

Dear Senators ANDREASON, Coiner & Werk, and
Representatives BLACK, Henderson & Elaine Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Dept. of Finance: IDAPA 12.01.10 - Proposed Rules of the Department of Finance Regarding the Idaho Residential Mortgage Practices Act (Docket #12-0110-0701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 7-2-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 7-31-08.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate Commerce and Human Resources Committee and the House of Representatives Business Committee

FROM: Research and Legislation Staff, Nugent

DATE: June 12, 2008

SUBJECT: IDAPA 12.01.10 - Proposed Rules of the Department of Finance Regarding the Idaho Residential Mortgage Practices Act (Docket #12-0110-0701)

The Department of Finance is proposing rules to promulgate implementing the Idaho Residential Mortgage Practices Act which is contained in Chapter 31, Title 26, Idaho Code. Subsection (2)(b) of Section 26-3105, Idaho Code, authorizes the Director of the Department of Finance to establish by rules new requirements as are necessary for the State of Idaho to participate in a uniform multistate licensing system upon the Director's finding that such new requirements are consistent with both the public interest and the purposes of the Idaho Residential Mortgage Practices Act. The proposed rules would allow the state of Idaho to participate in the Nationwide Mortgage Licensing System which became operative on January 1, 2008. The proposed rules were adopted as temporary rules effective January 1, 2008, and the temporary rules were approved by the 2008 Legislature. The Department of Finance is seeking to make the temporary rules permanent which is the purpose of the proposed rulemaking. It appears that the proposed rules have been promulgated within the scope of statutory authority granted to the Department of Finance.

cc: Idaho Dept. of Finance, Mike Larsen

IDAPA 12 - IDAHO DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-0701

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Idaho Code section 26-3105(1)(e) and 26-3105(2)(b).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In Section 26-3105(2), Idaho Code, the Idaho Legislature determined that a uniform multistate administration of an automated licensing system for mortgage brokers, mortgage lenders, and mortgage loan originators is consistent with both the public interest and the purposes of the Idaho Residential Mortgage Practices Act, chapter 31, title 26, Idaho Code (the Act). In Section 26-3105(2)(b) of the Act, the Legislature authorized the Director of the Idaho Department of Finance to establish by rule such new requirements as are necessary for the state of Idaho to participate in a uniform multistate licensing system upon the Director's finding that such new requirements are consistent with both the public interest and the purposes of the Act. The Director found that the requirements set forth in the proposed rules are consistent with the public interest and the purposes of the Act, and that they establish requirements necessary for the state of Idaho to participate in the Nationwide Mortgage Licensing System (NMLS), which became operative on January 1, 2008. The proposed rules also include amendments to existing rules regarding continuing professional education for licensees under the Act, which amendments establish uniformity with continuing professional education standards of other states; extend the time to apply to the Department for continuing education credit after course completion; and add a category of approved courses. The Director found that the proposed rules concerning continuing professional education standards for licensees under the Act were necessary to execute, enforce, and effectuate the purposes of the Act. The proposed rules were adopted as temporary rules, effective January 1, 2008. Such temporary rules were approved by the 2008 Idaho Legislature. The Department now seeks to make such temporary rules permanent rules, which is the purpose of this proposed rulemaking.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to the State General Fund related to this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted for the following reasons. A Notice of Rulemaking - Adoption of Temporary Rule and a copy of the text of the temporary rule were published in the December 5, 2007 edition of the Idaho Administrative Bulletin, Volume 07-12. The temporary rule became effective on January 1, 2008. The temporary rule, which confers a benefit, was reviewed and approved by the 2008 Idaho Legislature. The purpose of this rulemaking is to make permanent such temporary rule, including certain minor changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mike Larsen, Consumer Finance Bureau Chief, Idaho Department of Finance at (208) 332-8000.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2008.

DATED this 29th day of May, 2008.

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
800 Park Boulevard, Suite 200
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8000
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 12-0110-0701

006. DEFINITIONS (RULE 6).

Except where otherwise stated, terms used in these rules which are defined in the Idaho Residential Mortgage Practices Act shall have the same meaning as set forth in that Act. As used in these rules: (3-30-06)

01. Accredited Instruction. Means a course, video, motion picture, sound recording, or dissemination through electronic means of instructional material, which has been approved by the director for continuing professional education credit. (3-30-06)

02. Act. Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

03. Certificate of Completion. Means written documentation issued by an education provider to a participant, in a manner approved by the director, evidencing the completion of a specific amount of credit hours of accredited instruction. (3-30-06)

04. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee to complete such process. (3-30-06)

05. Credit Hour. Means ~~sixty~~ fifty (650) minutes of accredited instruction attained through actual course attendance ~~of a course~~ or an allotted increment of time of accredited instruction through independent study, as predetermined by the director. (~~3-30-06~~)()

06. Director. Means the director of the Idaho Department of Finance. (3-30-06)

07. Education Provider. Means a provider of accredited instruction. (3-30-06)

08. Participant. Means a person who attends accredited instruction for the purpose of accruing credit hours. (3-30-06)

09. Real Estate Settlement Procedures Act. Means the act set forth in 12 USCA 2601, et seq., as amended to and including January 1, 2007~~9~~. (~~3-30-07~~)()

10. Regulation X. Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2007~~9~~. (~~3-30-07~~)()

11. Regulation Z. Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2007~~9~~. ~~(3-30-07)~~()

12. Reporting Period. Means a two (2) year period of time commencing on November 1st and ending on October 31st unless otherwise specified by order of the director. (3-30-06)

13. Truth in Lending Act. Means the act set forth in 15 USCA 1601, et seq., as amended to and including January 1, 2007~~9~~. ~~(3-30-07)~~()

007. -- 009. (RESERVED).

010. REQUIREMENTS FOR CONTINUING PROFESSIONAL EDUCATION (RULE 10).

01. Licensee. For purposes of the “Requirements for Continuing Professional Education” provisions of this rule, the term “licensee” means a person: (3-30-06)

a. Who is a loan originator licensed under the Act; or (3-30-06)

b. Who is designated pursuant to Section 26-3108, Idaho Code, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act. (3-30-06)

02. Minimum Requirements. (3-30-06)

a. A loan originator licensed under the Act shall attain sixteen (16) credit hours within each reporting period. (3-30-06)

b. Persons designated in the director’s files, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act shall attain sixteen (16) credit hours within each reporting period. (3-30-06)

c. Credit hours accrued in excess of the required sixteen (16) credit hours in any reporting period shall not carry over nor be credited to any subsequent reporting period. (3-30-06)

03. Accrual of Credit Hours. (3-30-06)

a. For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than two (2) credit hours directly related to the Act and these rules. (3-30-06)

b. For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than ~~fourteen~~ two (~~14~~2) credit hours directly related to ~~the following:~~ ethics. ~~(3-30-06)~~()

c. For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than twelve (12) credit hours related to the following: ()

i. Basics of home purchase and ownership; (3-30-06)

ii. The mortgage industry generally; (3-30-06)

iii. Loan evaluation and documentation; (3-30-06)

iv. Features of various loan products; (3-30-06)

v. State and federally required disclosures; (3-30-06)

vi. Ethical considerations; (3-30-06)

- vii. The Idaho Credit Code; (3-30-06)
- viii. The Idaho Mortgage Company Act; (3-30-06)
- ix. The Idaho Escrow Act; (3-30-06)
- x. ~~The Uniform Commercial Credit Code~~ The Idaho Residential Mortgage Practices Act;
(3-30-06)()
- xi. Law related to mortgages, deeds of trust, liens, and pledges; (3-30-06)
- xii. Real estate and appraisal law; (3-30-06)
- xiii. Principal and agency law; (3-30-06)
- xiv. Contract law; (3-30-06)
- xv. The Real Estate Settlement Procedures Act; or (3-30-06)
- xvi. Truth in Lending and the federal Consumer Credit Protection Act. (3-30-06)

c. Accredited instruction shall be of a minimum duration of one (1) credit hour and shall contribute to the goal of maintaining or increasing the knowledge, skill and competence of licensees. The principal focus of accredited instruction shall not be sales, marketing, commercial lending or commercial loan brokering, motivational, or skills pertaining to running a business. (3-30-06)

d. A participant who successfully completes a course of accredited instruction may not repeat that course for credit hours with the same education provider within the same reporting period. (3-30-06)

e. A participant may accrue credit hours within ninety (90) days prior to initial submission of an application for a loan originator license under the Act. Such credit hours shall not accrue to the participant unless the initial license application is subsequently approved by the director and a license is issued. Credit hours shall not be granted to a participant under this provision unless the participant provides the director with a copy of the certificate of completion for such accredited instruction within sixty (60) days of initial licensure. (3-30-06)

f. Persons designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act may accrue credit hours for accredited instruction attended within ninety (90) days prior to the date of approval by the director of such designation. (3-30-06)

g. Persons who, as of January 1, 2006, are designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act may accrue credit hours for accredited instruction completed on or after October 1, 2005. (3-30-06)

04. Recordkeeping and Reporting of Accrued Credit Hours. (3-30-06)

a. Every licensee shall maintain copies of certificates of completion for a period of no less than three (3) years following completion of the accredited instruction. (3-30-06)

b. The initial reporting period for a loan originator licensed under the Act shall commence on November 1st immediately succeeding his initial licensure. (3-30-06)

c. The initial reporting period for persons who are not loan originators, but who have been designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act shall commence: (3-30-06)

- i. On November 1, 2006, if the person has been so designated prior to November 1, 2006; or (3-30-06)

ii. On November 1st immediately following the director's approval of the person's designation, if the person is so designated on or after November 1, 2006. (3-30-06)

d. Within thirty (30) days following the expiration of each reporting period a licensee shall deliver copies of certificates of completion to the director demonstrating the licensee's completion of the credit hours required under these rules. (3-30-06)

e. A licensee who fails to attain the credit hours required by these rules, or fails to maintain records as required in Section 010 of these rules, or fails to timely report compliance with the credit hour requirements of these rules shall be subject to license revocation or suspension as prescribed in Section 26-3109, Idaho Code. (3-30-06)

f. Upon revocation or suspension of a license issued under the Act for failure to complete or report credit hour requirements, no person shall obtain a new license or a reinstated license in the case of a license suspension, as a loan originator, mortgage broker or mortgage lender without first satisfying the credit hour requirements, which, having been previously incomplete or not reported, were the cause of the license revocation or suspension. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

012. PRESUMPTIVE ACCREDITATION (RULE 12).

01. Instructional Courses Presumptively Accredited. Instructional courses that cover subject matter set forth in Subsection 010.03 of these rules, that are provided by the following listed organizations, or by such other organizations as may be determined by the director, are presumptively accredited and no request for accreditation of an instructional course offered by these organizations is required, unless the director determines otherwise. (3-30-06)

- a. The Idaho Department of Finance. (3-30-06)
 - b. The National Association of Mortgage Brokers. (3-30-06)
 - c. The Mortgage Bankers Association. (3-30-06)
 - d. The National Association of Professional Mortgage Women. (3-30-06)
 - e. The Idaho Housing and Finance Association. (3-30-06)
 - f. Federal National Mortgage Association. (3-30-06)
 - g. Federal Home Loan Mortgage Corporation. (3-30-06)
 - h. The American Bankers Association. (3-30-06)
 - i. Regulatory agencies of any state or of the United States that have regulatory authority over mortgage related activity. (3-30-06)
 - j. Institutions of higher education accredited by the Idaho State Board of Education or by similar accrediting agencies of any other state. (3-30-06)
 - k. The Conference of State Bank Supervisors. (3-30-06)
 - l. The American Association of Residential Mortgage Regulators. (3-30-06)
- 02. Acceptance of Credit Hours for Presumptively Accredited Instruction.** Credit hours for

presumptively accredited instruction may be credited to participants in the following manner: (3-30-06)

a. Upon timely submission of a copy of a certificate of completion as set forth in Subsection 010.04 of these rules; or (3-30-06)

b. By written application by the participant, in a form prescribed by the director, within ~~thirty~~ ninety (~~30~~) days of successful course completion. The application shall be accompanied by a non-refundable fee of twenty-five dollars (\$25). (~~3-30-06~~)()

(BREAK IN CONTINUITY OF SECTIONS)

091. -- ~~9099.~~ (RESERVED).

100. LEGAL AUTHORITY (RULE 100).

In Section 26-3105(2), Idaho Code, the Idaho Legislature determined that a uniform multistate administration of an automated license system for mortgage brokers, mortgage lenders and mortgage loan originators is consistent with both the public interest and the purposes of the Residential Mortgage Practices Act, Chapter 31, Title 26, Idaho Code (the Act). In Section 26-3105(2)(b), Idaho Code, the Legislature authorized the Director of the Idaho Department of Finance to establish by rule such new requirements as are necessary for the state of Idaho to participate in a uniform multistate automated licensing system upon the Director's finding that such new requirements are consistent with both the public interest and the purposes of the Act. The Director finds that the requirements set forth in Sections 100 and 101 of these rules are consistent with the public interest and the purposes of the Act, and therefore promulgates such rules pursuant to Section 26-3105(2)(b), Idaho Code. ()

101. NATIONWIDE MORTGAGE LICENSING SYSTEM (RULE 101).

01. The Nationwide Mortgage Licensing System (NMLS). *The NMLS is an internet-based filing depository operated by the State Regulatory Registry, LLC (SRR), a wholly-owned operating subsidiary of the Conference of State Bank Supervisors (CSBS). The NMLS is designed to accept license applications and license renewal applications electronically from mortgage brokers, mortgage lenders, and mortgage loan originators; collect associated statutory filing fees on behalf of participating jurisdictions; and provide the public with Internet-based access to information concerning state-regulated mortgage brokers, mortgage lenders, and mortgage loan originators. The NMLS began accepting electronic filings of applications from state-regulated mortgage brokers, mortgage lenders, and mortgage loan originators from Idaho on January 2, 2008.* ()

02. Reasonable Access to NMLS. All mortgage brokers, mortgage lenders, and mortgage loan originators with reasonable access to NMLS via the Internet who seek a license under the Act, or who wish to retain a license previously issued under the Act, must do so through the NMLS. Applicants for a license or licensees who wish to retain a license under the Act who lack reasonable access to NMLS via the Internet may, upon prior approval of the Director and good cause shown, be excused from participation in the NMLS and may apply for a license or for license renewal through an alternative method designated by the Director. ()

03. Licensing. Mortgage brokers, mortgage lenders and mortgage loan originators who seek to obtain or retain a license under the Act through the NMLS must pay the charge imposed and retained by NMLS to fund the costs of NMLS associated with an applicant's or licensee's participation in the system. ()

04. Statutory Fees. NMLS shall collect on the Department's behalf any statutory fees required to be paid to the Department by license applicants and licensees pursuant to the Residential Mortgage Practices Act. NMLS is required to forward to the Department all statutory fees it collects on the Department's behalf pursuant to the terms of a written agreement between the Department and SRR. ()

102. -- 999. (RESERVED).