



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

P.O. Box 41200 ● Olympia, Washington 98504-1200

Telephone (360) 902-8700 ● TDD (360) 664-8126 ● FAX (360) 586-5068 ● <http://www.dfi.wa.gov>

CONSUMER LOAN ACT

INTERIM REGULATORY GUIDANCE

DATE: November 6, 2020

TO: Lenders wishing to operate in Washington to provide income share agreement products

FROM: Lucinda Fazio, Director, Division of Consumer Services *Lmf*

RE: Interim Regulatory Guidance – Income Share Agreements

Purpose

This Interim Guidance expresses the Department's intent to clarify that certain income share agreements (ISA) may be covered by the Consumer Loan Act, chapters 31.04 RCW and 208-620 WAC (Act).

This Interim Guidance does not amend chapters 31.04 RCW or 208-620 WAC. This Interim Guidance is subject to change or withdrawal.

The Department's Guidance

The Department believes that most ISAs meet the definition of "loan" under the Act. The definition, paraphrasing, is lending money for a fee or other charge. The Department interprets that definition to mean if money is advanced (loaned) with an expectation of repayment in excess of the amount loaned, it is a loan.

If a business model being offered meets the above description, the lender may need a license under the Act. The Department acknowledges that under the terms of some ISAs, it is possible the lender may receive less than the amount loaned due to a borrower's inability to be gainfully employed. This is rare however, and does not change the fact that most ISAs are structured for the lender to receive more than the amount advanced.

If a business model is offered to a Washington consumer to pay for secondary school and it is offered by, or offered and serviced by, the school, the school may not need a license under the Act. If a third-party company services the ISA on behalf of the school, however, that third-party may need a license under the Act as either a lender or a student education loan servicer. The third-party may also need a collection agency license from the Department of Licensing.

If an ISA business model is offered by a lender where the borrower does not pay any fees or other charges, and repays only the amount of money borrowed from the lender, a license is unlikely to be required under the Act.

Any lender wishing to provide an ISA to a Washington consumer should contact the Department for an analysis of its specific ISA product before offering the product in Washington.

Prepared by: Devon Phelps, Division of Consumer Services.
Contact Devon at 360-664-7894 or devon.phelps@dfi.wa.gov if you have questions.

Statutes and rules relied upon: Chapters 31.04 RCW and 208-620 WAC.