



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9020, Olympia, Washington 98507-9020

**Washington Administrative Code
Notice of Permanent Rules for
Washington State Collection Agency
Board**

Adoption of: New and amended Chapter 308-29 WAC Collection Agency Board

Effective date: These rule changes will become effective 31 days after filing or on February 17, 2021.

What are the agency's reasons for adopting this rule?

As per the Governor's proclamations to keep Washington residents safe and healthy during the Covid-19 pandemic, it was identified that to be consistent with other business and professions in this State that are able to remotely work from home that rule language was needed to allow the option for collection agency licensees and their employees to do the same. It is necessary to offer licensees the option to remotely work to support the return of commerce in all business sectors. This would allow them to continue to offer the public their necessary services. This also outlines the detailed and necessary security measures and data storage requirements; and detailed definitions and requirements of the remote work.

Summary of all public comments received on this rule proposal and the agency's response to those comments:

Six comments were received during the comment period. They have been summarized below and the complete text is attached as exhibits A through F1.

1) Chester Baldwin, Public Affairs Consulting, LLC, EXHIBIT A:

"Please change the language terms from "debt" to "claim" in:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect ~~debts~~ **claims** pursuant to chapter 19.16 RCW." PLEASE SEE EXHIBIT FOR COMPLETE TEXT.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Department of Licensing appreciates your involvement in this rulemaking process. If you have any questions, please contact Damon Monroe, Agency Rules Coordinator, at (360) 902-3843 or email dmonroe@dol.wa.gov.

Board response: There are a number of comments and legal arguments related to use of the terms debt vs. claim. After reviewing the RCWs and WACs, including our new proposed WAC, we do not see the need to address the issue of debt v. claim. The word “debt” occurs only once in the WAC definitions section. The Board specifically agreed not to become mired in that debate.

We propose that the simplest approach would be to remove the controversial phrase containing the word “debt” and focus on the employee’s ability to work remotely. The definition remains adequate.

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, ~~which are associated with collecting or attempting to collect debts~~ **claims** pursuant to chapter 19.16 RCW.”

2) David Reid, Receivables Management Association International (RMAI), EXHIBIT B:

“The Receivables Management Association International (RMAI) would like to indicate our support for Washington’s proposed Work From Home Rule for Collection Agencies. The compromises that were made in the task force that developed the proposal were fair with both sides having to meet in the middle on a number of issues. We are pleased that the rule incorporates RMAI’s certification standard on data security as we believe that standard is the strongest industry and was developed in cooperation with the Federal Trade Commission. I will note that some of the additions that were made to the data security language by the task force are being added to RMAI’s certification standard in version 9.0 which will be launched in March 2021. RMAI is also adding a new Work From Home certification standard in version 9.0 that is modeled after the strong protections created in the proposed rule -- that way we can help promote a national standard based on Washington’s work.” PLEASE SEE EXHIBIT FOR COMPLETE TEXT.

Board response: No response necessary.

3) Marc Rosenberg, Lee Smart, P.S., Inc., EXHIBIT C:

“...I would recommend simply exchanging the word “debts” for “claims” in WAC 308-29-010(4). This would make the new WAC definition consistent with RCW 19.16.100(2). There is no negative consequence in having the WAC provisions follow the definition of “claim” in RCW 19.15.100(2) by using the term “claims” instead. Anyone opposing this proposed change likely has an agenda and will attempt to exploit the ambiguity in the proposed code change.” PLEASE SEE EXHIBIT FOR COMPLETE TEXT.

Board response: See comment above in Number 1 regarding removing the phrase containing the word “debt.”

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4) Michael O’Meara, IFCCE, EXHIBIT D, D1 AND D2:

“I have reviewed the proposed WACs regarding remote work by collection agency employees, and note one correction that should be made in the definitions section, WAC 308-29-010(4). The word “debts” should be changed to “claims,” like so:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect debts claims pursuant to chapter 19.16 RCW....” PLEASE SEE EXHIBIT FOR COMPLETE TEXT.

Board response: See comment above in number 1 regarding removing the phrase containing the word “debt.”

5) April Kuehnhoff, National Consumer Law Center (NCLC), EXHIBIT E:

“While there is no need to authorize remote collection outside of the current pandemic, any authorization for remote work - even during the pandemic – should adopt adequate safeguards. As discussed further below, the Department of Licensing should:

- Limit the scope of any rulemaking to consumers located in Washington state;

Board response: All rules and statutes already apply to collection agency actions performed within Washington State.

- Add a one-year sunset provision;

Board response: Will be reviewed annually under WAC 308-29-085(10)

- Require careful supervision of remote workers;

Board response: Covered in WAC 308-29-085 (7)

- Require in-person training for new employees;

Board response: Covered in WAC 308-29-085(5)(b)

- Ensure robust data security protocols;

Board response: Covered in WAC 308-29-085 (6)

- Require collection agencies to inspect and authorize each remote work location; and

Board response: Board response: The rules have put a number of public safety measures in place. It is up to each licensee collection agency to ensure that the measures are followed. They may choose to inspect locations if they deem that necessary.

- Clarify liability by collection agencies.1 ...” PLEASE SEE EXHIBIT FOR COMPLETE TEXT.

Board response: Liability will remain the same.

6) Sonia Gibson, Encore Capital Group, EXHIBIT F:

“On behalf of Encore Capital Group, Inc. and its wholly owned subsidiaries (“Encore”), I am writing to express concerns with some aspects of the work from home rule proposal WSR 20-23-083. These well-intended rules contain many proposals that we can accept, however, the

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requirements that remote employees work within one hundred (100) miles of a business office, and complete forty-five (45) days of in-person training are non-tenable and put more people at risk during these difficult and uncertain times.” PLEASE SEE EXHIBIT FOR COMPLETE TEXT.

- Require collection agencies to inspect and authorize each remote work location; and

Board response: The rules have put a number of public safety measures in place. It is up to each licensee collection agency to ensure that the measures are followed. They may choose to inspect locations if they deem that necessary.

“...that remote employees work within one hundred (100) miles of a business office”:

Board response: This issue was debated in depth by the Board. There is an exception for training in emergency circumstances under WAC 308-29-085(5)(b).

Changes made to the proposed WAC as a result of public comment:

WAC 308-29-010 Definitions. originally read:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect debts pursuant to chapter 19.16 RCW.

Final language as approved January 12, 2021:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies pursuant to chapter 19.16 RCW.

This and the CR103P were approved by the Washington State Collection Agency Board in a special board meeting held January 12, 2021 at 11:00am.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

The Department of Licensing appreciates your involvement in this rulemaking process. If you have any questions, please contact Damon Monroe, Agency Rules Coordinator, at (360) 902-3843 or email dmonroe@dol.wa.gov.

From: [Monroe, Damon \(DOL\)](#)
To: [Konnersman, Julie \(DOL\)](#)
Cc: [McDaniel, Katherine \(DOL\)](#); [Starrett, Ellis \(DOL\)](#)
Subject: FW: DOL Rule on Remote Workers
Date: Tuesday, December 29, 2020 3:51:58 PM

FYI

Damon Monroe
Agency Rules Coordinator
Policy & Legislative Unit
Washington State Department of Licensing
Office: 360-902-3843
dmonroe@dol.wa.gov | dol.wa.gov

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From: Perschbacher, Beau (DOL)
Sent: Tuesday, December 29, 2020 2:49 PM
To: Starrett, Ellis (DOL) <EStarrett@DOL.WA.GOV>; Monroe, Damon (DOL) <DMONROE@DOL.WA.GOV>; Hood, Kelsey (DOL) <KeHood@DOL.WA.GOV>; Storvick, Richard (DOL) <RStorvick@DOL.WA.GOV>
Subject: FW: DOL Rule on Remote Workers

FYI – feedback from WA Collectors Association

From: Chester Baldwin [<mailto:chet@lobbywa.com>]
Sent: Tuesday, December 29, 2020 1:33 PM
To: Perschbacher, Beau (DOL) <BPerschbac@DOL.WA.GOV>
Subject: DOL Rule on Remote Workers

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Hi Beau,

I believe that we will/have provide these comments through the official rule making channel as well but I wanted to give speak with you directly about the one change that WA Collectors Assn believes is needed with the proposed rule.

We are asking for a slight tweak to WAC 308-29-010 Definitions (change “debts” to “claims”):

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect **debts claims** pursuant to chapter 19.16 RCW.

With this one word change I believe that we are fully supportive of the proposed rule and we look forward to working with you further on this.

Thanks,

Chester L. Baldwin, Attorney at Law

Public Affairs Consulting, LLC

123 Fir Street NE

Olympia, WA 98506

Chet@lobbywa.com

Cell: [\(360\) 688-4588](tel:(360)688-4588)

Fax: [\(360\) 841-7062](tel:(360)841-7062)

Begin forwarded message:

From: Kevin Underwood <Kevin.Underwood@lgbs.com>

Date: December 28, 2020 at 5:34:42 PM PST

To: Kelsi Hamilton <wcalegchair@gmail.com>, Justin Murphy <jmurphy@professionalcredit.com>, Mindy Chumbley <mindy@solveritynw.com>, Chester Baldwin <chet@lobbywa.com>, Gwen Turner <gturner@fairwaycollects.com>, Diana Hernandez <ACS@acceleratedcollection.com>, markcaselaw@gmail.com, Angela Crawford <Angela.Crawford@lgbs.com>

Subject: RE: Conversations

Chet, here's the message for DOL:

Here is the proposed revision to **WAC 308-29-010 Definitions** (change “debts” to “claims”):

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect **debts claims** pursuant to chapter 19.16 RCW.

“Claim” is the defined statutory term, and it refers to obligations arising out of an “agreement or contract, express or implied.” RCW [19.16.100\(2\)](#).

RCW 19.16.150 requires that branch offices be licensed, and current WAC 308-29-010(2) defines branch office as any physical location where activity meeting the definition of “collection agency” occurs. RCW 19.16.100(4) defines “collection agency” as someone collecting *claims*. So, the existing branch office requirements, which gives rise to the proposed work-from-home (WFH) exception, deal only with *claims*. It would be incongruous to create a WFH exception that is broader than the rule (i.e., covering not only claims, but any debts).

Moreover, the proposed WAC permits “collection activities” to be performed from a remote (WFH) location. WAC 308-29-085. Similar to the existing WAC definitions regarding branch offices, “collection activities” is defined in the new rule as certain actions taken by “collection agencies” or their employees. WAC 308-29-010(4), excerpted above. As indicated, “collection agency” is defined as someone collecting *claims*. RCW 19.16.100(4). Thus, it is contradictory to state in the definition of “collection activity” that it applies to the collection of “debts” when the included term “collection agency” by definition concerns only the collection of “claims.”

Kevin Underwood

Attorney

Gig Harbor

Linebarger Goggan Blair & Sampson, LLP

Attorneys at Law

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From: [David Reid](#)
To: [Konnersman, Julie \(DOL\)](#)
Cc: [Jan Stieger](#)
Subject: WA Proposed Work From Home Rule
Date: Tuesday, January 05, 2021 9:37:06 AM
Attachments: [image001.png](#)

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Ms. Konnersman:

The Receivables Management Association International (RMAI) would like to indicate our support for Washington's proposed Work From Home Rule for Collection Agencies. The compromises that were made in the task force that developed the proposal were fair with both sides having to meet in the middle on a number of issues.

We are pleased that the rule incorporates RMAI's certification standard on data security as we believe that standard is the strongest industry and was developed in cooperation with the Federal Trade Commission. I will note that some of the additions that were made to the data security language by the task force are being added to RMAI's certification standard in version 9.0 which will be launched in March 2021. RMAI is also adding a new Work From Home certification standard in version 9.0 that is modeled after the strong protections created in the proposed rule -- that way we can help promote a national standard based on Washington's work.

With appreciation,

David

David E. Reid ▪ JD, CRCP

General Counsel



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Sacramento, CA 95825

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Direct: (916) 779-2492

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dreid@rmaintl.org

Linked  [profile](#)

About the Receivables Management Association International – The Receivables Management Association International (RMAI) is a nonprofit trade association that represents the Receivables Management Industry. RMAI's [Receivables Management Certification Program](#) and [Code of Ethics](#) protect consumers and businesses by setting the gold standard through uniform industry best practices. RMAI provides networking, education, and business development opportunities through events and communications. RMAI also maintains a highly effective grassroots advocacy program at the state and federal levels. Founded in 1997, RMAI is headquartered in Sacramento, California.

From: [Marc Rosenberg](#)
To: [Konnersman, Julie \(DOL\)](#)
Subject: Public comment relating to adding new section WAC 308-29-085 Remote work requirements; and amending WAC 308-29-010 Definitions
Date: Monday, January 04, 2021 1:03:48 PM
Attachments: [Ltr re WAC.pdf](#)

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Greetings:

Please see the attached letter of today's date.

Marc Rosenberg | Attorney at Law | [VCard](#) | [Email](#) | [Bio](#)
Lee Smart, P.S., Inc. | 1800 One Convention Place | 701 Pike St. | Seattle,
WA 98101 | www.leesmart.com
Telephone 206.624.7990 | Toll-free 1.877.624.7990 | Fax 206.624.5944 | Direct Line
206.262.8308

I am currently working remotely. My cell phone number is 206-769-8506, if you need to reach me by phone during this time.

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January 4, 2021

Julie Konnersman

Address:

Department of Licensing

Washington State Board for Architects

PO Box 9020

Olympia, WA 98507-9020

jkonnersma@dol.wa.gov

Re: Public comment relating to adding new section WAC 308-29-085 Remote work requirements; and amending WAC 308-29-010 Definitions

Ms. Konnersman:

I am an attorney and shareholder at the law firm of Lee Smart, P.S., Inc., and one of my practice areas relates to creditor-debtor law. I have frequently litigated cases under Washington's Collection Agency Act (CAA), Washington's Consumer Protection Act ("CPA"), and the federal Fair Debt Collection Practices Act ("FDCPA").

I am concerned as to an aspect of the proposed new section WAC 308-29-085 and proposed amendments to the definitions in WAC 308-29-010. In my experience, cases often turn on definitions, including those based on CAA and FDCPA claims. Blurring of the definitions has a potential to significantly upset the delicate balance as to how these cases are treated. The proposed amendments to the WACs would cause a blurring of the parameters of the CAA, there is an easy correction that could be made consistent with the definitions in RCW 19.16.100, and there is no good reason that this simple change should not be made.

As a starting point, a "debtor" under the CAA is defined as "any person owing or alleged to owe a claim." RCW 19.16.11(8). A "claim" in the CAA is defined as "any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied." RCW 19.16.100(2). The CAA thus speaks in terms of "claims" and not "debts."

The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S.C. § 1692a(5).

The term "debt" is broader than "claim," and may include obligations that do not "arise out of an agreement or contract." Using the word "debt" rather than "claim" for purpose of explaining duties under the CAA thus has real potential to confuse the actual reach of the CAA, and the actual obligations of "collection agencies" as opposed to "debtors." With this in mind, the new proposed language includes the following:

- WAC 308-29-010(4) provides that “Collection Activities” means those activities performed by Collection Agencies or the employees of Collection Agencies, which are “associated with collecting or attempting to collect *debts*” pursuant to chapter 19.16 RCW. This definition is then incorporated into other sections of the proposed WACs.

- Under WAC 308-29-010(5), an “employee” becomes a person employed by a licensee that does not need a license to engage in “collection activity” (i.e., collect *debts*) on behalf of the licensee.

- Under WAC 308-29-010(8), “remote work” occurs when an employee performs “collection activity” (i.e., the collection of *debts*) for a licensee from the employee’s “virtual office” as defined herein and more particularly described in WAC 308-29-085.

- Under WAC 308-29-010(9), a “virtual office” becomes an extension of a licensee’s office and may perform “collection activities” (i.e., collection of *debts*) as if located at the business office.

- Under WAC 308-29-085, a licensee may allow qualified employees to perform “collection activities” (i.e., collect *debts*) from virtual offices.

- Under WAC 308-29-085(1), a licensee must keep a record of employees who are permitted to perform “collection activities” (i.e., collect *debts*) from a virtual office.

- Under WAC 308-29-085(4)(d), a virtual office must be in a private location where the employee can maintain consumer confidentiality during the performance of their “collection activities” (i.e., collection of *debts*).

As can be seen, the language currently proposed for these WACs arguably expands the reach of the CAA to create liability for “debts” in addition to “claims,” arguably creating potentially be liability for non-consumer events that are currently outside the scope of the CAA. I would recommend simply exchanging the word “debts” for “claims” in WAC 308-29-010(4). This would make the new WAC definition consistent with RCW 19.16.100(2). There is no negative consequence in having the WAC provisions follow the definition of “claim” in RCW 19.15.100(2) by using the term “claims” instead. Anyone opposing this proposed change likely has an agenda and will attempt to exploit the ambiguity in the proposed code change.

In summation, the word “debt” should be changed to “claim” in WAC 308-29-010(4) because the fix is simple, there is no negative consequence, and the change would keep the WAC consistent with the RCWs.

Thank you for your consideration.

Sincerely,

Marc Rosenberg

MR/mr

From: [Michael O'Meara](#)
To: [Konnersman, Julie \(DOL\)](#)
Subject: Proposed Debt Collection Remote-Worker Rule/WAC
Date: Monday, January 04, 2021 5:32:21 PM
Attachments: [image002.png](#)
[image003.png](#)

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Dear Ms. Konnersman:

I have reviewed the proposed WACs regarding remote work by collection agency employees, and note one correction that should be made in the definitions section, WAC 308-29-010(4). The word "debts" should be changed to "claims," like so:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect debts claims pursuant to chapter 19.16 RCW.

The current statutory/WAC scheme requires that collection agency branch offices be licensed, and the proposed remote-worker rule creates a branch office exception for collection activity done by individuals off-premises when certain conditions are met.

RCW 19.16.100(2) defines "claim" as an obligation arising out of an "agreement or contract, express or implied." The undefined term "debt" used in the proposed WAC is broader than the term "claim." RCW 19.16.150 requires that branch offices be licensed. WAC 308-29-010(2) defines branch office as any physical location where activity meeting the definition of "collection agency" occurs. RCW 19.16.100(4) defines "collection agency" as an entity collecting *claims*. So, the existing branch office requirements deal only with *claims*. The proposed remote worker rule is an exception to the branch-office-licensing rule, yet purports to cover activity (collecting "debts") not covered by the branch office rule (collecting "claims"). It is improper to create an exception that is broader than the rule.

Similar to the existing WAC definitions regarding branch offices, "collection activities" is defined in proposed WAC 308-29-010(4) as certain actions taken by "collection agencies" or their employees; and under proposed WAC 308-29-085, certain "collection activities" can be performed from a remote location. As indicated, "collection agency" is defined as someone collecting *claims*. RCW 19.16.100(4).

Thus, it is a contradiction to state in the definition of "collection activity" that it applies to the collection of "debts," when the included term "collection agency" by statutory definition concerns only the collection of "claims."

Thank you for considering this correction.

I am, very truly, yours,

Michael S. O'Meara - IFCCE

Attorney at Law

O'Meara Law Office P.S.

Phone: 425-263-1732



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From: [Michael O'Meara](#)
To: [Konnersman, Julie \(DOL\)](#)
Subject: RE: Proposed Debt Collection Remote-Worker Rule/WAC
Date: Tuesday, January 05, 2021 10:23:08 AM
Attachments: [image002.png](#)
[image003.png](#)

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Dear Ms. Konnersman:

My apologies, but I inadvertently neglected to strikethrough the word “debts” in my earlier email and that could be confusing. Please see the corrected email below. Many thanks.

I have reviewed the proposed WACs regarding remote work by collection agency employees, and note one correction that should be made in the definitions section, WAC 308-29-010(4). The word “debts” should be changed to “claims,” like so:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect ~~debts~~ claims pursuant to chapter 19.16 RCW.

The current statutory/WAC scheme requires that collection agency branch offices be licensed, and the proposed remote-worker rule creates a branch office exception for collection activity done by individuals off-premises when certain conditions are met.

RCW 19.16.100(2) defines “claim” as an obligation arising out of an “agreement or contract, express or implied.” The undefined term “debt” used in the proposed WAC is broader than the term “claim.” RCW 19.16.150 requires that branch offices be licensed. WAC 308-29-010(2) defines branch office as any physical location where activity meeting the definition of “collection agency” occurs. RCW 19.16.100(4) defines “collection agency” as an entity collecting *claims*. So, the existing branch office requirements deal only with *claims*. The proposed remote worker rule is an exception to the branch-office-licensing rule, yet purports to cover activity (collecting “debts”) not covered by the branch office rule (collecting “claims”). It is improper to create an exception that is broader than the rule.

Similar to the existing WAC definitions regarding branch offices, “collection activities” is defined in proposed WAC 308-29-010(4) as certain actions taken by “collection agencies” or their employees; and under proposed WAC 308-29-085, certain “collection activities” can be performed from a remote location. As indicated, “collection agency” is defined as someone collecting *claims*. RCW 19.16.100(4). Thus, it is a contradiction to state in the definition of “collection activity” that it applies to the collection of “debts,” when the included term “collection agency” by statutory

definition concerns only the collection of "claims."

Thank you for considering this correction.

I am, very truly, yours,

Michael S. O'Meara - IFCCE

Attorney at Law
O'Meara Law Office P.S.
Phone: 425-263-1732



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From: Konnersman, Julie (DOL) <JKonnersma@dol.wa.gov>
Sent: Tuesday, January 5, 2021 6:41 AM
To: Michael O'Meara <michael@omearalawoffice.com>
Subject: RE: Proposed Debt Collection Remote-Worker Rule/WAC

Your comment has been received. Thank you and have a great day.

Julie Konnersman
Management Analyst
Regulatory Boards

Washington State Department of Licensing
(360) 664-1507
jkonnersma@dol.wa.gov | dol.wa.gov

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From: Michael O'Meara [<mailto:michael@omearalawoffice.com>]

Sent: Monday, January 04, 2021 5:32 PM

To: Konnersman, Julie (DOL) <jkonnersma@dol.wa.gov>

Subject: Proposed Debt Collection Remote-Worker Rule/WAC

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Dear Ms. Konnersman:

I have reviewed the proposed WACs regarding remote work by collection agency employees, and note one correction that should be made in the definitions section, WAC 308-29-010(4). The word "debts" should be changed to "claims," like so:

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect debts claims pursuant to chapter 19.16 RCW.

The current statutory/WAC scheme requires that collection agency branch offices be licensed, and the proposed remote-worker rule creates a branch office exception for collection activity done by individuals off-premises when certain conditions are met.

RCW 19.16.100(2) defines "claim" as an obligation arising out of an "agreement or contract, express or implied." The undefined term "debt" used in the proposed WAC is broader than the term "claim." RCW 19.16.150 requires that branch offices be licensed. WAC 308-29-010(2) defines branch office as any physical location where activity meeting the definition of "collection agency" occurs. RCW 19.16.100(4) defines "collection agency" as an entity collecting *claims*. So, the existing branch office requirements deal only with *claims*. The proposed remote worker rule is an exception to the branch-office-licensing rule, yet purports to cover activity (collecting "debts") not covered by the branch office rule (collecting "claims"). It is improper to create an exception that is broader than the rule.

Similar to the existing WAC definitions regarding branch offices, “collection activities” is defined in proposed WAC 308-29-010(4) as certain actions taken by “collection agencies” or their employees; and under proposed WAC 308-29-085, certain “collection activities” can be performed from a remote location. As indicated, “collection agency” is defined as someone collecting *claims*. RCW 19.16.100(4).

Thus, it is a contradiction to state in the definition of “collection activity” that it applies to the collection of “debts,” when the included term “collection agency” by statutory definition concerns only the collection of “claims.”

Thank you for considering this correction.

I am, very truly, yours,

Michael S. O'Meara – IFCCE

Attorney at Law
O'Meara Law Office P.S.
Phone: 425-263-1732



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From: [Michael O'Meara](#)
To: [Konnersman, Julie \(DOL\)](#)
Subject: Re: Proposed Debt Collection Remote-Worker Rule/WAC
Date: Tuesday, January 05, 2021 10:27:06 AM
Attachments: [image006.png](#)
[image007.png](#)

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Many thanks again!

I am, very truly, yours,

Michael S. O'Meara
Attorney at Law
O'Meara Law Office P.S.

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On Jan 5, 2021, at 10:25 AM, Konnersman, Julie (DOL)
<JKonnersma@dol.wa.gov> wrote:

<image005.gif>

Received. I will be sure to pass this on. Have a great day.

Julie Konnersman
Management Analyst

Regulatory Boards
Washington State Department of Licensing
(360) 664-1507
jkonnorsma@dol.wa.gov | dol.wa.gov

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From: Michael O'Meara [mailto:michael@omearalawoffice.com]
Sent: Tuesday, January 05, 2021 10:23 AM
To: Konnersman, Julie (DOL) <JKonnorsma@dol.wa.gov>
Subject: RE: Proposed Debt Collection Remote-Worker Rule/WAC

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Dear Ms. Konnersman:

My apologies, but I inadvertently neglected to strikethrough the word “debts” in my earlier email and that could be confusing. Please see the corrected email below. Many thanks.

I have reviewed the proposed WACs regarding remote work by collection agency employees, and note one correction that should be made in the definitions section, WAC 308-29-010(4). The word “debts” should be changed to “claims,” like so:

-
(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies, which are associated with collecting or attempting to collect ~~debts~~ claims pursuant to chapter 19.16 RCW.

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Thank you for considering this correction.

I am, very truly, yours,

Michael S. O'Meara - IFCCE

Attorney at Law
O'Meara Law Office P.S.
Phone: 425-263-1732

<image006.png>

<image007.png>

<image008.gif>

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From: Konnersman, Julie (DOL) <JKonnersma@dol.wa.gov>
Sent: Tuesday, January 5, 2021 6:41 AM
To: Michael O'Meara <michael@omearalawoffice.com>
Subject: RE: Proposed Debt Collection Remote-Worker Rule/WAC

Your comment has been received. Thank you and have a great day.

Julie Konnersman
Management Analyst
Regulatory Boards
Washington State Department of Licensing
(360) 664-1507
jkonnersma@dol.wa.gov | dol.wa.gov

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From: Michael O'Meara [<mailto:michael@omearalawoffice.com>]
Sent: Monday, January 04, 2021 5:32 PM
To: Konnersman, Julie (DOL) <JKonnersma@dol.wa.gov>
Subject: Proposed Debt Collection Remote-Worker Rule/WAC

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Thank you for considering this correction.

I am, very truly, yours,

Michael S. O'Meara - IFCCE

Attorney at Law
O'Meara Law Office P.S.
Phone: 425-263-1732

<image006.png>

<image007.png>

<image008.gif>

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**National
Consumer Law
Center**

*Fighting Together
for Economic Justice*

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(617) 542-8010

WASHINGTON OFFICE
Spanogle Institute for Consumer Advocacy
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036
(202) 452-6252

NCLC.ORG

December 23, 2020

Department of Licensing
Washington State Board for Architects
PO Box 9020
Olympia, WA 98507-9020
jkonnersma@dol.wa.gov
VIA E-mail

RE: Proposed amendments to WAC 308-29-010 and new WAC 308-29-085

Dear Julie Konnersman:

My name is April Kuehnhoff, and I am a Staff Attorney at the National Consumer Law Center (“NCLC”),¹ where my work focuses on state and local advocacy related to fair debt collection. On behalf of NCLC’s low-income clients, I submit these comments in response to the proposal to make permanent certain emergency provisions allowing debt collection employees to work remotely.

While there is no need to authorize remote collection outside of the current pandemic, any authorization for remote work - even during the pandemic – should adopt adequate safeguards. As discussed further below, the Department of Licensing should:

- Limit the scope of any rulemaking to consumers located in Washington state;
- Add a one-year sunset provision;
- Require careful supervision of remote workers;
- Require in-person training for new employees;
- Ensure robust data security protocols;
- Require collection agencies to inspect and authorize each remote work location; and
- Clarify liability by collection agencies.

¹ The National Consumer Law Center (“NCLC”) is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 51 years NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support. Fair debt collection has been a major focus of the work of NCLC, which publishes *Fair Debt Collection* (9th ed. 2018), a comprehensive treatise to assist attorneys and debt collectors to comply with the law, and *Collection Actions* (5th ed. 2020), detailing defenses to consumer debts. These comments are filed.

Limit the Scope of Any Rulemaking to Consumers Located in Washington State

During the pandemic, some states have enacted temporary provisions to allow debt collectors to work remotely.² However, Washington state appears to be the first state to consider permanently amending its rules to allow debt collectors to work remotely.

The proposed rule would allow debt collection employees working remotely in Washington to collect from consumers located anywhere in the country. However, other states have not had time to assess the impact of remote work authorization on consumers or consider the need for additional consumer protections. To give other states more time to assess the issue, the Department of Licensing should limit any provision that they ultimately adopt to allowing remote collection employees to collect from consumers located in Washington. Limiting impacted consumers to residents of Washington will also make it more likely for Washington regulators to hear about any problems related to debt collectors working remotely.

Add a One-Year Sunset Provision

The Department of Licensing's Proposed Rule Making CR-102 Form lists as the reasons for supporting the proposed rule:

As per the Governor's proclamations to keep Washington residents safe and healthy during the Covid-19 pandemic; consistent with other business and professions in this State that are able to perform work from home, it was identified that rule language was needed to allow the option for collection agency licensees and their employees to work remotely. It is necessary to offer licensees the option to remotely work to support the return of commerce in all business sectors.

While this may be a reason for a temporary rulemaking, responding to temporary conditions created by the pandemic should not be the basis for a permanent rulemaking.

The motivation by the debt collection industry to seek permanent approval of remote work models seems to be largely driven by its desire to reduce costs and maximize profits.³ However, the Department of Licensing has a broader duty to ensure that its licensing scheme protects consumers. As such, it should not make permanent rules based on a temporary pandemic that will have long-term consumer protection implications.

If the current temporary provisions can no longer be extended, a one-year sunset provision should be added to the proposed rule to reflect that fact that the current rule is responding to a temporary problem created by the pandemic and allow for further consideration of the impact of debt collectors working remotely on consumer protection.

² National Consumer Law Center, Can Debt Collectors Work from Home?, *available at* <http://bit.ly/coll-work-home>.

³ TransUnion, A Year of Pivots, Challenges and Opportunities: The Collections Industry in 2020, p. 17 (Dec. 2020), *available at* <https://solutions.transunion.com/collections-annual-report-2020> (Stating that, “[a] more common way to reduce costs in the future may be to continue some degree of remote work as a new way of doing business,” and quoting a third-party collection industry participant as saying “‘If you can get the remote model approved, why pay for office space and all the expenses that go with it? [It] doesn’t make sense anymore.’”).

Require Close Supervision for Remote Workers

The collection industry is “advocating for the permanent remote work rule to focus on issues related only to remote work and to keep requirements such as call recording and monitoring specific to performing collection activities separate.”⁴ We strongly disagree.

As one collection industry article correctly pointed out, supervising remote employees is difficult:

It is more challenging to manage quality assurance, and to meet the differing requirements of each state when workers are remote. Your quality assurance person is unable to wander the floor and observe, so technology becomes more important. You still must be listening in, so make sure your call recording system and process is adequate.⁵

Technology to allow for remote supervision, such as call recording and speech analytics, already exists.⁶ Debt collectors that want to take advantage of remote work options should be required to use it.

Require In-Person Training for New Employees

To protect consumers from abusive or harassing collection practices, it is critical that the Department of Licensing require new debt collectors to provide in-person training for new employees and also to require such employees to work on site after their training to facilitate additional supervision, training and mentoring for new employees.

Ensure Robust Data Security Protocols

Debt collectors handle a variety of sensitive financial and personal information. Ensuring the security of this data is crucial to the success of any remote work scheme. Collection agencies must ensure the secure transmission of data, prohibit storage of data on computers used by remote workers, require strong passwords, time-out access for remote employees who are idle, and prohibit local printing, screen capture, or other activities by remote employees to record or share information. The Department of Licensing should require that the collection agency set up, maintain, and inspect the remote work location of each employee.

Require Collection Agencies to Inspect and Authorize Each Remote Work Location

Remote employees should only be authorized to work from a single location. That location should be inspected and approved by the debt collection agency, which should ensure that the workspace is private and verify the security of the connection as discussed above. Private workspaces should have a door that shuts, be separate from other living or working space, have soundproofing to prevent conversations from being overheard, and have separate telephone service that is not accessible to others who are not collection agency employees.

⁴ ACA International, Washington State Department of Licensing Sets Public Hearing on Remote Work Rule (Dec. 2, 2020), available at <https://www.acainternational.org/news/washington-state-department-of-licensing-remote-work-rule-collection-agencies-public-hearing>.

⁵ ACA International, Increasing Collections with Changing Regulations – Panel Talk (Dec. 10, 2020), available at <https://www.acainternational.org/news/increasing-collections-with-changing-regulations-panel-talk-remote-work-communications-text-request-aca-international>.

⁶ *Supra*, n.3 at 18.

Clarify Liability by Collection Agencies

Whether the debt collector works from a remote location or on site, the Department of Licensing should clarify that the employee's location does not alter the collection agency's liability for violations of state or federal laws, including debt collection, data security, and privacy laws.

Thank you for your time and attention to these comments.

Sincerely,

April Kuehnhoff
Staff Attorney

From: [Sonia Gibson](#)
To: [Konnersman, Julie \(DOL\)](#)
Subject: Comments Regarding Proposed Rules WSR 20-23-083
Date: Monday, January 04, 2021 2:25:57 PM
Attachments: [image001.png](#)
[image002.png](#)
[Rule Proposal WSR-20-23-083 Encore Capital Group Comments Jan 4 2021.pdf](#)

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Dear Ms. Konnersman

Please see the attached comments regarding Proposed Rules WSR 20-23-083 (work from home proposal for collection agencies) on behalf of Encore Capital Group.

Thank you,
Sonia Gibson



Midland
Credit
Management™

Sonia Gibson | National Government Affairs

**350 Camino De La Reina, Suite 100
San Diego, CA 92108**

DIRECT 858.309.6923 | **CELL** 412.726.2104
sonia.gibson@encorecapitalgroup.com

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January 4, 2021

Julie Konnersman
Department of Licensing
Washington State Board for Architects
PO Box 9020
Olympia, WA 98507-9020

Re: Concerns with Proposed Rules WSR 20-23-083

Dear Washington State Department of Licensing and Collection Agency Board Rule Committee:

On behalf of Encore Capital Group, Inc. and its wholly owned subsidiaries (“Encore”), I am writing to express concerns with some aspects of the work from home rule proposal WSR 20-23-083. These well-intended rules contain many proposals that we can accept, however, the requirements that remote employees work within one hundred (100) miles of a business office, and complete forty-five (45) days of in-person training are untenable and put more people at risk during these difficult and uncertain times.

By way of background, Encore is a publicly traded company and a leading provider of debt recovery solutions for consumers. Through its subsidiaries, our company purchases portfolios of consumer receivables from major banks and partners with individuals as they repay their obligations and work toward financial recovery. We take a consumer-centric approach to helping consumers resolve their obligations by charging no interest or fees and in 2019 alone, we forgave over \$16 million in debt for over 523,000 Washingtonians.

Our first concern with rule proposal WSR 20-23-083 is the requirement that an individual employee’s virtual office “must be located within 100 miles of the licensee’s business office”. We feel that this limitation goes against the very grain of allowing people to work from home. Due to the COVID-19 pandemic, many companies and organizations have shifted to a remote work structure in varying degrees. In response, a number of employees have moved away, or plan to move away, from city centers or to a different state to find a better location in terms of cost of living and personal preference¹. By limiting the distance from which a remote employee can work, you would not only affect the talent pool in which companies would be able to recruit from, but any employee who has already moved would be forced to move back, or face losing their job. Either prospect would be devastating to an individual and their family during this unprecedented pandemic. We would respectfully ask the committee to remove this language from the proposal.

Our next concern is with the proposed language that employees must have completed a “minimum of forty-five (45) days of direct oversight and mentoring in the licensee’s business office” prior to working from a virtual office. We feel that requiring in-person training, let alone 45 days’ worth, during a pandemic when numerous industries are either shut down, or limiting capacity, in conjunction with varying state and local COVID requirements makes coordinating this effort extremely risky and dangerous. We support the idea of direct oversight and mentoring but would suggest the removal of the language that requires the training be in-office. With modern IT security, virtual training is just as secure, and direct mentoring can be just as robust. Requiring in-office training also inhibits the ability for companies to hire remote workers from the outset.

¹ Barth, B., Cole-Johnson, B. K., Sullivan, A. N., & Warren, A. M. (2020, December 18). *Work from Anywhere? Telecommuting and Tax Obligations for Employers: Practical Considerations and Tips for Human Resources and Management*. Retrieved from <https://www.natlawreview.com/article/work-anywhere-telecommuting-and-tax-obligations-employers-practical-considerations>

For these above-mentioned reasons we respectfully ask that the work from home rule proposal be amended to remove the requirements that employees work within 100 miles of their business office and complete 45 days of in-person training. Thank you for your consideration of our comments and for your attention to this important matter.

Please feel free to contact me directly at sonia.gibson@encorecapital.com for any further information.

Sincerely,

A handwritten signature in black ink that reads "Sonia Gibson". The signature is written in a cursive, flowing style.

Sonia Gibson
National Government Affairs