

STATE OF IDAHO

IDAHO RESIDENTIAL MORTGAGE  
PRACTICES ACT



**DEPARTMENT OF FINANCE**

*As Amended Through 2009*

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# RESIDENTIAL MORTGAGE PRACTICES ACT

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# IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

## TITLE 26

### CHAPTER 31

#### PART 1.

#### GENERAL PROVISIONS

**26-31-101. SHORT TITLE AND SCOPE.** This chapter shall be known and may be cited as the "Idaho Residential Mortgage Practices Act," and is organized into three (3) parts. Part 1 includes provisions that apply to the entire chapter. Part 2 includes provisions for the regulation of mortgage brokers and mortgage lenders. Part 3 includes provisions for the regulation of individual mortgage loan originators.

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

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

(2) "Department" means the department of finance of the state of Idaho.

(3) "Director" means the director of the department of finance.

(4) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this chapter.

(5) "Nationwide mortgage licensing system and registry" or "NMLSR" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage brokers, mortgage lenders and mortgage loan originators.

(6) "Person" means a natural person, corporation, company, limited liability company, partnership or association;

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

(8) "Regulation X" means regulation X as promulgated by the U.S. department of housing and urban development and codified in 24 CFR part 3500 et seq., as identified by administrative rule.

(9) "Regulation Z" means regulation Z as promulgated by the board of governors of the federal reserve system and codified in 12 CFR part 226 et seq., as identified by administrative rule.

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

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

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

(13) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

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

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

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

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

(c) Require a background investigation of each applicant for a mortgage broker, mortgage lender or mortgage loan originator license by means of fingerprint checks by the Idaho state police and the FBI for state and national criminal history record checks. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this chapter. The fee required to perform the criminal history record check shall be borne by the license applicant. Information obtained or held by the director pursuant to this subsection shall be considered confidential personal information and shall be exempt from disclosure pursuant to section 9-340C(8) and (9), Idaho Code.

**26-31-104. BORROWER'S REMEDIES NOT AFFECTED.** The grant of powers to the director in this chapter does not limit remedies available to borrowers under this chapter or under other principles of law or equity.

**26-31-105. RELATIONSHIP TO OTHER LAWS.** (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions, regulations and rules pertaining to the financial or lending activities of persons who:

(a) Are subject to the jurisdiction of the department, including those whose activities are subject to this chapter;

(b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or

(c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (a) or (b) of this subsection or who assist or facilitate such transactions.

(2) The requirements of this section shall apply to all ordinances, resolutions and rules pertaining to financial or lending activities, including any ordinances, resolutions or rules disqualifying persons from doing business with a political subdivision based upon financial or

lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

(3) In the event that the United States department of housing and urban development pursuant to the authority granted to it under section 1508, P.L. 110-289, determines that a provision of this chapter does not meet the requirements of section 1508, P.L. 110-289, the director may, in his discretion, for the sole purpose of complying with the determination, refrain from enforcing the provision found by the department of housing and urban development to not meet the requirements of section 1508, P.L. 110-289, until the adjournment of the session of the legislature next following the determination by the department of housing and urban development.

**26-31-106. FUNDS COLLECTED UNDER THIS CHAPTER.** Except as provided in section 26-31-110 of this chapter pertaining to the mortgage recovery fund, the director shall deposit all funds collected by the department under this chapter into the finance administrative account pursuant to section 67-2702, Idaho Code.

**26-31-107. CHARGES FOR PARTICIPATION IN THE NMLSR.** Mortgage brokers, mortgage lenders and mortgage loan originators who seek to obtain or retain a license under this chapter shall pay the charges imposed and retained by the NMLSR to fund the expenses associated with an applicant's or licensee's participation in the NMLSR.

**26-31-108. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.** The director shall regularly report to the NMLSR violations of this chapter, as well as enforcement actions and other relevant information, subject to the provisions of section 26-31-315, Idaho Code.

**26-31-109. MORTGAGE RECOVERY FUND.** (1) There is hereby created in the state treasury the mortgage recovery fund.

(2) As provided in section 26-31-112, Idaho Code, the mortgage recovery fund shall be used to reimburse persons to whom an Idaho court awards actual damages resulting from acts constituting violations of this chapter by a mortgage broker, mortgage lender or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(3) A recovery from the mortgage recovery fund shall not include punitive damages awarded by a court.

(4) Payments from the mortgage recovery fund may not be made to:

(a) Any lender whose acts, or the acts of its agent, were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(b) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(c) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

**26-31-110. FUNDING.** (1) Upon application for a mortgage broker, mortgage lender or mortgage loan originator license, and upon renewal of such licenses issued under this chapter, the applicant or person seeking renewal shall, in addition to paying the license application or renewal fee required under this chapter, pay a fee to the department through the NMLSR for deposit in the mortgage recovery fund as follows:

- (a) Two hundred fifty dollars (\$250) for home office locations of mortgage brokers and mortgage lenders licensed under part 2 of this chapter;
- (b) One hundred fifty dollars (\$150) for each branch office location of a mortgage broker or mortgage lender licensed under part 2 of this chapter; and
- (c) One hundred dollars (\$100) for each mortgage loan originator licensed under part 3 of this chapter.

(2) With respect to mortgage recovery fund fees payable at the time of annual license renewal for licensees under this chapter, the director may adjust the fees within the limits of subsection (1) of this section on a pro rata basis as necessary to maintain a balance of one million five hundred thousand dollars (\$1,500,000) in the mortgage recovery fund, plus an additional amount of fifty thousand dollars (\$50,000) as set forth in subsection (4) of this section.

(3) All interest that accrues in the mortgage recovery fund shall be added to the balance of the mortgage recovery fund.

(4) On an annual basis, the department may apply up to fifty thousand dollars (\$50,000) of moneys accumulated in the mortgage recovery fund in excess of one million five hundred thousand dollars (\$1,500,000) to:

- (a) Fund the department's expenses in administering the mortgage recovery fund;
- (b) Develop and implement consumer education concerning the residential mortgage industry;
- (c) Contract for research projects for the state concerning the residential mortgage industry;
- (d) Fund the training expenses of department staff members and its attorneys concerning the residential mortgage industry; and
- (e) Publish and distribute educational materials to licensees and applicants for licensure under this chapter.

**26-31-111. STATUTE OF LIMITATIONS.** The filing of a verified claim with the court pursuant to section 26-31-112, Idaho Code, that is the basis of a claim against the mortgage recovery fund may not be instituted more than one (1) year after termination of all court proceedings concerning such judgment, including appeals.

**26-31-112. PROCEDURE FOR RECOVERY.** (1) A person who obtains against a mortgage broker, mortgage lender or mortgage loan originator a money judgment in an Idaho court that includes findings of violations of this chapter occurring on or after July 1, 2009, after final judgment has been entered, execution returned unsatisfied and the judgment has been recorded, may file a verified claim with the court in which the judgment was entered, and on twenty (20) days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment, subject to section 26-31-111, Idaho Code.

(2) At a hearing on the application, the person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under section 26-31-109(2), Idaho Code;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker, mortgage lender or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this state or any other state to satisfy the judgment.

(3) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund shall be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(4) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (2) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all of the requirements of this section.

(5) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(6) If the court finds that the aggregate amount of claims against a mortgage broker, mortgage lender or mortgage loan originator exceeds the limits set forth in section 26-31-113, Idaho Code, the court shall reduce proportionately the amount the court finds payable on the claim.

(7) The department shall provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

**26-31-113. RECOVERY LIMITS.** (1) A person entitled to receive payment from the mortgage recovery fund may receive reimbursement of actual damages, which shall not include post judgment interest, reasonable attorney's fees and court costs as determined by the court, subject to the limitations in subsection (2) of this section and subject to the availability of sufficient funds in the mortgage recovery fund at the time payment is ordered.

(2) A payment from the mortgage recovery fund may be made by the director only pursuant to a court order as provided by section 26-31-112, Idaho Code, in an amount equal to the unsatisfied portion of the creditor's judgment or judgments or fifty thousand dollars (\$50,000), whichever is less.

(3) Payments from the mortgage recovery fund shall be limited in the aggregate to two hundred fifty thousand dollars (\$250,000) against any one (1) licensee. If the total claims against such licensee exceed the aggregate limit of two hundred fifty thousand dollars (\$250,000), the court shall prorate payment based on the ratio that a person's claim bears to the other claims filed against such licensee.

**26-31-114. REVOCATION OF LICENSE FOR PAYMENT FROM MORTGAGE RECOVERY FUND.** (1) The director may summarily revoke a license issued under this chapter if the director is required by court order under section 26-31-112, Idaho Code, to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(2) A person whose license has been revoked under subsection (1) of this section is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(3) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

## **PART 2.**

### **PROVISIONS APPLICABLE TO MORTGAGE BROKERS AND MORTGAGE LENDERS**

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

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

(2) "Loan modification" means an adjustment or compromise of an existing residential mortgage loan. The term "loan modification" does not include a refinancing transaction.

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

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

(5) "Mortgage brokering activities" means for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans or engaging in loan modification activities on behalf of a borrower.

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

(7) "Mortgage lending activities" means for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept applications for residential mortgage loans, assisting or offering to assist in the preparation of an application for a residential mortgage loan.

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

(9) "Qualified person in charge" means the person designated, pursuant to section 26-31-206, Idaho Code, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under this part.

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

(1) Agencies of the United States and agencies of this state and its political subdivisions;

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

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

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

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

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

(7) Attorneys, or persons licensed under chapter 2, title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status;

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

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

(10) Any person who funds a residential mortgage loan which has been originated and processed by a licensee under this part or by an exempt person under this part, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee under this part or an exempt person under this part.

**26-31-203. UNLAWFUL ACTS.** (1) Any person, except a person exempt under section 26-31-202, Idaho Code, who engages in mortgage brokering activities or mortgage lending activities without first obtaining a license from the department in accordance with this part, shall upon conviction be guilty of a felony.

(2) No person, except a person exempt under section 26-31-202, Idaho Code, shall engage in mortgage brokering activities or mortgage lending activities without first obtaining a license from the department in accordance with this part.

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

- (1) Administer and enforce the provisions and requirements of this part;
- (2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this part or rules promulgated pursuant to this chapter and pertinent to this part;
- (3) Conduct examinations of the books and records of mortgage broker and mortgage lender licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this part and the rules promulgated pursuant to this chapter and pertinent to this part;
- (4) Appoint a volunteer advisory board which shall consist of two (2) individuals who represent mortgage lenders and two (2) individuals who represent mortgage brokers;
- (5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this part;
- (6) Be authorized to set, by annual written notification to mortgage broker and mortgage lender licensees, limits on the fees and charges which are set forth in subsections (1) and (2) of section 26-31-210, Idaho Code; and
- (7) Review and approve forms used by mortgage broker and mortgage lender licensees prior to their use as prescribed by the director.

**26-31-205. REMEDIES AVAILABLE TO THE DEPARTMENT.** (1) Whenever it appears to the director that any person subject to this part has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z or of this part or any rule promulgated or order issued under this act and pertinent to this part, he may in his discretion bring an action in any court of competent jurisdiction, and upon a showing of any violation, there shall be granted any or all of the following:

- (a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part or any rule promulgated or order issued under this chapter and pertinent to this part, and to enforce compliance with this part or any rule promulgated or order issued under this chapter and pertinent to this part;
  - (b) An order that the person violating any provision of this part, or a rule promulgated or order issued under this chapter and pertinent to this part pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation;
  - (c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees;
  - (d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this part;
  - (e) An order granting other appropriate remedies including restitution to borrowers for excess charges or actual damages.
- (2) If the director finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated or order issued under this chapter and pertinent to this part, the director may, in his discretion, order the person to cease and desist from the violations.

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

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

(a) The financial responsibility, character and fitness of the license applicant, or of the officers and directors thereof, if the applicant is a corporation, partners thereof if the applicant is a partnership, members or managers thereof if the applicant is a limited liability company and individuals designated in charge of the applicant's places of business, are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this part;

(b) The qualified person in charge of the applicant's places of business does not have a minimum of three (3) years' experience in residential mortgage brokering or mortgage lending;

(c) The applicant has been convicted of any felony, or of a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the applicant of any felony, or of a misdemeanor involving any aspect of the financial services business;

(d) The applicant has had a license, substantially equivalent to a license under this part and issued by any state, denied, revoked or suspended under the law of such state;

(e) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

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

(g) The applicant or any partner, officer, director, manager, member, employee or agent of the applicant has violated any state or federal law, rule or regulation pertaining to the financial services industry; or

(h) The applicant has not provided information on the application as reasonably required by the director pursuant to subsection (1) of this section, or has provided materially false information.

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

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

(a) The director has notified the applicant in writing that his application has been denied;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has

mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application.

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

(6) No licensee under this part shall change the location of any place of business, consolidate two (2) or more locations or close any home office location without giving the director at least fifteen (15) days' prior written notice. A licensee under this part shall give written notice to the director within three (3) business days of the closure of any branch location licensed under this part. Written notice of the closure of a home or branch office location shall include a detailed explanation of the disposition of all loan applications pending at the time of closure of the licensed location.

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

(8) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which could disqualify that applicant if convicted.

(9) The director may suspend action upon a mortgage broker or mortgage lender license application pending resolution of any civil action or administrative proceeding against an applicant in which the civil action or administrative proceeding involves any aspect of a financial service business and the outcome of which could disqualify the applicant.

(10) A license applicant under this part shall make complete disclosure of all information required in the license application, including information concerning officers, directors, partners, members, managers, employees or agents. A license applicant, or person acting on behalf of the applicant, is not liable in any civil action other than a civil action brought by a governmental agency, related to an alleged untrue statement made pursuant to this part, unless it is shown by clear and convincing evidence that:

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

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

(11) Each mortgage broker or mortgage lender licensed under this part shall display in plain view the certificate of licensure issued by the department in its principal office and in each branch office.

(12) Notwithstanding any other provision of this part, an individual licensed under part 3 of this chapter may apply for a license under this section.

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

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

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

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

(d) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has been convicted of any felony, or of a misdemeanor involving any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the licensee or partner, officer, director, manager, member, employee or agent of the licensee, of any felony, or of a misdemeanor involving any aspect of the financial services business; or

(e) The licensee or any partner, officer, director, manager, member, employee or agent of the licensee has had a license substantially equivalent to a license under this act, and issued by another state, denied, revoked or suspended under the laws of such state; or

(f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(g) The mortgage broker or mortgage lender licensee has failed to notify the director of the employment or termination of, or the entering into or termination of a contractual relationship with, a licensed mortgage loan originator pursuant to section 26-31-208(2), Idaho Code; or

(h) The mortgage broker or mortgage lender licensee has failed to supervise diligently and control the mortgage-related activities of a mortgage loan originator as defined in part 3 of this chapter and that is employed by the licensee.

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

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

(4) The director may, in his discretion, reinstate a license issued under this part, terminate a suspension or grant a new license under this part to a person whose license issued under this part has been revoked or suspended, if no fact or condition then exists which clearly would justify the department in refusing to grant a license.

**26-31-208. RECORDS -- ANNUAL REPORTS -- RENEWAL OF LICENSE.** (1)

Every licensee under this part shall maintain records, including financial records in conformity with generally accepted accounting principles, in a manner that will enable the director to determine whether the licensee is complying with the provisions of this part. The recordkeeping system of the licensee shall be sufficient if it makes the required information reasonably available to the director. The records need not be kept in the place of business where residential mortgage loans are made, if the director is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than three (3) years after making the final entry relating to the loan.

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

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

(b) Notify the director through the NMLSR, or as otherwise prescribed by the director, of the termination of employment of, or contractual relationship with, a mortgage loan originator licensee within thirty (30) days of such termination; and

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

(3) On or before December 31 of each year, every mortgage broker and mortgage lender licensee under this part shall pay through the NMLSR, or as otherwise prescribed by the director, an annual license renewal fee of one hundred fifty dollars (\$150), and file with the director through the NMLSR, or as otherwise prescribed by the director, a renewal form containing such information as the director may require.

(4) On or before March 31 of each year, or other date established by the director by rule, every mortgage broker and mortgage lender licensee under this part shall file with the director a composite annual report containing such information as the director may require for the residential mortgage loans made or brokered by it for the preceding calendar year.

(5) Each mortgage broker and mortgage lender licensee under this part shall, as required by the NMLSR, submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require.

**26-31-209. EXAMINATION AND INVESTIGATIONS.** (1) The director shall examine periodically at intervals he deems appropriate, the loans and business records of each licensee under this part. In addition, for the purpose of discovering violations of the provisions of this part or securing information lawfully required pursuant to this part, the director may at any time investigate the loans, business, books and records of any such licensee. For these purposes, the director shall have free and reasonable access to the offices, places of business and books and records of the licensee. The director, for purposes of examination of licensees under this part,

shall be paid the actual cost of examination by such licensee within thirty (30) days of the completion of the examination.

(2) If the records of a licensee under this part are located outside of this state, the licensee shall have the option to make such records available to the director at a convenient location within this state, or pay the reasonable and necessary expenses for the director or his representative to examine such records at the place where they are maintained. The director may designate representatives, including comparable officials of the state in which the records are located, to inspect such records on his behalf.

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

(4) Upon failure to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the district court for an order compelling compliance.

**26-31-210. RESTRICTIONS ON FEES AND CHARGES.** (1) A person subject to this part shall not require a borrower or person seeking a loan modification to pay any fees or charges prior to a residential mortgage loan closing, or prior to the completion of a loan modification, except:

- (a) Charges actually incurred by the person subject to this part on behalf of the borrower or person seeking a loan modification for services which have been rendered by third parties. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, UCC-4 lien searches and appraisals;
- (b) An application fee;
- (c) A rate-lock fee;
- (d) A commitment fee upon approval of the residential mortgage loan;
- (e) A cancellation fee which may be charged and collected by a person subject to this part at any time either prior to the scheduled closing of a residential mortgage loan transaction, completion of a loan modification or subsequent thereto.

(2) Any fees charged under the authority of this section must be reasonable and customary as to the type and the amount of the fee charged.

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

- (1) Obtain any exclusive dealing or exclusive agency agreement from any borrower;
- (2) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;
- (3) Accept any fees at closing which were not previously disclosed fully to the borrower;
- (4) Obtain any agreement or instrument in which blanks are left to be filled in after signing by a borrower;

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

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

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

(8) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material terms of a residential mortgage loan transaction;

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

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

(11) Receive a fee for engaging in loan modification activities except pursuant to a written agreement between the person subject to this part and a person seeking a loan modification. The written agreement must specify the amount of the fee that will be charged to the person seeking a loan modification, specify the terms of the loan for which modification will be sought and disclose the expected impact of the loan modification on the monthly payment and length of the loan.

**26-31-212. CONTINUING EDUCATION OF QUALIFIED PERSONS IN CHARGE.** The continuing education requirements set forth in section 26-31-310, Idaho Code, shall apply to each qualified person in charge designated by a mortgage broker or mortgage lender licensed under this part.

### **PART 3.**

#### **PROVISIONS APPLICABLE TO MORTGAGE LOAN ORIGINATORS**

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

**26-31-302. PURPOSE OF THIS PART.** (1) The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Idaho consumers, Idaho's economy, the neighborhoods and communities of Idaho, and the housing and real estate industry. The legislature finds that accessibility to mortgage credit is vital to the state's citizens. The legislature also finds that it is essential for the protection of the citizens of Idaho and the stability of Idaho's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan

originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage loan origination process. The purpose of this part is to protect consumers seeking mortgage loans and to ensure that the mortgage industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore, the legislature establishes within this part an effective system of supervision of mortgage loan originators and enforcement authority, including:

(a) The authority of the director to issue licenses to conduct business under this part, and the authority to promulgate rules and adopt procedures necessary to the licensing of persons covered under this part;

(b) The authority of the director to deny, suspend, condition or revoke licenses issued under this part;

(c) The authority of the director to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this part, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties, and order the removal and ban of individuals from office or employment.

(2) The director shall have broad administrative authority to administer, interpret and enforce this part, and to promulgate rules and issue orders implementing this part, to carry out the intention of the legislature under this part.

**26-31-303. DEFINITIONS.** For purposes of this part, the following definitions shall apply:

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

(2) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation.

(3) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and includes stepparents, stepchildren, stepsiblings and adoptive relationships.

(4) "Individual" means a natural person.

(5) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under this chapter.

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

(i) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

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

(6) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.

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

(i) An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 26-31-304(4), Idaho Code;

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

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

(iv) A person that only performs the activities of a manufactured housing resale broker, responsible managing employee, retailer or salesman as defined in and licensed under chapter 21, title 44, Idaho Code, unless the person is compensated by a lender, a mortgage broker or other mortgage loan originator, or by any agent of such lender, mortgage broker or other mortgage loan originator. This subparagraph shall not apply if the United States department of housing and urban development finds, through guideline, rule, regulation or interpretive letter, that it is inconsistent with the requirements of P.L. 110-289, title V.

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

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

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

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

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

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

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

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

(a) A depository institution;

(b) A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

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

#### **26-31-304. LICENSE AND REGISTRATION REQUIRED — EXEMPTIONS. (1)**

Unless specifically exempt under subsection (3) of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state

without first obtaining and maintaining annually a license under this part. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the NMLSR.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective dates for subsection (1) of this section are as follows:

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

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

(3) The following are exempt from this part:

(a) Registered mortgage loan originators when acting on behalf of an entity described in section 26-31-303(8)(a) through (c), Idaho Code;

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

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

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

(4) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

(5) For the purpose of implementing an orderly and efficient application and licensing process the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director may establish expedited review and licensing procedures.

**26-31-305. LICENSE AND REGISTRATION APPLICATION.** (1) Applicants for a license under this part shall apply through the NMLSR in a form prescribed by the director. Each form shall include such content as the director may reasonably require, shall be updated as necessary to keep the information current and shall be accompanied by a nonrefundable application fee of two hundred dollars (\$200).

(2) In order to fulfill the purposes of this part, the director may establish relationships or enter into contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and to process fees.

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

(a) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

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

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the fair credit reporting act; and

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

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

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

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

(a) The director has notified the applicant in writing that his application has been denied and the request for a hearing is made not more than fifteen (15) days after the director mailed the written notification of denial; or

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

If a hearing is held, the applicant shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. The director shall state, in substance, his findings that support a denial of an application.

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

(8) The director may suspend action upon an application for a license pursuant to this part pending resolution of any civil action or administrative proceeding against an applicant that involves any aspect of a financial service business, the outcome of which could disqualify the applicant from licensure.

(9) A license applicant under this part shall make complete disclosure of all information required in the license application. A license applicant or person acting on behalf of the applicant is not liable in any civil action other than a civil action brought by a governmental agency related to an alleged untrue statement made pursuant to this section, unless it is shown that:

(a) The license applicant, or person acting on behalf of the license applicant, knew at the time that the statement was made that it was materially false; or

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

**26-31-306. ISSUANCE OF LICENSE.** (1) The director shall not issue a mortgage loan originator license under this part unless the director first makes the following findings:

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

(b) The applicant has not been convicted of, found guilty of or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court:

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

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

Any pardon of a conviction shall not be deemed a conviction for purposes of this section.

(c) The applicant has demonstrated financial responsibility, character and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this part. The director shall not base a license application denial under this part solely on a license applicant's credit score or credit report. For purposes of this section, a license applicant is not financially responsible if he has shown a disregard for the management of his personal financial affairs. A determination that an individual has not shown financial responsibility may include, but is not limited to, consideration of the following:

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

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

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

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

(d) The applicant has successfully completed the prelicensing education requirement pursuant to section 26-31-307, Idaho Code.

(e) The applicant has passed a written test that meets the test requirement pursuant to section 26-31-308, Idaho Code.

(f) The applicant has met the mortgage recovery fund requirement pursuant to section 26-31-110, Idaho Code.

(g) The applicant has provided information on the application as required in section 26-31-305, Idaho Code.

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

**26-31-307. PRELICENSING AND RELICENSING EDUCATION OF MORTGAGE LOAN ORIGINATORS.** (1) All individuals seeking a mortgage loan originator license under this part shall satisfy the prelicensing education requirement by completing at least twenty (20) hours of course instruction that has been approved by the NMLSR and administered by a provider approved by the NMLSR. Course instruction shall include:

(a) Three (3) hours minimum of instruction on federal law and regulation;

(b) Three (3) hours minimum of instruction on ethics, which shall include fraud, consumer protection and fair lending issues;

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

(d) Two (2) hours minimum of instruction directly related to this chapter and rules promulgated pursuant to this chapter.

(2) Nothing in this section shall preclude any prelicensing education course approved by the NMLSR that is provided by the applicant's employer, an entity affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(3) The prelicensing education may be completed in a classroom, online or by any other means approved by the NMLSR.

(4) The prelicensing education requirements approved by the NMLSR in subsection (1)(a) through (c) of this section for any state shall be accepted as credit toward completion of prelicensing education requirements in Idaho.

(5) An individual licensed prior to the effective date of this part who is applying to be relicensed shall submit proof that he has completed all of the continuing education requirements for the year in which the license was last held.

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

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

(a) Ethics;

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

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

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

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

(5) An individual may retake a qualified written test three (3) times with each test occurring at least thirty (30) days after the preceding test. If an individual does not achieve a passing score on a qualified written test upon retake number three (3), then the individual shall wait at least six (6) months before retaking a written test.

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

**26-31-309. LICENSE RENEWAL REQUIREMENTS.** (1) The minimum standards for license renewal for mortgage loan originators licensed under this part shall include the following:

- (a) The mortgage loan originator continues to meet the minimum standards for license issuance pursuant to section 26-31-306, Idaho Code;
- (b) The mortgage loan originator has satisfied the annual continuing education requirements pursuant to section 26-31-310, Idaho Code; and
- (c) The mortgage loan originator has filed with the director through the NMLSR, on or before December 31 of each year, a renewal form containing such information as the director may require, accompanied by a nonrefundable annual license renewal fee of one hundred dollars (\$100).

(2) If a mortgage loan originator fails to timely satisfy the provisions of subsection (1) of this section, then his license shall be deemed expired. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

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

- (a) Three (3) hours minimum of instruction on federal law and regulation;
- (b) Two (2) hours minimum of instruction on ethics, including instruction on fraud, consumer protection and fair lending issues;
- (c) Two (2) hours minimum of instruction on lending standards for the nontraditional mortgage product marketplace; and
- (d) One (1) hour minimum of instruction directly related to this chapter and rules promulgated pursuant to this chapter.

(2) All continuing education courses and course providers shall be reviewed and approved by the NMLSR based upon reasonable standards.

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

(4) Continuing education courses may be completed either in a classroom, online or by any other means approved by the NMLSR.

(5) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, except as provided in section 26-31-309(2), Idaho Code, and subsection (9) of this section, and may not take the same approved course in the same or successive years in order to meet the annual continuing education requirements.

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

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

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

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

**26-31-311. AUTHORITY TO REQUIRE LICENSE AND REGISTRATION.** In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the NMLSR. In order to carry out this requirement the director is authorized to participate in the NMLSR. For this purpose, the director may establish by rule or order requirements for licensure as a mortgage loan originator, as necessary including, but not limited to:

- (1) Background checks, to include:
  - (a) Criminal history, through fingerprint or other databases;
  - (b) Civil or administrative records;
  - (c) Credit history; and
  - (d) Any other information as deemed necessary by the NMLSR.
- (2) The setting or resetting as necessary of renewal or reporting dates; and
- (3) Requirements for amending or surrendering a license or any other such activities as the director deems necessary for participation in the NMLSR.

**26-31-312. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS.** The director shall establish a process whereby mortgage loan originators may challenge the information entered into the NMLSR by the director.

**26-31-313. ENFORCEMENT AUTHORITY, VIOLATIONS AND PENALTIES.** (1) In order to ensure the effective supervision and enforcement of this part, the director may, pursuant to chapter 52, title 67, Idaho Code:

- (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, or rule or order issued under this chapter;
- (b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee under this part fails at any time to meet the requirements of section 26-31-306, Idaho Code, or section 26-31-309, Idaho Code, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (c) Deny, suspend, revoke, condition or decline to renew a license if the applicant has violated any state or federal law, rule or regulation pertaining to mortgage brokering, mortgage lending or loan origination activities;
- (d) Order restitution against persons subject to this part for violations of this part;
- (e) Impose penalties on persons subject to this part pursuant to subsections (2) through (4) of this section; and
- (f) Issue orders under this part as follows:
  - (i) Order persons subject to this part to cease and desist from conducting business, including immediate temporary orders to cease and desist;
  - (ii) Order persons subject to this part to cease any harmful activities or violations of this part, including immediate temporary orders to cease and desist;
  - (iii) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to this part, if the director determines that such

license was erroneously granted or the licensee is currently in violation of this part;

(iv) Order such other affirmative action as the director deems necessary.

(2) The director may impose a civil penalty upon a mortgage loan originator or other person subject to this part if the director finds on the record, after notice and the opportunity for a hearing, that such mortgage loan originator or other person subject to this part has violated or failed to comply with any requirement of this part or any rule promulgated or order issued by the director under this chapter and pertinent to this part.

(3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be twenty-five thousand dollars (\$25,000).

(4) Each violation of this part, or failure to comply with any rule promulgated or order issued by the director under this chapter and pertinent to this part, is a separate and distinct violation or failure.

**26-31-314. REMEDIES AVAILABLE TO THE DEPARTMENT.** (1) If the director determines that a person subject to this part has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z or of this part or any rule promulgated or order issued under this chapter and pertinent to this part, then the director may bring an action in any court of competent jurisdiction, and upon a showing of any violation, there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part or any rule promulgated or order issued under this chapter and pertinent to this part, and to enforce compliance with this part or any rule promulgated or order issued under this chapter and pertinent to this part;

(b) An order that the person violating any provision of this part, or a rule promulgated or order issued under this chapter and pertinent to this part pay a civil penalty to the department in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation;

(c) An order allowing the director to recover costs, which may include investigative expenses and attorney's fees;

(d) A declaratory judgment that a particular act, practice or method is a violation of the provisions of this part;

(e) Other appropriate remedies including restitution to borrowers.

(2) If the director finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this part, or any rule promulgated or order issued under this chapter and pertinent to this part, the director may, in his discretion, order the person to cease and desist from the violations.

**26-31-315. CONFIDENTIALITY.** In order to promote effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in section 1512, P.L. 110-289, the requirements under any federal law or chapter 3, title 9, Idaho Code, regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or Idaho state law, including the rules of any federal or Idaho state court, with respect to such information or material, shall continue to apply to such information or material after the information or

material has been disclosed to the NMLSR. Such information and material may be shared with all state and federal regulatory officials having mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 3, title 9, Idaho Code.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) Coordination with chapter 3, title 9, Idaho Code, relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the NMLSR for access by the public.

**26-31-316. INVESTIGATION AND EXAMINATION AUTHORITY.** In addition to any authority allowed under this chapter, the director shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or inquiry or investigation to determine compliance with this part, the director shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

(a) Criminal, civil and administrative history information including nonconviction data; and

(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(c) Any other documents, information or evidence the director deems relevant to the inquiry or investigation, regardless of the location, possession, control or custody of such documents, information or evidence.

(2) For the purposes of investigating violations or complaints arising under this part, or for the purposes of examination, the director may review, investigate or examine any licensee, individual or person subject to this part, as often as necessary in order to carry out the purposes of this part. The director may subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of

any such examination or investigation, and may subpoena or order such person to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry.

(3) Each licensee, individual or other person subject to this part shall make available to the director upon request the books and records relating to the operations of such licensee, individual or other person subject to this part. The director may interview the licensee's employer, its employees and agents, its independent contractors, its officers and principals, other mortgage loan originators, agents and customers of the licensee, individual or other person subject to this part. For the purposes of this section, the director shall have free access to the books and records of such persons.

(4) Each licensee, individual or other person subject to this part shall make or compile reports or prepare other information as directed by the director in order to carry out the purposes of this part including, but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the director; and
- (c) Such other information deemed necessary to carry out the purposes of this part.

(5) In making any examination or investigation authorized by this part, the director may control access to any documents and records of the licensee or other person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or other person have been, or are at risk of being altered or destroyed for the purpose of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents and records as necessary to conduct its ordinary business affairs.

(6) In order to carry out the purposes of this section, the director may:

- (a) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;
- (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;
- (c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or other person subject to this part;
- (d) Accept and rely on examination or investigation reports made by other government officials, including those inside and outside the state of Idaho; and
- (e) Accept and rely upon audit reports made by an independent certified public accountant for the licensee, individual or other person subject to this part. The director may incorporate the audit report in the examination report, investigation report or other writing of the director.

(7) The authority of this section shall remain in effect, whether such a licensee, individual or other person subject to this part acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

(8) No licensee, individual or other person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information requested by the director.

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

(1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice;

(3) Obtain property by fraud or misrepresentation;

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

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

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

(7) Fail to make disclosures as required by this part or any other applicable state or federal law including rules or regulations promulgated thereunder;

(8) Fail to comply with provisions of this part or rules promulgated under this part, or fail to comply with any other state or federal law, including the rules and regulations promulgated thereunder, applicable to any business authorized or conducted under this part;

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

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

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat or promise, directly or indirectly, to any appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property;

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

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction;

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

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

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

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

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

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

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

**26-31-318. UNLAWFUL ACTS.** Any person, not exempt under the provisions of this part, who engages in mortgage loan origination activities without first obtaining a mortgage loan originator license or without first registering as a mortgage loan originator in accordance with the requirements of this part, shall be guilty of a felony.

**26-31-319. NONFEDERALLY INSURED CREDIT UNIONS.** Nonfederally insured credit unions which employ loan originators, as defined in P.L. 110-289, shall register such loan originators with the NMLSR by furnishing the information concerning the loan originators' identities set forth in section 1507(a)(2), P.L. 110-289.

**26-31-320. UNIQUE IDENTIFIER DISCLOSURE.** The unique identifier of any person engaged in the origination of a residential mortgage loan shall be clearly displayed on all residential mortgage loan application forms, solicitations or advertisements, including business cards and websites, and any other document required by rule promulgated under this chapter or order issued by the director under this chapter and pertinent to this part.

**26-31-321. SEVERABILITY.** The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

# RESIDENTIAL MORTGAGE PRACTICES ACT

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