IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DEPARTMENT INTERPRETATION NO. 2009-16-01

Issued on June 1, 2009

Licensing and Registration Requirements Applicable to Mortgage Loan Originators When the Newly Enacted Idaho Residential Mortgage Practices Act Becomes Effective on July 1, 2009

I. Background

The 2009 Idaho Legislature enacted House Bill 169, which repealed the *old* Idaho Residential Mortgage Practices Act, Idaho Code § 26-3101 *et seq.*, and enacted a *new* Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.* (referred to herein as the "IRMPA"), that will become effective on July 1, 2009. The IRMPA consists of three parts. Part 1 includes general provisions that apply to the entire IRMPA, Part 2 includes provisions applicable to mortgage brokers and mortgage lenders, and Part 3 applies to mortgage loan originators. Part 3 incorporates the requirements of the federal S.A.F.E. Mortgage Licensing Act, an act passed by Congress and signed by the President in July of 2008, as part of the Housing and Economic Recovery Act of 2008. Part 3 of the IRMPA is entitled the "Idaho Secure and Fair Enforcement for Mortgage Licensing Act of 2009" or the "Idaho S.A.F.E. Mortgage Licensing Act of 2009" and applies to mortgage loan originators. Part 3 of the IRMPA will be referred to herein as the "Idaho S.A.F.E. Act."

After the IRMPA was enacted, the Department began receiving questions regarding mortgage loan originator license and registration requirements under the IRMPA, particularly under part 3 of that act, the Idaho S.A.F.E. Act. To respond to such questions, and to clarify how the IRMPA licensing and registration requirements of the IRMPA will be implemented, the Department hereby issues this interpretation. It is intended to assist current mortgage broker/lender and mortgage loan originator licensees and future such licensees and others affected by the IRMPA with the changes that will occur when the IRMPA becomes effective on July 1, 2009.

II. Determining Who Is a Mortgage Loan Originator

Section 26-31-303(6) of the Idaho S.A.F.E. Act defines "mortgage loan originator" as 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[1]. Part (a) of § 26-31-303(6) sets forth activities that do not fall within the definition of a mortgage loan originator.

[1] A "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, which dwelling is located in Idaho, or on residential real estate located in Idaho. A "dwelling" is a residential structure that contains 1 to 4 units, whether or not such structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if used as a residence. *See* 12 CFR § 226.2(a)(10).

The Idaho S.A.F.E. Act requires a mortgage loan originator to be registered with the Nationwide Mortgage Licensing System and Registry (NMLSR) and licensed under the IRMPA.

Specific facts and circumstances that apply to a person's activities in connection with a residential mortgage loan will determine whether or not that person qualifies as a mortgage loan originator under the definition in the Idaho S.A.F.E. Act. The examples that follow are not intended as a complete list of all activities that may fall within the definition of a mortgage loan originator, or that may be exempt from such definition. They are merely intended to assist the mortgage industry in determining generally whether an activity constitutes mortgage loan origination as defined in § 26-31-303(6) of the Idaho S.A.F.E. Act, or falls within the exceptions set forth in subsections (a) and (b) of that section.

The following activities, when pursued for compensation or gain, or in the expectation of compensation or gain, will likely constitute mortgage loan origination activities under the Idaho S.A.F.E. Act:

(1) Completing, in whole or in part, a residential mortgage loan application, or assisting a borrower in the completion of such an application, or assisting a borrower in applying for such a loan. Assisting may include instructing or otherwise directing a borrower in completing any section of an application form, or providing advice or counsel to a borrower in the lending process, but does not include communication of factual information related to the loan process, such as the type of information necessary to complete a loan form.

(2) Advising or counseling a borrower as to loan terms, including the amount, payment period, payment amount, rates, fees, costs or options concerning a residential mortgage loan.

(3) Recommending, referring, or steering a borrower to a specific lender, based upon the borrower's credit history or income, or any other factor specific to the borrower that relates to obtaining a mortgage loan.

(4) Obtaining financial information in connection with paragraphs (1), (2), or (3) above, including obtaining a credit report or credit score from the borrower or from a third party to be used in making a credit decision.

The following activities likely fall within the exemptions set forth in § 26-31-303(6) of the Idaho S.A.F.E. Act, and thus the person engaging in such activities would not be subject to the registration and licensing requirements for mortgage loan originators under that Act:

(1) Making blank application materials available to a customer;

(2) Physically handling documents or transmitting documents for or to the borrower;

(3) Informing the borrower that certain lenders or persons are available to assist in a residential mortgage loan transaction, provided that no "Affiliated Business

Arrangement" (AfBA) as defined in Regulation X pursuant to the Real Estate Settlement Procedures Act (RESPA) has been established.[2]

HUD's Interpretive Statements

The Office of Housing and Urban Development (HUD) has issued various interpretations that the Department will likely rely on in determining whether a person's activities in connection with a residential mortgage loan place him or her within the definition of "mortgage loan originator."[3] An example is the following interpretive statement issued by HUD, addressing the meaning of the phrase "takes an application" in the residential mortgage lending context:

> HUD interprets 'tak[ing]' an application to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower.

HUD elaborates on the limits of the clerical and administrative exclusion by stating:

> HUD interprets an individual who "takes a residential mortgage loan application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the exclusion defined in section 1503(3)(C) of the SAFE Act. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act provided by section 1503(3)(B).

Finally, HUD states that "preparing loan packages" qualifies as "assisting a consumer," which would require licensure as a mortgage loan originator:

> Section 1503(3)(B), entitled "Other Definitions Relating to Loan Originator" provides "For purposes of this subsection, an individual 'assists a consumer in obtaining or applying to obtain a residential mortgage loan' by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan."

III. Registration and Licensing Requirements under the IRMPA and the Idaho S.A.F.E. Act by Mortgage Loan Originator Category

Some individuals who were exempt from licensing as individual mortgage loan originators under the *old* Idaho Residential Mortgage Practices Act are no longer exempt from licensing due to Congress'

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[2] The existence of an AfBA in and of itself will not likely, by itself, determine whether an exemption applies. The Director will consider the nature of the AfBA and to what extent one entity may have been referred business above others.

[3] The HUD interpretations referenced herein are found in the Federal Register/Vol.74, No.2, and on the HUD website, at: http://www.hud.gov/offices/hsg/ramh/safe/smlicact.cfm

passage of the federal SAFE Act, a key component of the Housing and Economic Recovery Act of 2008 (Public Law 110-289). The Department recognizes that various provisions in the IRMPA give rise to questions as to the registration and licensing requirements relating to different types of mortgage loan originators and the timing of such requirements. The following sets forth the Department's interpretation of such requirements and the timing as to each.

(1) Mortgage Loan Originators of Exempt Non-Depository Institutions

Individuals who engage in mortgage loan origination activities in Idaho on behalf of non-depository entities or individuals that are *exempt* from licensing under the IRMPA must still meet all of the Act's requirements for a mortgage loan originator license and obtain such license on or before July 31, 2010, through the NMLSR. The Department encourages all such individuals to initiate this process for an approved *conditional mortgage loan originator license*[4] *immediately* to minimize or prevent business interruption, as all requirements to maintain a fully approved non-conditional license must be *completed* by July 31, 2010. Additionally, employing or contracting firms, even though they are *exempt* from licensure under the IRMPA, will need to file a "registration" and pay NMLSR system fees in order to "sponsor" the license of the loan originators they employ or contract with. Such employers will have full access to the NMLSR and its capabilities for purposes such as filing applications and renewals, and requesting reports of their sponsored loan originators. No state fees will be assessed against such employing or contracting firms for filing the registration enabling them to sponsor mortgage loan originators.

(2) Mortgage Loan Originators of Non-Depository Institutions Who Were Formerly Exempt From Licensing in Idaho

Under the *old* Idaho Residential Mortgage Practices Act, repealed as of July 1, 2009, some individuals who engaged in mortgage loan origination activities in Idaho for non-depository institutions were exempt from mortgage loan originator licensing requirements due to the institution's affiliate relationship with a depository institution. Such former exemptions are no longer applicable under the IRMPA, effective July 1, 2009. As a result, all individuals who engage in mortgage loan origination activity in Idaho on behalf of non-depository institutions who formerly qualified for an exemption from Idaho's mortgage loan originator licensing requirements must obtain a *conditional mortgage loan originator license* from the Department by July 1, 2009. This requirement arises from the elimination of certain licensing exemptions included in the *old* Idaho Residential Mortgage Practices that will be repealed on July 1, 2009, and the requirement in the IRMPA that mortgage brokers and mortgage lenders can engage in mortgage loan origination activities in Idaho *only* through mortgage loan originators licensed by the Department. *See* Idaho Code § 26-31-211(10). By July 31, 2010, mortgage loan originators falling within this category must satisfy all of the requirements for licensing under the Idaho S.A.F.E. Act through the NMLSR to remain qualified for an Idaho mortgage loan originator license after that date.

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[4] A conditional mortgage loan originator license is a license issued by the Idaho Department of Finance to an individual allowing him or her to engage in mortgage loan origination activities in Idaho prior to satisfying all of the new Idaho S.A.F.E. Act licensing requirements. On July 1, 2009, all existing Idaho mortgage loan originator licenses will automatically convert to an approved-conditional status, and will remain in that status until all new Idaho S.A.F.E. Act licensing requirements have been satisfied. The new Idaho S.A.F.E. Act licensing requirements include, but are not limited to: 1) pre-license testing; 2) pre-license education; 3) criminal background checks; and 4) credit checks. The deadlines for completion of the new Idaho S.A.F.E. Act licensing requirements for mortgage loan originators are set forth on Appendix "A."

(3) Mortgage Loan Originators with a Current Idaho License as of June 30, 2009

Individuals who hold an active or approved-inactive Idaho mortgage loan originator license on June 30, 2009 and who have successfully renewed their license by December 31, 2009, will have until January 1, 2011, to satisfy all of the new requirements for licensing under the Idaho S.A.F.E. Act through the NMLSR to remain qualified for an Idaho mortgage loan originator license. Such mortgage loan originators will hold a *conditional mortgage loan originator license* until all new requirements for licensure under the Idaho S.A.F.E. Act are met, which must be accomplished by no later than January 1, 2011.

(4) Mortgage Loan Originators with a License Approval Date on or After July 1, 2009

Individuals who hold a mortgage loan originator license (active or inactive) with an issue date between June 30, 2009, and August 1, 2010 who successfully renew that license (if applicable) by December 31, 2009, and who are employed by, or have contracted with, a mortgage broker, mortgage lender, or mortgage loan modification company, will have until July 31, 2010, to satisfy all of the new licensing requirements of the Idaho S.A.F.E. Act. During the interim period, such individuals will hold a *conditional mortgage loan originator license*. The Department encourages all such individuals to initiate the process for an approved conditional license *immediately* to minimize or prevent business interruption. All requirements for obtaining a fully-approved non-conditional license must be *completed* by July 31, 2010.

(5) Independent Contractor Mortgage Loan Processors and Underwriters

After July 1, 2009, individuals who engage in mortgage loan processing or mortgage loan underwriting activities as an independent contractor may *not* conduct such activities until licensed as a mortgage loan originator through the NMLSR in conformance with the requirements of the Idaho S.A.F.E. Act. See paragraph (4) above for the applicable requirements and deadlines. Independent contractors whose licenses are not sponsored by a licensed or registered entity under the IRMPA or the Idaho Credit Code, Idaho Code § 28-41-101 *et seq.*, will be required to obtain a mortgage broker/lender license under Part 2 of the IRMPA and sponsor any mortgage loan originator they employ or contract with.

(6) Idaho Mortgage Loan Originator Employment Exclusivity Requirement

Idaho-licensed mortgage loan originators may not be employed as mortgage loan originators simultaneously by more than one (1) mortgage broker or mortgage lender licensed, or required to be licensed, under the provisions of IRMPA. Similarly, Idaho-licensed mortgage loan originators may not 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 the provisions of the IRMPA. Under the IRMPA, mortgage loan originators include individuals who offer or engage in mortgage loan modification activities in Idaho.

(7) Mortgage Loan Modification Activities

Beginning July 1, 2009, entities that offer to perform, or engage in, mortgage loan modification activities in Idaho on behalf of borrowers for compensation or gain, or in the expectation of compensation or gain, must be licensed as mortgage brokers or mortgage lenders through the NMLSR. All individuals who engage in mortgage loan modification activities on behalf of a mortgage broker or mortgage lender licensed, or required to be licensed in Idaho, must obtain a *conditional mortgage loan originator license* from the Department beginning July 1, 2009. The Department encourages all such individuals to initiate the process for an approved conditional license *immediately* to minimize or prevent business interruption. All requirements for obtaining a fully-approved non-conditional license must be *completed* by July 31, 2010.

(8) Mortgage Loan Originators for FDIC Insured Depository Institutions

Individuals who engage in mortgage loan origination activities in Idaho on behalf of a federally insured depository institution are not required to obtain a license under the Idaho S.A.F.E. Act, but must register with the NMLSR pursuant to requirements that will later be adopted and published by the Federal Financial Institutions Examination Council (FFIEC). On May 29, 2009, the Federal banking agencies issued a joint notice of proposed rulemaking concerning implementation of federal registration requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. A 30-day comment period will follow the publication in the federal register with a final rule expected to be established by July 31, 2009. Operating agreements and modifications to the NMLSR to accommodate the federal registration requirements will be completed once the final rule is in place. A notification through the federal register will notify the federally insured depository institutions when the NMLSR is available to them. It is expected that the filing deadlines will match those of the state supervised licensees.

(9) Mortgage Loan Originators for Non-Federally Insured Depository Institutions

Individuals who engage in mortgage loan origination activities in Idaho on behalf of non-federally insured depository institutions are *not* required to obtain a license under the Idaho S.A.F.E. Act, but must register with the NMLSR according to standards to be adopted by the Department in the near future. Such standards are expected to essentially mirror the requirements of the FFIEC. When the Department adopts such standards, it will provide notice to the affected parties.

DATED this 1ST day of June, 2009.

State of Idaho
Department of Finance

Gavin M. Gee, Director

Appendix A

Mortgage Loan Originator (MLO) Filing Dates and Idaho S.A.F.E. Act Compliance Deadlines

Loan Originator Employment Status	Begin Application for Conditional License	MLO License Issue Date	Deadline to Meet All Idaho S.A.F.E. Act Licensing Requirements
MLO employed/contracted by a regulated lender licensed under the Idaho Credit Code (ICC)[5]	Immediately	If prior to July 1, 2009: If on or after July 1, 2009:	then January 1, 2011 then July 31, 2010
MLO formerly exempt from licensing due to employment or contract with an Idaho mortgage broker/lender licensee affiliated with a depository institution	Immediately	If prior to July 1, 2009: If on or after July 1, 2009:	then January 1, 2011 then July 31, 2010
MLO – existing licensee whether active or inactive	NA	If prior to July 1, 2009:	then January 1, 2011
MLO – newly employed or contracted by licensed mortgage broker/lender	Immediately	If prior to July 1, 2009: If on or after July 1, 2009:	then January 1, 2011 then July 31, 2010
1099/Independent Contractor Mortgage Loan Processors and Mortgage Underwriters	Immediately	If prior to July 1, 2009: If on or after July 1, 2009:	then January 1, 2011 then July 31, 2010
Individuals conducting mortgage loan modification activity (and not currently licensed as an Idaho Mortgage Loan Originator)	Immediately	If prior to July 1, 2009: If on or after July 1, 2009:	then January 1, 2011 then July 31, 2010

[5] Employing regulated lender company licensees under the ICC are expected to begin filing for company registration on July 1, 2009.

Anticipated Dates for Functionality in the NMLS&R

Functionality	Anticipated Start Date
Pre-license National Component Test	**August 1, 2009**
Pre-license Idaho State Component Test	**August 1, 2009**
Pre-license Education Certification (in lieu of Pre-License Education)[6]	**TBD**
Pre-license Education Courses	**August 1, 2009**
Fingerprinting/Criminal Background Check	**October 1, 2009** (dependent upon FBI)
Credit Report	**April 1, 2010**

6 Applies only to MLO licensees with a license issue date PRIOR to July 1, 2009