



PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS SINCE 1905

Idaho Department of Finance
Guidance Statement
2020-01-CFB
FINANCIAL RESPONSIBILITY/FITNESS OF MORTGAGE LOAN ORIGINATORS
AND KEY INDIVIDUALS
Issue Date: July 1, 2020 (Replaces Policy Statement 2018-01)

I. Background

The Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.* (IRMPA) 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 key individuals who exercise control of the license applicant, such as officers, directors, members, managers, and partners. 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 and control persons will be referred to in the remainder of this Guidance as Individual(s), 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 and fitness if the Individual has shown a pattern of disregard for the management of their personal financial affairs. The Department will also consider the following factors in determining whether an Individual meets the requirement of financial responsibility and fitness:

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- Answers to all questions in an application must be truthful and accurate; it is most important to provide complete disclosure of events and then provide explanations; do not presume that something does not or should not matter, for example, because it happened so long ago, is minor, or currently being addressed, or no longer appears on a credit report; if the answer to a disclosure question is “yes,” then make sure you answer that question “yes” and provide a full explanation;
- The existence of outstanding judgment(s), except a judgment issued solely as a result of medical expenses (but you must still disclose any existing medical expense judgment and then provide the explanation);
- 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, 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 within the last three years;
- 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 one or more non-mortgage accounts, with a cumulative past due balance in excess of \$1,000;
- The existence, within the past three years, of a pattern of delinquent accounts, including but not limited to –
 - The existence of a mortgage tradeline with 1 or more 60, 90, 120 or 150 day past due payments;
 - The Individual having gone through a foreclosure, which means or includes the issuance of a notice of default, a pre-foreclosure sale (short sale), pre-foreclosure modification, deed in lieu of foreclosure, or mortgage-related charge-off; and,

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- The Individual having filed a bankruptcy petition. The Department will not consider a bankruptcy as the sole basis for a finding that an Individual lacks the required financial responsibility or 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 may 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. However, it is the responsibility of the Individual to provide required disclosures and documentation responsive to an application for a license, which allows the Department to fully evaluate the Individual's financial responsibility and fitness. Therefore, an Individual's failure to provide required disclosures and documentation may result in the denial of a license application.

Examples of the type of documentation that the Department may request includes, but is not 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, including -
 - 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

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

Any document provided must be legible, complete, and contain enough information to identify the creditor, owner of the account, or resolution of account. Incomplete documents will not be accepted. 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. The supporting statement 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. Additionally, the supporting statement must be signed by an authorized signatory of the agency or creditor 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;

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- 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 any agreed amounts, or has failed to make arrangements with his or her creditor to pay any agreed amounts, on –
 - 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

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Department will not consider 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 modification 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.

IV. Summary

The Department will apply the provisions of this Guidance to applications received after July 1, 2020. 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. 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.

Contact - You may direct comments or requests for additional information regarding this Guidance Statement to:

Bureau Chief, Consumer Finance Bureau
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

Telephone: 1-(208)-332-8000
Facsimile: 1-(208)-332-8099
Email: finance@finance.idaho.gov

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Idaho Financial Responsibility/Fitness FAQs

*The questions and answers provided here are for informational purposes only and should not be construed to address any specific situation or to constitute legal advice. This information pertains only to Idaho mortgage loan originator licensees, license applicants, and mortgage company “control persons.” Information from, and requirements of, other states may be different. Please refer to the Department’s **FINANCIAL RESPONSIBILITY/FITNESS OF MORTGAGE LOAN ORIGINATORS AND CONTROL PERSONS 2020-01-CFB (Guidance)** for details on the documentation that must be provided to the Department for review.*

Individuals who may not currently qualify for a license may qualify after corrective actions are in place demonstrating financial responsibility or fitness, and after demonstrating responsible management of financial affairs. It is important to remember that according to the Guidance, decisions will be made based on an Individual’s overall credit history, the responses and documentation provided by an applicant or a licensee, and the Individual’s licensing and enforcement history with the Department.

1. **Q:** What happens if I don’t answer a question on the application accurately?

A: Questions on the application are designed to obtain information that is important to the licensing process. If you provide an answer that is inaccurate, misleading, incomplete, wrong, etc., that is a fundamental problem. That is why you must attest to the truthfulness, accuracy, and completeness of every application submittal or update in NMLS. You should double, or even triple, check the information before attesting to it and submitting it to the Idaho Department of Finance. Applications that do not contain required information are subject to denial.

2. **Q:** Why does my credit record and history matter to the Department?

A: The Department has been charged with the application of the licensing requirements of the federal SAFE Act, as reflected in Idaho law. Some of those requirements involve determining the financial fitness and responsibility of mortgage loan originators by an assessment of how the Individual manages his or her financial affairs. This information is collected and reported through personal credit report histories and in public records of lien filings, judgments, foreclosures and bankruptcies.

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Additionally, it is the Department's view that the same standards applied to mortgage loan originators should also be applied to control personnel who are responsible for the training, education, and policies and procedures of a mortgage broker or lender.

3. Q: How will the Department decide if my credit meets or doesn't meet the requirements to have a license?

A: Each Individual's credit report will be reviewed, along with supplemental information obtained by and provided to the Department, with specific attention given to those with items such as judgments, liens, foreclosures, delinquent accounts over 90 days, and accounts with multiple delinquencies. If there are items of concern, the Individual may be notified that additional information is needed by the Department. If requested, once that information is received and reviewed, a decision will be made whether a license can be issued to the applicant or whether an existing licensee is qualified by law to maintain such license.

4. Q: Is there a minimum credit score that will cause me to be denied?

A: No. Idaho has not adopted a minimum credit score requirement that would cause denial or removal of a license.

5. Q: How will I know if the Department needs additional information from me related to a financial issue?

A: Individuals will be notified by a "private" license item placed on the Individual's NMLS record under the license item type of credit report clarification if the Individual is applying for a mortgage loan originator license. Individuals that are solely a control person with an MU2 filing will be notified by certified mail and a deficiency notice will be placed on the Individual's NMLS record under the license item type of credit report clarification *when the certified mail is sent*. The certified letter will be sent to the Individual's residential address. Privacy issues and restrictions contained within NMLS's contract with TransUnion limit the type of information that can be placed on the Individual's NMLS record as well as how the information is communicated.

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6. **Q:** My employer takes care of all my licensing application. Why won't the Department talk with my employer about what is needed on my credit if I say it is ok?

A: Privacy issues and restrictions contained within NMLS's contract with TransUnion limit the type of information that can be placed on the NMLS record as well as how the information is communicated and to whom. Communication with anyone other than the Individual who is the subject of the credit report is prohibited.

7. **Q:** How can I obtain a copy of my credit report used with my license application?

A: If an Individual wants to see a copy of the report that was provided to a particular state agency, he or she may request a copy directly from TransUnion at: TransUnion, 2 Baldwin Place, P.O. Box 1000, Chester, PA 19022 ((800) 888-4213 -- www.transunion.com/consumersupport)

8. **Q:** How often will credit reports be pulled?

A: Credit reports will be obtained upon submission of an initial license application and at such frequency as the Department may determine. Credit reports obtained following the issuance of a license will be reviewed for any significant negative changes and to verify that actions to address negative information, such as participating in payment plans or requirements of a conditional license agreement, are being completed as agreed.

9. **Q:** Does obtaining a credit report for a license application affect my credit score?

A: Credit reports obtained via the NMLS are considered "soft" pulls and do not affect an Individual's credit score.

10. **Q:** Will filing for bankruptcy cause me to lose my license?

A: The Department will not make a determination of financial responsibility and fitness 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.

11. **Q:** I have several outstanding collections for unpaid medical bills. How will this affect my license?

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A: The Department will not make a determination of financial responsibility and fitness based on delinquent accounts that are solely due to medical expenses.

12. Q: My spouse is unemployed and my income has been reduced due to a change in jobs. We have been late on our credit cards, and not all of them are current. Will I lose my loan originator license because of this?

A: Several factors, such as the severity of the delinquencies, the number of accounts involved, how recent the occurrences of delinquency are, and what remedies the Individual has pursued will be evaluated to determine whether an Individual's license will be impacted. Be prepared to document any representations made to the Department regarding derogatory information.

13. Q: I have an outstanding tax lien. Will this be a problem?

A: If a tax lien has been fully disclosed and an Individual can document that a payment arrangement has been made, and that there is a history of timely payments under that agreement, such information will weigh in favor of the Individual. Be prepared to provide documentation of the payment agreement as well as proof of payments and current status.

14. Q: When I left my last apartment my roommate stayed. He didn't pay the final utility bills when he left and the utility accounts were in my name. I was sued, and civil judgments were entered against me. The judgments are still unpaid. Do I have to do something with them?

A: If the judgment account is in the name of an Individual, and the judgment creditor has not released that person from the judgment, then the Department will require that the account is either satisfied or that the Individual has entered into a repayment plan. Be prepared to provide documentation of payment agreements as well as proof of payments and current status.

15. Q: I have a delinquent student loan and my husband owes back child support. All of our other credit is current. How will this affect my license application?

A: Individuals will need to provide a written explanation as to the circumstances that caused them to be delinquent on a student loan. They will need to address what they have done to rectify the delinquency, such as entering into a repayment plan with the creditor or negotiating a settlement. Be

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prepared to document any representations made in a response to the Department regarding derogatory information. If a spouse is NOT an MLO, or applying to be one, delinquent child support should not have any effect on your application, assuming nothing is reflected on your credit report or other documentation obtained by the Department. If a spouse IS an MLO, then the same requirements for a delinquent student loan would apply to his or her child support situation.

16. Q: Will I lose my license because we had a foreclosure last year?

A: The Department will review the circumstances causing a foreclosure, what steps were taken to avoid a foreclosure, the Individual's overall credit history, and what has happened since the foreclosure. Be prepared to document any representations made in a response to the Department regarding derogatory credit information.

17. Q: I had a car repossessed and I haven't been notified by the finance company that I owe anything. What do I do?

A: If an account reflects any past due amounts or a balance remaining or owing at the time of repossession, the Individual will need to account for that in his or her explanation and remedies. That may involve contacting the creditor for more information. If the account only reflects the repossession, but no amounts past due, delinquent or charged off, an explanation of the circumstances leading to the repossession and the steps taken by the Individual may be sufficient.

18. Q: I couldn't pay my credit card and the balance on the account was charged off. There was no collection. What do I need to provide?

A: Individuals will need to document the current status of the charged-off amount. A creditor may have charged off an account as an internal loss but also sold the account to another creditor or debt buyer, or may be investigating other options to collect. The Department will review an explanation of circumstances that caused the charge off, to include any remedies an Individual has taken or is in the process of taking to remedy the charge off, the amount charged off, as well as the current status of the account.

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19. Q: Why can't the Department see that my charged-off Wells Fargo credit card balance was bought by Citibank and I paid it off last year? It's the same account.

A: The credit reports that the Department receives do not contain full identifying account information, such as account numbers. The Department also does not receive specific information about account transfers or by whom an account has been purchased. Additionally, the Department cannot identify duplicate account postings. Therefore, in order for the Department to identify and track this type of information, it must rely on the subject of the report to provide that documentation.

20. Q: The delinquent accounts the Department wants information on were listed in my bankruptcy. How am I supposed to get more information on them?

A: To demonstrate that an account was included in a bankruptcy, an Individual should provide a copy of the schedule of debts, as well as confirmation that the account was discharged in the bankruptcy, or included in a restructuring.

21. Q: When the market was better I bought several rental properties. When the economy went bad I couldn't keep renters and I couldn't afford to keep the rentals on my reduced income so I let the lender take them. How will this affect me?

A: The Department will consider explanations of circumstances along with supporting documentation, remedies taken or attempted, as well as the Individual's overall credit history to determine if there were extenuating circumstances. The Department will also consider an Individual's credit history, both prior to and after any foreclosures.

22. Q: If my credit isn't good enough or gets worse after I already have a license, what will happen? Will my license be revoked?

A: Recognizing that credit histories can be improved with effort, and that a revocation of an Individual license is a permanent bar to future licensure, the Department will make every effort not to revoke a license during this process. Individuals may voluntarily surrender a license at any time if they cannot meet or document necessary requirements.

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23. Q: I have been originating loans for years. Can I lose my license now because of my credit history?

A: Yes. It is possible that an Individual's license may be revoked or not renewed depending upon his or her credit history and the management of the Individual's financial affairs.

24. Q: What will happen if I don't provide any information to the Department?

A: If an applicant fails to provide required documentation, his or her application will be administratively denied or deemed withdrawn, and all previously paid fees will be forfeited. If an existing licensee fails to provide required documentation, their license will either be administratively revoked or the license will not be renewed for the next calendar year. If an Individual is a control person of a licensee, the Department may consider an appropriate administrative remedy.

25. Q: If I enter into a debt settlement plan where I pay monthly into an account and a company negotiates reduced payoffs with my creditors after I have saved some money, will that meet the requirements to get a license?

A: In most cases, the answer would be "no." The Department views arrangements with third parties that do not include an explicit agreement with a creditor to make regular payments under specified terms (e.g. an agreement to reduced interest charges on the account or to allow less than the required minimum payments) as not representative of a documented payment arrangement.

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