-210 through this section but are not in conformance with the rules established in WAC 208-512-210 through this section will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with WAC 208-512-210 through this section may be made on or after the effective dates of WAC 208-512-210 through this section, if the nonconformity is caused by the amendments to Title 30 RCW contained in ESSB 4917; however, all loans or extensions of credit made under such renewals or extensions must conform with WAC 208-512-210 through this section no later than April 1, 1988. Loans or extensions of credit which are not in conformance with WAC 208-512-210 through this section for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a state bank, prior to the relevant effective dates of WAC 208-512-210 through this section, entered into a legally binding commitment to advance funds on or after those dates, and such commitment was in conformance with RCW 30.04.111, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance with WAC 208-512-210 through this section. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation. Advances under renewals or extensions of such extension of the commitment

is made on or after the relevant effective dates of WAC 208-512-210 through this section.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 01-06-024, § 208-512-300, filed 2/27/01, effective 3/30/01; 00-17-141, recodified as § 208-512-300, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.111. 87-20-022 (Order 69), § 50-12-300, filed 9/30/87.]

WAC 208-512-310 Insurance agency activities—Promulgation. The division of banks, after due and proper notice, and pursuant to the general rule-making authority in RCW 30.04.030 hereby adopts and promulgates the following rules and regulations.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-310, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-310, filed 5/2/90, effective 6/2/90.]

WAC 208-512-320 Insurance agency activities—Purpose. These rules and regulations are intended to administer and interpret the provisions governing the authority of state-chartered commercial banks and trust companies to act as insurance agents pursuant to the provisions in RCW 30.04.215(1), 30.08.140(10), and 30.08.150(3).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-320, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-320, filed 5/2/90, effective 6/2/90.]

WAC 208-512-330 Insurance agency activities—Definitions. (1) "Bank" means a bank chartered under the provisions of Title 30 RCW.

(2) "Trust company" means a trust company chartered under the provisions of Title 30 RCW.

(3) "Insurance agent" means any person, including a bank, appointed by an insurer to solicit applications for insurance on its behalf and conduct such other activities and be subject to such restrictions of an insurance agent as authorized by the Washington insurance code, Title 48 RCW.

(4) "City" means a city whose boundaries and powers of self-government are defined by Title 35 or 35A RCW.

(5) "Located in a city" means operating a duly certificated full service branch within the city limits of the city.

(6) "Act as insurance agent" means to exercise the full power of an insurance agent on all lines of insurance subject only to the limitations and requirements of Title 48 RCW.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-330, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-330, filed 5/2/90, effective 6/2/90.]

WAC 208-512-340 Insurance agency activities—General rule. Except as provided in these rules, or as otherwise provided by law, a bank may not act as insurance agent.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-340, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-340, filed 5/2/90, effective 6/2/90.]

WAC 208-512-350 Insurance agency activities—Exceptions. (1) A bank located in a city of not more than five thousand inhabitants may act as insurance agent from an office in that city. A bank exercising this power may continue to act as insurance agent notwithstanding a change of the population of the city in which it is located.

(2) A trust company may act as an insurance agent pursuant to its powers under RCW 30.08.150(3) "to act as attorney in fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise."

(3) A bank may engage in insurance activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of June 11, 1986. These activities include, but are not limited to:

(a) General insurance agency activities conducted by a bank with total assets of fifty million dollars or less, provided, however, that such bank may not engage in the sale of life insurance or annuities. For purposes of this exception "total assets" is determined by the latest consolidated report of condition filed with the director of the department of financial institutions. This exception ceases when the value of the assets of the bank exceed fifty million dollars. The insurance agency license must be surrendered and the assets sold or otherwise disposed of within three years unless otherwise extended by the director of the department of financial institutions.

(b) A bank may act as agent for life, disability, and involuntary unemployment insurance if the insurance is limited to assuring the repayment of the outstanding balance due on a specific extension of credit by the bank.

(c) A bank may act as agent for property insurance on loan collateral, provided such insurance is limited to assuring repayment of the outstanding balance of the extension of credit and such extension of credit is not more than ten thousand dollars (twenty-five thousand dollars to finance the purchase of a residential manufactured home and which is secured by such home) increased by the percentage increase in the *Consumer Price Index for Urban Wage Earners and Clerical Workers* published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year of the extension of credit.

(4) A bank or trust company may engage in any insurance agency activity lawfully engaged in by national banks located in the state of Washington.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-350, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-350, filed 5/2/90, effective 6/2/90.]

WAC 208-512-360 Insurance agency activities—Subsidiary. A bank or trust company may conduct insurance agency activities that are authorized to be engaged in by the bank or trust company through a subsidiary of the bank or trust company as authorized by RCW 30.04.125(8).

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, recodified as § 208-512-360, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-360, filed 5/2/90, effective 6/2/90.]

WAC 208-512-370 Insurance agency activities—Enforcement. It shall be considered an unsafe and unsound practice in conducting the affairs of the bank or trust company if in the opinion of the director the insurance agency activities of the bank or bank subsidiary are:

(1) A violation of any applicable state or federal consumer protection law; or

(11/4/08)

(2) A violation of any applicable state or federal statute prohibiting anticompetitive activities.

[Statutory Authority: RCW 30.04.030 and 43.320.040. 00-17-141, amended and recodified as § 208-512-370, filed 8/22/00, effective 9/22/00. Statutory Authority: RCW 30.04.030. 90-10-074, § 50-12-370, filed 5/2/90, effective 6/2/90.]

WAC 208-512-400 Purpose of these rules. These rules are designed to help Washington state-chartered banks (Title 30 RCW), savings banks (Title 32 RCW) and savings associations (Title 33 RCW) establish, reiterate, integrate and maintain their own policies and procedures regarding subprime and nontraditional mortgage lending guidance. These policies and procedures are required by a new state law, chapter 108, Laws of 2008 (chapter 19.144 RCW).

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-400, filed 11/4/08, effective 12/5/08.]

WAC 208-512-410 What is the "guidance"? Because of concerns about problems with subprime mortgage lending, the federal government issued the *Interagency Guidance on Nontraditional Mortgage Product Risks* and a *Statement on Subprime Mortgage Lending* (collectively, "the guidance"). In 2007, the governor convened the Washington state task force for homeowner security. The task force recommended including the federal guidance in state legislation. The 2008 Washington state legislature enacted SHB 2770, requiring the department of financial institutions to apply the two guidance documents to financial institutions in Washington. Starting in 2008, credit unions, banks, savings banks, savings associations, mortgage brokers and other Washington state consumer loan companies (collectively, "financial institutions") must have policies and procedures that use the guidance.

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-410, filed 11/4/08, effective 12/5/08.]

WAC 208-512-420 What does the guidance require of banks, savings banks and savings associations? The stated intent of the guidance is to help borrowers to better understand adjustable rate mortgage (ARM) risks. The guidance requires financial institutions to have policies and procedures that focus on the various risks of subprime/nontraditional mortgage lending. The guidance requires financial institutions to be aware of portfolio and risk management practices, to use appropriate underwriting standards and to abide by consumer protection principles. Financial institutions also need to maintain strong internal control systems. Many of the recommendations in the guidance are good business practices and may already be followed by financial institutions.

Not all of the elements of the guidance may be applicable to all banks, savings banks and savings associations, or to all other financial institutions. Banks, savings banks and savings associations must determine which elements are relevant to their operations, and incorporate only those subjects into their policies and procedures.

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-420, filed 11/4/08, effective 12/5/08.]

WAC 208-512-430 Is there a list of subjects that banks, savings banks and savings associations must include in their policies and procedures? Yes, the guidance requires all financial institutions, including banks, savings banks and savings associations, to focus on the following subjects and apply the relevant ones to their existing policies and procedures:

- Help borrowers understand ARM risks, including:
 - Low initial payment;
 - High or unlimited reset rate caps;
 - Low or no documentation loans;
 - Problems of frequent refinancing;
 - Risk layering;
 - Simultaneous second lien loans;
 - Prepayment penalties;
 - FDIC prohibited practices (banks, savings banks and savings associations);
 - OTS prohibited practices (savings associations).
- Understand portfolio and risk management practices, including:
 - Relationship between subprime lending and predatory lending;
 - Risks of loans based on foreclosed or liquidation value;
 - Problem of loan "flipping";
 - Fraud detection;
 - Use of qualifying standards;
 - Maintenance of appropriate capital levels;
 - Use of appropriate allowance for loan and lease loss levels;
 - Risks of stated income loans;
- Underwriting standards.
- Workout arrangements.
- Consumer protection principles, including:
 - Use of a summary disclosure form;
 - Avoidance of steering borrowers to inappropriate products;
 - Explanation of payment shock risk;
 - Explanation of prepayment penalty;
 - Explanation of balloon payment;
 - Explanation of costs of low documentation or stated income loans;
 - Compliance with the Truth in Lending Act and other federal requirements;
 - Importance of good consumer communications in promotional materials and product descriptions;
 - Explanation of borrower responsibility for taxes and insurance.
- Development and maintenance of strong internal controls, including:
 - Management of deals with third-party originators;
 - Management of secondary market risk;
 - Effective management information and reporting;
 - Use of stress testing and performance measures;
 - Actual practices consistent with policies.

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-430, filed 11/4/08, effective 12/5/08.]

WAC 208-512-440 Where can I read the guidance documents? You can find the two federal guidance documents on the internet: <http://www.fdic.gov/news/news/press/>

[Ch. 208-512 WAC—p. 14]

2006/pr06086b.pdf; and <http://www.fdic.gov/news/news/press/2007/pr07055a.html>.

You can also click on the links on the DFI web site at www.dfi.wa.gov.

If you do not have internet access, you may contact the department of financial institutions, division of banks (division of banks) for a copy of the documents.

Read these documents to ensure proper application of the law to your institution and to comply with the required integration of the guidance into your policies and procedures. If your institution needs help incorporating the guidance or reconciling it to your policies and procedures, contact your legal counsel.

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-440, filed 11/4/08, effective 12/5/08.]

WAC 208-512-450 Why do I need to read the federal guidance documents? The federal guidance consists of two lengthy documents that are very detailed. Because they are required by state statutory law, they apply in their entirety. Division of banks cannot merely summarize them or give you a checklist. You must read the documents in order to apply them to your particular institution by means of integrating the guidance into your own policies and procedures.

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-450, filed 11/4/08, effective 12/5/08.]

WAC 208-512-460 What will the division of banks do about compliance with guidance policies and procedures? Every state-chartered bank, savings banks and savings association is different. There is no "one-size-fits-all" guidance available. Division of banks will not issue model guidance, because the process of self-analysis that your institution needs to do, in order to develop its own guidance policies and procedures, is beneficial. The division of banks does not provide technical legal advice. Also, the guidance is complex and will result in variations in wording or applicability of guidance policies and procedures among institutions, depending upon the size and complexity of a particular institution, the overall characteristics of its mortgage lending market base, and the specific types of mortgage lending it does, if any.

For supervision purposes, the division of banks will:

(1) Verify that an institution has integrated the guidance into its policies and procedures, as part of its risk-focused examination. Division of banks will not mandate the length or exact wording used in the guidance policies and procedures.

(2) Review the guidance policies and procedures with the institution, if a consumer complaint indicates a problem or issue regarding subprime and nontraditional mortgage lending practices.

(3) Verify that an institution is following its policies and procedures.

The division of banks expects prompt compliance by banks, savings banks and savings associations with the requirements of this rule.

The law provides the division of banks with examination, enforcement and investigation authority to take appropriate action against banks, savings banks and savings associ-

ations that are in noncompliance with the guidance policies and procedures requirement.

[Statutory Authority: RCW 19.144.040 [19.144.030]. 08-22-070, § 208-512-460, filed 11/4/08, effective 12/5/08.]