

**IDAPA 12
TITLE 01
CHAPTER 10**

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Idaho Code sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2). (7-29-09)

001. TITLE AND SCOPE (RULE 1).

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

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

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

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals are not available within the agency. (11-1-98)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules contained in this chapter are public records. (11-1-98)

005. INCORPORATION BY REFERENCE (RULE 5).

The "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporate by reference the full text of the following federal laws and regulations as defined in these rules: the Real Estate Settlement Procedures Act, Regulation X, the Truth in Lending Act, and Regulation Z. Documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in section 002. of these rules. (7-29-09)

006. DEFINITIONS (RULE 6).

As used in the Idaho Residential Mortgage Practices Act and these rules, the following definitions apply: (7-29-09)

01. Act. Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (7-29-09)

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

03. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee or person required to be licensed under the Act to complete such process. (7-29-09)

04. Director. Means the director of the Idaho Department of Finance. (7-29-09)

05. Real Estate Settlement Procedures Act. Means the act set forth in 12 USCA 2601 et seq., as amended to and including January 1, 2009. (7-29-09)

06. Regulation X. Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2009. (7-29-09)

07. Regulation Z. Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2009. (7-29-09)

08. Truth in Lending Act. Means the act set forth in 15 USCA 1601 et seq., as amended to and including January 1, 2009. (7-29-09)

007. -- 039. (RESERVED).

040. DECEPTIVE ADVERTISING (RULE 40).

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

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

b. Advertising without clearly and conspicuously disclosing the business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the licensee or person required to be licensed under the Act. (7-29-09)

c. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them, but rather to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the licensee or person required to be licensed under the Act. (7-29-09)

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

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

041. -- 049. (RESERVED).

050. WRITTEN DISCLOSURES (RULE 50).

01. Receipt of an Application. Upon receipt of an application as defined in subsection 006.02. of these rules, and before receipt of any moneys from a borrower, a licensee or person required to be licensed under the Act shall disclose to each borrower information about the licensee or person required to be licensed under the Act, including the services that may be provided and the services that will be provided, in a form acceptable to the director. (7-29-09)

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

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

b. Disclosures through good faith estimates of settlement services in compliance with the requirements of the Real Estate Settlement Procedures Act and Regulation X. Such disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection, and any mortgage broker or mortgage lender fees associated with the residential mortgage loan. (7-29-09)

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

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

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

06. Additional Disclosures Required. In addition to the disclosures required under subsection 050.02. of these rules, if a prepayment penalty is a condition of a residential mortgage loan offered by a licensee or person required to be licensed under the Act, that fact shall be separately disclosed in writing to the borrower by the licensee or person required to be licensed under the Act. Such disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the residential mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the director, and shall be delivered to the borrower within three (3) business days of receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. (7-29-09)

051.RESTRICTIONS ON FEES (RULE 51).

01. Fees Authorized by section 26-31-210 of the Act. If a licensee or person required to be licensed under the Act imposes fees authorized by section 26-31-210 of the Act, the following restrictions apply, subject to the director's authority to set limits on fees and charges pursuant to section 26-31-204(6) of the Act: (7-29-09)

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

b. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a licensee or person required to be licensed under the Act to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the licensee or person required to be licensed under the Act for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. (7-29-09)

052. – 059. (RESERVED).

060. PROHIBITED PRACTICES (RULE 60).

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

a. Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading, or if the licensee or person required to be licensed under the Act does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include, but are not limited to, the availability of funds, terms, conditions, changes incident to the mortgage transaction, prepayment penalties, the possibility of refinancing, and the likelihood of successfully obtaining specific mortgage loan modification terms. (7-29-09)

b. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: (7-29-09)

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

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

iii. For the purposes of this subsection, the term “immediately” represents a period of time no greater than seventy-two (72) hours. (7-29-09)

c. Fail to give the borrower, upon the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document that is required pursuant to these rules, and other applicable laws, rules or regulations. (7-29-09)

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

e. Engage in any deceptive advertising as set forth in Section 040. of these rules (Rule 40). (7-29-09)

f. Provide or offer to provide any services, for compensation or gain, or in the expectation of compensation or gain, incident to services authorized under the Act, such as investment advising, real estate brokerage services, tax or legal advice, unless the person offering such services has first obtained a license or the approval required by the appropriate licensing authority to engage in the offering of such services. (7-29-09)

061. -- 089. (RESERVED).

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

If, for any reason, a licensee or person required to be licensed under the Act fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the licensee or person required to be licensed under the Act shall provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other person to whom the borrower directs that the documents be transmitted. The licensee or person required to be licensed under the Act shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing. (7-29-09)

091. -- 099. (RESERVED).

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

In section 26-31-103(1) of the Act, the Idaho Legislature determined that a uniform multistate administration of an automated license system for mortgage brokers, mortgage lenders and mortgage loan originators is consistent with both the public interest and the purposes of the Idaho Residential Mortgage Practices Act. In section 26-31-103(2)(b) of the Act, the Idaho Legislature authorized the director of the Idaho Department of Finance to establish by rule such new requirements as are necessary for the State of Idaho to participate in a uniform multistate automated licensing system upon the director's finding that such new requirements are consistent with both the public interest and the purposes of the Act. The director finds that the requirements set forth in sections 100 and 101 of these rules are consistent with the public interest and the purposes of the Act, and therefore promulgates such rules pursuant to section 26-31-103(2)(b) of the Act. (7-29-09)

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

01. The Nationwide Mortgage Licensing System and Registry (NMLSR). The NMLSR is an Internet-based filing depository operated by the State Regulatory Registry, LLC (SRR), a wholly-owned operating subsidiary of the Conference of State Bank Supervisors (CSBS). The NMLSR is designed to accept license applications and license renewal applications electronically from mortgage brokers, mortgage lenders, and mortgage loan originators; collect associated statutory filing fees on behalf of participating jurisdictions, as well as the expenses associated with an applicant's or licensee's participation in the NMLSR; and provide the public with Internet-based access to information concerning mortgage brokers, mortgage lenders, and mortgage loan originators. The NMLSR began accepting electronic filings of applications from mortgage brokers, mortgage lenders, and mortgage loan originators from Idaho on January 1, 2008. (7-29-09)

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

03. Licensing. Mortgage brokers, mortgage lenders, and mortgage loan originators who seek to obtain or retain a license under the Act through the NMLSR must pay the charge imposed and retained by the NMLSR to fund the costs of the NMLSR associated with an applicant's or licensee's participation in the system. (7-29-09)

04. Statutory Fees. The NMLSR shall collect any statutory fees on behalf of the Idaho Department of Finance that are required to be paid to the Idaho Department of Finance by license applicants and licensees pursuant to the Idaho Residential Mortgage Practices Act. The NMLSR is required to forward to the Idaho Department of Finance all statutory fees it collects on behalf of the Idaho Department of Finance, pursuant to the terms of a written agreement between the Idaho Department of Finance and the SRR. (7-29-09)

102. -- 999. (RESERVED).