



IDAHO

DEPARTMENT OF FINANCE

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Governor

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IDAHO DEPARTMENT OF FINANCE Policy Statement 2018-01

Policy Statement Replacing Former Policy Statement 2017-01 Concerning Requirement of Financial Responsibility/Fitness of Mortgage Loan Originators, Qualified Persons in Charge, and Designated Control Persons of Mortgage Brokers and Lenders Under the Idaho Residential Mortgage Practices Act.

I. Background

The 2009 Idaho Legislature enacted the revised Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.* (IRMPA) that became effective July 1, 2009. The IRMPA now consists of three parts. Part 1 includes general provisions. Part 2 includes provisions that apply to mortgage brokers and lenders. Part 3, entitled the "Idaho S.A.F.E. Mortgage Licensing Act of 2009," referred to as the "Idaho S.A.F.E. Act," incorporates the requirements of the federal S.A.F.E. Mortgage Licensing Act, which applies to mortgage loan originators.

Part 2 of the IRMPA sets forth requirements for financial responsibility, character and fitness of mortgage broker/lender license applicants, including officers, directors, members, managers, partners, and qualified persons in charge (QPICs). Part 3 of the IRMPA sets forth requirements for financial responsibility, character and general fitness of mortgage loan originator license applicants and licensees. Mortgage loan originators, as well as officers, directors, members, managers, partners, and QPICs will be referred to in the remainder of this Policy as "Individuals," and the same standards of financial responsibility, character and general fitness apply to each under the IRMPA.

II. Determining Financial Responsibility/Fitness

The Department will find an Individual as lacking the required financial responsibility/fitness if he or she has shown a pattern of disregard for the management of his or her personal financial affairs. The Department will also consider the following factors in determining whether an Individual meets the requirement of financial responsibility/fitness:

- The existence of outstanding judgment(s) (to exclude judgments resulting solely from medical expenses);
- The existence of outstanding tax liens or other government liens or filings. The existence of any liens or judgments resulting from findings of fraud, embezzlement, misrepresentation, dishonest dealing, deceit and/or mishandling of trust funds;
- The existence of any liens, judgments, or financial or professional disciplinary actions that indicate a pattern of dishonesty;
- A pattern of delinquency in child support or student loan payments;

- The existence of outstanding collection actions against the Individual with a reported balance in excess of \$5,000 as of the date of the credit report or other source information received by the Department (unless solely as a result of medical expenses);
- The existence of outstanding non-mortgage charged-off accounts with a reported past due balance owed in excess of \$5,000 as of the date of the credit report or other source information received by the Department (unless solely as a result of medical expenses);
- The existence of a mortgage tradeline with a reported past due amount;
- The existence of a mortgage tradeline with 1 or more 60, 90, 120 or 150 day past due payments within 12 months of the date of the credit report;
- The existence of one or more non-mortgage accounts, with a cumulative past due balance in excess of \$1,000;
- The Individual having gone through a foreclosure, preforeclosure sale (short sale) or mortgage-related charge-off within the past four years;
- The existence of a pattern of delinquent accounts within the past three years; and
- The Individual having filed a bankruptcy petition within the past five years. The Department will not consider a bankruptcy as the sole basis for a finding that an Individual lacks the required financial responsibility/fitness but will consider the circumstances and explanation of events that caused the bankruptcy filing(s).

If an Individual's credit report, response to any application disclosure question or other information obtained by the Department contains adverse information under any of the foregoing standards, the Department will notify the Individual in writing of the specific items that must be addressed, and may specify the documentation that must be provided for the Department's consideration and review. It is the responsibility of the Individual to identify and provide the documentation necessary for the Department to fully evaluate the Individual's financial responsibility and fitness. Examples of the type of documentation that the Department may request may include, but not be limited to, the following:

- A written explanation of the circumstances surrounding the adverse information reported; and
- Documents that the Department finds necessary to its review of the adverse information. Any document provided must be legible and complete. Incomplete documents will not be accepted. Examples of documents that may be required may include, but not be limited to:
 - Copies of a satisfaction of judgment;
 - Copies of a bankruptcy discharge order or dismissal documents or the list of creditors and required payment amount(s) in the case of an open Chapter 11 or 13;
 - Copies of a satisfaction of outstanding tax liens or other governmental liens;
 - Copies of court documents that exist showing the factual basis underlying the adverse information being reviewed by the Department and how the matter was resolved or adjudicated;
 - Copies of account statements or letters from the Individual's creditors, collection agency, lien or judgment holders, explaining and verifying the current status of any past due accounts, to include documentation of any

repayment plans and agreements, as well as any temporary or permanent modifications to such accounts.

If the Individual is not able to obtain the documents requested by the Department, the Individual must support that fact with documentation from the source of the unavailable documents. This support must consist of a written statement from the agency or creditor who holds or held the records and must be written on the agency's or creditor's letterhead; must indicate that the agency or creditor does not have any record of the matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and why; and must be signed by the agency's or creditor's records custodian and include contact information such as phone, mailing address, and e-mail address.

III. Reviewing Adverse Credit History and Other Information

The Department has the legal responsibility to determine whether an Individual has sufficiently demonstrated financial responsibility, character, and general fitness before it can approve or renew a mortgage loan originator license or a mortgage broker/lender license. To make this determination, the Department will consider the following:

- The Individual's credit history reflected in a credit report;
- Supplemental information and documentation requested from and provided by the Individual as determined necessary by the Department;
- Supplemental information obtained from outside sources such as courts or third party reporting agencies;
- Responses and information contained in the Individual's application filings;
- Previous and current license history with the Department, to include any regulatory actions that have occurred;
- Other information that reflects upon the Individual's character, general fitness, or financial responsibility;
- The timing and context of the information reviewed;
- Patterns of conduct; and
- Factors indicating that financially adverse information may be the result of the involuntary loss of job or income, divorce, or health issues. Under such circumstances, the Individual shall provide documents showing attempted workout arrangements with creditors or other factors that indicate the Individual has made an attempt to correct his or her financial difficulties. However, contracting with a debt settlement company as a resolution effort, wherein creditors do not receive regular and timely payments, will not be considered or accepted.

No determination of financial responsibility, character and general fitness made by the Department will be based solely on the fact that an Individual has been a debtor in bankruptcy or has been the control person of an organization that filed a bankruptcy petition. Also, the Department will not base a license application denial solely on a license applicant's credit score or credit report.

Although the following may not be an exclusive list, the Department may consider the following factors, or a combination thereof, in determining whether to deny, condition, bar from renewal, suspend, or revoke a mortgage loan originator license or mortgage broker/lender license:

- The Individual has failed to fully provide any documentation required by the Department;
- The Individual has made a false attestation associated with a filing related to an application for a license or a license renewal;
- The Individual has failed to pay in full, or has failed to make arrangements with his or her creditor to pay in full, any past due non-mortgage account(s) with cumulative balances of \$1,000 or more; lien(s), judgment(s) or charged-off balance(s) as described above, either as of the date of the issuance of a credit report to the Department, or at time of initial licensure, designation as a control person, or at renewal of any license. In reviewing this factor, the Department may make an exception for any account, lien(s), judgment(s), or charged-off balance(s) attributable solely to medical expenses;
- The Individual has past due child support payments;
- The Individual has past due student loan payments in excess of \$1,000;
- The Individual is in arrears or has failed to comply with the terms of a repayment plan or agreement entered into with a creditor;
- The Individual has failed to make timely payments under a plan or agreement with any state or federal tax or other regulatory agency;
- The Individual has three or more non-mortgage accounts of any kind, except those solely related to medical expenses, 90 days or more past due with a cumulative balance of \$5,000 or more;
- The Individual has been the subject of one or more foreclosure actions within the past three years; and
- The individual has had a pattern of delinquent accounts, except those solely related to medical expenses, within the past three years.

Financial responsibility, character and general fitness are continuing requirements for Individuals and must be met at all times, to include, but not limited to, at initial licensure and licensure renewal.

No mortgage loan originator license or mortgage broker/lender license will be approved on or after July 1, 2018, unless compliance with Idaho's Financial Responsibility/Fitness Policy has been met. Applications will be deemed withdrawn or abandoned if not completed within sixty days of notification to the applicant by the Department of deficiencies in the application.

DATED this 1st day of July, 2018.



 Gavin Gee
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