



PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS SINCE 1905

**Idaho Department of Finance
Guidance Statement
2022-01-CFB
Idaho Credit Code – Indirect Lending
Application to license requirements to the origination or Assignment of
Installment Sales Contract**

ISSUE DATE: APRIL 12, 2022

I. Background

The purpose of this Guidance Statement 2022-01-CFB (Guidance) is to provide clarity and direction to finance companies and other lenders regarding the requirement for licensure under Idaho Code §28-41-101, et seq. (Idaho Credit Code or ICC) when the company is acting as an indirect lender by receiving the assignment of a purchase of goods on credit. Often a finance company may receive all or most of the assignments from a particular dealer or seller to whom the finance company has previously provided the dealer or seller with guidelines or requirements for buyers to qualify for extensions of credit.

II. Applicability

The licensure requirement under the ICC focuses on entities that make regulated consumer loans or take assignment of and undertake the direct collection or enforcement of rights from regulated consumer loans. Idaho Code § 28-46-301 provides:

28-46-301. AUTHORITY TO MAKE REGULATED CONSUMER LOANS — EXEMPTION FROM LICENSING. (1) The administrator shall receive and act on all applications for licenses to make regulated consumer loans under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain such information as the administrator may reasonably require. Unless a person is exempt under federal law or

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under this section or has first obtained a license from the administrator authorizing him to make regulated consumer loans, he shall not engage in the business of:

(a) Making regulated consumer loans; or

(b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from regulated consumer loans.

(2) Any "supervised financial organization," as defined in section [28-41-301](#), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) Mortgage lenders licensed under the Idaho residential mortgage practices act, [chapter 31, title 26](#), Idaho Code, shall be exempt from the licensing requirements of this section as to mortgage lending activities defined in [chapter 31, title 26](#), Idaho Code.

(4) Agencies of the United States and agencies of this state and its political subdivisions shall be exempt from the licensing requirements of this section.

(Emphasis added).

The requirement for licensure set forth above applies to finance companies and other lenders making or taking assignment of "regulated consumer loans". It does not apply to those entities that have made or taken assignment of a regulated credit sale by a seller of goods but does apply to a lender under the plain language of the statute.

III. Summary

Where a transaction is structured as a regulated credit sale outside the definitions of a loan under the ICC, the sales contract is then assigned to a third party, that transaction should not be viewed as a loan. Additionally, the assignee of the credit sale is not viewed as a lender required to be licensed as it does not appear that the ICC restricts who may receive an assignment of a regulated credit sale.

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Exceptions to this Guidance may exist where facts presented support the view that the installment sale was misrepresented, and the true transaction is a loan between the buyer and a third party rather than the seller. This information serves as general guidance only and does not cover every circumstance. If a conflict exists between current law and this guidance, current law will govern.

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

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