The Idaho Compliance Connection

A Newsletter Published by the Consumer Finance Bureau of the Idaho Department of Finance for Mortgage Companies, Consumer Finance Companies and Collection Agencies Doing Business in Idaho

FALL 2004

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WELCOME OUR NEW STAFF

Jan Kochan joins the Consumer Finance Bureau as an Examiner/Investigator. Jan has a BS in Finance and brings over 17 years of diverse experience in such areas as commercial lending, commercial appraising, customer relations and federal income tax compliance.

Jo Ann Lanham joins the Consumer Finance Bureau as a Consumer Affairs Specialist. She has a BS in Applied Sociology and a Masters Degree in Public Administration. Jo Ann brings a wealth of experience from the Idaho Attorney General's Office where she formerly served as Senior Consumer Specialist in the Consumer Protection Unit. Jo Ann will primarily handle consumer complaints and education outreach.

Consumer Protection Issues

Homeownership is on the rise. Along with this increase in the number of consumers realizing part of the American dream, there has been an increase in consumer spending, consumer debt, and consumer protection abuses in the finance and credit industries. Each of these factors has an effect on the overall financial health of both consumers and consumer finance industry members.

Over the past year, increases in consumer spending have been influenced by improved economic shifts in employment levels, low interest rates, and rising home values. Many consumers have shifted the structure of their debt by taking advantage of increased equity in their homes to pay down other types of outstanding credit balances. But, at the same time, consumer debt nationally has increased as indicated by the ratio of personal consumer debt to personal income being at an all-time high of 113% for the first half of 2004. From the consumer perspective, pressures to reduce debt burdens in an environment of rising interest rates creates a sense of urgency that makes some solutions, which may neither be effective or legitimate, seem practical. At the same time, businesses offering financing, who feel the pressure to make their production and profitability match 2003 levels, may consider using unsound methods to obtain clientele. Also, some entities may see an opportunity to profit from the position that both consumers and finance professionals are in by offering solutions that violate consumer protection laws.

The factors affecting consumer spending and consumer debt appear to be the motivation for certain types of schemes that are becoming national trends. The Mortgage Asset Research Institute Inc. preliminarily reported for the end of 2003 that incidents of mortgage fraud are little changed over the past year. However, the geographic location of fraud incidents have shifted from previous hot spots such as Florida and California and now are increasingly being reported for states such as Nevada, Georgia, South Carolina, and Utah. The types of factors involved in mortgage fraud have also shifted to some extent with fraud in applications and tax and financial statements being the top areas where fraud indicators are most likely to be found in subprime mortgage lending. This trend makes it important for industry members to know who their clients are and verify the information that they provide. It also points to the need for closer review of credit applications to ensure validity of information provided thereon. Also, the fact that such trends are occurring in neighboring states with markets not too dissimilar from Idaho's highlights the possibility of mortgage fraud trends migrating to Idaho.

But mortgage fraud is not isolated to loan originations. As an example, recently in Florida, two licensed mortgage brokers engaged in a scheme to defraud owners of residential properties. The loans outstanding on the properties ultimately ended up in default creating a total loss to consumers and lenders of over $3 million dollars. Cases such as this demonstrate the need to critically evaluate all aspects of the transactions with which industry members are associated.

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Enforcement Actions

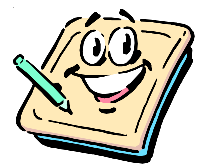
Collection Agencies

Paul & Associates Law Offices, PLLC—6/28/04— Agreement and Order—paid $5,000 settlement for unlicensed collection activity under the ICAA.
Merchants Credit Guide Company—7/16/04—Agreement and Order—paid $5,000 settlement for unlicensed collection activity under the ICAA.
National Credit Acceptance, Inc.—8/9/04—Cease and Desist Order for unlicensed activity.
M.A.D. Collection Agency—9/21/04— Cease and Desist Order for unlicensed activity.
Giove Law Office P.C.—10/15/04—Cease and Desist Order for unlicensed activity and various violations of the FDCPA. Hearing has been requested.

Mortgage Brokers/Lenders

Academy Mortgage dba Castle Hill Mortgage—4/6/04— Denial and Cease and Desist Order for unlicensed activity; **6/15/04**—Agreement and Order—paid $30,329.97 restitution and $12,679.03 settlement for various violations of the IRMPA.
Utah Valley Mortgage Company—4/2/04—Agreement and Order**—**paid $1,000 settlement for failure to maintain surety bond.
Molen Financial Credit, LLC—5/6/04—Agreement and Order— paid $1,000 settlement for failure to maintain surety bond.
Jefferson Nationwide Mortgage Corporation—5/17/04— Agreement and Order—paid $1,000 settlement for failure to maintain surety bond.
American Union Mortgage, Inc.—5/25/04—Agreement and Order— paid $1,000 settlement for failure to maintain surety bond.
Brokerage Services Unlimited, Inc dba Bellevue Center Finance—6/16/04—License revocation for failure to maintain surety bond.
Charter Financial Group, LLC—8/31/04—License revocation for failure to maintain surety bond.
Independent Realty Capital Corporation dba Independent Mortgage Company—6/25/04—Agreement and Order—assessed $85,000 penalty with $75,000 suspended, paid $10,000 settlement, surrendered nine licenses and banned Jeffrey Barrett from engaging in or applying for a license for mortgage or consumer lending activity for 10 years, for various violations of the IRMPA.
Randy Jenks and Wanda Jenks dba Ikon Financial—7/22/04— Stipulated Judgment and Permanent Injunction entered by the Court with $20,000 civil penalty.
Coventry Mortgage of Utah dba Priority 1 Mortgage—8/4/04—Agreement and Order—paid $2,500 settlement for various violations of the IRMPA.

How to.......delay your application/renewal/annual notification process



incorrect fee and/or tax submitted;
forms incomplete or contain incorrect information;
background questions not taken seriously or answered incorrectly;
required attachments missing;
daily (or more) phone or email status inquiries;
conduct activity prior to licensure;

and the number one delay factor.... don't read the instructions!

Tammy Marie Fil dba First Option Mortgage—8/4/04—License denial.
Consolidated Mortgage, Inc—9/30/04—Agreement and Order—assessed $4,361.75 restitution and $10,000 settlement for various violations of the IRMPA.

Regulated Lenders (includes Payday, Title, Finance Companies)
The Meridian Group, Inc dba Rapid Cash—5/19/05— license revocation for abandonment of licensed location.

What to Expect During a Payday/Title Examination

In addition to other industries, the Idaho Department of Finance is charged with regulatory authority over payday lenders and automobile title lenders. The Department conducts on-site compliance examinations as required by law for the purpose of identifying and correcting problem areas for licensees. Without proper understanding or preparation, licensees sometimes experience stress or anxiety before, during, and after such examinations. It does not have to be so.

Industry members often refer to compliance examinations as "audits." The term "audit," however, relates more to financial safety and soundness, a form of review more commonly associated with licensed depository financial institutions. No matter the phraseology, it goes without saying that licensees are responsible for knowing the laws and rules governing their licensed business activities. Licensees are also responsible to ensure that their business activities comply with those laws and rules. The examination process has proven to be a valuable educational tool for many licensees. This article is intended to provide licensees with direction on steps that they can take to help ensure a successful examination.

At the time of an examination, it is preferred that the office manager for the licensee be present to answer questions. This helps avoid delays and added expense to the licensee for a lengthier examination. If compliance issues are discovered during an examination, the Department examiner will discuss those issues with the office manager to assist in the determination of corrective measures. One of the Department's objectives in each examination is to provide direction and educate the licensee on compliance requirements.

According to statute, the Department of Finance charges an hourly rate of $25.00 per examiner for each examination. A goal of each Department examiner is to conduct examinations as quickly and efficiently as possible. During an examination, a licensee's staff can assist examiners in completing their work. Licensees are expected to be responsive to requests for information by the examiner. Such requests may include providing the examiner with copies of required disclosures. This includes anything that would be presented by the licensee to the consumer for information or for the consumer's signature. Examples of such disclosures include, the loan application, the loan agreement, the denial or adverse action form, the licensee's written privacy policy, and addendums to the loan agreement, if any.

Additionally, the examiner may ask automobile title lenders to produce copies of power of attorney instruments and the lender's version of a consumer's "ability to repay" document analyzing a borrower's debt load in relation to his or her income. Licensees should also be prepared to provide reports documenting the number of each type of loan issued along with information on outstanding loan accounts, including the total dollar amount of outstanding loans.

During the examination process, the examiner is attempting to get a "snapshot" of the licensee's business activities against the backdrop of laws and rules governing the licensee. To assist in obtaining this "snapshot," the examiner may require access to current accounts, the previous day's closing receipts, or other information identified by the examiner. Providing the examiner with requested information in an orderly and timely fashion will serve to expedite the examination process and lessen the licensee's examination costs.

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IMPORTANT DATES TO REMEMBER

Renewals and Annual Notifications	Last Date to Complete
Regulated Lenders (includes payday & title lenders, as well as dual-licensed mortgage lenders with this license)	January 31st
Collection Agencies/Foreign Permittees	March 15th
Mortgage Brokers & Lenders	August 31st
Annual Reports of Activity	
Regulated Lenders	May 31st
Collection Agencies/Foreign Permittees	March 15th
Mortgage Brokers & Lenders	August 31st

Consumer Protection Issues (continued from page 1)

There are other trends that have little to do with financing but do address consumer concerns over increasing debt. Credit and mortgage elimination schemes have become prevalent throughout the nation. In exchange for a hefty up-front fee, these deceptive schemes claim to offer consumers total relief from their credit card balances or mortgage secured loans. In late 2003, the Department of Finance ordered a northern Idaho corporation and its affiliates to cease and desist from engaging in such offers and practices. The offer that was subject to the Department's order was for the elimination of mortgage debt and the release of liens through a process which was based on alleged illegalities in the terms of a borrower's deed of trust. Although the corporation has apparently ceased its operations, several more companies making similar claims about the possibility to eliminate debt or credit account balances through either some unknown proprietary process or through the good will of an unknown benefactor have taken its place throughout the country.

Claims that debts can be eliminated through arbitration, grants, or gifts are unfounded and are based upon false statements and generalities. False claims of debt eliminations are also used as a marketing tool to recruit "financial professionals" into offering such services. The only result of claims like these have been losses to consumers who have paid anywhere between $1,500 and $10,000 to "eliminate" their mortgage or credit card debt. And, because of the types of contracts, agreements, and other instruments signed by consumers who deal with these companies, further risks to consumers may be the loss of interest in property, severely damaged credit ratings and foreclosure.

It is the mission of the Department of Finance to aggressively promote access to comprehensive financial services for Idaho citizens while also detecting and reducing consumer exposure to fraud, unsafe practices, and consumer protection abuses. A goal for both the Department and for all industry members who provide Idaho citizens with financial services they seek should be to identify and stop illicit financial schemes before they affect the ability of consumers to participate in legitimate financial services and programs.

Suggestions and comments concerning the newsletter or its contents should be sent to the Bureau at PO Box 83720, Boise, Idaho 83720-0031 or via email to kschaler@fin.state.id.us.

This newsletter is produced semi-annually as a part of the Bureau's continued communication outreach with the companies we regulate.

Special thanks to Brian Cox, Anthony Polidori and Cina Treese for their contributions to this issue!

In addition, the examiner will review repossession logs and check files to ensure compliance with record retention requirements. When it comes to loan file organization, a rule of thumb for licensees is to place all loan application-related paperwork in the loan file. Loan documents must be retained for at least 2 years (Idaho Credit Code), and loan application denial documentation must be retained for 25 months (Federal Regulation B). The examiner will also check to ensure that money judgments obtained against debtors are not in amounts beyond what is allowed. To establish this, the examiner may require a thorough review of the licensee's records of receipts, filings, and court documents. The examiner will also review loan files to ensure that licensees are not "up charging" borrowers for third-party services. Licensees are reminded that they must ensure that all of their repossession files include full documentation, including copies of receipts, invoices, orders, and communications.

Compliance violations sometimes occur as a result of isolated instances of inadvertent error. Such violations are commonly resolved without the necessity of a formal administrative action. On the other hand, violations of a more serious nature, including repeated violations after prior notice from the Department, may lead to the issuance of a formal administrative order and imposition of an administrative fine. In the most serious cases, a license can be revoked or suspended through an administrative process.

Most violations noted in the Department's examination reports stem from improper manual APR calculations, or from the loan agreement not being completed correctly. Department examiners understand that computer systems can occasionally go down. Licensees should consider a backup plan for such occurrences. Licensees should have in place a system for the accurate manual calculation of APRs when computers "refuse to cooperate."

Another common source for violations noted in the Department's examination reports is the absence of required disclosure statements on loan agreements and their addendums. Sometimes an office manager will describe to the examiner that the business location has been provided with incomplete forms by the "home office." In these instances, the manager often claims to have no control over the content of the forms. Nevertheless, if required disclosures are missing on the licensee's forms, the examination report will reflect a violation. Repeated instances of violations of this type can lead to an administrative action.

The examination process is designed to help promote licensee education and ensure compliance. Department examiners like to consider it a "win-win" situation. If a licensee has implemented business practices to promote compliance with relevant laws and rules, the examination will undoubtedly be shorter, less expensive, and less stressful. Often, the examination process provides licensees with a good opportunity to ask questions and receive helpful direction from the Department's examiners.

In conclusion, when examined – don't panic. Rather, correct errors and violations and put measures in place to ensure against repeat violations. With proper preparation, including the implementation of business practices that comply with relevant laws and rules, the Department's examination process can be a time of learning and improvement rather than a time of stress and anxiety.

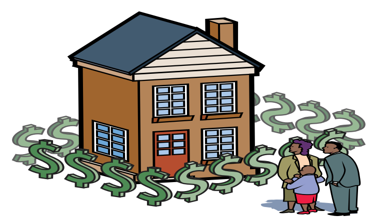
Licensees are welcome to telephone the Department's compliance examiners with questions. Department compliance examiners can be reached at (208) 332-8000, or in state toll-free at: (888) 346-3378.

Contact Information for the Idaho Department of Finance

Main phone number	(208)-332-8000
Consumer Finance Bureau	(208) 332-8002
Facsimile	(208) 332-8099

USPS (regular mail)
Idaho Department of Finance
PO Box 83720
Boise ID 83720-0031

Overnight Delivery
Idaho Department of Finance
700 W State Street 2nd Floor
Boise ID 83702



BUREAU STATISTICS
(1/1/2004 to 9/30/2004)

Licensees	
Mortgage Broker Licenses (active)	621
Mortgage Lender Licenses (active)	684
Licenses expired 8/31/04	243
Regulated Lenders (inc. title lenders)	695
Payday Lenders	203
Collection Agencies	164
Foreign Permittee	375
Mortgage Applications Received to Date	488
Mortgage Applications Approved to Date	
Mortgage Brokers	192
Mortgage Lenders	215
Exemptions	29
Withdrawals	307
Exams Conducted to Date	
Mortgage	12
Regulated Lenders (title, payday)	103
Collection Agency	1
Complaints filed (written)	431

STATE OF IDAHO
DEPARTMENT OF FINANCE
PO BOX 83720
BOISE ID 83720-0031