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Idaho State Legislature

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Division Manager - Mike Nugent

DATE: September 30, 2016

SUBJECT: Department of Finance Rules Relating to the Idaho Residential Mortgage Practices Act

IDAPA 12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act - Proposed Rule (Docket No. 12-0110-1601)

The Department of Finance is promulgating proposed rules which will update its incorporation by reference provisions relating to the Idaho Residential Mortgage Practices Act. These proposed rule changes will pick up the latest versions of incorporated by reference rules for Regulation X under the federal Real Estate Settlement Procedures Act and Regulation Z of the federal Truth in Lending Act. It appears that the proposed rules have been promulgated within the scope of statutory authority granted to the Department of Finance.

cc: Department of Finance
Michael Larsen

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently in full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

IDAPA 12 – DEPARTMENT OF FINANCE

12.01.10.005 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. _____

The Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.*, incorporates certain provisions of the federal Real Estate Settlement Procedures Act, codified in 12 U.S.C. section 2601 *et seq.*, the federal Truth in Lending Act, codified in 15 U.S.C. sections 1601 *et seq.* and Regulations X and Z as issued by the federal Consumer Financial Protection Bureau. Provisions of Regulations X and Z were amended during the past year and these amendments need to be incorporated into the Idaho rules. This is done to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules whether or not the Department incorporates them by reference. The following is a summary of the rules adopted by the Consumer Financial Protection Bureau (Bureau).

1. Amendments to the 2013 Mortgage rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z).

Date of final rule: August 4, 2016

This rule amended several mortgage servicing rules previously issued in 2013. This final rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions.

In 2013 the Bureau made a number of substantial amendments to Regulations X and Z. On February 13, 2013, the Bureau announced an initiative to support implementation of the new mortgage rules (Implementation Plan), under which the Bureau would work with the mortgage industry to ensure that the 2013 amended rule could be implemented accurately and expeditiously. As a result of working with industry, the Bureau finalized the Implementation

Plan and through the Plan incorporated the changes to Regulations X and Z that became final on August 4, 2016. The following is a summary of the major rule changes by topic:

1. Successors in interest. The Bureau finalized three sets of rule changes relating to successors in interest. First, the Bureau adopted definitions of successor in interest for purposes of Regulation X's subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St Germain Act. Second, the Bureau finalized rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest.¹² Third, the Bureau applied the Regulation X and Z mortgage servicing rules to successors in interest once a servicer confirms the successor in interest's status.

2. Definition of delinquency. The Bureau finalized a general definition of delinquency that applies to all of the servicing provisions of Regulation X and the provisions regarding periodic statements for mortgage loans in Regulation Z. Delinquency means a period of time during which a borrower and a borrower's mortgage loan obligation are delinquent. A borrower and a borrower's mortgage loan obligation are delinquent beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, until such time as no periodic payment is due and unpaid.

3. Requests for information. The Bureau finalized amendments that change how a servicer must respond to requests for information asking for ownership information for loans in trust for which the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac) is the owner of the loan or the trustee of the securitization trust in which the loan is held.

4. Force-placed insurance. The Bureau finalized amendments to the force-placed insurance disclosures and model forms to account for when a servicer wishes to force-place insurance when the borrower has insufficient, rather than expiring or expired, hazard insurance coverage on the property. Additionally, servicers now have the option to include a borrower's mortgage loan account number on the notices required under § 1024.37. The Bureau also finalized several technical edits to correct discrepancies between the model forms and the text of § 1024.37.

5. Early intervention. The Bureau clarified the early intervention live contact obligations for servicers to establish or make good faith efforts to establish live contact so long as the borrower remains delinquent. The Bureau also clarified requirements regarding the frequency of the written early intervention notices, including when there is a servicing transfer.

In addition, regarding certain borrowers who are in bankruptcy or who have invoked their cease communication rights under the FDCPA, the Bureau finalized exemptions for servicers from complying with the live contact obligations but requiring servicers to provide written early intervention notices under certain circumstances.

6. Loss mitigation. The Bureau finalized several amendments relating to the loss mitigation requirements. The final rule: (1) Requires servicers to meet the loss mitigation requirements more than once in the life of a loan for borrowers who become current on payments at any time between the borrower's prior complete loss mitigation application and a subsequent loss mitigation application; (2) modifies an existing exception to the 120-day prohibition on

foreclosure filing to allow a servicer to join the foreclosure action of a superior or subordinate lienholder; (3) clarifies how servicers select the reasonable date by which a borrower should return documents and information to complete an application; (4) clarifies that, if the servicer has already made the first notice or filing, and a borrower timely submits a complete loss mitigation application: (i) the servicer must not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, even where the sale proceedings are conducted by a third party, unless one of the specified circumstances is met (*i.e.*, the borrower's loss mitigation application is properly denied, withdrawn, or the borrower fails to perform on a loss mitigation agreement); (ii) that absent one of the specified circumstances, conduct of the sale violates the rule; (iii) that the servicer must instruct foreclosure counsel promptly not to make any further dispositive motion, to avoid a ruling or order on a pending dispositive motion, or to prevent conduct of a foreclosure sale, unless one of the specified circumstances is met; and (iv) that the servicer is not relieved from its obligations by counsel's actions or inactions; (5) requires that servicers provide a written notice to a borrower within five days (excluding Saturdays, Sundays, or legal holidays) after they receive a complete loss mitigation application and requires that the notice: (i) indicate that the servicer has received a complete application; (ii) provide the date of completion, a statement that the servicer expects to complete its evaluation within 30 days from the date it received the complete application, and an explanation that the borrower is entitled to certain specific foreclosure protections and may be entitled to additional protections under State or Federal law; (iii) clarify that the servicer might need additional information later, in which case the evaluation could take longer and the foreclosure protections could end if the servicer does not receive the information as requested.; (6) sets forth how servicers must attempt to obtain information not in the borrower's control and evaluate a loss mitigation application while waiting for third party information; requires servicers to exercise reasonable diligence to obtain the information and prohibits servicers from denying borrowers solely because a servicer lacks required information not in the borrower's control, except under certain circumstances; requires servicers in this circumstance to complete all possible steps in the evaluation process within the 30 days, notwithstanding the lack of the required third-party information; requires that servicers promptly provide a written notice to the borrower if the servicer lacks required third party information 30 days after receiving the borrower's complete application and cannot evaluate the application in accordance with applicable requirements established by the owner or assignee of the mortgage loan; and requires servicers to notify borrowers of their determination on the application in writing promptly upon receipt of the third party information it lacked; (7) permits servicers to offer a short-term repayment plan based upon an evaluation of an incomplete loss mitigation application; (8) clarifies that servicers may stop collecting documents and information from a borrower for a particular loss mitigation option after receiving information confirming that, pursuant to any requirements established by the owner or assignee, the borrower is ineligible for that option; and clarifies that servicers may not stop collecting documents and information for any loss mitigation option based solely upon the borrower's stated preference but may stop collecting documents and information for any loss mitigation option based on the borrower's stated preference in conjunction with other information, as prescribed by requirements established by the owner or assignee of the mortgage loan; and (9) addresses and clarifies how loss mitigation procedures and timelines apply when a transferee servicer receives a mortgage loan for which there is a loss mitigation application pending at the time of a servicing transfer.

7. *Prompt payment crediting.* The Bureau clarified how servicers must treat periodic payments made by consumers who are performing under either temporary loss mitigation programs or permanent loan modifications. Periodic payments made pursuant to temporary loss mitigation programs must continue to be credited according to the loan contract and could, if appropriate, be credited as partial payments, while periodic payments made pursuant to a permanent loan modification must be credited under the terms of the permanent loan agreement.

8. *Periodic statements.* The Bureau finalized several requirements relating to periodic statements. The final rule: (1) clarifies certain periodic statement disclosure requirements relating to mortgage loans that have been accelerated, are in temporary loss mitigation programs, or have been permanently modified, to conform generally the disclosure of the amount due with the Bureau's understanding of the legal obligation in each of those circumstances, including that the amount due may only be accurate for a specified period of time when a mortgage loan has been accelerated; (2) requires servicers to send modified periodic statements (or coupon books, where servicers are otherwise permitted to send coupon books instead of periodic statements) to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying depending on whether the consumer is a debtor in a chapter 7 or 11 bankruptcy case, or a chapter 12 or 13 bankruptcy case; and includes proposed sample periodic statement forms that servicers may use for consumers in bankruptcy to ensure compliance with § 1026.41; and (3) exempts servicers from the periodic statement requirement for charged-off mortgage loans if the servicer will not charge any additional fees or interest on the account and provides a periodic statement including additional disclosures related to the effects of charge-off.

9. *Small servicer.* The Bureau finalized certain changes to the small servicer determination. The small servicer exemption generally applies to servicers who service 5,000 or fewer mortgage loans for all of which the servicer is the creditor or assignee. The final rule excludes certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate, even if the non-affiliate is not a creditor or assignee, from being counted toward the 5,000 loan limit, allowing servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

2. Truth in Lending (Regulation Z) annual threshold adjustments.

Date of final rule: June 17, 2016

This rule amended the regulatory text and official interpretations for Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau is required to annually make changes reflected in the Consumer Price Index in effect on June 1, 2016 to several provisions in Regulation Z; this final rule revises, as applicable, the dollar amounts for provisions implementing amendments to TILA under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), the Home Ownership and Equity Protection Act of 1994 (HOEPA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In addition to adjusting these amounts, where appropriate, based on the annual percentage change reflected in the Consumer Price Index in effect on June 1, 2016, the Bureau is correcting a calculation error pertaining to the 2016 subsequent violation penalty safe harbor fee.

3. Finalization of Interim Final rules under the consumer financial protection laws

Date of final rule: May 3, 2016

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau as of July 21, 2011. In December 2011, the Bureau republished the existing regulations implementing those laws, as previously adopted by the seven predecessor agencies, as interim final rules (December 2011 IFRs) with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The December 2011 IFRs did not impose any new substantive obligations on persons subject to the existing regulations. This final rule adopts the December 2011 IFRs as final, subject to any intervening final rules published by the Bureau.

4. Operations in rural areas under the Truth in Lending act (Regulation Z)

Date of interim final rule: March 3, 2016

The Bureau issued another final rule amending certain provisions of Regulation Z in light of title LXXXIX of the Fixing America's Surface Transportation Act, entitled the Helping Expand Lending Practices in Rural Communities Act, Public Law 114-94 (the HELP Act). The amendments to Regulation Z concern two matters: the eligibility of certain small creditors that operate in rural or underserved areas for special provisions that permit the origination of balloon-payment qualified mortgages and balloon-payment high cost mortgages and for an exemption from the requirement to establish an escrow account for higher-priced mortgage loans and the determination of whether an area is rural for the purposes of Regulation Z.

The HELP Act, which broadened the class of creditors which may be eligible under the Truth in Lending Act (TILA) for the special provision that permits a qualified mortgage to have a balloon-payment feature and the exemption from the escrow requirement for certain higher-priced mortgage loans (HPMLs) under Regulation Z. The pertinent sections of TILA previously permitted the Bureau to grant the special provision and exemption to certain small creditors that operate predominantly in rural or underserved areas. The HELP Act removed the "predominantly" requirement from those provisions, giving the Bureau authority to extend those provisions to certain small creditors who operate in rural or underserved areas, even if they do not operate predominantly in such areas. The HELP Act also directed the Bureau to establish a process for individuals and entities to apply to have the Bureau designate an area as rural for purposes of Federal consumer financial laws.

5. 2013 Integrated Mortgage Disclosures Rule under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

Date of final rule: February 10, 2016

Sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) direct the Bureau to publish rules and forms that combine certain disclosures

that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (Regulation Z) and the Real Estate Settlement Procedures Act (Regulation X). Consistent with this requirement, the Bureau amended Regulations X and Z in 2013 to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property.

In 2016, the Bureau made an amendment to the TILA-RESPA Final Rule correcting a typographical error regarding the application of tolerances to property insurance premiums, property taxes, homeowner's association dues, condominium fees, and cooperative fees.