IDAPA 12 – IDAHO DEPARTMENT OF FINANCE

Consumer Finance Bureau

12.01.10 – Rules Pursuant to the Idaho Residential Mortgage Practices Act

Who does this rule apply to?
The rule applies to persons engaging in mortgage brokering, mortgage lending, and mortgage loan origination in Idaho.

What is the purpose of this rule?
The rule provides definitions of the federal Real Estate Settlement Procedures Act and federal Truth-in-Lending Act, and implementing regulations, incorporated by reference within the Idaho Residential Mortgage Practices Act and provisions related to required disclosures; certain fees and charges; deceptive advertising practices; and, prohibited practices in residential mortgage brokering, lending, and origination.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Banks and Banking -
Idaho Residential Mortgage Practices Act, Part 1 - General Provisions:
- Section 26-31-102, Idaho Code – General Definitions

Part 2 - Provisions Applicable to Mortgage Brokers and Mortgage Lenders
- Section 26-31-204, Idaho Code – Powers and Duties of Director

Part 3 - Provisions Applicable to Mortgage Loan Originators
- Section 26-31-302, Idaho Code – Purposes of this Part

Who do I contact for more information on this rule?

Idaho Department of Finance
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Boise, Idaho 83712
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000. LEGAL AUTHORITY.
This chapter is promulgated pursuant to Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. (3-29-10)

001. TITLE AND SCOPE.
The title of this chapter is "Rules Pursuant to the Idaho Residential Mortgage Practices Act," which rules are administered by the Idaho Department of Finance, and may be cited as IDAPA 12.01.10. These rules interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-29-10)

002. -- 004. (RESERVED)

005. INCORPORATION BY REFERENCE.
For the purposes of the Act and the "Rules Pursuant to the Idaho Residential Mortgage Practices Act," the full text of the following are incorporated by reference: (3-20-20)

01. The Real Estate Settlement Procedures Act. As set forth in 12 U.S.C. 2601, et seq., as amended to and including January 1, 2020. The Real Estate Settlement Procedures Act is available for viewing online at: https://www.gpo.gov/fdsys/pkg/USCODE-2016-title12/html/USCODE-2016-title12-chap27.htm. (3-20-20)

02. Regulation X. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1024, et seq., as amended to and including January 1, 2020. Regulation X is available for viewing online at: https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol8/xml/CFR-2018-title12-vol8-part1024.xml. (3-20-20)

03. The Truth in Lending Act. As set forth in 15 U.S.C. 1601, et seq., as amended to and including January 1, 2020. The Truth in Lending Act is available for viewing online at: https://www.gpo.gov/fdsys/pkg/USCODE-2016-title15/html/USCODE-2016-title15-chap41.htm. (3-20-20)

04. Regulation Z. As issued by the federal Bureau of Consumer Financial Protection and codified at 12 CFR 1026, et seq., as amended to and including January 1, 2020. Regulation Z is available for viewing online at: https://www.gpo.gov/fdsys/pkg/CFR-2018-title12-vol9/xml/CFR-2018-title12-vol9-part1026.xml. (3-20-20)

05. Availability of Documents. Unless otherwise available, the documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance. (3-20-20)

006. DEFINITIONS.
In addition to the terms defined in the Idaho Residential Mortgage Practices Act, the following definitions apply: (3-20-20)

01. Act. The Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

02. Application. In relation to a "residential mortgage loan" or "loan modification" as defined in the Act, an "application" means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term "application" does not include the processing of such request. (3-29-10)

03. Closing. 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 covered person to complete such process. (3-20-20)

04. Covered Person. A person who has been issued a license, pursuant to the Act, or a person required to be licensed under the Act. (3-20-20)

007. -- 039. (RESERVED)

040. DECEPTIVE ADVERTISING.

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 authorized under the Act. Deceptive advertising is defined to include the following practices by a covered person: (3-20-20)

a. Advertising without clearly and conspicuously disclosing the business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the covered person. (3-20-20)

b. Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to services authorized under the Act. Bait and switch advertising, for the purposes of these rules, means advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the covered person. (3-20-20)

c. Using an address in advertising at which the covered person conducts no mortgage brokering, mortgage lending, or mortgage loan origination activities or for which the covered person does not hold a license. (3-20-20)

d. Advertising or soliciting 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. (3-29-10)

041. -- 049. (RESERVED)

050. WRITTEN DISCLOSURES.

01. Receipt of an Application. Upon receipt of an application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a covered person shall make available to each borrower information, in a manner acceptable to the Director, about the services authorized under the Act that he may provide to a borrower. (3-20-20)

02. Loan Modification Confirmation. Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a covered person shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. (3-20-20)

051. RESTRICTIONS ON FEES.
If a covered person imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: (3-20-20)

01. Application Fee. An application fee shall include only the actual costs incurred by a covered person in connection with the taking of an application and transcribing application information. (3-20-20)

02. Cancellation Fee. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a covered person to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the covered person for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. (3-20-20)

052. -- 059. (RESERVED)

060. PROHIBITED PRACTICES.
It is a prohibited practice for any covered person in connection with offering or providing services authorized under the Act, to: (3-20-20)

01. Fail to Disburse Funds Timely. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: (3-29-10)

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

b. 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)

c. For the purposes of this Subsection, the term "immediately" represents a period of time no greater

than seventy-two (72) hours. (3-29-10)

02. Fail to Provide Reasonable Opportunity for Document Review. 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 that is required pursuant to these rules, and other applicable laws, rules or regulations. (3-29-10)

03. Require Excessive Insurance. 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. (3-29-10)

04. Engage in Deceptive Advertising. Engage in any deceptive advertising as set forth in Section 040 of these rules. (3-29-10)

061. -- 089. (RESERVED)

090. BORROWERS UNABLE TO OBTAIN LOANS.
If, for any reason, a covered person fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the covered person shall provide 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 person to whom the borrower directs that the documents be transmitted. The covered person shall provide such copies or transmit such documents within three (3) business days after the borrower makes the request in writing. (3-20-20)

091. -- 999. (RESERVED)

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