

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 401

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO MORTGAGE PRACTICES; AMENDING SECTION 26-2239, IDAHO CODE, TO  
2 REVISE TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; REPEAL-  
3 ING CHAPTER 28, TITLE 26, IDAHO CODE, RELATING TO MORTGAGE COMPANIES;  
4 AMENDING SECTION 26-31-102, IDAHO CODE, TO REVISE DEFINITIONS, TO  
5 DEFINE A TERM, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
6 26-31-201, IDAHO CODE, TO REVISE A DEFINITION, TO REMOVE DEFINITIONS,  
7 TO DEFINE A TERM, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
8 26-31-202, IDAHO CODE, TO REVISE AN EXEMPTION AND TO MAKE TECHNICAL COR-  
9 RECTIONS; AMENDING SECTION 26-31-206, IDAHO CODE, TO REMOVE REFERENCES  
10 TO A QUALIFIED PERSON AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
11 TION 26-31-207, IDAHO CODE, TO REMOVE A REFERENCE TO A QUALIFIED PERSON  
12 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-31-211, IDAHO  
13 CODE, TO REVISE A CERTAIN PROHIBITED PRACTICE, TO REMOVE A REFERENCE TO  
14 A QUALIFIED PERSON, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER  
15 31, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-31-212,  
16 IDAHO CODE, TO PROVIDE FOR CERTAIN REQUIREMENTS REGARDING RESERVE AC-  
17 COUNTS; AMENDING CHAPTER 31, TITLE 26, IDAHO CODE, BY THE ADDITION OF A  
18 NEW SECTION 26-31-213, IDAHO CODE, TO PROVIDE FOR CERTAIN ANNUAL STATE-  
19 MENTS; AMENDING CHAPTER 31, TITLE 26, IDAHO CODE, BY THE ADDITION OF  
20 A NEW SECTION 26-31-214, IDAHO CODE, TO PROVIDE FOR A NOTICE OF TRANS-  
21 FER OF A BORROWER'S RESIDENTIAL MORTGAGE LOAN; AND AMENDING SECTION  
22 26-31-304, IDAHO CODE, TO PROVIDE FOR TEMPORARY AUTHORITY TO ORIGINATE  
23 LOANS IN CERTAIN INSTANCES AND TO MAKE TECHNICAL CORRECTIONS.  
24

25 Be It Enacted by the Legislature of the State of Idaho:

26 SECTION 1. That Section 26-2239, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 26-2239. EXEMPTIONS. The provisions of this act shall not apply to the  
29 following:

30 (1) Persons licensed to practice law in this state, to the extent that  
31 they are retained by their clients to engage in activities authorized by this  
32 act, and such activities are incidental to the practice of law. Such exemp-  
33 tion shall not apply to an attorney engaged in a separate business conducting  
34 the activities authorized by this act;

35 (2) Any regulated lender as defined in section 28-41-301, Idaho Code,  
36 and its subsidiary, affiliate or agent, to the extent that the regulated  
37 lender, subsidiary, affiliate or agent collects for the regulated lender or  
38 engages in acts governed by this act which are incidental to the business of  
39 a regulated lender;

40 (3) Any bank, trust company, credit union, insurance company or indus-  
41 trial loan company authorized to do business in this state;

1 (4) Any federal, state or local governmental agency or instrumental-  
2 ity;

3 (5) Any real estate broker or real estate salesman licensed under the  
4 laws of and residing within this state while engaged in acts authorized by  
5 his real estate license;

6 (6) Any person authorized to engage in escrow business in this state  
7 while engaged in authorized escrow business;

8 (7) Any mortgage ~~company~~ lender engaged in the regular business of a  
9 mortgage ~~company~~ lender as defined in section 26-280231-201, Idaho Code, ex-  
10 cept a mortgage ~~company~~ lender engaged in a separate business conducting the  
11 activities authorized by this act;

12 (8) Any court-appointed trustee, receiver or conservator;

13 (9) Any telephone corporation as defined in subsection (14) of section  
14 62-603, Idaho Code, whose initial request for payment on behalf of such tele-  
15 phone corporation or on behalf of another person is made by the telephone  
16 corporation as a part of regular telecommunications billings to its cus-  
17 tomers and at a time before the account, bill, claim or other indebtedness  
18 becomes past due or delinquent;

19 (10) Any person while acting as a debt collector for another person,  
20 both of whom are related by common ownership or affiliated by corporate  
21 control, if the person acting as a debt collector does so only for persons  
22 to whom he is so related or affiliated and if the principal business of such  
23 person is not the collection of debts.

24 SECTION 2. That Chapter 28, Title 26, Idaho Code, be, and the same is  
25 hereby repealed.

26 SECTION 3. That Section 26-31-102, Idaho Code, be, and the same is  
27 hereby amended to read as follows:

28 26-31-102. GENERAL DEFINITIONS. As used in this chapter and in rules  
29 promulgated pursuant to this chapter:

30 (1) "Borrower" means the person who has applied for a residential  
31 mortgage loan from a licensee, or person required to be licensed, un-  
32 der this chapter, or on whose behalf the activities set forth in section  
33 26-31-201(3), (5) or (7) or 26-31-303(7), Idaho Code, are conducted.  
34 "Borrower" does not include an organization that, as part of a regular busi-  
35 ness of constructing or rehabilitating dwellings, makes application for a  
36 residential mortgage loan to finance the construction or rehabilitation of a  
37 dwelling.

38 (2) "Control person" means a person who:

39 (a) ~~Is a person who h~~Has the power, directly or indirectly, to direct  
40 the management or policies of a company, including a managing member,  
41 general partner, director, executive officer, or other person occupy-  
42 ing a similar position or performing similar functions or, in the case  
43 of a limited liability company, is a managing member;

44 (b) Directly or indirectly has the right to vote ten percent (10%) or  
45 more of a class of a voting security of a mortgage broker or mortgage  
46 lender; or

47 (c) ~~Is a qualified person in charge as defined in section 26-31-201,~~  
48 ~~Idaho Code; or~~

1       ~~(d)~~ Is an individual identified as a manager of a location for which an  
2 applicant is applying for a license under part 2 of this chapter.

3       (3) "Deficiency" means information contained in, or omitted from, an  
4 application for a mortgage broker, mortgage lender, or mortgage loan origi-  
5 nator license that causes the application to be inaccurate, incomplete, or  
6 otherwise not in conformance with the provisions of this chapter, any rule  
7 promulgated or order issued under this chapter, application instructions  
8 published by the director or the provisions of the NMLSR policy guidebook.

9       (4) "Department" means the department of finance of the state of Idaho.

10       (5) "Director" means the director of the department of finance.

11       (6) "Financial services" means any activity pertaining to securities,  
12 commodities, banking, insurance, consumer lending, money services busi-  
13 nesses, consumer debt management, or real estate including, but not limited  
14 to, acting as or being associated with a bank or savings association, credit  
15 union, farm credit system institution, mortgage lender, mortgage broker,  
16 real estate salesperson or agent, appraiser, closing agent, title company,  
17 escrow agent, payday lender, money transmitter, check casher, pawnbroker,  
18 collection agent, debt management company, title lender, or credit repair  
19 organization.

20       (7) "Housing finance agency" means any entity that is:

21       (a) Chartered by a state to help meet the affordable housing needs of  
22 the residents of the state;

23       (b) Supervised, directly or indirectly, by the state government; and

24       (c) Subject to audit and review by the state in which it operates.

25       (8) "Licensee" means a person licensed pursuant to this chapter to en-  
26 gage in the activities regulated by this chapter.

27       (9) "Nationwide mortgage licensing system and registry" or "NMLSR"  
28 means a mortgage licensing system developed and maintained by the confer-  
29 ence of state bank supervisors and the American association of residential  
30 mortgage regulators for the licensing and registration of mortgage brokers,  
31 mortgage lenders, and mortgage loan originators.

32       (10) "NMLSR policy guidebook" means the conference of state bank super-  
33 visor's and the American association of residential mortgage regulator's  
34 NMLSR policy guidebook for licensees, published by the NMLSR, as identified  
35 by administrative rule.

36       (11) "Organization" means a person that is not a natural person.

37       (12) "Person" means a natural person, corporation, company, limited li-  
38 ability company, partnership or association.

39       (123) "Real estate settlement procedures act" means the act set forth in  
40 12 U.S.C. ~~section~~ 2601 et seq., as identified by administrative rule.

41       (134) "Regulation X" means regulation X as issued by the federal bureau  
42 of consumer protection and codified at 12 CFR 1024 et seq., as identified by  
43 administrative rule.

44       (145) "Regulation Z" means regulation Z as issued by the federal bureau  
45 of consumer protection and codified at 12 CFR 1026 et seq., as identified by  
46 administrative rule.

47       (156) "Residential mortgage loan" means any loan that is secured by a  
48 mortgage, deed of trust, or other equivalent consensual security interest on  
49 a dwelling, as defined in section 103(w) of the truth in lending act, located  
50 in Idaho, or on residential real estate.

1 (167) "Residential real estate" means any real property located in  
 2 Idaho upon which is constructed or intended to be constructed a dwelling as  
 3 defined in section 103(w) of the truth in lending act.

4 (178) "Truth in lending act" means the act set forth in 15 U.S.C. section  
 5 1601 et seq., as identified by administrative rule.

6 (189) "Unique identifier" means a number or other identifier assigned  
 7 by protocols established by the NMLSR.

8 SECTION 4. That Section 26-31-201, Idaho Code, be, and the same is  
 9 hereby amended to read as follows:

10 26-31-201. DEFINITIONS. As used in this part and in rules promulgated  
 11 pursuant to this chapter and pertinent to this part:

12 (1) "Agent" means a person who acts with the consent and on behalf of a  
 13 licensee and is subject to the licensee's direct or indirect control, and may  
 14 include an independent contractor.

15 (2) "Loan modification" means an adjustment or compromise of an exist-  
 16 ing residential mortgage loan. The term "loan modification" does not in-  
 17 clude a refinancing transaction.

18 (3) "Loan modification activities" means, for compensation or gain, or  
 19 in the expectation of compensation or gain, engaging in or offering to engage  
 20 in effecting loan modifications in this state. The definition of "debt coun-  
 21 selor" or "credit counselor" in section 26-2222(9), Idaho Code, shall not  
 22 apply to loan modification activities.

23 (4) "Mortgage broker" means any nonexempt organization that performs  
 24 the activities described in subsection (5) of this section, with respect to a  
 25 residential mortgage loan.

26 (5) "Mortgage brokering activities" means, for compensation or gain, or  
 27 in the expectation of compensation or gain, either directly or indi-  
 28 rectly, accepting or offering to accept an application for a residential  
 29 mortgage loan, assisting or offering to assist in the preparation of an  
 30 application for a residential mortgage loan on behalf of a borrower, nego-  
 31 tiating or offering to negotiate the terms or conditions of a residential  
 32 mortgage loan with any person making residential mortgage loans, or engaging  
 33 in loan modification activities on behalf of a borrower.

34 (6) "Mortgage lender" means any nonexempt organization that makes res-  
 35 idential mortgage loans to borrowers and performs the activities described  
 36 in subsection (7) of this section.

37 (7) "Mortgage lending activities" means, for compensation or gain, or  
 38 in the expectation of compensation or gain, either directly or indirectly,  
 39 accepting or offering to accept applications for residential mortgage  
 40 loans, or assisting or offering to assist in the preparation of an applica-  
 41 tion for a residential mortgage loan, or servicing a residential mortgage  
 42 loan on behalf of any person.

43 (8) "Organization" means a person that is not a natural person.

44 ~~(9) "Qualified person in charge" means the person designated, pursuant~~  
 45 ~~to section 26-31-206, Idaho Code, as being in charge of, and primarily re-~~  
 46 ~~sponsible for, the operation of a licensed location of a mortgage broker or~~  
 47 ~~mortgage lender licensed under this part~~ "Servicing" means collecting pay-  
 48 ments of principal, interest, or any other payment obligations required pur-  
 49 suant to the terms of a residential mortgage loan.

1 SECTION 5. That Section 26-31-202, Idaho Code, be, and the same is  
2 hereby amended to read as follows:

3 26-31-202. EXEMPTIONS. The provisions of this part do not apply to:

4 (1) Agencies of the United States and agencies of this state and its po-  
5 litical subdivisions;

6 (2) An owner of real property who offers credit secured by a contract of  
7 sale, mortgage, or deed of trust on the property sold;

8 (3) A loan that is made by a person to an employee of that person if the  
9 proceeds of the loan are used to assist the employee in meeting his housing  
10 needs;

11 (4) Regulated lenders licensed under the Idaho credit code and regu-  
12 larly engaged in making regulated consumer loans other than those secured by  
13 a security interest in real property;

14 (5) Trust companies as defined in section 26-3203, Idaho Code;

15 (6) Any person licensed or chartered under the laws of any state or of  
16 the United States as a bank, savings and loan association, credit union, or  
17 industrial loan company. The terms "bank," "savings and loan association,"  
18 "credit union," and "industrial loan company" shall include employees and  
19 agents of such organizations as well as wholly owned subsidiaries of such or-  
20 ganizations, provided that the subsidiary is regularly examined by the char-  
21 tering state or federal agency for consumer compliance purposes;

22 (7) Attorneys duly authorized to practice in this state, to the extent  
23 that they are retained by their clients to engage in activities authorized by  
24 this part and such activities are ancillary to the attorney's representation  
25 of the client;

26 (8) Accountants with an active license under chapter 2, title 54, Idaho  
27 Code, provided that they are retained by their clients to engage in activi-  
28 ties authorized by this part and such activities are ancillary to the repre-  
29 sentation of the client;

30 (9) Persons employed by, or who contract with, a licensee under this  
31 part to perform only clerical or administrative functions on behalf of such  
32 licensee, and who do not solicit borrowers or negotiate the terms of loans on  
33 behalf of the licensee;

34 (10) Any person not making more than five (5) residential mortgage loans  
35 ~~primarily for personal, family or household use and primarily secured by a~~  
36 ~~security interest on residential real property,~~ with his own funds for his  
37 own investment, in any period of twelve (12) consecutive months; ~~nor or~~

38 (11) Any person who funds a residential mortgage loan ~~which~~ that has  
39 been originated and processed by a licensee under this part or by an exempt  
40 person under this part, who does not directly or indirectly solicit borrow-  
41 ers in this state for the purpose of making residential mortgage loans, and  
42 who does not participate in the negotiation of residential mortgage loans  
43 with the borrower. For the purpose of this subsection, "negotiation of res-  
44 idential mortgage loans" does not include setting the terms under which a  
45 person may buy or fund a residential mortgage loan originated by a licensee  
46 under this part or an exempt person under this part.

47 SECTION 6. That Section 26-31-206, Idaho Code, be, and the same is  
48 hereby amended to read as follows:

1           26-31-206. LICENSE TO DO BUSINESS AS A MORTGAGE BROKER OR MORTGAGE  
2 LENDER. (1) The director shall receive and act on all applications for li-  
3 censes to do business as a mortgage broker or mortgage lender. Applications  
4 shall be filed through the NMLSR, or as otherwise prescribed by the director,  
5 shall contain such information as the director may reasonably require, shall  
6 be updated through the NMLSR, or as otherwise prescribed by the director,  
7 as necessary to keep the information current, and shall be accompanied by a  
8 nonrefundable application fee of three hundred fifty dollars (\$350).

9           (2) An application for license may be denied if the director finds that:

10          (a) The financial responsibility, character and fitness of the license  
11 applicant, or of the officers and directors thereof, if the applicant is  
12 a corporation, partners thereof if the applicant is a partnership, mem-  
13 bers or managers thereof if the applicant is a limited liability company  
14 and individuals designated in charge of the applicant's places of busi-  
15 ness, or other control persons, are not such as to warrant belief that  
16 the business will be operated honestly and fairly within the purposes of  
17 this part;

18          ~~(b) The qualified person in charge of the applicant's places of busi-~~  
19 ~~ness has not been issued a license under part 3 of this chapter or does~~  
20 ~~not have a minimum of three (3) years' experience in residential mort-~~  
21 ~~gage brokering or mortgage lending;~~

22          ~~(c)~~ The applicant or any control person of the applicant has been con-  
23 victed of or pled nolo contendere to any felony, or has been convicted  
24 of or pled nolo contendere to a misdemeanor involving any aspect of fi-  
25 nancial services, or a court has accepted a finding of guilt on the part  
26 of the applicant or any control person of the applicant of any felony,  
27 or of a misdemeanor involving any aspect of financial services, fraud,  
28 false statement or omission, any theft or wrongful taking of property,  
29 bribery, perjury, forgery, counterfeiting, extortion or conspiracy to  
30 commit any of these offenses;

31          ~~(d)~~ The applicant or any control person of the applicant has had a li-  
32 cense to conduct financial services issued by a government agency re-  
33 voked or suspended under the laws enforced by such agency;

34          ~~(e)~~ The applicant or any control person of the applicant has filed an  
35 application for a license which is false or misleading with respect to  
36 any material fact;

37          ~~(f)~~ The applicant or any partner, officer, director, manager, member,  
38 employee, agent or other control person of the applicant has violated  
39 this chapter or any rule promulgated or order issued under this chapter  
40 and pertinent to this part;

41          ~~(g)~~ The applicant or any partner, officer, director, manager, mem-  
42 ber, employee, agent or other control person of the applicant has vio-  
43 lated any state or federal law, rule or regulation pertaining to finan-  
44 cial services; or

45          ~~(h)~~ The applicant or any control person of the applicant has not pro-  
46 vided information on the application as reasonably required by the di-  
47 rector pursuant to subsection (1) of this section, or has provided mate-  
48 rially false information.

1 (3) The director is empowered to conduct investigations, as he may deem  
2 necessary, to enable him to determine the existence of the requirements set  
3 out in subsection (2) of this section.

4 (4) Upon written request to the director, an applicant is entitled to a  
5 hearing on the question of his qualifications for a license if:

6 (a) The director has notified the applicant in writing that his appli-  
7 cation has been denied;

8 (b) The director has not issued a license within sixty (60) days after  
9 receipt of a complete license application from an applicant. If a hear-  
10 ing is held, the applicant shall reimburse, pro rata, the director for  
11 his reasonable and necessary expenses incurred as a result of the hear-  
12 ing. A request for hearing may not be made more than fifteen (15) days  
13 after the director has mailed a writing to the applicant notifying him  
14 that the application has been denied and stating in substance the direc-  
15 tor's finding supporting denial of the application.

16 (5) A license application shall be deemed withdrawn and void if an ap-  
17 plicant submits an incomplete license application and, after receipt of a  
18 written notice of the application deficiency, fails to provide the direc-  
19 tor with information necessary to complete the application within sixty (60)  
20 days of receipt of the deficiency notice. A written deficiency notice shall  
21 be deemed received by a license applicant when:

22 (a) Placed in regular U.S. mail by the director or his agent using an  
23 address provided by the applicant on the license application; or

24 (b) E-mailed to the applicant using an e-mail address provided by the  
25 applicant on the license application; or

26 (c) Posted by the director or his agent on the NMLSR.

27 (6) Every licensee under this part shall maintain a home office located  
28 in the United States and licensed under this part as the licensee's princi-  
29 pal location for the transaction of mortgage business. The director may, on  
30 application through the NMLSR, or as otherwise prescribed by the director,  
31 issue additional branch licenses to the same licensee upon compliance with  
32 all the provisions of this part governing the issuance of a single license.  
33 A separate license shall be required for each place of business from which  
34 mortgage brokering activities or mortgage lending activities are directly  
35 or indirectly conducted. ~~The qualified person in charge of each place of~~  
36 ~~business shall continuously satisfy the requirements of subsection (2) (b),~~  
37 ~~(c) and (d) of this section.~~

38 (7) No licensee under this part shall change the location of any place  
39 of business, consolidate two (2) or more locations or close any home office  
40 location without giving the director at least fifteen (15) days' prior writ-  
41 ten notice. A licensee under this part shall give written notice to the di-  
42 rector within three (3) business days of the closure of any branch location  
43 licensed under this part. Written notice of the closure of a home or branch  
44 office location shall include a detailed explanation of the disposition of  
45 all loan applications pending at the time of closure of the licensed loca-  
46 tion.

47 (8) No licensee under this part shall engage in the business of making  
48 or brokering residential mortgage loans at any place of business for which he  
49 does not hold a license nor shall he engage in business under any other name  
50 than that on the license.

1 (9) The director may suspend action upon a mortgage broker or mortgage  
 2 lender license application pending resolution of any criminal charges be-  
 3 fore any court of competent jurisdiction against an applicant which could  
 4 disqualify that applicant if convicted.

5 (10) The director may suspend action upon a mortgage broker or mortgage  
 6 lender license application pending resolution of any civil action or admin-  
 7 istrative proceeding against an applicant in which the civil action or ad-  
 8 ministrative proceeding involves any aspect of a financial service business  
 9 and the outcome of which could disqualify the applicant.

10 (11) A license applicant under this part shall make complete disclosure  
 11 of all information required in the license application, including informa-  
 12 tion concerning officers, directors, partners, members, managers, employ-  
 13 ees or agents. A license applicant, or person acting on behalf of the appli-  
 14 cant, is not liable in any civil action other than a civil action brought by a  
 15 governmental agency, related to an alleged untrue statement made pursuant to  
 16 this part, unless it is shown by clear and convincing evidence that:

17 (a) The license applicant, or person acting on behalf of the license ap-  
 18 plicant, knew at the time that the statement was made that it was false  
 19 in any material respect; or

20 (b) The license applicant, or person acting on behalf of the applicant,  
 21 acted in reckless disregard as to the statement's truth or falsity.

22 (12) Notwithstanding any other provision of this part, an individual  
 23 licensed under part 3 of this chapter may apply for a license under this sec-  
 24 tion.

25 SECTION 7. That Section 26-31-207, Idaho Code, be, and the same is  
 26 hereby amended to read as follows:

27 26-31-207. REVOCATION OR SUSPENSION OF LICENSE. (1) If the department  
 28 has reason to believe that grounds exist for revocation or suspension of a  
 29 license issued pursuant to this part, the department may initiate a con-  
 30 tested case against a mortgage broker or mortgage lender, and any partner,  
 31 officer, director, manager, member, control person, employee or agent whose  
 32 activities constitute the basis for revocation or suspension, in accordance  
 33 with chapter 52, title 67, Idaho Code. The director may, after proceedings  
 34 pursuant to chapter 52, title 67, Idaho Code, suspend the license for a pe-  
 35 riod not to exceed six (6) months, or revoke the license, if he finds that:

36 (a) The licensee or any partner, officer, director, manager, member,  
 37 control person, employee or agent of the licensee has violated this  
 38 chapter or any rule promulgated or order issued under this chapter and  
 39 pertinent to this part; or

40 (b) The licensee or any partner, officer, director, manager, member,  
 41 control person, employee or agent of the licensee has violated any state  
 42 or federal law, rule or regulation pertaining to mortgage brokering,  
 43 mortgage lending, or mortgage loan origination activities; or

44 (c) Facts or conditions exist ~~which~~ that would clearly have justified  
 45 the director in refusing to grant a license had these facts or condi-  
 46 tions been known to exist at the time the license was issued; or

47 (d) The licensee or any partner, officer, director, manager, member,  
 48 control person, employee or agent of the licensee has been convicted of  
 49 any felony, or of a misdemeanor involving any aspect of financial ser-



1 vices, or a court has accepted a finding of guilt on the part of the li-  
 2 censee or partner, officer, director, manager, member, control person,  
 3 employee or agent of the licensee, of any felony, or of a misdemeanor in-  
 4 volving any aspect of financial services; or

5 (e) The licensee or any partner, officer, director, manager, member,  
 6 control person, employee or agent of the licensee has had a license to  
 7 conduct financial services, including a license substantially equiva-  
 8 lent to a license under this act, revoked or suspended by any government  
 9 agency; or

10 (f) The licensee has filed an application for a license ~~which~~ that as of  
 11 the date the license was issued, or as of the date of an order denying,  
 12 suspending or revoking a license, was incomplete in any material re-  
 13 spect or contained any statement that was, in light of the circumstances  
 14 under which it was made, false or misleading with respect to any mate-  
 15 rial fact; or

16 (g) The mortgage broker or mortgage lender licensee has failed to no-  
 17 tify the director of the employment or termination of, or the entering  
 18 into or termination of a contractual relationship with, a licensed  
 19 mortgage loan originator pursuant to section 26-31-208 (2), Idaho Code;  
 20 or

21 (h) The mortgage broker or mortgage lender licensee has failed to su-  
 22 pervise diligently and control the mortgage-related activities of a  
 23 mortgage loan originator as defined in part 3 of this chapter and that is  
 24 employed by the licensee; or

25 ~~(i) The mortgage broker or mortgage lender licensee has failed to des-  
 26 ignate a new qualified person in charge and notify the director of the  
 27 same through the NMLSR within thirty (30) days following a change in the  
 28 qualified person in charge; or~~

29 ~~(j)~~ The licensee has failed to notify the director of the appointment  
 30 or employment of a control person within thirty (30) days of such occur-  
 31 rence.

32 (2) If the director finds that good cause exists for revocation of a li-  
 33 cense issued under this part, and that enforcement of this chapter and the  
 34 public interest require immediate suspension of the license pending inves-  
 35 tigation, he may, after a hearing upon five (5) days' written notice, enter  
 36 an order suspending the license for ~~not~~ no more than thirty (30) days.

37 (3) Any mortgage broker or mortgage lender licensee may relinquish its  
 38 license by notifying the department in writing of its relinquishment, but  
 39 this relinquishment shall not affect its liability for acts previously com-  
 40 mitted, and may not occur after the filing of a complaint for revocation of  
 41 the license.

42 (4) The director may, in his discretion, reinstate a license issued un-  
 43 der this part, terminate a suspension or grant a new license under this part  
 44 to a person whose license issued under this part has been revoked or sus-  
 45 pended, if no fact or condition then exists ~~which~~ that clearly would justify  
 46 the department in refusing to grant a license.

47 SECTION 8. That Section 26-31-211, Idaho Code, be, and the same is  
 48 hereby amended to read as follows:

1 26-31-211. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND MORTGAGE  
2 LENDERS. No mortgage broker or mortgage lender licensee under this part or  
3 person required under this part to have such license shall:

4 (1) Obtain any exclusive dealing or exclusive agency agreement from any  
5 borrower;

6 (2) Delay closing of any residential mortgage loan for the purpose of  
7 increasing interest, costs, fees or charges payable by the borrower;

8 (3) Accept any fees at closing ~~which~~ that were not previously disclosed  
9 fully to the borrower;

10 (4) Obtain any agreement or instrument in which blanks are left to be  
11 filled in after signing by a borrower;

12 (5) Engage in any misrepresentation or omission of a material fact in  
13 connection with a residential mortgage loan;

14 (6) Make payment, whether directly or indirectly, of any kind to any  
15 in-house or fee appraiser for the purpose of influencing the independent  
16 judgment of the appraiser with respect to the value of any residential real  
17 property ~~which~~ that is to be covered by a residential mortgage loan;

18 (7) Make any false promise likely to influence or persuade, or pursue a  
19 course of misrepresentations and false promises through mortgage loan orig-  
20 inators or other agents, or through advertising or otherwise;

21 (8) Misrepresent, circumvent or conceal, through whatever subterfuge  
22 or device, any of the material terms of a residential mortgage loan transac-  
23 tion;

24 (9) Enter into any agreement, with or without the payment of a fee, to  
25 fix in advance a particular interest rate or other term in a residential  
26 mortgage loan unless written confirmation of the agreement is delivered to  
27 the borrower as required by rule promulgated pursuant to this chapter and  
28 pertinent to this part;

29 (10) Engage in mortgage loan origination activity through any person  
30 who at the time of such mortgage loan origination activity does not hold a  
31 mortgage loan originator license issued by the department or temporary au-  
32 thority pursuant to this chapter; or

33 (11) Receive a fee for engaging in loan modification activities except  
34 pursuant to a written agreement between the person subject to this part and a  
35 person seeking a loan modification. The written agreement must specify the  
36 amount of the fee that will be charged to the person seeking a loan modifica-  
37 tion, specify the terms of the loan for which modification will be sought and  
38 disclose the expected impact of the loan modification on the monthly payment  
39 and length of the loan; ~~nor~~

40 ~~(12) Employ or otherwise appoint as a qualified person in charge any~~  
41 ~~person who the director has found to have violated standards of conduct~~  
42 ~~adopted by the NMLSR applicable to a person taking a written test admin-~~  
43 ~~istered pursuant to section 26-31-308, Idaho Code, or who has obtained~~  
44 ~~or attempted to obtain credit for education required pursuant to section~~  
45 ~~26-31-307 or 26-31-310, Idaho Code, by means of false pretenses or represen-~~  
46 ~~tations.~~

47 SECTION 9. That Chapter 31, Title 26, Idaho Code, be, and the same is  
48 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
49 ignated as Section 26-31-212, Idaho Code, and to read as follows:

1           26-31-212. RESERVE ACCOUNTS. (1) A mortgage lender shall, conspic-  
2 uously and specifically, disclose to each borrower all contractual provi-  
3 sions relating to reserve accounts, impound accounts, escrow accounts, or  
4 any other account maintained for the borrower in order to pay for property  
5 taxes, property insurance, or private mortgage insurance.

6           (2) Except as otherwise required by the truth in lending act, the real  
7 estate settlement procedures act, regulation X, or regulation Z, a mort-  
8 gage lender shall not keep more than one hundred twenty percent (120%) of  
9 the amounts necessary on an annual basis to pay expected insurance, taxes,  
10 or other agreed charges. Upon written notice by a borrower to the mortgage  
11 lender that reserves being required are excessive, the mortgage lender  
12 must, within thirty (30) days, either refund the excess or explain to the  
13 borrower why the amounts being required are believed to be reasonable and  
14 necessary. If, after notice of hearing under chapter 52, title 67, Idaho  
15 Code, the director determines that the reserve account, impound account,  
16 escrow account, or any other similar account maintained for a borrower is not  
17 reasonable, the director may order the mortgage lender to reduce its reserve  
18 requirements for such accounts. In any proceeding under this section, the  
19 burden shall be upon the mortgage lender to prove that the amounts required  
20 for such reserve accounts are based upon actual and reasonably anticipated  
21 charges.

22           SECTION 10. That Chapter 31, Title 26, Idaho Code, be, and the same is  
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
24 ignated as Section 26-31-213, Idaho Code, and to read as follows:

25           26-31-213. ANNUAL STATEMENTS. (1) A mortgage lender shall deliver to  
26 the borrower at least annually, during the month of January, a statement of  
27 the borrower's account showing the date and amount of all payments made or  
28 credited to the account for the immediately preceding twelve (12) month pe-  
29 riod and the total unpaid balance. The statement shall also clearly describe  
30 in full the amounts received on all tax and insurance reserve accounts, the  
31 disposition of such funds, and the amounts held in reserve in such accounts.  
32 The statement shall clearly indicate any penalty or interest payments be-  
33 cause of failure to pay taxes on time. A fee shall not be charged to the bor-  
34 rower for the statements.

35           (2) A borrower may request additional statements from a mortgage lender  
36 at any time, and the mortgage lender may, unless otherwise prohibited by law,  
37 require a fee to provide each such statement. The statement shall be deliv-  
38 ered to the borrower within thirty (30) days after receipt of a written re-  
39 quest from the borrower.

40           SECTION 11. That Chapter 31, Title 26, Idaho Code, be, and the same is  
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
42 ignated as Section 26-31-214, Idaho Code, and to read as follows:

43           26-31-214. NOTICE OF TRANSFER. Except as otherwise provided for in the  
44 truth in lending act, the real estate settlement procedures act, regulation  
45 X, or regulation Z, a mortgage lender shall provide notice to the borrower  
46 within fifteen (15) days after any sale or assignment of the borrower's res-  
47 idential mortgage loan to another person wherein the mortgage lender does

1 not retain the loan servicing. A mortgage lender purchasing or receiving as-  
2 signment of a residential mortgage loan with servicing shall provide to the  
3 borrower within thirty (30) days a written statement describing policies re-  
4 lating to the reserve account.

5 SECTION 12. That Section 26-31-304, Idaho Code, be, and the same is  
6 hereby amended to read as follows:

7 26-31-304. LICENSE AND REGISTRATION REQUIRED -- EXEMPTIONS. (1) Un-  
8 less specifically exempt under subsection (2) of this section, an individual  
9 shall not engage in the business of a mortgage loan originator with respect  
10 to any dwelling located in this state without first obtaining and maintain-  
11 ing annually a license under this part. Each licensed mortgage loan origina-  
12 tor shall register with and maintain a valid unique identifier issued by the  
13 NMLSR.

14 (2) The following are exempt from this part:

15 (a) Registered mortgage loan originators when acting on behalf of an  
16 entity described in section 26-31-303(9) (a) through (c), Idaho Code;

17 (b) Any individual who offers or negotiates terms of a residential  
18 mortgage loan with or on behalf of an immediate family member of the  
19 individual;

20 (c) Any individual who offers or negotiates terms of a residential  
21 mortgage loan that is secured by a dwelling that serves as the individ-  
22 ual's residence; and

23 (d) An attorney duly authorized to practice in this state who negoti-  
24 ates the terms of a residential mortgage loan on behalf of a client as  
25 an ancillary matter to the attorney's representation of the client, un-  
26 less the attorney is compensated by a lender, a mortgage broker or other  
27 mortgage loan originator or by any agent of such lender, mortgage broker  
28 or other mortgage loan originator.

29 (3) A loan processor or underwriter who is an independent contractor  
30 may not engage in the activities of a loan processor or underwriter unless  
31 such independent contractor loan processor or underwriter obtains and main-  
32 tains a license under subsection (1) of this section. Each independent con-  
33 tractor loan processor or underwriter licensed as a mortgage loan origina-  
34 tor must have and maintain a valid unique identifier issued by the nationwide  
35 mortgage licensing system and registry.

36 (4) For the purpose of implementing an orderly and efficient applica-  
37 tion and licensing process, the director may establish licensing rules and  
38 interim procedures for licensing and acceptance of applications. For previ-  
39 ously registered or licensed individuals, the director may establish exped-  
40 ited review and licensing procedures.

41 (5) An individual subject to the licensing requirements of this part  
42 may obtain temporary authority to originate loans in this state under the  
43 conditions of paragraphs (a), (b), and (c) of this subsection.

44 (a) Upon becoming employed by a mortgage broker or lender that is li-  
45 icensed pursuant to this chapter, an individual who is a registered loan  
46 originator shall be deemed to have temporary authority to act as a loan  
47 originator in this state for the period described in paragraph (c) of  
48 this subsection if the individual:

1           (i) Has not had an application for a loan originator license de-  
2           nied, revoked, or suspended in any governmental jurisdiction;

3           (ii) Has not been subject to or served with a cease and desist or-  
4           der in any governmental jurisdiction nor subject to an action pur-  
5           suant to 12 U.S.C. 5113(c);

6           (iii) Has not been convicted of a misdemeanor or felony that would  
7           preclude licensure under the laws of this state;

8           (iv) Has submitted an application for a loan originator license  
9           under this part; and

10           (v) Was registered in the NMLSR as a loan originator during the  
11           one (1) year period preceding the date on which the information re-  
12           quired under this part is submitted.

13           (b) A loan originator shall be deemed to have temporary authority to act  
14           as a loan originator in this state for the period described in paragraph  
15           (c) of this subsection if the individual:

16           (i) Meets the requirements of subparagraphs (i), (ii), (iii), and  
17           (iv) of paragraph (a) of this subsection;

18           (ii) Is employed by a mortgage broker or lender that is licensed  
19           pursuant to this act;

20           (iii) Was licensed as a mortgage loan originator in a state other  
21           than this state during the thirty (30) day period preceding the  
22           date on which the information required under this part was submit-  
23           ted in connection with an application for a mortgage loan origina-  
24           tor license.

25           (c) The period described in this paragraph shall begin on the date on  
26           which a loan originator submits the information required under this  
27           part in connection with the application for a mortgage loan originator  
28           license and end on the earliest of the date:

29           (i) On which the loan originator withdraws the application for a  
30           mortgage loan originator license submitted pursuant to this part;

31           (ii) On which the director denies, or issues a notice of intent to  
32           deny, the application;

33           (iii) On which the director grants a mortgage loan originator li-  
34           cence; or

35           (iv) That is one hundred twenty (120) days after the date on which  
36           the loan originator submits an application, if the application is  
37           listed on the NMLSR as incomplete.

38           (d) Any person employing an individual who, pursuant to the provisions  
39           of this subsection, is deemed to have temporary authority to act as a  
40           loan originator in this state shall be subject to the requirements of  
41           this chapter and to applicable law to the same extent as if that individ-  
42           ual was a loan originator licensed by this state.

43           (e) An individual who, pursuant to the provisions of this subsection,  
44           is deemed to have temporary authority to act as a loan originator in this  
45           state and who engages in residential mortgage loan origination activi-  
46           ties shall be subject to the requirements of this chapter and to appli-  
47           cable law to the same extent as if that individual was a loan originator  
48           licensed by this state.