

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

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Finance: IDAPA 12.01.10 – Rules Pursuant to the Idaho Residential Mortgage Practices Act – Docket No. 12-0110-0901 .

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 9-11-09. 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 10-9-09.

_____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: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Brooke Murdoch, Research Analyst

DATE: August 24, 2009

SUBJECT: Idaho Department of Finance
IDAPA 12.01.10 – Rules Pursuant to the Idaho Residential Mortgage Practices Act – Docket No. 12-0110-0901

The Department of Finance submits notice of temporary and proposed rulemaking at IDAPA 12.01.10 – Rules Pursuant to the Idaho Residential Mortgages Practices Act. The temporary and proposed rules are prompted by House Bill 169 which was passed by the 2009 Legislature. House Bill 169, effective July 1, 2009, repeals the former Idaho Residential Mortgage Practices Act and replaces it with a new version of the Idaho Residential Mortgage Practices Act (the “Act”) that incorporates the standards of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the S.A.F.E. Act), as required by federal law. The new version of the Idaho Residential Mortgage Practices Act includes additional requirements for providers of residential mortgage loan and loan modification services, specific requirements concerning continuing education for licensees and grants authority to the Director of the Department of Finance to set limits on fees and charges imposed by providers of residential mortgage loan modification services. The Department states that the temporary and proposed rules are consistent with these additional requirements contained in the new Act.

The Department states that the temporary adoption of the rules is appropriate and that negotiated rulemaking was not conducted because the rules are necessary to comply with a change to the governing law that took effect on July 1, 2009.

The temporary and proposed rules are within the authority granted to the Department under Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a) and 26-31-302(2), Idaho Code.

cc: Idaho Department of Finance
Michael Larsen, Consumer Finance Bureau Chief

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rules is July 29, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code.

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, by no later than September 16, 2009.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2009 Idaho Legislature repealed the former Idaho Residential Mortgage Practices Act, Section 26-3101, Idaho Code, and replaced it with a new version of the Idaho Residential Mortgage Practices Act, Section 26-31-101, Idaho Code, (the new Act). The new Act incorporates the standards of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the S.A.F.E. Act), as required by federal law, and includes changes to prior law. Among the changes to Idaho law included in the new Act are:

1. New requirements for providers of residential mortgage loan and for loan modification services;
2. Specific requirements concerning continuing education for licensees under the new Act; and
3. Authorization for the Director of the Idaho Department of Finance to limit fees and charges imposed by providers of residential mortgage loan modification services.

The Director found it necessary to adopt temporary rules to establish consistency with the requirements of the new Act, and to interpret some of such requirements, to include:

1. Corrections to citation references to the Act;
2. Deletion of all continuing education definitions and provisions to reflect statutory changes and the role of the Nationwide Mortgage Licensing System and Registry in testing and education;
3. A definition of "application" for a residential mortgage loan and a loan modification;
4. A requirement that an "application fee" must be based on actual costs incurred by a licensee, or person required to be licensed under the new Act, in taking the application; and
5. A requirement that a "cancellation fee" may only be charged at the time of, or subsequent to, a request by a borrower to cancel services authorized under the Act and must bear a reasonable relationship to the actual costs incurred for services provided to a borrower up to the point of cancellation.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason:

The Department of Finance was required to update the Rules Pursuant to the Idaho Residential Mortgage Practices Act to establish consistency with the new version of the Idaho Residential Mortgage Practices Act that was adopted by the 2009 Idaho Legislature (the new Act). A portion of the new Act was mandated by the federal government to be in place by July 1, 2009. These changes will ensure that the Department maintains consistency with the requirements of the new Act, which became effective on July 1, 2009.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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: N/A.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the timing of the effective date of the new Idaho Residential Mortgage Practices Act, July 1, 2009, did not provide adequate time to conduct negotiated rulemaking by the effective date of the new Act or within a reasonably short time thereafter, requiring that temporary rules be adopted to establish consistency between the rules and the new Act and interpret some of the new requirements included in the new Act.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned at the address set forth above, and must be delivered on or before September 23, 2009.

DATED this 29th day of July, 2009.

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8000
Facsimile: (208) 332-8096

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 12-0110-0901

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Sections ~~26-3105(5)~~ 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. ~~(11-1-98)(7-29-09)T~~

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is "Rules Pursuant to the Idaho Residential Mortgage Practices Act," ~~of which rules are administered by~~ the Idaho Department of Finance, and may be cited as IDAPA 12.01.10. These rules ~~implement~~ interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ~~(11-1-98)(7-29-09)T~~

002. WRITTEN INTERPRETATIONS -- AGENCY ACCESS -- FILINGS (RULE 2).

Written interpretations of these rules are available by mail from the Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Idaho Department of Finance, 800 Park Boulevard, Suite 200, Boise, Idaho 83712. The telephone numbers of the ~~agency include~~ Idaho Department of Finance are: (208) 332-8000 - Administration; and (208) 332-8002 - Consumer Finance Bureau. The ~~telephone~~ number ~~of~~ for the facsimile machine ~~in the Consumer Finance Bureau~~ is (208) 332-8096. All filings with the ~~agency~~ Idaho Department of Finance in connection with rulemaking or contested cases shall be made with the Director of the Idaho Department of Finance, and shall include an original and one (1) copy. ~~(3-30-07)(7-29-09)T~~

(BREAK IN CONTINUITY OF SECTIONS)

005. INCORPORATION BY REFERENCE (RULE 5).

~~IDAPA 12-01-10.~~ The “Rules Pursuant to the Idaho Residential Mortgage Practices Act,” incorporates by reference the full text of the following federal laws and regulations as defined in these rules: the Real Estate Settlement Procedures Act, *12-USCA 2601, et seq., as amended to and including January 1, 2007*; Regulation X, *24-CFR 3500, et seq., as amended to and including January 1, 2007*; the Truth in Lending Act, *15-USCA 1601, et seq., as amended to and including January 1, 2007*; and Regulation Z, *12-CFR 226, et seq., as amended to and including January 1, 2007*. Documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. (3-30-07)(7-29-09)T

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 the Idaho Residential Mortgage Practices Act and these rules, the following definitions apply: (3-30-06)(7-29-09)T

~~**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)~~

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

02. Application. In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. (7-29-09)T

~~**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)~~

043. 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 or person required to be licensed under the Act to complete such process. (3-30-06)(7-29-09)T

~~**05. Credit Hour.** Means fifty (50) minutes of accredited instruction attained through actual course attendance or an allotted increment of time of accredited instruction through independent study, as predetermined by the director. (5-8-09)~~

064. 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)~~

095. Real Estate Settlement Procedures Act. Means the act set forth in 12 USCA 2601, et seq., as amended to and including January 1, 2009. (5-8-09)

~~**106. 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, 2009. (5-8-09)~~

~~**107. 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, 2009. (5-8-09)~~

~~**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)~~

~~1308.~~ **Truth in Lending Act.** Means the act set forth in 15 USCA 1601 et seq., as amended to and including January 1, 2009. (5-8-09)

007. -- ~~0039.~~ (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 two (2) credit hours directly related to ethics. (5-8-09)~~

~~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: (5-8-09)~~

~~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 Idaho Residential Mortgage Practices Act; (5-8-09)~~

- ~~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)~~
- ~~e. 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)~~
- ~~e. 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)~~

~~**011. EDUCATION PROVIDERS AND CONTENT OF CONTINUING PROFESSIONAL EDUCATION (RULE 11).**~~

~~**01. Submission of Continuing Professional Education Courses for Accreditation by the Director.** Education provider applicants shall submit an application, in a form provided by the director, for accreditation of continuing professional education for each instructional course proposed to be offered by the education provider applicant. The application shall be accompanied by a non refundable application fee of two hundred fifty dollars (\$250) and shall include, but not be limited to, the following information: (3-30-06)~~

~~a. The name and address of the education provider and date(s) on and locations at which the program is to be offered; (3-30-06)~~

~~b. The qualifications and experience of the education provider's principal officers, staff, and instructor(s); (3-30-06)~~

~~c. The costs of all programs for which approval is sought; (3-30-06)~~

~~d. A copy of the proposed course materials together with a description of each course for which approval is sought; and (3-30-06)~~

~~e. A sample of what is provided to participants to verify course completion. (3-30-06)~~

~~**02. Granting of Accreditation of Professional Education Courses.** The director shall grant accreditation to continuing professional education courses if he finds: (3-30-06)~~

~~a. That the course constitutes an organized program of learning which provides instruction on subject matter as described in Subsection 010.03 of these rules; (3-30-06)~~

~~b. That course materials are prepared, and instruction conducted, by an individual or group qualified by practical or academic experience in the subject or subjects to be presented; (3-30-06)~~

~~c. That the course shall be presented in a setting physically suited to the educational activity or in a manner which allows for participant interaction and comprehension of course materials. Training facilities for live class settings shall be easily accessible and comply with all applicable state and federal laws, including, but not limited to, the Americans With Disabilities Act of 1990; (3-30-06)~~

~~d. That course outlines, syllabi, workbooks, examinations, study guides, or other instructional material are of a high quality, readable, and carefully prepared and relevant to the course of study offered; and (3-30-06)~~

~~e. That the prospective education provider's application is complete and truthful. (3-30-06)~~

~~**03. Review of Accredited Instruction.** (3-30-06)~~

~~a. An education provider shall designate one (1) person as its contact person who shall be available to the director, or to his designated representative, during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising,~~

~~recordkeeping, and supervising all programs offered by the education provider. (3-30-06)~~

~~**b.** The director may periodically review the content and facilitation of accredited instruction for the purposes of verifying that such accredited instruction continues to meet the requirements of these rules. (3-30-06)~~

~~**c.** The education provider shall be required to permit the director, or the director's representative, to audit the accredited instruction and course material at no cost to the director or to the director's representative. The audit shall evaluate whether the accredited instruction meets the requirements of these rules. The education provider shall permit the director or the director's representative to review records appropriate to selected course offerings. Upon a finding that accredited instruction no longer meets the requirements of these rules, the director may suspend or revoke the approval of the accredited instruction. The education provider shall be responsible for payment of audits conducted under Section 011 of these rules. (3-30-06)~~

~~**d.** Education providers shall notify the director of any material changes which have been made to accredited instruction within thirty (30) days of such changes. Material changes include changes materially affecting the content or facilitation of accredited instruction as it applies to the requirements of Subsection 011.02 of these rules. (3-30-06)~~

~~**e.** Within thirty (30) days of conclusion of a course of accredited instruction, an education provider shall submit to the director an attendance roster in a form prescribed by the director. Education providers shall maintain records related to participant attendance and completion of accredited instruction for a period of no less than three (3) years. (3-30-06)~~

~~**04. Suspension of Accreditation.** The accreditation of a continued professional education course may be suspended if the director determines that: (3-30-06)~~

~~**a.** The accredited instruction teaching method or program content no longer meets the standards of these rules, or have been materially changed without notice to the director as required; or (3-30-06)~~

~~**b.** The education provider granted a certificate of completion when in fact the participant had not satisfactorily completed the accredited instruction; or (3-30-06)~~

~~**c.** The education provider failed to grant a certificate of completion to a participant when in fact the participant had satisfactorily completed the accredited instruction; or (3-30-06)~~

~~**d.** The education provider or any of its instructors have had a mortgage license revoked or suspended in any jurisdiction; or (3-30-06)~~

~~**e.** There is other good cause why accreditation should be suspended. (3-30-06)~~

~~**05. Reinstatement of Accreditation.** Reinstatement of a suspended accreditation will be made upon the furnishing of proof satisfactory to the director that the conditions responsible for the suspension have been corrected. (3-30-06)~~

~~**06. Renewal of Approval of Accredited Instruction.** The director's accreditation of a continuing professional education course shall expire two (2) years from the date of issuance and thereafter on each subsequent two (2) year anniversary of the renewal date. Application for renewal of accreditation shall be filed by not later than sixty (60) days prior to each such expiration date and shall be accompanied by a non-refundable renewal fee of one hundred fifty dollars (\$150). Applications for renewal of accreditation shall be in a form prescribed by the director and shall include documentation demonstrating that the accredited instruction continues to meet the requirements of Subsection 011.02 of these rules. (3-30-06)~~

~~**07. Prohibited Practices.** (3-30-06)~~

~~**a.** No person shall represent, in any manner that an instructional course has received approval or accreditation from the director or that participants will receive credit hours for attendance and completion of an instructional course, unless such course has been approved by the director. (3-30-06)~~

~~b. No person shall misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars of the status, content, or facilitation of an instructional course offered to participants for the purposes of meeting the continuing professional education requirements of these rules. (3-30-06)~~

~~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 ninety (90) days of successful course completion. The application shall be accompanied by a non-refundable fee of twenty five dollars (\$25). (5-8-09)~~

~~013.—039. (RESERVED).~~

040. DECEPTIVE ADVERTISING (RULE 40).

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. Deceptive advertising is defined to include the following practices by a licensee, or a person required to be licensed under the Act: ~~(3-30-06)~~(7-29-09)T

a. Making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or if the licensee or person required to be licensed under the Act does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. ~~(11-1-98)~~(7-29-09)T

b. Advertising without clearly and conspicuously disclosing the ~~licensee's~~ business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the licensee or person required to be licensed under the Act. ~~(11-1-98)~~(7-29-09)T

c. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to ~~the mortgage loan being advertised~~ services authorized under the Act. Bait and switch advertising, for these purposes of these rules, means ~~an alluring, but insincere offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms which the licensee cannot, does not intend, or want to provide, or which the licensee knows cannot be reasonably provided. Its purpose is to switch borrowers from obtaining the advertised mortgage loan product to obtaining a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the licensee~~ advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the licensee or person required to be licensed under the Act. ~~(3-30-06)~~(7-29-09)T

d. ~~Advertising~~ Using an address in advertising at which the licensee or person required to be licensed under the Act conducts no mortgage brokering, ~~or mortgage~~ lending, or mortgage loan origination activities or for which the licensee or person required to be licensed does not hold a license. ~~(3-30-06)~~(7-29-09)T

e. Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. ~~(3-30-06)~~(7-29-09)T

041. -- 049. (RESERVED).

050. WRITTEN DISCLOSURES (RULE 50).

01. ~~Upon Receipt of an Residential Mortgage Loan Application.~~ Upon receipt of an residential mortgage loan application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a licensee or person required to be licensed under the Act shall disclose to each borrower information about the licensee or person required to be licensed under the Act, in a form acceptable to the Director, information about the licensee, the services that a licensee may provide and the services that the licensee will provide including the services that may be provided and the services that will be provided, in a form acceptable to the Director. ~~(3-30-06)~~(7-29-09)T

02. **Information Provided Within Three Days.** Within three (3) business days after receipt of a residential mortgage loan application, a licensee or person required to be licensed under the Act shall provide to the borrower the following disclosures specific to the residential mortgage loan application: ~~(3-30-06)~~(7-29-09)T

a. Disclosures in compliance with the requirements of the ~~federal~~ Truth-in-Lending Act and Regulation Z. These include the annual percentage rate, finance charge, amount to be financed, total of all payments, number of payments, amount of each payment, and amount of points or prepaid interest, ~~and if~~ If the loan is a variable rate loan, such disclosures shall include the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount, and the total interest to be paid, and an example of the payment terms resulting from an increase for a loan in the approximate amount of the loan that is being requested in the amount of the loan and fees associated with the loan. ~~(11-1-98)~~(7-29-09)T

b. Disclosures through good faith estimates of settlement services in compliance with the requirements of the ~~federal~~ Real Estate Settlement Procedures Act and Regulation X. ~~These~~ Such disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection, and any

mortgage broker or mortgage ~~banker~~ lender fees associated with the residential mortgage loan. ~~(11-1-98)~~(7-29-09)T

03. Interest Rate Lock-In Agreement Not Entered. If, at the time of a residential mortgage loan application, an interest rate lock-in agreement has not been entered, disclosure shall be made to the borrower, in a form approved by the director, that the disclosed interest rate and terms are subject to change. A licensee or person required to be licensed under the Act shall provide such disclosure to the borrower within three (3) business days of ~~the licensee's~~ receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. ~~(3-30-06)~~(7-29-09)T

04. ~~Licensee Enters into a~~ Lock-In Agreement Entered. If a licensee or person required to be licensed under the Act enters into an interest rate lock-in agreement with a lender or represents to the borrower that ~~the licensee has entered into~~ a lock-in agreement has been entered into, then within no more than three (3) business days thereafter, including Saturdays, the licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the term of the lock-in agreement. ~~(3-30-06)~~(7-29-09)T

05. Loan Modification Confirmation. Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. (7-29-09)T

056. ~~Additional~~ Disclosures Required. In addition to the disclosures required under Subsection 050.02 of these rules, if a prepayment penalty ~~may be~~ is a condition of a residential mortgage loan offered by a licensee or person required to be licensed under the Act, that fact shall be separately disclosed in writing to the borrower by the licensee or person required to be licensed under the Act. ~~The~~ Such disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the residential mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the ~~Director~~, and shall be delivered to the borrower within three (3) business days of ~~the licensee's~~ receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. ~~(3-30-06)~~(7-29-09)T

051. RESTRICTIONS ON FEES (RULE 51).

If a licensee or person required to be licensed under the Act imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: (7-29-09)T

01. Application Fee. An application fee shall include only the actual costs incurred by a licensee or person required to be licensed under the Act in connection with the taking of an application and transcribing application information. (7-29-09)T

02. Cancellation Fee. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a licensee or person required to be licensed under the Act to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the licensee or person required to be licensed under the Act for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. (7-29-09)T

~~0542.~~ -- 059. (RESERVED).

060. PROHIBITED PRACTICES (RULE 60).

~~01. Prohibited Practices.~~ It shall be a prohibited practice for any licensee, or person required to be licensed under the Act, in connection with offering or providing services authorized under the Act, to: ~~(3-30-06)~~(7-29-09)T

~~01.~~ **Make False or Misleading Statements.** Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity

to be misleading, or if the licensee or ~~lender~~ person required to be licensed under the Act does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include, but are not limited to, the availability of funds, terms, conditions, ~~or~~ changes incident to the mortgage transaction, prepayment penalties, ~~and~~ the possibility of refinancing, ~~and the likelihood of successfully obtaining specific mortgage loan modification terms.~~ ~~(11-1-98)(7-29-09)T~~

~~b02.~~ **Fail to Disburse Funds Timely.** Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: ~~(11-1-98)(7-29-09)T~~

~~ia.~~ Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)

~~ib.~~ Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (3-30-06)

~~ic.~~ For the purposes of this ~~paragraph~~ Subsection, the term “immediately” represents a period of time no greater than seventy-two (72) hours. ~~(3-30-06)(7-29-09)T~~

~~e03.~~ **Fail to Provide Reasonable Opportunity for Document Review.** Fail to give the borrower, upon the borrower’s verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document ~~which~~ that is required pursuant to these rules, and other applicable laws, rules or regulations. ~~(3-30-06)(7-29-09)T~~

~~e04.~~ **Require Excessive Insurance.** Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. (3-30-06)

~~e05.~~ **Engage in Deceptive Advertising.** Engage in any deceptive advertising as set forth in Section 040 of these rules. ~~(11-1-98)(7-29-09)T~~

~~e06.~~ **Provide or Offer Services Without a License or Approval.** Provide or offer to provide any services, for compensation or gain, or in the expectation of compensation or gain, incident to services authorized under the Act, such as ~~credit repair, credit or debt counseling~~, investment advising, real estate brokerage services, tax or legal advice, unless the person offering such services has first obtained a license or the approval required by the appropriate licensing authority to engage in the offering of such services. ~~(3-30-06)(7-29-09)T~~

061. -- 089. (RESERVED).

090. BORROWERS UNABLE TO OBTAIN LOANS (RULE 90).

If, for any reason, a licensee ~~does not~~ or person required to be licensed under the Act fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the licensee or person required to be licensed under the Act shall ~~give~~ provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other ~~licensee or person exempt from licensure~~ person to whom the borrower directs that the documents be transmitted. The licensee or person required to be licensed under the Act shall provide ~~the~~ such copies or transmit ~~the~~ such documents within three (3) business days after the borrower makes the request in writing. ~~(3-30-06)(7-29-09)T~~

091. -- 099. (RESERVED).

100. LEGAL AUTHORITY IDAHO LEGISLATURE’S DETERMINATION AND THE DIRECTOR’S AUTHORITY (RULE 100).

In Section ~~26-3105(2), Idaho Code~~ 26-31-103(1) of the Act, 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 Idaho Residential Mortgage Practices Act, Chapter 31, Title 26, Idaho Code (the Act). In Section ~~26-3105(2)(b), Idaho Code~~ 26-31-103(2)(b) of the Act, the Idaho 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~~ 26-31-103(2)(b) of the Act. ~~(5-8-09)~~(7-29-09)T

101. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (RULE 101).

01. The Nationwide Mortgage Licensing System and Registry (NMLSR). The NMLSR 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 NMLSR 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, as well as the expenses associated with an applicant's or licensee's participation in the NMLSR; and provide the public with Internet-based access to information concerning ~~state-regulated~~ mortgage brokers, mortgage lenders, and mortgage loan originators. The NMLSR began accepting electronic filings of applications from ~~state-regulated~~ mortgage brokers, mortgage lenders, and mortgage loan originators from Idaho on January ~~21~~, 2008. ~~(5-8-09)~~(7-29-09)T

02. Reasonable Access to the NMLSR. All mortgage brokers, mortgage lenders, and mortgage loan originators with reasonable access to the NMLSR 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 NMLSR. Applicants for a license or licensees who wish to retain a license under the Act who lack reasonable access to the NMLSR via the Internet may, upon prior approval of the Director and good cause shown, be excused from participation in the NMLSR and may apply for a license or for license renewal through an alternative method designated by the Director. ~~(5-8-09)~~(7-29-09)T

03. Licensing. Mortgage brokers, mortgage lenders, and mortgage loan originators who seek to obtain or retain a license under the Act through the NMLSR must pay the charge imposed and retained by the NMLSR to fund the costs of the NMLSR associated with an applicant's or licensee's participation in the system. ~~(5-8-09)~~(7-29-09)T

04. Statutory Fees. The NMLSR shall collect any statutory fees on ~~the Department's~~ behalf ~~any~~ ~~statutory fees~~ of the Idaho Department of Finance that are required to be paid to the Idaho Department of Finance by license applicants and licensees pursuant to the Idaho Residential Mortgage Practices Act. The NMLSR is required to forward to the Idaho Department of Finance all statutory fees it collects on ~~the Department's~~ behalf of the Idaho Department of Finance, pursuant to the terms of a written agreement between the Idaho Department of Finance and the SRR. ~~(5-8-09)~~(7-29-09)T