

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 10

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT; AMENDING SECTION
2 26-31-102, IDAHO CODE, TO DEFINE TERMS, TO REVISE DEFINITIONS, TO
3 PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION;
4 AMENDING SECTION 26-31-103, IDAHO CODE, TO REQUIRE A BACKGROUND IN-
5 VESTIGATION FOR CERTAIN CONTROL PERSONS; AMENDING SECTION 26-31-201,
6 IDAHO CODE, TO FURTHER DEFINE A TERM AND TO MAKE TECHNICAL CORREC-
7 TIONS; AMENDING SECTION 26-31-202, IDAHO CODE, TO REVISE EXEMPTIONS
8 RELATING TO ATTORNEYS AND ACCOUNTANTS; AMENDING SECTION 26-31-204,
9 IDAHO CODE, TO REVISE THE MEMBERSHIP OF A VOLUNTEER ADVISORY BOARD;
10 AMENDING SECTION 26-31-206, IDAHO CODE, TO REVISE PROVISIONS, TO ES-
11 TABLISH ADDITIONAL PROVISIONS RELATING TO A LICENSE TO DO BUSINESS AS A
12 MORTGAGE BROKER OR MORTGAGE LENDER AND TO MAKE TECHNICAL CORRECTIONS;
13 AMENDING SECTION 26-31-207, IDAHO CODE, TO REVISE PROVISIONS AND TO
14 ESTABLISH ADDITIONAL PROVISIONS RELATING TO THE REVOCATION OR SUSPEN-
15 SION OF CERTAIN LICENSES; AMENDING SECTION 26-31-208, IDAHO CODE, TO
16 REVISE PROVISIONS AND TO ESTABLISH ADDITIONAL PROVISIONS RELATING TO
17 THE MAINTENANCE OF RECORDS AND THE RENEWAL AND REINSTATEMENT OF CERTAIN
18 LICENSES; AMENDING SECTION 26-31-209, IDAHO CODE, TO GRANT THE DIREC-
19 TOR OF THE DEPARTMENT OF FINANCE CERTAIN SUBPOENA AUTHORITY; AMENDING
20 SECTION 26-31-211, IDAHO CODE, TO ESTABLISH ADDITIONAL PROHIBITED
21 PRACTICES OF MORTGAGE BROKERS AND MORTGAGE LENDERS; REPEALING SECTION
22 26-31-212, IDAHO CODE, RELATING TO CONTINUING EDUCATION OF QUALIFIED
23 PERSONS IN CHARGE; AMENDING SECTION 26-31-301, IDAHO CODE, TO PROVIDE
24 A CORRECT CITATION; AMENDING SECTION 26-31-303, IDAHO CODE, TO DEFINE
25 A TERM, TO REVISE A DEFINITION AND TO PROVIDE A CORRECT CODE REFERENCE;
26 AMENDING SECTION 26-31-304, IDAHO CODE, TO REVISE REQUIREMENTS RE-
27 LATING TO LICENSE, REGISTRATION AND EXEMPTIONS AND TO PROVIDE CORRECT
28 CODE REFERENCES; AMENDING SECTION 26-31-305, IDAHO CODE, TO PROVIDE
29 CRITERIA ESTABLISHING WHEN A LICENSE APPLICATION SHALL BE DEEMED WITH-
30 DRAWN AND VOID; AMENDING SECTION 26-31-306, IDAHO CODE, TO REVISE A
31 SHORT TITLE, TO ESTABLISH ADDITIONAL REQUIREMENTS FOR THE ISSUANCE OF
32 A LICENSE, TO PROHIBIT THE ASSIGNMENT OR TRANSFER OF CERTAIN LICENSES,
33 TO ESTABLISH PROVISIONS RELATING TO AN INACTIVE LICENSE STATUS AND TO
34 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 26-31-308, IDAHO CODE, TO
35 REVISE PROVISIONS RELATING TO A CERTAIN QUALIFIED WRITTEN TEST; AMEND-
36 ING SECTION 26-31-309, IDAHO CODE, TO REVISE A SHORT TITLE, TO REVISE
37 LICENSE RENEWAL REQUIREMENTS AND TO ESTABLISH REQUIREMENTS RELATING
38 TO LICENSE REINSTATEMENT; AMENDING SECTION 26-31-310, IDAHO CODE, TO
39 PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 26-31-317, IDAHO
40 CODE, TO PROVIDE ADDITIONAL PROHIBITED ACTS AND PRACTICES; AND AMENDING
41 SECTION 26-31-320, IDAHO CODE, TO ESTABLISH ADDITIONAL PROVISIONS RE-
42 LATING TO UNIQUE IDENTIFIER DISCLOSURE.
43

44 Be It Enacted by the Legislature of the State of Idaho:

1 SECTION 1. That Section 26-31-102, Idaho Code, be, and the same is
2 hereby amended to read as follows:

3 26-31-102. GENERAL DEFINITIONS. As used in this chapter and in rules
4 promulgated pursuant to this chapter:

5 (1) "Borrower" means the person who has applied for a residential
6 mortgage loan from a licensee, or person required to be licensed, un-
7 der this chapter, or on whose behalf the activities set forth in section
8 26-31-201(3), (5) or (7), or section 26-31-303(~~67~~), Idaho Code, are con-
9 ducted.

10 (2) "Control person" means a person who:

11 (a) Is a person who has the power, directly or indirectly, to direct the
12 management or policies of a company, including a managing member, gen-
13 eral partner, director, executive officer or other person occupying a
14 similar position or performing similar functions, or in the case of a
15 limited liability company, is a managing member;

16 (b) Directly or indirectly has the right to vote ten percent (10%) or
17 more of a class of a voting security of a mortgage broker or mortgage
18 lender;

19 (c) Is a qualified person in charge as defined in section 26-31-201,
20 Idaho Code; or

21 (d) Is an individual identified as a manager of a location for which an
22 applicant is applying for a license under part 2 of this chapter.

23 (3) "Deficiency" means information contained in, or omitted from, an
24 application for a mortgage broker, mortgage lender or mortgage loan origina-
25 tor license that causes the application to be inaccurate, incomplete or oth-
26 erwise not in conformance with the provisions of this chapter, any rule pro-
27 mulgated or order issued under this chapter, application instructions pub-
28 lished by the director or the provisions of the NMLSR policy guidebook.

29 (24) "Department" means the department of finance of the state of
30 Idaho.

31 (35) "Director" means the director of the department of finance.

32 (6) "Financial services" means any activity pertaining to securities,
33 commodities, banking, insurance, consumer lending, money services busi-
34 nesses, consumer debt management or real estate including, but not limited
35 to, acting as or being associated with a bank or savings association, credit
36 union, farm credit system institution, mortgage lender, mortgage broker,
37 real estate salesperson or agent, appraiser, closing agent, title company,
38 escrow agent, payday lender, money transmitter, check casher, pawnbroker,
39 collection agent, debt management company, title lender or credit repair
40 organization.

41 (7) "Housing finance agency" means any entity that is:

42 (a) Chartered by a state to help meet the affordable housing needs of
43 the residents of the state;

44 (b) Supervised directly or indirectly by the state government; and

45 (c) Subject to audit and review by the state in which it operates.

46 (48) "Licensee" means a person licensed pursuant to this chapter to en-
47 gage in the activities regulated by this chapter.

48 (59) "Nationwide mortgage licensing system and registry" or "NMLSR"
49 means a mortgage licensing system developed and maintained by the confer-

1 ence of state bank supervisors and the American association of residential
2 mortgage regulators for the licensing and registration of mortgage brokers,
3 mortgage lenders and mortgage loan originators.

4 (10) "NMLSR policy guidebook" means the conference of state bank super-
5 visor's and the American association of residential mortgage regulator's
6 NMLSR policy guidebook for licensees, published by the NMLSR, as identified
7 by administrative rule.

8 ~~(611)~~ "Person" means a natural person, corporation, company, limited
9 liability company, partnership or association.

10 ~~(712)~~ "Real estate settlement procedures act" means the act set forth in
11 12 U.S.C. section 2601 et seq., as identified by administrative rule.

12 ~~(813)~~ "Regulation X" means regulation X as ~~promulgated~~ issued by the
13 ~~U.S. department of housing and urban development~~ federal bureau of consumer
14 protection and codified in ~~24 at 12 CFR part 3500~~ 1024 et seq., as identified
15 by administrative rule.

16 ~~(914)~~ "Regulation Z" means regulation Z as ~~promulgated~~ issued by the
17 ~~board of governors of the federal reserve system~~ federal bureau of consumer
18 protection and codified in ~~at 12 CFR part 226~~ 1026 et seq., as identified by
19 administrative rule.

20 ~~(105)~~ "Residential mortgage loan" means any loan that is secured by a
21 mortgage, deed of trust, or other equivalent consensual security interest on
22 a dwelling, as defined in section 103(v) of the truth in lending act, located
23 in Idaho, or on residential real estate.

24 ~~(146)~~ "Residential real estate" means any real property located in
25 Idaho, upon which is constructed or intended to be constructed a dwelling as
26 defined in section 103(v) of the truth in lending act.

27 ~~(127)~~ "Truth in lending act" means the act set forth in 15 U.S.C. section
28 1601 et seq., as identified by administrative rule.

29 ~~(138)~~ "Unique identifier" means a number or other identifier assigned
30 by protocols established by the NMLSR.

31 SECTION 2. That Section 26-31-103, Idaho Code, be, and the same is
32 hereby amended to read as follows:

33 26-31-103. DIRECTOR'S AUTHORITY UNDER THE NATIONWIDE MORTGAGE LI-
34 CENSING SYSTEM AND REGISTRY. (1) The legislature has determined that a
35 nationwide mortgage licensing system and registry for mortgage brokers,
36 mortgage lenders and mortgage loan originators is consistent with both the
37 public interest and the purposes of this chapter.

38 (2) For the sole purpose of participating in the nationwide mortgage
39 licensing system and registry, the director is authorized to:

40 (a) Modify by rule the license renewal dates under this chapter;

41 (b) Establish by rule such new requirements as are necessary for the
42 state of Idaho to participate in the nationwide mortgage licensing sys-
43 tem and registry upon the director's finding that each new requirement
44 is consistent with both the public interest and the purposes of this
45 chapter; and

46 (c) Require a background investigation of each applicant and each con-
47 trol person of an applicant for a mortgage broker, mortgage lender or
48 mortgage loan originator license by means of fingerprint checks by the
49 Idaho state police and the FBI for state and national criminal history

1 record checks. The information obtained thereby may be used by the
 2 director to determine the applicant's eligibility for licensing under
 3 this chapter. The fee required to perform the criminal history record
 4 check shall be borne by the license applicant. Information obtained or
 5 held by the director pursuant to this subsection shall be considered
 6 confidential personal information and shall be exempt from disclosure
 7 pursuant to section 9-340C(8) and (9), Idaho Code.

8 SECTION 3. That Section 26-31-201, Idaho Code, be, and the same is
 9 hereby amended to read as follows:

10 26-31-201. DEFINITIONS. As used in this part and in rules promulgated
 11 pursuant to this chapter and pertinent to this part:

12 (1) "Agent" means a person who acts with the consent and on behalf of a
 13 licensee and is subject to the licensee's direct or indirect control, and may
 14 include an independent contractor.

15 (2) "Loan modification" means an adjustment or compromise of an exist-
 16 ing residential mortgage loan. The term "loan modification" does not in-
 17 clude a refinancing transaction.

18 (3) "Loan modification activities" means for compensation or gain, or
 19 in the expectation of compensation or gain, engaging in or offering to engage
 20 in effecting loan modifications in this state. The definition of "debt coun-
 21 selor" or "credit counselor" in section 26-2222(9), Idaho Code, shall not
 22 apply to loan modification activities.

23 (4) "Mortgage broker" means any nonexempt organization that performs
 24 the activities described in subsection (5) of this section, with respect to a
 25 residential mortgage loan.

26 (5) "Mortgage brokering activities" means for compensation or gain, or
 27 in the expectation of compensation or gain, either directly or indirectly,
 28 accepting or offering to accept an application for a residential mortgage
 29 loan, assisting or offering to assist in the preparation of an application
 30 for a residential mortgage loan on behalf of a borrower, negotiating or of-
 31 fering to negotiate the terms or conditions of a residential mortgage loan
 32 with any person making residential mortgage loans or engaging in loan modi-
 33 fication activities on behalf of a borrower.

34 (6) "Mortgage lender" means any nonexempt organization that makes res-
 35 idential mortgage loans to borrowers and performs the activities described
 36 in subsection (7) of this section.

37 (7) "Mortgage lending activities" means for compensation or gain, or in
 38 the expectation of compensation or gain, either directly or indirectly, ac-
 39 cepting or offering to accept applications for residential mortgage loans,
 40 or assisting or offering to assist in the preparation of an application for a
 41 residential mortgage loan.

42 (8) "Organization" means a person that is not a natural person.

43 (9) "Qualified person in charge" means the person designated, pursuant
 44 to section 26-31-206, Idaho Code, as being in charge of, and primarily re-
 45 sponsible for, the operation of a licensed location of a mortgage broker or
 46 mortgage lender licensed under this part.

47 SECTION 4. That Section 26-31-202, Idaho Code, be, and the same is
 48 hereby amended to read as follows:

1 26-31-202. EXEMPTIONS. The provisions of this part do not apply to:

2 (1) Agencies of the United States and agencies of this state and its po-
3 litical subdivisions;

4 (2) An owner of real property who offers credit secured by a contract of
5 sale, mortgage or deed of trust on the property sold;

6 (3) A loan that is made by a person to an employee of that person if the
7 proceeds of the loan are used to assist the employee in meeting his housing
8 needs;

9 (4) Regulated lenders licensed under the Idaho credit code and regu-
10 larly engaged in making regulated consumer loans other than those secured by
11 a security interest in real property;

12 (5) Trust companies as defined in section 26-3203, Idaho Code;

13 (6) Any person licensed or chartered under the laws of any state or of
14 the United States as a bank, savings and loan association, credit union or
15 industrial loan company. The terms "bank," "savings and loan association,"
16 "credit union" and "industrial loan company" shall include employees and
17 agents of such organizations as well as wholly owned subsidiaries of such
18 organizations, provided that the subsidiary is regularly examined by the
19 chartering state or federal agency for consumer compliance purposes;

20 (7) Attorneys, or persons duly authorized to practice in this state, to
21 the extent that they are retained by their clients to engage in activities
22 authorized by this part and such activities are ancillary to the attorney's
23 representation of the client;

24 (8) Accountants with an active license licensed under chapter 2, title 54,
25 Idaho Code, provided that the license held by such attorneys or persons is in
26 an active status they are retained by their clients to engage in activities
27 authorized by this part and such activities are ancillary to the representa-
28 tion of the client;

29 (89) Persons employed by, or who contract with, a licensee under this
30 part to perform only clerical or administrative functions on behalf of such
31 licensee, and who do not solicit borrowers or negotiate the terms of loans on
32 behalf of the licensee;

33 (910) Any person not making more than five (5) loans primarily for per-
34 sonal, family or household use and primarily secured by a security interest
35 on residential real property, with his own funds for his own investment, in
36 any period of twelve (12) consecutive months; nor

37 (101) Any person who funds a residential mortgage loan which has been
38 originated and processed by a licensee under this part or by an exempt per-
39 son under this part, who does not directly or indirectly solicit borrowers
40 in this state for the purpose of making residential mortgage loans, and who
41 does not participate in the negotiation of residential mortgage loans with
42 the borrower. For the purpose of this subsection, "negotiation of residen-
43 tial mortgage loans" does not include setting the terms under which a person
44 may buy or fund a residential mortgage loan originated by a licensee under
45 this part or an exempt person under this part.

46 SECTION 5. That Section 26-31-204, Idaho Code, be, and the same is
47 hereby amended to read as follows:

48 26-31-204. POWERS AND DUTIES OF DIRECTOR. In addition to any other du-
49 ties imposed upon the director by law, the director shall:

1 (1) Administer and enforce the provisions and requirements of this
2 part;

3 (2) Conduct investigations and issue subpoenas as necessary to deter-
4 mine whether a person has violated any provision of this part or rules pro-
5 mulgated pursuant to this chapter and pertinent to this part;

6 (3) Conduct examinations of the books and records of mortgage broker
7 and mortgage lender licensees and conduct investigations as necessary and
8 proper for the enforcement of the provisions of this part and the rules pro-
9 mulgated pursuant to this chapter and pertinent to this part;

10 (4) Appoint a volunteer advisory board ~~which shall consist of up to five~~
11 (5) individual mortgage industry participants who are licensed or regis-
12 tered through the NMLSR, no less than two (2) individuals who of whom repre-
13 sent licensed mortgage lenders brokers and no less than two (2) individuals
14 who of whom represent licensed mortgage brokers lenders;

15 (5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and pro-
16 mulgate rules that, in the opinion of the director, are necessary to execute,
17 enforce and effectuate the purposes of this part;

18 (6) Be authorized to set, by annual written notification to mortgage
19 broker and mortgage lender licensees, limits on the fees and charges which
20 are set forth in subsections (1) and (2) of section 26-31-210, Idaho Code;
21 and

22 (7) Review and approve forms used by mortgage broker and mortgage
23 lender licensees prior to their use as prescribed by the director.

24 SECTION 6. That Section 26-31-206, Idaho Code, be, and the same is
25 hereby amended to read as follows:

26 26-31-206. LICENSE TO DO BUSINESS AS A MORTGAGE BROKER OR MORTGAGE
27 LENDER. (1) The director shall receive and act on all applications for li-
28 censes to do business as a mortgage broker or mortgage lender. Applications
29 shall be filed through the NMLSR, or as otherwise prescribed by the director,
30 shall contain such information as the director may reasonably require, shall
31 be updated through the NMLSR, or as otherwise prescribed by the director,
32 as necessary to keep the information current, and shall be accompanied by a
33 nonrefundable application fee of three hundred fifty dollars (\$350).

34 (2) An application for license may be denied if the director finds that:

35 (a) The financial responsibility, character and fitness of the license
36 applicant, or of the officers and directors thereof, if the applicant is
37 a corporation, partners thereof if the applicant is a partnership, mem-
38 bers or managers thereof if the applicant is a limited liability company
39 and individuals designated in charge of the applicant's places of busi-
40 ness, or other control persons, are not such as to warrant belief that
41 the business will be operated honestly and fairly within the purposes of
42 this part;

43 (b) The qualified person in charge of the applicant's places of busi-
44 ness has not been issued a license under part 3 of this chapter or does
45 not have a minimum of three (3) years' experience in residential mort-
46 gage brokering or mortgage lending;

47 (c) The applicant or any control person of the applicant has been con-
48 victed of or pled nolo contendere to any felony, or has been convicted of
49 or pled nolo contendere to a misdemeanor involving any aspect of the fi-

1 nancial services ~~business~~, or a court has accepted a finding of guilt on
 2 the part of the applicant or any control person of the applicant of any
 3 felony, or of a misdemeanor involving any aspect of ~~the~~ financial ser-
 4 vices ~~business~~, fraud, false statement or omission, any theft or wrong-
 5 ful taking of property, bribery, perjury, forgery, counterfeiting, ex-
 6 tortion or conspiracy to commit any of these offenses;

7 (d) The applicant or any control person of the applicant has had a li-
 8 cense, ~~substantially equivalent to a license under this part and issued~~
 9 ~~by any state, denied, to conduct financial services issued by a govern-~~
 10 ~~ment agency revoked or suspended under the laws of such state enforced~~
 11 ~~by such agency;~~

12 (e) The applicant or any control person of the applicant has filed an
 13 application for a license which is false or misleading with respect to
 14 any material fact;

15 (f) The applicant or any partner, officer, director, manager, member,
 16 employee, or agent or other control person of the applicant has violated
 17 this chapter or any rule promulgated or order issued under this chapter
 18 and pertinent to this part;

19 (g) The applicant or any partner, officer, director, manager, member,
 20 employee, or agent or other control person of the applicant has violated
 21 any state or federal law, rule or regulation pertaining to ~~the~~ financial
 22 services ~~industry~~; or

23 (h) The applicant or any control person of the applicant has not pro-
 24 vided information on the application as reasonably required by the di-
 25 rector pursuant to subsection (1) of this section, or has provided mate-
 26 rially false information.

27 (3) The director is empowered to conduct investigations as he may deem
 28 necessary, to enable him to determine the existence of the requirements set
 29 out in subsection (2) of this section.

30 (4) Upon written request to the director, an applicant is entitled to a
 31 hearing on the question of his qualifications for a license if:

32 (a) The director has notified the applicant in writing that his appli-
 33 cation has been denied;

34 (b) The director has not issued a license within sixty (60) days af-
 35 ter ~~the~~ receipt of a complete license application for the license was
 36 filed from an applicant. If a hearing is held, the applicant shall re-
 37 imburse, pro rata, the director for his reasonable and necessary ex-
 38 penses incurred as a result of the hearing. A request for hearing may
 39 not be made more than fifteen (15) days after the director has mailed a
 40 writing to the applicant notifying him that the application has been de-
 41 nied and stating in substance the director's finding supporting denial
 42 of the application.

43 (5) A license application shall be deemed withdrawn and void if an ap-
 44 plicant submits an incomplete license application and, after receipt of a
 45 written notice of the application deficiency, fails to provide the direc-
 46 tor with information necessary to complete the application within sixty (60)
 47 days of receipt of the deficiency notice. A written deficiency notice shall
 48 be deemed received by a license applicant when:

49 (a) Placed in regular U.S. mail by the director or his agent using an
 50 address provided by the applicant on the license application; or

1 **(b)** E-mailed to the applicant using an e-mail address provided by the
 2 applicant on the license application; or

3 **(c)** Posted by the director or his agent on the NMLSR.

4 **(6)** Every licensee under this part shall maintain a home office located
 5 in the United States and licensed under this part as the licensee's principal
 6 location for the transaction of mortgage business. The director may, on
 7 application through the NMLSR, or as otherwise prescribed by the director,
 8 issue additional branch licenses to the same licensee upon compliance with
 9 all the provisions of this part governing the issuance of a single license.
 10 A separate license shall be required for each place of business from which
 11 mortgage brokering activities or mortgage lending activities are directly
 12 or indirectly conducted. The individual qualified person in charge of each
 13 place of business shall continuously satisfy the requirements of subsec-
 14 tions (2) (b), (c) and (d) of this section. Each license under this part shall
 15 remain in full force and effect unless the licensee does not satisfy the
 16 renewal requirements of section 26-31-208(3), Idaho Code, or the license is
 17 relinquished, suspended or revoked; provided however, branch licenses shall
 18 terminate upon the relinquishment or revocation of a home office license.

19 **(67)** No licensee under this part shall change the location of any place
 20 of business, consolidate two (2) or more locations or close any home office
 21 location without giving the director at least fifteen (15) days' prior writ-
 22 ten notice. A licensee under this part shall give written notice to the di-
 23 rector within three (3) business days of the closure of any branch location
 24 licensed under this part. Written notice of the closure of a home or branch
 25 office location shall include a detailed explanation of the disposition of
 26 all loan applications pending at the time of closure of the licensed loca-
 27 tion.

28 **(78)** No licensee under this part shall engage in the business of making
 29 or brokering residential mortgage loans at any place of business for which he
 30 does not hold a license nor shall he engage in business under any other name
 31 than that on the license.

32 **(89)** The director may suspend action upon a mortgage broker or mort-
 33 gage lender license application pending resolution of any criminal charges
 34 before any court of competent jurisdiction against an applicant which could
 35 disqualify that applicant if convicted.

36 **(910)** The director may suspend action upon a mortgage broker or mortgage
 37 lender license application pending resolution of any civil action or admin-
 38 istrative proceeding against an applicant in which the civil action or ad-
 39 ministrative proceeding involves any aspect of a financial service business
 40 and the outcome of which could disqualify the applicant.

41 **(101)** A license applicant under this part shall make complete disclo-
 42 sure of all information required in the license application, including in-
 43 formation concerning officers, directors, partners, members, managers, em-
 44 ployees or agents. A license applicant, or person acting on behalf of the ap-
 45 plicant, is not liable in any civil action other than a civil action brought
 46 by a governmental agency, related to an alleged untrue statement made pur-
 47 suant to this part, unless it is shown by clear and convincing evidence that:

48 **(a)** The license applicant, or person acting on behalf of the license ap-
 49 plicant, knew at the time that the statement was made that it was false
 50 in any material respect; or

1 (b) The license applicant, or person acting on behalf of the applicant,
2 acted in reckless disregard as to the statement's truth or falsity.

3 ~~(11) Each mortgage broker or mortgage lender licensed under this part~~
4 ~~shall display in plain view the certificate of licensure issued by the de-~~
5 ~~partment in its principal office and in each branch office.~~

6 (12) Notwithstanding any other provision of this part, an individual
7 licensed under part 3 of this chapter may apply for a license under this sec-
8 tion.

9 SECTION 7. That Section 26-31-207, Idaho Code, be, and the same is
10 hereby amended to read as follows:

11 26-31-207. REVOCATION OR SUSPENSION OF LICENSE. (1) If the department
12 has reason to believe that grounds exist for revocation or suspension of a
13 license issued pursuant to this part, the department may initiate a con-
14 tested case against a mortgage broker or mortgage lender, and any partner,
15 officer, director, manager, member, control person, employee or agent whose
16 activities constitute the basis for revocation or suspension, in accordance
17 with chapter 52, title 67, Idaho Code. The director may, after proceedings
18 pursuant to chapter 52, title 67, Idaho Code, suspend the license for a pe-
19 riod not to exceed six (6) months, or revoke the license, if he finds that:

20 (a) The licensee or any partner, officer, director, manager, member,
21 control person, employee or agent of the licensee has violated this
22 chapter or any rule promulgated or order issued under this chapter and
23 pertinent to this part; or

24 (b) The licensee or any partner, officer, director, manager, member,
25 control person, employee or agent of the licensee has violated any state
26 or federal law, rule or regulation pertaining to mortgage brokering,
27 mortgage lending, or mortgage loan origination activities; or

28 (c) Facts or conditions exist which would clearly have justified the
29 director in refusing to grant a license had these facts or conditions
30 been known to exist at the time the license was issued; or

31 (d) The licensee or any partner, officer, director, manager, member,
32 control person, employee or agent of the licensee has been convicted of
33 any felony, or of a misdemeanor involving any aspect of ~~the~~ financial
34 services ~~business~~, or a court has accepted a finding of guilt on the part
35 of the licensee or partner, officer, director, manager, member, control
36 person, employee or agent of the licensee, of any felony, or of a misde-
37 meanor involving any aspect of ~~the~~ financial services ~~business~~; or

38 (e) The licensee or any partner, officer, director, manager, member,
39 control person, employee or agent of the licensee has had a license to
40 conduct financial services, including a license substantially equiva-
41 lent to a license under this act, and issued by another state, denied,
42 revoked or suspended under the laws of such state by any government
43 agency; or

44 (f) The licensee has filed an application for a license which as of the
45 date the license was issued, or as of the date of an order denying, sus-
46 pending or revoking a license, was incomplete in any material respect
47 or contained any statement that was, in light of the circumstances un-
48 der which it was made, false or misleading with respect to any material
49 fact; or

1 (g) The mortgage broker or mortgage lender licensee has failed to no-
 2 tify the director of the employment or termination of, or the entering
 3 into or termination of a contractual relationship with, a licensed
 4 mortgage loan originator pursuant to section 26-31-208(2), Idaho Code;
 5 or

6 (h) The mortgage broker or mortgage lender licensee has failed to su-
 7 pervise diligently and control the mortgage-related activities of a
 8 mortgage loan originator as defined in part 3 of this chapter and that is
 9 employed by the licensee; or

10 (i) The mortgage broker or mortgage lender licensee has failed to des-
 11 ignate a new qualified person in charge and notify the director of the
 12 same through the NMLSR within thirty (30) days following a change in the
 13 qualified person in charge; or

14 (j) The licensee has failed to notify the director of the appointment
 15 or employment of a control person within thirty (30) days of such occur-
 16 rence.

17 (2) If the director finds that good cause exists for revocation of a li-
 18 cense issued under this part, and that enforcement of this chapter and the
 19 public interest require immediate suspension of the license pending inves-
 20 tigation, he may, after a hearing upon five (5) days' written notice, enter
 21 an order suspending the license for not more than thirty (30) days.

22 (3) Any mortgage broker or mortgage lender licensee may relinquish its
 23 license by notifying the department in writing of its relinquishment, but
 24 this relinquishment shall not affect its liability for acts previously com-
 25 mitted, and may not occur after the filing of a complaint for revocation of
 26 the license.

27 (4) The director may, in his discretion, reinstate a license issued un-
 28 der this part, terminate a suspension or grant a new license under this part
 29 to a person whose license issued under this part has been revoked or sus-
 30 pended, if no fact or condition then exists which clearly would justify the
 31 department in refusing to grant a license.

32 SECTION 8. That Section 26-31-208, Idaho Code, be, and the same is
 33 hereby amended to read as follows:

34 26-31-208. RECORDS -- ~~ANNUAL~~ REPORTS -- RENEWAL AND REINSTATEMENT OF
 35 LICENSE. (1) Every licensee under this part shall maintain records in the
 36 United States, including financial records in conformity with generally
 37 accepted accounting principles, in a manner that will enable the director
 38 to determine whether the licensee is complying with the provisions of this
 39 part. The recordkeeping system of the licensee shall be sufficient if it
 40 makes the required information reasonably available to the director. The
 41 records need not be kept in the place of business where residential mortgage
 42 loans are made, if the director is given free access to the records wherever
 43 located. The records pertaining to any loan need not be preserved for more
 44 than three (3) years after making the final entry relating to the loan.

45 (2) Every mortgage broker or mortgage lender licensed under this part
 46 that employs or contracts with a mortgage loan originator licensed under
 47 part 3 of this chapter, for the purpose of conducting mortgage loan origina-
 48 tion activities in Idaho, shall:

1 (a) Notify the director through the NMLSR, or as otherwise prescribed
 2 by the director, of the employment of, or contractual relationship
 3 with, a mortgage loan originator licensee within thirty (30) days of
 4 such employment or contract;

5 (b) Notify the director through the NMLSR, or as otherwise prescribed
 6 by the director, of the termination of employment of, or contractual re-
 7 lationship with, a mortgage loan originator licensee within thirty (30)
 8 days of such termination; and

9 (c) Maintain any records relating to the employment of, or contractual
 10 relationship with, a mortgage loan originator licensee, for a period
 11 not to exceed three (3) years.

12 (3) On or before December 31 of each year, every mortgage broker and
 13 mortgage lender licensee under this part shall pay through the NMLSR, or
 14 as otherwise prescribed by the director, ~~a~~ nonrefundable annual license
 15 renewal fee of one hundred fifty dollars (\$150), and file with the director
 16 through the NMLSR, or as otherwise prescribed by the director, a renewal
 17 ~~form~~ application containing such information as the director may require.
 18 Notwithstanding the provisions of section 67-5254, Idaho Code, a license
 19 issued under this part automatically expires if not timely renewed according
 20 to the requirements of this section. Notwithstanding the provisions of sec-
 21 tion 67-5254, Idaho Code, branch licenses issued under this part also expire
 22 upon the expiration, relinquishment or revocation of a license issued under
 23 this part to a licensee's designated home office.

24 (4) ~~On or before March 31 of each year, or other date established by the~~
 25 ~~director by rule, every mortgage broker and mortgage lender licensee under~~
 26 ~~this part shall file with the director a composite annual report containing~~
 27 ~~such information as the director may require for the residential mortgage~~
 28 ~~loans made or brokered by it for the preceding calendar year. The director~~
 29 ~~may reinstate an expired license during the time period of January 1 through~~
 30 ~~February 28, immediately following license expiration if the director finds~~
 31 ~~that the applicant meets the requirements for licensure under this part af-~~
 32 ~~ter submission to the director of:~~

33 (a) A complete application for renewal;

34 (b) The fees required to apply for license renewal unless previously
 35 paid for the period for which the license renewal applies; and

36 (c) A reinstatement fee of two hundred dollars (\$200).

37 (5) Within forty-five (45) days of the end of each calendar quarter,
 38 ~~e~~Each mortgage broker and mortgage lender licensee under this part shall,
 39 ~~as required by the NMLSR, submit to quarterly mortgage call reports through~~
 40 ~~the NMLSR reports of condition, which shall be in such form and shall contain~~
 41 ~~such information as the NMLSR director may require.~~

42 (6) Within forty-five (45) days of the end of each calendar year, each
 43 mortgage broker and mortgage lender licensee under this part shall submit
 44 an annual report of financial condition through the NMLSR, which shall be in
 45 such form and shall contain such information as the director may require.

46 SECTION 9. That Section 26-31-209, Idaho Code, be, and the same is
 47 hereby amended to read as follows:

48 26-31-209. EXAMINATION AND INVESTIGATIONS. (1) The director shall ex-
 49 amine periodically at intervals he deems appropriate, the loans and business

1 records of each licensee under this part. In addition, for the purpose of
 2 discovering violations of the provisions of this part or securing informa-
 3 tion lawfully required pursuant to this part, the director may at any time
 4 investigate the loans, business, books and records of any such licensee. For
 5 these purposes, the director shall have free and reasonable access to the of-
 6 fices, places of business and books and records of the licensee. The direc-
 7 tor, for purposes of examination of licensees under this part, shall be paid
 8 the actual cost of examination by such licensee within thirty (30) days of
 9 the completion of the examination.

10 (2) If the records of a licensee under this part are located outside of
 11 this state, the licensee shall have the option to make such records available
 12 to the director at a convenient location within this state, or pay the rea-
 13 sonable and necessary expenses for the director or his representative to ex-
 14 amine such records at the place where they are maintained. The director may
 15 designate representatives, including comparable officials of the state in
 16 which the records are located, to inspect such records on his behalf.

17 (3) For the purposes of this section, the director may administer oaths
 18 or affirmations, and upon his own motion or upon request of any party, may
 19 subpoena witnesses, compel their attendance, adduce evidence and require
 20 the production of any matter which is relevant to the investigation, includ-
 21 ing the existence, description, nature, custody, condition, and location of
 22 any books, documents, or other tangible things and the identity and location
 23 of persons having knowledge of relevant facts, or any other matter reason-
 24 ably calculated to lead to the discovery of admissible evidence.

25 (4) If the director has a reasonable basis to believe that an unlicensed
 26 person is engaging in activities for which a license is required under this
 27 part, then the director may subpoena the person or any employee, member, of-
 28 ficer, representative or agent that has possession, custody or care of the
 29 books and records of the person to compel their attendance, adduce evidence
 30 and require the production of any matter that is relevant to the investiga-
 31 tion, including the existence, description, nature, custody, condition and
 32 location of any books, documents or other tangible things and the identity
 33 and location of persons having knowledge of relevant facts or any other mat-
 34 ter reasonably calculated to lead to the discovery of admissible evidence.

35 (5) Upon failure to obey a subpoena or to give testimony and upon rea-
 36 sonable notice to all persons affected thereby, the director may apply to the
 37 district court for an order compelling compliance.

38 SECTION 10. That Section 26-31-211, Idaho Code, be, and the same is
 39 hereby amended to read as follows:

40 26-31-211. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE
 41 LENDERS. No mortgage broker or mortgage lender licensee under this part or
 42 person required under this part to have such license shall:

43 (1) Obtain any exclusive dealing or exclusive agency agreement from any
 44 borrower;

45 (2) Delay closing of any residential mortgage loan for the purpose of
 46 increasing interest, costs, fees or charges payable by the borrower;

47 (3) Accept any fees at closing which were not previously disclosed
 48 fully to the borrower;

1 (4) Obtain any agreement or instrument in which blanks are left to be
2 filled in after signing by a borrower;

3 (5) Engage in any misrepresentation or omission of a material fact in
4 connection with a residential mortgage loan;

5 (6) Make payment, whether directly or indirectly, of any kind to any
6 in-house or fee appraiser for the purpose of influencing the independent
7 judgment of the appraiser with respect to the value of any residential real
8 property which is to be covered by a residential mortgage loan;

9 (7) Make any false promise likely to influence or persuade, or pursue a
10 course of misrepresentations and false promises through mortgage loan origi-
11 nators or other agents, or through advertising or otherwise;

12 (8) Misrepresent, circumvent or conceal, through whatever subterfuge
13 or device, any of the material terms of a residential mortgage loan transac-
14 tion;

15 (9) Enter into any agreement, with or without the payment of a fee, to
16 fix in advance a particular interest rate or other term in a residential
17 mortgage loan unless written confirmation of the agreement is delivered to
18 the borrower as required by rule promulgated pursuant to this chapter and
19 pertinent to this part;

20 (10) Engage in mortgage loan origination activity through any person
21 who at the time of such mortgage loan origination activity does not hold a
22 mortgage loan originator license issued by the department pursuant to this
23 chapter; ~~nor~~

24 (11) Receive a fee for engaging in loan modification activities except
25 pursuant to a written agreement between the person subject to this part and a
26 person seeking a loan modification. The written agreement must specify the
27 amount of the fee that will be charged to the person seeking a loan modifica-
28 tion, specify the terms of the loan for which modification will be sought and
29 disclose the expected impact of the loan modification on the monthly payment
30 and length of the loan; ~~nor~~

31 (12) Employ or otherwise appoint as a qualified person in charge any
32 person who the director has found to have violated standards of conduct
33 adopted by the NMLSR applicable to a person taking a written test admin-
34 istered pursuant to section 26-31-308, Idaho Code, or who has obtained
35 or attempted to obtain credit for education required pursuant to section
36 26-31-307 or 26-31-310, Idaho Code, by means of false pretenses or represen-
37 tations.

38 SECTION 11. That Section [26-31-212](#), Idaho Code, be, and the same is
39 hereby repealed.

40 SECTION 12. That Section 26-31-301, Idaho Code, be, and the same is
41 hereby amended to read as follows:

42 26-31-301. TITLE. This part 3 of the chapter may be cited as the "Idaho
43 Secure and Fair Enforcement for Mortgage Licensing Act ~~of 2009~~" or the "Idaho
44 S.A.F.E. Mortgage Licensing Act ~~of 2009~~."

45 SECTION 13. That Section 26-31-303, Idaho Code, be, and the same is
46 hereby amended to read as follows:

1 26-31-303. DEFINITIONS. For purposes of this part, the following def-
2 initions shall apply:

3 (1) "Depository institution" has the same meaning as in section 3 of the
4 federal deposit insurance act, and includes any credit union.

5 (2) "Expungement" means, with respect to a record of criminal convic-
6 tion entered in this state, that no one, including law enforcement, can be
7 permitted access to the record even by court order. With respect to criminal
8 convictions entered in another state, that state's definition of expunge-
9 ment shall apply.

10 (3) "Federal banking agency" means the board of governors of the fed-
11 eral reserve system, the comptroller of the currency, the director of the of-
12 fice of thrift supervision, the national credit union administration and the
13 federal deposit insurance corporation.

14 (34) "Immediate family member" means a spouse, child, sibling, parent,
15 grandparent or grandchild, and includes stepparents, stepchildren, stepsi-
16 blings and adoptive relationships.

17 (45) "Individual" means a natural person.

18 (56) "Loan processor or underwriter" means an individual who performs
19 clerical or support duties as an employee at the direction of and subject to
20 the supervision and instruction of a person licensed, or exempt from licens-
21 ing under this chapter.

22 (a) For the purposes of this subsection clerical or support duties may
23 include, subsequent to the receipt of an application:

24 (i) The receipt, collection, distribution and analysis of infor-
25 mation common for the processing or underwriting of a residential
26 mortgage loan; and

27 (ii) Communicating with a consumer to obtain the information nec-
28 essary for the processing or underwriting of a loan, to the ex-
29 tent that such communication does not include offering or negoti-
30 ating loan rates or terms or counseling consumers about residen-
31 tial mortgage loan rates or terms.

32 (b) An individual engaging solely in loan processor or underwriter
33 activities shall not represent to the public, through advertising or
34 other means of communicating or providing information, including the
35 use of business cards, stationery, brochures, signs, rate lists or
36 other promotional items, that such individual can or will perform any of
37 the activities of a mortgage loan originator.

38 (67) "Mortgage loan originator" means an individual who for compensa-
39 tion or gain or in the expectation of compensation or gain takes a residen-
40 tial mortgage loan application, or offers or negotiates terms of a residen-
41 tial mortgage loan.

42 (a) Mortgage loan originator does not mean the following:

43 (i) An individual engaged solely as a loan processor or under-
44 writer except as otherwise provided in section 26-31-304(43),
45 Idaho Code;

46 (ii) A person or entity that only performs real estate brokerage
47 activity and is licensed or registered in accordance with Idaho
48 law, unless the person or entity is compensated by a lender, a
49 mortgage broker or other mortgage loan originator, or by any agent
50 of such lender, mortgage broker or other mortgage loan originator;

1 (iii) A person or entity solely involved in extensions of credit
 2 relating to timeshare plans, as that term is defined in 11 U.S.C.
 3 section 101(53D); and

4 ~~(iv) A person that only performs the activities of a manufactured~~
 5 ~~housing resale broker, responsible managing employee, retailer or~~
 6 ~~salesman as defined in and licensed under chapter 21, title 44,~~
 7 ~~Idaho Code, unless the person is compensated by a lender, a mort-~~
 8 ~~gage broker or other mortgage loan originator, or by any agent of~~
 9 ~~such lender, mortgage broker or other mortgage loan originator.~~
 10 This subparagraph shall not apply if the United States department
 11 of housing and urban development finds, through guideline, rule,
 12 regulation or interpretive letter, that it is inconsistent with
 13 the requirements of P.L. 110-289, title V An individual who is an
 14 employee of a federal, state or local government agency or housing
 15 finance agency and who acts as a loan originator only pursuant to
 16 his or her official duties as an employee of the federal, state or
 17 local government agency or housing finance agency.

18 (b) For the purposes of this section, "real estate brokerage activity"
 19 means any activity that involves offering or providing real estate bro-
 20 kerage services to the public, including:

21 (i) Acting as a real estate agent or real estate broker for a
 22 buyer, seller, lessor or lessee of real property;

23 (ii) Bringing together parties interested in the sale, purchase,
 24 lease, rental or exchange of real property;

25 (iii) Negotiating, on behalf of any party, any portion of a con-
 26 tract relating to the sale, purchase, lease, rental or exchange of
 27 real property, other than in connection with providing financing
 28 with respect to any such transaction;

29 (iv) Engaging in any activity for which a person is required to be
 30 registered or licensed as a real estate agent or real estate broker
 31 under law; and

32 (v) Offering to engage in any activity, or act in any capacity,
 33 described in subparagraphs (i) through (iv) of this paragraph.

34 (78) "Nontraditional mortgage product" means any mortgage product
 35 other than a thirty (30) year fixed rate mortgage.

36 (89) "Registered mortgage loan originator" means any individual who is
 37 registered with, and maintains a unique identifier through the NMLSR, who
 38 meets the definition of mortgage loan originator and who is an employee of
 39 one (1) of the following:

40 (a) A depository institution;

41 (b) A subsidiary that is owned and controlled by a depository institu-
 42 tion and regulated by a federal banking agency; or

43 (c) An institution regulated by the farm credit administration.

44 SECTION 14. That Section 26-31-304, Idaho Code, be, and the same is
 45 hereby amended to read as follows:

46 26-31-304. LICENSE AND REGISTRATION REQUIRED -- EXEMPTIONS. (1)
 47 Unless specifically exempt under subsection (32) of this section, an indi-
 48 vidual shall not engage in the business of a mortgage loan originator with
 49 respect to any dwelling located in this state without first obtaining and

1 maintaining annually a license under this part. Each licensed mortgage loan
2 originator shall register with and maintain a valid unique identifier issued
3 by the NMLSR.

4 ~~(2) In order to facilitate an orderly transition to licensing and mini-~~
5 ~~mize disruption in the mortgage marketplace, the effective dates for subsec-~~
6 ~~tion (1) of this section are as follows:~~

7 ~~(a) For all individuals other than those described in subsection (2) (b)-~~
8 ~~of this section, the effective date is July 31, 2010, or such later date~~
9 ~~approved by the secretary of the U.S. department of housing and urban~~
10 ~~development, pursuant to the authority granted under P.L. 110-289, sec-~~
11 ~~tion 1508 (a).~~

12 ~~(b) For all individuals licensed as mortgage loan originators at the~~
13 ~~time of the enactment of this part, the effective date is January 1,~~
14 ~~2011, or such later date approved by the secretary of the U.S. de-~~
15 ~~partment of housing and urban development, pursuant to the authority~~
16 ~~granted under P.L. 110-289, section 1508 (a).~~

17 ~~(3) The following are exempt from this part:~~

18 (a) Registered mortgage loan originators when acting on behalf of an
19 entity described in section 26-31-303(~~89~~) (a) through (c), Idaho Code;

20 (b) Any individual who offers or negotiates terms of a residential
21 mortgage loan with or on behalf of an immediate family member of the
22 individual;

23 (c) Any individual who offers or negotiates terms of a residential
24 mortgage loan that is secured by a dwelling that serves as the individ-
25 ual's residence; and

26 (d) An licensed attorney duly authorized to practice in this state
27 who negotiates the terms of a residential mortgage loan on behalf of a
28 client as an ancillary matter to the attorney's representation of the
29 client, unless the attorney is compensated by a lender, a mortgage bro-
30 ker or other mortgage loan originator or by any agent of such lender,
31 mortgage broker or other mortgage loan originator.

32 (43) A loan processor or underwriter who is an independent contractor
33 may not engage in the activities of a loan processor or underwriter unless
34 such independent contractor loan processor or underwriter obtains and main-
35 tains a license under subsection (1) of this section. Each independent con-
36 tractor loan processor or underwriter licensed as a mortgage loan origina-
37 tor must have and maintain a valid unique identifier issued by the nationwide
38 mortgage licensing system and registry.

39 (54) For the purpose of implementing an orderly and efficient appli-
40 cation and licensing process the director may establish licensing rules and
41 interim procedures for licensing and acceptance of applications. For pre-
42 viously registered or licensed individuals the director may establish exped-
43 ited review and licensing procedures.

44 SECTION 15. That Section 26-31-305, Idaho Code, be, and the same is
45 hereby amended to read as follows:

46 26-31-305. LICENSE AND REGISTRATION APPLICATION. (1) Applicants for a
47 license under this part shall apply through the NMLSR in a form prescribed by
48 the director. Each form shall include such content as the director may rea-
49 sonably require, shall be updated as necessary to keep the information cur-

1 rent and shall be accompanied by a nonrefundable application fee of two hun-
2 dred dollars (\$200).

3 (2) In order to fulfill the purposes of this part, the director may es-
4 tablish relationships or enter into contracts with the NMLSR or other enti-
5 ties designated by the NMLSR to collect and maintain records and to process
6 fees.

7 (3) Applicants for licensure under this part shall submit the following
8 to the NMLSR:

9 (a) Fingerprints for submission to the federal bureau of investiga-
10 tion, and any governmental agency or entity authorized to receive such
11 information for a state, national and international criminal history
12 background check; and

13 (b) Personal history and experience in a form prescribed by the NMLSR,
14 including the authorization for the NMLSR and the director to obtain the
15 following:

16 (i) An independent credit report obtained from a consumer report-
17 ing agency described in section 603(p) of the fair credit report-
18 ing act; and

19 (ii) Information related to any administrative, civil or criminal
20 findings by any governmental jurisdiction.

21 (4) For the purposes of this section and in order to reduce the points
22 of contact which the federal bureau of investigation may have to maintain
23 for purposes of subsection (3) (a) and (b) (ii) of this section, the director
24 may use the NMLSR as a channeling agent for requesting information from and
25 distributing information to the department of justice or any governmental
26 agency.

27 (5) For the purposes of this section and in order to reduce the points
28 of contact which the director may have to maintain for purposes of subsec-
29 tion (3) (b) (i) and (ii) of this section, the director may use the NMLSR as a
30 channeling agent for requesting and distributing information to and from any
31 source so directed by the director.

32 (6) Upon written request, an applicant for a license under this part is
33 entitled to a hearing on the question of his qualifications for a license if:

34 (a) The director has notified the applicant in writing that his appli-
35 cation has been denied and the request for a hearing is made not more
36 than fifteen (15) days after the director mailed the written notifica-
37 tion of denial; or

38 (b) The director has not issued the applicant a license within sixty
39 (60) days after ~~the~~ a complete application for the license was filed.

40 If a hearing is held, the applicant shall reimburse, pro rata, the director
41 for his reasonable and necessary expenses incurred as a result of the hear-
42 ing. The director shall state, in substance, his findings that support a de-
43 nial of an application.

44 (7) A license application shall be deemed withdrawn and void if an ap-
45 plicant submits an incomplete license application and, after receipt of a
46 written notice of the application deficiency, fails to provide the direc-
47 tor with information necessary to complete the application within sixty (60)
48 days of receipt of the deficiency notice. A written deficiency notice shall
49 be deemed received by a license applicant when:

1 (a) Placed in regular U.S. mail by the director or his agent using an
 2 address provided by the applicant on the license application; or

3 (b) E-mailed to the applicant using an e-mail address provided by the
 4 applicant on the license application; or

5 (c) Posted by the director or his agent on the NMLSR.

6 (8) The director may suspend action upon an application for a license
 7 pursuant to this part pending the resolution of any criminal charge before
 8 a court of competent jurisdiction against the applicant which could dis-
 9 qualify the applicant from licensure if the applicant is found guilty of or
 10 pleads guilty to the pending charge.

11 (89) The director may suspend action upon an application for a license
 12 pursuant to this part pending resolution of any civil action or administra-
 13 tive proceeding against an applicant that involves any aspect of a financial
 14 service business, the outcome of which could disqualify the applicant from
 15 licensure.

16 (910) A license applicant under this part shall make complete disclo-
 17 sure of all information required in the license application. A license ap-
 18 plicant or person acting on behalf of the applicant is not liable in any civil
 19 action other than a civil action brought by a governmental agency related to
 20 an alleged untrue statement made pursuant to this section, unless it is shown
 21 that:

22 (a) The license applicant, or person acting on behalf of the license ap-
 23 plicant, knew at the time that the statement was made that it was materi-
 24 ally false; or

25 (b) The license applicant or person acting on behalf of the license ap-
 26 plicant acted in reckless disregard as to the truth or falsity of the
 27 statement.

28 SECTION 16. That Section 26-31-306, Idaho Code, be, and the same is
 29 hereby amended to read as follows:

30 26-31-306. ISSUANCE OF LICENSE -- LICENSE NOT ASSIGNABLE OR TRANSFER-
 31 ABLE -- INACTIVE LICENSE STATUS. (1) The director shall not issue a mortgage
 32 loan originator license under this part unless the director first makes the
 33 following findings:

34 (a) The applicant has never had a mortgage loan originator license,
 35 or other mortgage related license, revoked in any governmental juris-
 36 diction. If such revocation was formally vacated, then it shall not be
 37 deemed a revocation for purposes of this section.

38 (b) The applicant has not been convicted of, found guilty of or pled
 39 guilty or nolo contendere to, a felony in a domestic, foreign or mili-
 40 tary court:

41 (i) During the seven (7) year period immediately preceding the
 42 date of the application for licensing or registration; or

43 (ii) At any time preceding such date of application, if such
 44 felony involved an act of fraud, dishonesty, or a breach of trust,
 45 or money laundering;

46 (c) Any pardon or expungement of a conviction shall not be deemed a con-
 47 viction for purposes of this section resulting in an automatic denial or
 48 revocation of a mortgage loan originator license. The director may con-
 49 sider the underlying crime, facts or circumstances of a pardoned or ex-

1 punged felony conviction when determining the eligibility of an appli-
 2 cant for licensure under paragraph (d) of this subsection.

3 (ed) The applicant has demonstrated financial responsibility, charac-
 4 ter and general fitness sufficient to command the confidence of the com-
 5 munity and to warrant a determination that the mortgage loan origina-
 6 tor will operate honestly, fairly, and efficiently within the purposes
 7 of this part. The director shall not base a license application denial
 8 under this part solely on a license applicant's credit score or credit
 9 report. For purposes of this section, a license applicant is not finan-
 10 cially responsible if he has shown a disregard for the management of his
 11 personal financial affairs. A determination that an individual has not
 12 shown financial responsibility may include, but is not limited to, con-
 13 sideration of the following:

14 (i) A current outstanding judgment, except a judgment issued
 15 solely as a result of medical expenses;

16 (ii) A current outstanding tax lien or other government lien or
 17 filing;

18 (iii) A foreclosure within the past three (3) years; or

19 (iv) A pattern of delinquent accounts within the past three (3)
 20 years.

21 (de) The applicant has successfully completed the prelicensing educa-
 22 tion requirement pursuant to section 26-31-307, Idaho Code.

23 (ef) The applicant has passed a written test that meets the test re-
 24 quirement pursuant to section 26-31-308, Idaho Code.

25 (fg) The applicant has met the mortgage recovery fund requirement pur-
 26 suant to section 26-31-110, Idaho Code.

27 (gh) The applicant has provided information on the application as re-
 28 quired in section 26-31-305, Idaho Code.

29 (2) The director may conduct investigations as he deems necessary to
 30 determine the existence of the requirements listed in this section.

31 (3) A license issued under this part is not assignable or transferable.

32 (4) A mortgage loan originator whose license is placed on inactive sta-
 33 tus under this part shall not act as a mortgage loan originator in this state
 34 until the license is activated.

35 (5) The director shall place a mortgage loan originator license on in-
 36 active status upon the occurrence of any of the following:

37 (a) A mortgage loan originator license application is submitted and ap-
 38 proved prior to the filing and approval of a loan originator's relation-
 39 ship and sponsorship by an employing licensed mortgage broker or mort-
 40 gage lender or by an exempt entity;

41 (b) Receipt of a notice from either the licensed mortgage broker, mort-
 42 gage lender, registrant, exempt entity or mortgage loan originator that
 43 the mortgage loan originator's sponsored relationship as an employee or
 44 independent agent of a licensed mortgage broker, mortgage lender or ex-
 45 empt entity has been terminated; or

46 (c) The surrender, expiration, suspension or revocation of the employ-
 47 ing licensed mortgage broker's, mortgage lender's or exempt entity's
 48 license.

1 (6) If a mortgage loan originator license is designated as inactive un-
2 der this part, then it shall remain in that status unless and until it is sur-
3 rendered, revoked, suspended, expired or is activated.

4 (7) A mortgage loan originator who holds an inactive mortgage loan
5 originator license may renew such inactive license if he or she remains oth-
6 erwise eligible for renewal pursuant to section 26-31-309, Idaho Code. Such
7 renewal shall not activate the license from an inactive status.

8 (8) The director may activate a mortgage loan originator license upon
9 receipt of a filing through the NMLSR indicating that the mortgage loan origi-
10 inator licensee has been employed and sponsored as a mortgage loan origi-
11 nator by a licensed mortgage broker, mortgage lender or by an exempt entity
12 registrant and if such mortgage loan originator meets the conditions for li-
13 censing under this part.

14 SECTION 17. That Section 26-31-308, Idaho Code, be, and the same is
15 hereby amended to read as follows:

16 26-31-308. TESTING OF MORTGAGE LOAN ORIGINATORS. (1) All individuals
17 seeking a mortgage loan originator license under this part shall satisfy the
18 written test requirement by passing a qualified written test developed by
19 the NMLSR and administered by a provider approved by the NMLSR based upon
20 reasonable standards and subject to subsection (2) of this section.

21 (2) A written test shall not be deemed a qualified written test for
22 purposes of subsection (1) of this section unless it tests the applicant's
23 knowledge and comprehension in the following subject areas:

24 (a) Ethics;

25 (b) Federal and state law and regulation pertaining to mortgage loan
26 origination;

27 (c) Federal and state law and regulation pertaining to fraud, consumer
28 protection, the nontraditional mortgage marketplace and fair lending
29 issues.

30 (3) Nothing in this section shall prohibit a test provider approved by
31 the NMLSR from administering a written test at the applicant's place of em-
32 ployment, at the location of any subsidiary or affiliate of the applicant's
33 employer or at the location of any entity with which the applicant holds an
34 exclusive arrangement to conduct the business of a mortgage loan originator.

35 (4) In order to pass a qualified written test, an individual must
36 achieve a test score of not less than seventy-five percent (75%) correct
37 answers to questions.

38 (5) An individual may retake a qualified written test ~~three~~ two (32)
39 times with each test occurring at least thirty (30) days after the preceding
40 test. If an individual does not achieve a passing score on a qualified writ-
41 ten test upon retake number ~~three~~ two (32), then the individual shall wait at
42 least six (6) months before retaking a written test.

43 (6) A mortgage loan originator who fails to maintain a valid license un-
44 der this part for a period of five (5) years or longer shall, as a condition of
45 obtaining a new license under this part, retake and pass a qualified written
46 test, not taking into account any time during which such individual is a reg-
47 istered mortgage loan originator.

1 SECTION 18. That Section 26-31-309, Idaho Code, be, and the same is
2 hereby amended to read as follows:

3 26-31-309. LICENSE RENEWAL AND REINSTATEMENT REQUIREMENTS. (1) The
4 minimum standards for license renewal for mortgage loan originators li-
5 censed under this part shall include the following:

6 (a) The mortgage loan originator continues to meet the minimum stan-
7 dards for license issuance pursuant to section 26-31-306, Idaho Code;

8 (b) The mortgage loan originator has satisfied the annual continuing
9 education requirements pursuant to section 26-31-310, Idaho Code; and

10 (c) The mortgage loan originator has filed with the director through
11 the NMLSR, on or before December 31 of each year, a renewal ~~form~~
12 application containing such information as the director may require,
13 accompanied by a nonrefundable annual license renewal fee of one hun-
14 dred dollars (\$100).

15 (2) If a mortgage loan originator fails to timely satisfy the provi-
16 sions of subsection (1) of this section, notwithstanding the provisions of
17 section 67-5254, Idaho Code, then his license shall be deemed automatically
18 and immediately expireds.

19 (3) The director may adopt procedures for the reinstatement of
20 reinstated an expired licenses consistent with the standards established by
21 the NMLSR during the time period of January 1 through February 28, immedi-
22 ately following license expiration if the director finds that the former
23 licensee meets the requirements for licensure under this part after submis-
24 sion to the director of:

25 (a) A complete application for renewal;

26 (b) The fees required to apply for license renewal unless previously
27 paid for the period for which the license renewal applies; and

28 (c) A reinstatement fee of one hundred dollars (\$100).

29 SECTION 19. That Section 26-31-310, Idaho Code, be, and the same is
30 hereby amended to read as follows:

31 26-31-310. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS. (1) In
32 order to meet the annual continuing education requirements, a licensed mort-
33 gage loan originator shall complete at least eight (8) hours of education
34 each year, which shall include:

35 (a) Three (3) hours minimum of instruction on federal law and regula-
36 tion;

37 (b) Two (2) hours minimum of instruction on ethics, including instruc-
38 tion on fraud, consumer protection and fair lending issues;

39 (c) Two (2) hours minimum of instruction on lending standards for the
40 nontraditional mortgage product marketplace; and

41 (d) One (1) hour minimum of instruction directly related to this chap-
42 ter and rules promulgated pursuant to this chapter.

43 (2) All continuing education courses and course providers shall be re-
44 viewed and approved by the NMLSR based upon reasonable standards.

45 (3) Nothing in this section shall preclude any approved education
46 course that is provided by the mortgage loan originator's employer or an
47 entity which is affiliated with the mortgage loan originator by an agency
48 contract or any subsidiary or affiliate of such employer or entity.

1 (4) Continuing education courses may be completed either in a class-
2 room, online or by any other means approved by the NMLSR.

3 (5) A licensed mortgage loan originator may only receive credit for a
4 continuing education course in the year in which the course is taken, except
5 as provided in section 26-31-309(23), Idaho Code, and subsection (9) of this
6 section, and may not take the same approved course in the same or successive
7 years in order to meet the annual continuing education requirements.

8 (6) A licensed mortgage loan originator who is an approved instructor
9 may receive credit toward his required annual continuing education hours at
10 the rate of two (2) hours of credit for every one (1) hour of instruction of an
11 approved continuing education course.

12 (7) An individual having successfully completed the continuing educa-
13 tion requirements described in subsection (1) (a) through (c) of this section
14 for any state shall be awarded credit toward completion of continuing educa-
15 tion requirements in Idaho.

16 (8) A licensed mortgage loan originator who subsequently becomes un-
17 licensed shall complete the continuing education requirements for the last
18 year in which the license was held prior to issuance of a new or renewed li-
19 cense.

20 (9) An individual meeting the requirements of section 26-31-309(1) (a)
21 and (c), Idaho Code, may make up any deficiency in continuing education re-
22 quirements as established by rule of the director.

23 SECTION 20. That Section 26-31-317, Idaho Code, be, and the same is
24 hereby amended to read as follows:

25 26-31-317. PROHIBITED ACTS AND PRACTICES. It is a violation of this
26 part for a person or individual subject to this part, in connection with
27 mortgage loan origination activity in this state, to:

28 (1) Directly or indirectly employ any scheme, device or artifice to de-
29 fraud or mislead borrowers or lenders or to defraud any person;

30 (2) Engage in any unfair or deceptive practice;

31 (3) Obtain property by fraud or misrepresentation;

32 (4) Solicit or enter into a contract with a borrower that provides that
33 the person or individual subject to this part may earn a fee or commission
34 through "best efforts" to obtain a loan, even though no loan is actually ob-
35 tained for the borrower;

36 (5) Solicit, advertise or enter into a contract for specific interest
37 rates, points or other financing terms, unless the terms are actually avail-
38 able at the time of soliciting, advertising or contracting;

39 (6) Conduct any business covered by this part without holding a valid
40 license as required under this part, or assist or aid and abet any person in
41 the conduct of business under this part who does not hold a valid license as
42 required under this part;

43 (7) Fail to make disclosures as required by this part or any other ap-
44 plicable state or federal law including rules or regulations promulgated
45 thereunder;

46 (8) Fail to comply with provisions of this part or rules promulgated
47 under this part, or fail to comply with any other state or federal law, in-
48 cluding the rules and regulations promulgated thereunder, applicable to any
49 business authorized or conducted under this part;

1 (9) Make any false or deceptive statement or representation, including
2 a false or deceptive statement or representation concerning rates, points
3 or other financing terms or conditions for a residential mortgage loan, or
4 engage in bait and switch advertising;

5 (10) Negligently make any false statement or knowingly and willfully
6 omit a material fact in connection with any information or reports filed with
7 a government agency or the NMLSR or in connection with any investigation
8 conducted by the director or another governmental agency;

9 (11) Make any payment, threat or promise, directly or indirectly, to any
10 person for the purpose of influencing the independent judgment of the person
11 in connection with a residential mortgage loan, or make any payment, threat
12 or promise, directly or indirectly, to any appraiser of a property, for the
13 purpose of influencing the independent judgment of the appraiser with re-
14 spect to the value of the property;

15 (12) Collect, charge, attempt to collect or charge, or use or propose
16 any agreement purporting to collect or charge any fee prohibited by this
17 part;

18 (13) Cause or require a borrower to obtain property insurance coverage
19 in an amount that exceeds the replacement cost of the improvements as estab-
20 lished by the property insurer;

21 (14) Fail to truthfully account for moneys belonging to a party to a res-
22 idential mortgage loan transaction;

23 (15) Be employed simultaneously by more than one (1) mortgage broker
24 or mortgage lender licensed or required to be licensed under part 2 of this
25 chapter;

26 (16) Enter into concurrent contractual relationships for delivery of
27 mortgage loan origination services to more than one (1) mortgage broker or
28 mortgage lender licensed or required to be licensed under part 2 of this
29 chapter;

30 (17) Obtain any exclusive dealing or exclusive agency agreement from
31 any borrower;

32 (18) Delay closing of any residential mortgage loan for the purpose of
33 increasing interest, costs, fees or charges payable by the borrower;

34 (19) Accept any fees at closing which were not previously disclosed
35 fully to the borrower;

36 (20) Obtain any agreement or instrument in which blanks are left to be
37 filled in after signing by a borrower; ~~or~~

38 (21) Enter into any agreement, with or without the payment of a fee,
39 to fix in advance a particular interest rate or other term in a residential
40 mortgage loan unless written confirmation of the agreement is delivered to
41 the borrower as required by rule pursuant to this chapter;

42 (22) Violate standards of conduct adopted by the NMLSR applicable to a
43 person taking a written test administered pursuant to section 26-31-308,
44 Idaho Code, as found by the director; or

45 (23) Obtain or attempt to obtain credit for education required pursuant
46 to section 26-31-307 or 26-31-310, Idaho Code, by means of false pretenses or
47 representations.

48 SECTION 21. That Section 26-31-320, Idaho Code, be, and the same is
49 hereby amended to read as follows:

1 26-31-320. UNIQUE IDENTIFIER DISCLOSURE. The unique identifier of any
2 person engaged in the origination of a residential mortgage loan shall be
3 clearly displayed on all residential mortgage loan application forms, so-
4 licitations or advertisements, including business cards, ~~and~~ websites and
5 other forms of media, and any other document required by rule promulgated un-
6 der this chapter or order issued by the director under this chapter and per-
7 tinent to this part.