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**IDAPA 12
TITLE 01
CHAPTER 10**

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

000. LEGAL AUTHORITY (RULE 0).

This chapter is promulgated pursuant to Section 26-3105(5), Idaho Code. (11-1-98)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is "Rules Pursuant to the Idaho Residential Mortgage Practices Act" of the Idaho Department of Finance and may be cited as IDAPA 12.01.10. These rules implement the Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (11-1-98)

002. WRITTEN INTERPRETATIONS -- AGENCY ACCESS -- FILINGS (RULE 2).

Written interpretations of these rules are available by mail from the Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Department of Finance, Joe R. Williams Building, 700 West State Street, Boise, Idaho, 83702. The telephone numbers of the agency include (208) 332-8000 - Administration; and (208) 332-8002 - Residential Mortgage. The telephone number of the facsimile machine is (208) 332-8099. All filings with the agency in connection with rule-making or contested cases shall be made with the Director of the Department of Finance, and shall include an original and one (1) copy. (3-30-06)

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals are not available within the agency. (11-1-98)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules contained in this chapter are public records. (11-1-98)

005. INCORPORATION BY REFERENCE (RULE 5).

IDAPA 12.01.10, "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporates by reference the full text of the following federal laws and regulations as defined in these rules: the Real Estate Settlement Procedures Act, Regulation X, the Truth in Lending Act, and Regulation Z. (3-30-06)

006. DEFINITIONS (RULE 6).

Except where otherwise stated, terms used in these rules which are defined in the Idaho Residential Mortgage Practices Act shall have the same meaning as set forth in that Act. As used in these rules: (3-30-06)

01. Accredited Instruction. Means a course, video, motion picture, sound recording, or dissemination through electronic means of instructional material, which has been approved by the director for continuing professional education credit. (3-30-06)

02. Act. Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

03. Certificate of Completion. Means written documentation issued by an education provider to a participant, in a manner approved by the director, evidencing the completion of a specific amount of credit hours of accredited instruction. (3-30-06)

04. Closing. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee to complete such process. (3-30-06)

05. Credit Hour. Means sixty (60) minutes of accredited instruction attained through actual attendance of a course or an allotted increment of time of accredited instruction through independent study, as predetermined by the director. (3-30-06)

06. Director. Means the director of the Idaho Department of Finance. (3-30-06)

- 07. Education Provider.** Means a provider of accredited instruction. (3-30-06)
- 08. Participant.** Means a person who attends accredited instruction for the purpose of accruing credit hours. (3-30-06)
- 09. Real Estate Settlement Procedures Act.** Means the act set forth in 12 USCA 2601, et seq., as amended to and including January 1, 2006. (3-30-06)
- 10. Regulation X.** Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2006. (3-30-06)
- 11. Regulation Z.** Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2006. (3-30-06)
- 12. Reporting Period.** Means a two (2) year period of time commencing on November 1st and ending on October 31st unless otherwise specified by order of the director. (3-30-06)
- 13. Truth in Lending Act.** Means the act set forth in 15 USCA 1601, et seq., as amended to and including January 1, 2006. (3-30-06)

007. -- 009. (RESERVED).

010. REQUIREMENTS FOR CONTINUING PROFESSIONAL EDUCATION (RULE 10).

- 01. Licensee.** For purposes of the “Requirements for Continuing Professional Education” provisions of this rule, the term “licensee” means a person: (3-30-06)
- a.** Who is a loan originator licensed under the Act; or (3-30-06)
 - b.** Who is designated pursuant to Section 26-3108, Idaho Code, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act. (3-30-06)
- 02. Minimum Requirements.** (3-30-06)
- a.** A loan originator licensed under the Act shall attain sixteen (16) credit hours within each reporting period. (3-30-06)
 - b.** Persons designated in the director’s files, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act shall attain sixteen (16) credit hours within each reporting period. (3-30-06)
 - c.** Credit hours accrued in excess of the required sixteen (16) credit hours in any reporting period shall not carry over nor be credited to any subsequent reporting period. (3-30-06)
- 03. Accrual of Credit Hours.** (3-30-06)
- a.** For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than two (2) credit hours directly related to the Act and these rules. (3-30-06)
 - b.** For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than fourteen (14) credit hours related to the following: (3-30-06)
 - i.** Basics of home purchase and ownership; (3-30-06)
 - ii.** The mortgage industry generally; (3-30-06)
 - iii.** Loan evaluation and documentation; (3-30-06)

- iv. Features of various loan products; (3-30-06)
- v. State and federally required disclosures; (3-30-06)
- vi. Ethical considerations; (3-30-06)
- vii. The Idaho Credit Code; (3-30-06)
- viii. The Idaho Mortgage Company Act; (3-30-06)
- ix. The Idaho Escrow Act; (3-30-06)
- x. The Uniform Commercial Credit Code; (3-30-06)
- xi. Law related to mortgages, deeds of trust, liens, and pledges; (3-30-06)
- xii. Real estate and appraisal law; (3-30-06)
- xiii. Principal and agency law; (3-30-06)
- xiv. Contract law; (3-30-06)
- xv. The Real Estate Settlement Procedures Act; or (3-30-06)
- xvi. Truth in Lending and the federal Consumer Credit Protection Act. (3-30-06)

c. Accredited instruction shall be of a minimum duration of one (1) credit hour and shall contribute to the goal of maintaining or increasing the knowledge, skill and competence of licensees. The principal focus of accredited instruction shall not be sales, marketing, commercial lending or commercial loan brokering, motivational, or skills pertaining to running a business. (3-30-06)

d. A participant who successfully completes a course of accredited instruction may not repeat that course for credit hours with the same education provider within the same reporting period. (3-30-06)

e. A participant may accrue credit hours within ninety (90) days prior to initial submission of an application for a loan originator license under the Act. Such credit hours shall not accrue to the participant unless the initial license application is subsequently approved by the director and a license is issued. Credit hours shall not be granted to a participant under this provision unless the participant provides the director with a copy of the certificate of completion for such accredited instruction within sixty (60) days of initial licensure. (3-30-06)

f. Persons designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act may accrue credit hours for accredited instruction attended within ninety (90) days prior to the date of approval by the director of such designation. (3-30-06)

g. Persons who, as of January 1, 2006, are designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act may accrue credit hours for accredited instruction completed on or after October 1, 2005. (3-30-06)

04. Recordkeeping and Reporting of Accrued Credit Hours. (3-30-06)

a. Every licensee shall maintain copies of certificates of completion for a period of no less than three (3) years following completion of the accredited instruction. (3-30-06)

b. The initial reporting period for a loan originator licensed under the Act shall commence on November 1st immediately succeeding his initial licensure. (3-30-06)

c. The initial reporting period for persons who are not loan originators, but who have been designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act shall commence: (3-30-06)

i. On November 1, 2006, if the person has been so designated prior to November 1, 2006; or (3-30-06)

ii. On November 1st immediately following the director's approval of the person's designation, if the person is so designated on or after November 1, 2006. (3-30-06)

d. Within thirty (30) days following the expiration of each reporting period a licensee shall deliver copies of certificates of completion to the director demonstrating the licensee's completion of the credit hours required under these rules. (3-30-06)

e. A licensee who fails to attain the credit hours required by these rules, or fails to maintain records as required in Section 010 of these rules, or fails to timely report compliance with the credit hour requirements of these rules shall be subject to license revocation or suspension as prescribed in Section 26-3109, Idaho Code. (3-30-06)

f. Upon revocation or suspension of a license issued under the Act for failure to complete or report credit hour requirements, no person shall obtain a new license or a reinstated license in the case of a license suspension, as a loan originator, mortgage broker or mortgage lender without first satisfying the credit hour requirements, which, having been previously incomplete or not reported, were the cause of the license revocation or suspension. (3-30-06)

011. EDUCATION PROVIDERS AND CONTENT OF CONTINUING PROFESSIONAL EDUCATION (RULE 11).

01. Submission of Continuing Professional Education Courses for Accreditation by the Director. Education provider applicants shall submit an application, in a form provided by the director, for accreditation of continuing professional education for each instructional course proposed to be offered by the education provider applicant. The application shall be accompanied by a non-refundable application fee of two hundred fifty dollars (\$250) and shall include, but not be limited to, the following information: (3-30-06)

a. The name and address of the education provider and date(s) on and locations at which the program is to be offered; (3-30-06)

b. The qualifications and experience of the education provider's principal officers, staff, and instructor(s); (3-30-06)

c. The costs of all programs for which approval is sought; (3-30-06)

d. A copy of the proposed course materials together with a description of each course for which approval is sought; and (3-30-06)

e. A sample of what is provided to participants to verify course completion. (3-30-06)

02. Granting of Accreditation of Professional Education Courses. The director shall grant accreditation to continuing professional education courses if he finds: (3-30-06)

a. That the course constitutes an organized program of learning which provides instruction on subject matter as described in Subsection 010.03 of these rules; (3-30-06)

b. That course materials are prepared, and instruction conducted, by an individual or group qualified by practical or academic experience in the subject or subjects to be presented; (3-30-06)

c. That the course shall be presented in a setting physically suited to the educational activity or in a manner which allows for participant interaction and comprehension of course materials. Training facilities for live

class settings shall be easily accessible and comply with all applicable state and federal laws, including, but not limited to, the Americans With Disabilities Act of 1990; (3-30-06)

d. That course outlines, syllabi, workbooks, examinations, study-guides, or other instructional material are of a high quality, readable, and carefully prepared and relevant to the course of study offered; and (3-30-06)

e. That the prospective education provider's application is complete and truthful. (3-30-06)

03. Review of Accredited Instruction. (3-30-06)

a. An education provider shall designate one (1) person as its contact person who shall be available to the director, or to his designated representative, during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the education provider. (3-30-06)

b. The director may periodically review the content and facilitation of accredited instruction for the purposes of verifying that such accredited instruction continues to meet the requirements of these rules. (3-30-06)

c. The education provider shall be required to permit the director, or the director's representative, to audit the accredited instruction and course material at no cost to the director or to the director's representative. The audit shall evaluate whether the accredited instruction meets the requirements of these rules. The education provider shall permit the director or the director's representative to review records appropriate to selected course offerings. Upon a finding that accredited instruction no longer meets the requirements of these rules, the director may suspend or revoke the approval of the accredited instruction. The education provider shall be responsible for payment of audits conducted under Section 011 of these rules. (3-30-06)

d. Education providers shall notify the director of any material changes which have been made to accredited instruction within thirty (30) days of such changes. Material changes include changes materially affecting the content or facilitation of accredited instruction as it applies to the requirements of Subsection 011.02 of these rules. (3-30-06)

e. Within thirty (30) days of conclusion of a course of accredited instruction, an education provider shall submit to the director an attendance roster in a form prescribed by the director. Education providers shall maintain records related to participant attendance and completion of accredited instruction for a period of no less than three (3) years. (3-30-06)

04. Suspension of Accreditation. The accreditation of a continued professional education course may be suspended if the director determines that: (3-30-06)

a. The accredited instruction teaching method or program content no longer meets the standards of these rules, or have been materially changed without notice to the director as required; or (3-30-06)

b. The education provider granted a certificate of completion when in fact the participant had not satisfactorily completed the accredited instruction; or (3-30-06)

c. The education provider failed to grant a certificate of completion to a participant when in fact the participant had satisfactorily completed the accredited instruction; or (3-30-06)

d. The education provider or any of its instructors have had a mortgage license revoked or suspended in any jurisdiction; or (3-30-06)

e. There is other good cause why accreditation should be suspended. (3-30-06)

05. Reinstatement of Accreditation. Reinstatement of a suspended accreditation will be made upon the furnishing of proof satisfactory to the director that the conditions responsible for the suspension have been corrected. (3-30-06)

06. Renewal of Approval of Accredited Instruction. The director's accreditation of a continuing professional education course shall expire two (2) years from the date of issuance and thereafter on each subsequent two (2) year anniversary of the renewal date. Application for renewal of accreditation shall be filed by not later than sixty (60) days prior to each such expiration date and shall be accompanied by a non-refundable renewal fee of one hundred fifty dollars (\$150). Applications for renewal of accreditation shall be in a form prescribed by the director and shall include documentation demonstrating that the accredited instruction continues to meet the requirements of Subsection 011.02 of these rules. (3-30-06)

07. Prohibited Practices. (3-30-06)

a. No person shall represent, in any manner that an instructional course has received approval or accreditation from the director or, that participants will receive credit hours for attendance and completion of an instructional course, unless such course has been approved by the director. (3-30-06)

b. No person shall misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars of the status, content, or facilitation of an instructional course offered to participants for the purposes of meeting the continuing professional education requirements of these rules. (3-30-06)

012. PRESUMPTIVE ACCREDITATION (RULE 12).

01. Instructional Courses Presumptively Accredited. Instructional courses that cover subject matter set forth in Subsection 010.03 of these rules, that are provided by the following listed organizations, or by such other organizations as may be determined by the director, are presumptively accredited and no request for accreditation of an instructional course offered by these organizations is required, unless the director determines otherwise. (3-30-06)

- a.** The Idaho Department of Finance. (3-30-06)
- b.** The National Association of Mortgage Brokers. (3-30-06)
- c.** The Mortgage Bankers Association. (3-30-06)
- d.** The National Association of Professional Mortgage Women. (3-30-06)
- e.** The Idaho Housing and Finance Association. (3-30-06)
- f.** Federal National Mortgage Association. (3-30-06)
- g.** Federal Home Loan Mortgage Corporation. (3-30-06)
- h.** The American Bankers Association. (3-30-06)
- i.** Regulatory agencies of any state or of the United States that have regulatory authority over mortgage related activity. (3-30-06)
- j.** Institutions of higher education accredited by the Idaho State Board of Education or by similar accrediting agencies of any other state. (3-30-06)
- k.** The Conference of State Bank Supervisors. (3-30-06)
- l.** The American Association of Residential Mortgage Regulators. (3-30-06)

02. Acceptance of Credit Hours for Presumptively Accredited Instruction. Credit hours for presumptively accredited instruction may be credited to participants in the following manner: (3-30-06)

a. Upon timely submission of a copy of a certificate of completion as set forth in Subsection 010.04 of these rules; or (3-30-06)

b. By written application by the participant, in a form prescribed by the director, within thirty (30) days of successful course completion. The application shall be accompanied by a non-refundable fee of twenty-five dollars (\$25). (3-30-06)

013. -- 039. (RESERVED).

040. DECEPTIVE ADVERTISING (RULE 40).

01. Advertising. Advertising means making or permitting to be made any oral, written, graphic or pictorial statements, in any manner, in the course of the solicitation of business. Deceptive advertising is defined to include the following practices by a licensee, or a person required to be licensed under the Act: (3-30-06)

a. Making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or if the licensee does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. (11-1-98)

b. Advertising without clearly and conspicuously disclosing the licensee's business name. (11-1-98)

c. Engaging in bait advertising or misrepresenting, directly or indirectly the terms, conditions or charges incident to the mortgage loan being advertised. Bait advertising, for these purposes, means an alluring, but insincere offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms which the licensee cannot, does not intend, or want to provide, or which the licensee knows cannot be reasonably provided. Its purpose is to switch borrowers from obtaining the advertised mortgage loan product to obtaining a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the licensee. (3-30-06)

d. Advertising an address at which the licensee conducts no mortgage brokering or lending activities or for which the licensee does not hold a license. (3-30-06)

e. Advertising in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity when such is not the case. (3-30-06)

041. -- 049. (RESERVED).

050. WRITTEN DISCLOSURES (RULE 50).

01. Upon Receipt of a Residential Mortgage Loan Application. Upon receipt of a residential mortgage loan application, and before receipt of any moneys from a borrower, a licensee shall disclose to each borrower, in a form acceptable to the Director, information about the licensee, the services that a licensee may provide and the services that the licensee will provide. (3-30-06)

02. Information Provided Within Three Days. Within three (3) business days after receipt of a residential mortgage loan application, a licensee shall provide to the borrower the following disclosures specific to the residential mortgage loan application: (3-30-06)

a. Disclosures in compliance with the requirements of the federal Truth-in-Lending Act and Regulation Z. These include the annual percentage rate, finance charge, amount to be financed, total of all payments, number of payments, amount of each payment, amount of points or prepaid interest; and if a variable rate loan, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount and total interest to be paid, and an example of the payment terms resulting from an increase for a loan in the approximate amount of the loan that is being requested. (11-1-98)

b. Disclosures through good faith estimates of settlement services in compliance with the requirements of the federal Real Estate Settlement Procedures Act and Regulation X. These disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection and any mortgage broker

or mortgage banker fees associated with the residential mortgage loan. (11-1-98)

03. Interest Rate Lock-In Agreement Not Entered. If, at the time of application, an interest rate lock-in agreement has not been entered, disclosure shall be made to the borrower, in a form approved by the director, that the disclosed interest rate and terms are subject to change. A licensee shall provide such disclosure to the borrower within three (3) business days of the licensee's receipt of an application for a residential mortgage loan. (3-30-06)

04. Licensee Enters into a Lock-In Agreement. If a licensee enters into an interest rate lock-in agreement with a lender or represents to the borrower that the licensee has entered into a lock-in agreement, then within no more than three (3) business days thereafter, including Saturdays, the licensee shall deliver or send by first-class mail to the borrower a written confirmation of the term of the lock-in agreement. (3-30-06)

05. In Addition to Disclosures Required. In addition to the disclosures required under Subsection 050.02 of these rules, if a prepayment penalty may be a condition of a residential mortgage loan offered by a licensee, that fact shall be separately disclosed in writing to the borrower by the licensee. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the director, and shall be delivered to the borrower within three (3) business days of the licensee's receipt of an application for a residential mortgage loan. (3-30-06)

051. -- 059. (RESERVED).

060. PROHIBITED PRACTICES (RULE 60).

01. Prohibited Practices. It shall be a prohibited practice for any licensee, or person required to be licensed under the Act to: (3-30-06)

a. Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading, or if the licensee or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include but are not limited to the availability of funds, terms, conditions, or changes incident to the mortgage transaction, prepayment penalties and the possibility of refinancing. (11-1-98)

b. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a broker: (11-1-98)

i. Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)

ii. Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (3-30-06)

iii. For the purposes of this paragraph, the term "immediately" represents a period of time no greater than seventy-two (72) hours. (3-30-06)

c. Fail to give the borrower, upon the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document which is required pursuant to these rules, and other applicable laws, rules or regulations. (3-30-06)

d. Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. (3-30-06)

e. Engage in any deceptive advertising as set forth in Section 040 (Rule 40). (11-1-98)

f. Provide or offer to provide any services, for compensation or gain, such as credit repair, credit or

debt counseling, investment advising, real estate brokerage services, tax or legal advice, unless the person offering such services has first obtained a license or approval required by the appropriate licensing authority to engage in the offering of such services. (3-30-06)

061. -- 089. (RESERVED).

090. BORROWERS UNABLE TO OBTAIN LOANS (RULE 90).

If, for any reason, a licensee does not obtain a residential mortgage loan for a borrower, that is satisfactory to the borrower, and the borrower has paid for an appraisal, the licensee shall give a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other licensee or person exempt from licensure to whom the borrower directs that the documents be transmitted. The licensee shall provide the copies or transmit the documents within three (3) business days after the borrower makes the request in writing. (3-30-06)

091. -- 999. (RESERVED).

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